



800 North Third Street, Suite 205, Harrisburg, Pennsylvania 17102
Telephone (717) 901-0600 • Fax (717) 901-0611 • www.energypa.org

November 19, 2018

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

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

Dear Secretary Chiavetta:

Please find enclosed for filing the Reply Comments of the Energy Association of Pennsylvania to the Tentative Implementation Order entered on August 23, 2018 at the above-referenced docket.

Sincerely,

A handwritten signature in black ink that reads "Donna M.J. Clark".

Donna M.J. Clark
Vice President & General Counsel

cc: Kriss Brown, Assistant Counsel, Law Bureau

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Implementation of Act 58 of 2018
Alternative Ratemaking for Utilities

:

M-2018-3003269

**REPLY COMMENTS OF THE
ENERGY ASSOCIATION OF PENNSYLVANIA TO THE TENTATIVE
IMPLEMENTATION ORDER**

I. INTRODUCTION

On June 28, 2018, Governor Wolf signed into law Act 58 of 2018 (“Act 58”) which amends Chapter 13 of the Pennsylvania Public Utility Code, 66 Pa. C. S. §§ 1301 *et seq* (relating to rates and distribution systems) by adding a new section 1330, 66 Pa. C. S. § 1330 (relating to alternative ratemaking for utilities). Section 1330 authorizes the Pennsylvania Public Utility Commission (“Commission” or “PUC”) to approve an application by a utility to establish alternative rates and rate mechanisms.

Pursuant to Section 1330 (d), the General Assembly directed the PUC to, within six months of the effective date, “prescribe the specific procedures for the approval of an application to establish alternative rates” by regulation or order. 66 Pa. C. S. § 1330 (d). The Commission issued a Tentative Implementation Order (“TIO”) at its Public Meeting on August 23, 2018 to meet this directive. Following the publication of the TIO in the *Pennsylvania Bulletin* on September 8, 2018, interested parties had until October 8 (30 days) to file comments. The TIO also allowed for reply comments, due 70 days following publication, i.e., November 19, 2018.

The Energy Association of Pennsylvania (“EAP” or “Association”) is a trade association that represents and promotes the interests of regulated electric and natural gas distribution companies operating in the Commonwealth. EAP previously submitted initial comments under this docket,¹ and now respectfully submits these reply comments to supplement those filed individually by its member companies.²

II. COMMENTS

A. EAP disagrees that any further rulemaking at this stage is necessary to fully implement Act 58.

In their comments to the TIO, some stakeholders disagree with the Commission’s assessment that the current regulation at 52 Pa. Code § 53.53 are “comprehensive and far-reaching”³ and therefore sufficient to address alternative rate mechanism proposals, and argue that the Commission should create specific procedures and filing requirements when utilities seek to implement alternative ratemaking mechanisms as part of a rate case. Citing “uncertainty for stakeholders, especially for consumers that will be required to participate in multiple proceedings,” these commenters believe that the Commission should “immediately” commence an additional rulemaking.⁴

EAP disagrees with this assessment. The Commission has rightfully recognized that the “the utility has the burden of establishing the justness and reasonableness” of any new tariff

¹ See, Comments of the Energy Association of Pennsylvania to the Tentative Implementation Order, Docket No. M-2018-3003269, October 8, 2018.

² The Association’s electric distribution company members include: Citizens’ Electric Company; Duquesne Light Company; Metropolitan Edison Company; PECO Energy Company; Pennsylvania Electric Company; Pennsylvania Power Company; Pike County Light & Power Company; PPL Electric Utilities Corporation; UGI Utilities, Inc.(Electric Division); Wellsboro Electric Company; and, West Penn Power Company. The Association’s natural gas distribution company members include: Columbia Gas of Pennsylvania, Inc.; Pike County Light & Power Company; Leatherstocking Gas Co., LLC, National Fuel Distribution Corp.; PECO Energy Company; Peoples Natural Gas Company LLC; Peoples TWP LLC; Philadelphia Gas Works; UGI Central Penn Gas, Inc.; UGI Penn Natural Gas, Inc.; UGI Utilities Inc.; and Valley Energy Inc.

³ TIO, p. 9.

⁴ Industrial Customers Comments to the Tentative Implementation Order, Docket No. M-2018-3003269, p.2; See also, Comments of the Office of Consumer Advocate to the Tentative Implementation Order, p. 10.

proposal, and this would extend to any alternative ratemaking methodology being proposed. The TIO, in accordance with the language of the statute, “does not alter or change these well-established standards place on a utility seeking to change its rates.”⁵ As the Commission noted in the TIO, utilities have always had the ability to propose, and the Commission the ability to approve, alternative rate mechanism as part of a rate case.⁶ Indeed, the Commission has addressed alternative rate mechanism proposals made by utilities as part of their rate cases, without the need for additional procedures or filing requirements.⁷

By suggesting that a further rulemaking is necessary to establish additional rules not contemplated by the statute, the commenters not only question the robust nature of the current ratemaking rules and procedures to adequately protect all consumers, but also seek to limit utilities in their proposals before any have been made and assessed. In addition, the number of cases to which intervenors will be party is unknown at this time and, like all rate filings, subject to the particular circumstances of each utility company. There is no way of knowing at this early stage the impact, if any, alternative ratemaking will have on the frequency of utility rate filings. EAP encourages the Commission to maintain its proposal to utilize existing filing requirements to evaluate the appropriateness of any proposed alternative ratemaking mechanism as contemplated by the General Assembly. EAP again suggests that prior to considering additional or prescriptive criteria for specific rate designs or mechanisms, all stakeholders and the Commission could benefit and gain experience through the litigation of actual utility proposals for approval of an alternative rate design or mechanism.

