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November 19, 2018

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

VIA ELECTRONIC FILING

**Re: Implementation of Act 58 of 2018 Alternative Ratemaking for Utilities;
Docket No. M-2018-3003269**

Dear Secretary Chiavetta:

Please find enclosed for filing with the Pennsylvania Public Utility Commission ("PUC" or "Commission") the Reply Comments of the Industrial Energy Consumers of Pennsylvania ("IECPA"), in the above-referenced matter.

All parties of record are being served a copy of this letter in accordance with the enclosed Certificate of Service.

Please contact me if you have any questions concerning this submission.

Sincerely,

SPILMAN THOMAS & BATTLE, PLLC

By 

Derrick Price Williamson
Barry A. Naum

BAN/sds

Enclosures

c: Kriss Brown, Esquire, Law Bureau (via E-mail and First-Class Mail)
Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Implementation of Act 58 of 2018 Alternative : Docket No. M-2018-3003269
Ratemaking for Utilities :

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the following parties to this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by participant).

VIA FIRST-CLASS MAIL

Bureau of Investigation & Enforcement
Pennsylvania Public Utility Commission
400 North Street, 2nd Floor
P.O. Box 3265
Harrisburg, PA 17105-3265

Office of Small Business Advocate
300 North Second Street
Suite 202
Harrisburg, PA 17101

Office of Consumer Advocate
5th Floor, Forum Place
555 Walnut Street
Harrisburg, PA 17101



Barry A. Naum

Dated: November 19, 2018

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Implementation of Act 58 of 2018 : **Docket No. M-2018-3003269**
Alternative Ratemaking for Utilities :

REPLY COMMENTS OF THE
INDUSTRIAL ENERGY CONSUMERS OF PENNSYLVANIA

The Industrial Energy Consumers of Pennsylvania ("IECPA")¹ is an association of energy-intensive industrial consumers of electricity and natural gas taking service from a variety of regulated utilities in Pennsylvania, including Columbia Gas of Pennsylvania, Inc.; Duquesne Light Company; Metropolitan Edison Company; PECO Energy Company; Pennsylvania Electric Company; Pennsylvania Power Company; Peoples Gas Company, LLC; Peoples Natural Gas Company LLC; PPL Electric Utilities Corporation; UGI Utilities Inc., – Gas Division, UGI North Rate District; UGI Utilities, Inc. – Gas Division, UGI South Rate District; and West Penn Power Company.

Act 58 of 2018 ("Act 58") tasks the Pennsylvania Public Utility Commission ("PUC" or "Commission") with establishing the specific procedures related to the application and approval of alternative ratemaking mechanisms. 66 Pa.C.S. § 1330(d). To help facilitate this process, the PUC solicited comments on its proposed interpretation and implementation of Act 58. IECPA,

¹ For the purpose of this matter, IECPA's membership consists of: Air Products & Chemicals, Inc.; AK Steel Corporation; Arconic, Inc.; ArcelorMittal USA LLC; Benton Foundry, Inc.; Carpenter Technology Corporation; East Penn Manufacturing Company; Knouse Foods Cooperative, Inc.; Praxair, Inc.; Proctor & Gamble Paper Products Company; and United States Gypsum Company.

along with several other stakeholders, took this opportunity to address the various customer protections contemplated by the text of Act 58. IECPA offers these Reply Comments in response to the Comments filed by other parties in this matter.

A. Section 1330(a) — Declaration of Policy

Notably, Act 58 affirmed that it is in the public interest to "ensur[e] that utility infrastructure costs are reasonably allocated to and recovered from customers and market participants consistent with the use of the infrastructure." 66 Pa. CS § 1330(a). IECPA supports the inclusion of such language, which echoes a fundamental tenant of ratemaking, as it indicates a clear intention to ensure ratepayers are only required to pay for utility services based upon an individual utility's cost-to-serve that customer or class of customers. This is inherently fair. Other parties, including the Pennsylvania Energy Consumer Alliance ("PECA"), also filed Comments promoting this basic concept of equity through an adherence to cost-of-service principles. *See, e.g.*, PECA Comments, pp. 6-7 (recommending a requirement that alternative ratemaking be implemented on a customer class-specific basis to avoid inappropriate cost shifting). IECPA supports all efforts to retain the cost-to-serve polestar for determining consumer rates, even in the context of alternative ratemaking under Act 58.

B. Section 1330(b) — Alternative Rate Mechanisms

Touching on the issue of "lost or decreased revenues," the PUC's Tentative Implementation Order interprets the "notwithstanding" language within Section 1330(b)(1) as permitting "any utility, including EDCs, to establish alternative rates and rate mechanisms, in spite of the prohibitions in Section 2806.1(k)(2) and 2807(f)(4)" on the recovery of these revenue elements. Tentative Implementation Order, p 5. It appears that the PUC simply interprets

Section 1330(b)(1) as noting that these prohibitions do not restrict the Commission's authority to approve alternative ratemaking structures.