⁵ TIO, p. 8.

⁶ TIO, p. 9.

⁷ For example, in the Columbia Gas 2012 rate case at Docket No. R-2012-2321748, the Commission approved an alternative rate mechanism – a Weather Normalization Adjustment – as a three-year pilot program.

B. EAP agrees clarification is needed with respect to the use of an adjustment mechanism under section 1307 of the Public Utility Code to recover lost revenues.

In its comments, PECO highlighted that the Commission, in the TIO, stated that Section 1330(b) permits alternative rate and rate mechanisms notwithstanding other provisions of law, including Sections 2806.1(k) and 2807(f)(4) of the Code, “but did not address whether decreased revenues associated with reduced energy consumption or shifting energy demand may be recovered.”⁸ PECO therefore asks the Commission to “clearly state” that decreased revenues may be recovered through the use of a Section 1307 charge.⁹ EAP supports this request for clarification.

As previously raised in EAPs’ comments to the TIO, given the “notwithstanding” language of the statute, the Commission should be explicit in its future order that alternative rates or rate mechanisms considered and approved by the Commission may recover such lost revenues.¹⁰

C. EAP amends its previous comments to support those of UGI and PPL with regard to interpretation of “a base rate proceeding.”

In its initial comments to the TIO, EAP expressed support for the Commission’s interpretation “that at the present time, the established law, rules and procedures for filing and seeking approval of a new rate, including alternative rates and rate mechanisms, under a Section 1308 general base rate proceeding appear to be adequate for the Section 1330 requirements.” EAP further agrees with the Commission’s proposal to meet its obligations under Section

⁸ Comments of PECO Energy Company to the Tentative Implementation Order, Docket No. M-2018-3003269, October 9, 2018, p.2

⁹ *Id.*

¹⁰ Comments of the Energy Association of Pennsylvania to the Tentative Implementation Order, Docket No. M-2018-3003269, October 8, 2018, p.4.

1330(d) of the Act by applying the existing rules and regulations applicable in a Section 1308(d) base rate proceeding.¹¹

Upon review of comments submitted by UGI and PPL, EAP believes the Commission should consider the “base rate proceeding” language of the statute to contemplate any Section 1308 proceeding, not 1308(d) exclusively. UGI notes that Section 1308(d) defines the filing as one “which affects more than 5% of the customers and amounts to in excess of 3% of the total gross annual intrastate operating revenue of the public utility.”¹² However, other base rate filings under Section 1308 do not meet this impact and cost standard yet still provide parties with their statutory rights and protections subject to full Commission review. Noting that the General Assembly provided discretion to utilities to initiate individual alternative ratemaking proposals, EAP encourages the commission to avoid limiting approval for such mechanisms to one subset of base rate cases. Section 1330(b) of the statute does not contemplate such a limitation, and therefore, consideration and approval of alternative ratemaking methodologies should not be limited to Section 1308(d) proceedings, but must occur in the context of a Section 1308 proceeding.

As requested by UGI, to ensure the Commission does not unintentionally limit company proposals, the Commission should clarify that Section 1307 alternative rate mechanisms approved in base rate proceedings can be adjusted and reviewed outside Section 1308 base rate cases. As recounted by PPL in its comments, the company’s existing automatic adjustment clauses, following initial approval in a 1308(d) proceeding, currently operate under Section 1307 review. “The Commission’s interpretation [in these examples] allows for all of the stakeholder protections and examination afforded in Section 1308 base rate case proceedings, while

¹¹ Ibid, p.3.


¹² UGI, p. 3.

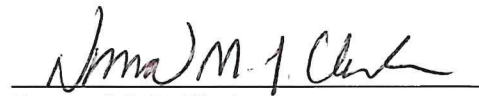
establishing an efficient alternative to the lengthy and voluminous process of a base rate case by allowing for mechanisms to subsequently operate under Section 1307.”¹³ Given these points, EAP encourages the Commission to be explicit regarding this flexibility intended by the statute in its final order.

III. CONCLUSION

EAP appreciates the opportunity to provide reply comments regarding the Tentative Implementation Order issued by the Commission. Noting the clarification and the exception detailed above, EAP agrees that implementation of Act 58 is met by application of existing Commission rules, regulations, and procedures that govern base rate proceedings to any future request by a utility to establish alternative rates or rate mechanisms under section 1330 of the Public Utility Code.

Respectfully submitted,


Terrance J. Fitzpatrick
President & CEO
tfitzpatrick@energypa.org


Donna M. J. Clark
Vice President & General Counsel
dclark@energypa.org

Energy Association of Pennsylvania
800 North Third Street, Suite 205
Harrisburg, PA 17102

Date: November 19, 2018

¹³ PPL, p. 3.