On this issue, IECPA submitted Comments arguing that a plain reading of Sections 2806.1(k) and 2807(f)(4) indicates that the Legislature included these prohibitions in order to insure that utilities do not recover lost or decreased revenues from ratepayers as a cost component of *any* charge,² and asked that the Commission clarify that the Tentative Implementation Order's interpretation of the "notwithstanding" clause did not serve as a blanket approval for inclusion of lost or decreased revenues through an alternative ratemaking mechanism. IECPA Comments, pp. 4-6. In its Comments, PECO Energy Company ("PECO") offered an opposing view and asked the PUC to clarify that Act 58 *does* provide for the recovery of lost revenue pursuant to alternative ratemaking mechanisms. PECO Comments, p. 3. For the reasons stated in its Comments, IECPA disagrees with PECO.

In providing further guidance on this point, the Commission should also look to the Comments filed by the Office of Consumer Advocate ("OCA"), which IECPA supports. From the OCA's perspective, there is no reason to believe that Act 58 somehow extinguished the prohibitions included Sections 2806.1(k)(2) and 2807(f)(4). Therefore, the prohibitions continue to preclude electric distribution companies ("EDCs") from recovering decreased revenues attributable to reduced energy consumption or changes in energy demand as eligible costs in rates. OCA Comments, pp. 6-7. It follows that, regardless of Act 58's authorization of alternative ratemaking structures, recovering decreased revenues through automatic adjustment mechanisms (*e.g.*, lost revenue adjustment clauses) remains unlawful, and nothing in Section 1330(b) supersedes this prohibition.

² IECPA also maintains that the Section 1308 base rate proceeding is the only appropriate procedure under which a utility should be permitted to seek approval to implement or modify any alternative rate mechanism, including a Section 1307 "automatic adjustment clause," as is clearly delineated in Section 1330(b)(1).

C. Filing Requirements

Likewise, IECPA concurs with the OCA's statements regarding the filing requirements for alternative ratemaking mechanisms. The PUC should require utilities to include the information outlined on page 11 of the OCA's Comments in all future filings. Adopting the OCA's proposal would lead to increased transparency and efficiency and would provide the PUC and stakeholders with additional time to evaluate an alternative ratemaking mechanism in the timeframe allotted for the consideration of a Section 1308(d) base rate case.³

D. Consumer Protections

In its Comments, PECA highlights the fact that the PUC's Tentative Implementation Order lacks any discussion of specific consumer protections that will apply to future alternative ratemaking proposals filed by utilities. PECA Comments, p. 2. IECPA shares PECA's concern that the Commission has instead suggested that "the details of consumer protections should be addressed in the base rate proceeding when a utility proposes such a mechanism." *Id.* According to PECA, such an approach creates needless "uncertainty for stakeholders." *Id.* IECPA agrees with this conclusion, which is especially true for consumers required to participate in multiple proceedings in an effort protect their interests against various utilities' desire for greater revenue certainty. As noted by PECA, the PUC can avoid unnecessary litigation by commencing a rulemaking pursuant to Section 1330(d) of Act 58.

PECA's recommended course of action provides the PUC and stakeholders with an opportunity to build on the consumer protections already present in Act 58. For example, the Commission may wish to incorporate the most effective consumer protections from other jurisdictions as they relate to various alternative ratemaking mechanisms. In the alternative, the

³ The OCA's proposal here aligns with IECPA's Comments filed in Dockets M-2015-2518883 and M-2018-3003269.

PUC could use a rulemaking to simply offer guidance and instruction related to reasonably foreseeable consequences of Act 58.

IECPA urges the Commission to adopt the additional consumer protections proposed by the OCA and PECA and require any utility that proposes to implement a novel ratemaking mechanism to include sufficient consumer protections before the PUC can find that the mechanism is just, reasonable, and in the public interest. Given that Act 58 affords the PUC with the authority to approve unlimited variations of alternative ratemaking mechanisms, it is critical that the Commission pair each approved mechanism with the most effective set of consumer protections.

The following is a non-exhaustive list of some of the consumer protections that the OCA and PECA identified in their Comments⁴:

- Time limits to ensure periodic review;
- Implement earnings-sharing mechanism;
- Reduced authorized return on equity levels;
- Design mechanisms on a customer-class basis;
- Capped adjustments;
- Freeze the revenue requirement from the test period;
- Specific metrics to determine incremental benefits; and
- Periodic base rate case filings and evaluations.

⁴ See OCA Comments, pp. 12-13; *see also generally* PECA Comments, pp. 4-7.

IECPA supports these, as well as other, consumer protections. Of course, the Commission will need to continue to develop new consumer protections to mitigate the unique risks posed by an ever-growing list of alternative ratemaking mechanisms.

Respectfully submitted,

By 

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