

November 19, 2018
Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

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

Dear Secretary Chiavetta:

The undersigned organizations (“Commenters”) are pleased to submit these reply comments concerning the Pennsylvania Public Utility Commission’s Tentative Implementation Order for Section 1330 of the Public Utility Code, 66 Pa. C.C. § 1330.

Sincerely,

Eric Miller
Policy Counsel
Keystone Energy Efficiency Alliance

Tom Schuster
Sr. Campaign Representative
Sierra Club

Mark Szybist
Senior Attorney & Pennsylvania Advocate
Natural Resources Defense Council

Ron Celentano
President
PA Solar Energy Industries Assoc.

Logan Welde
Staff Attorney
Clean Air Council

Liz Robinson
Executive Director
Philadelphia Solar Energy Association

Rob Altenburg
Director,
PennFuture Energy Center

Comments

In our initial comments, the undersigned organizations expressed general support for the Public Utility Commission's Tentative Implementation Order ("TIO") concerning Section 1330 of the Public Utility Code, which was added to the Code by Act 58 of 2018. Specifically, the Commenters agreed with the PUC that the goals set forth in Act 58 are similar to those the Commission has articulated in its proposed Policy Statement ("Policy Statement") under Docket No. M-2015-2518883 ("alternative ratemaking docket"). Further, Commenters agreed with the Commission's conclusion that 1330(b)(1) settles the important question of whether sections 2806.1(k)(2) and 2807(f)(4) of the Code prohibit EDCs from using alternative ratemaking mechanisms that rely on 1307 automatic adjustment mechanisms. The Commenters are pleased to see that there is broad agreement among stakeholders concerning these issues.

We submit the following reply comments primarily to emphasize that, while some commenters have suggested otherwise, there is no inconsistency between Act 58 and the Proposed Policy Statement, and it is both appropriate and prudent for the Commission to proceed on its current path of using the TIO for the former to provide the procedure by which alternative ratemaking mechanisms are to be approved, while using the Policy Statement to provide substantive guidance regarding the specific factors the Commission will consider in determining whether to approve or deny any proposed alternative rate designs in a utility's general base rate case.¹

We strongly disagree with the suggestion by the Energy Association of Pennsylvania ("EAP") that any policy guidance concerning alternative ratemaking and Act 58 implementation is "premature in light of the broad nature of Act 58," and that the Commission should "wait until such time as it and other stakeholders have gained experience in reviewing utility alternative ratemaking proposals before codifying any policies relating thereto."² In fact, the breadth of Act 58 -- i.e., the wide latitude utilities now have to propose virtually any types of alternative rate mechanism -- is the very reason why policy guidance from the Commission is necessary. The Commission does not need experience with particular alternative ratemaking *mechanisms* to

¹ Comments of CAC, (Oct. 2 2018) Docket No. M-2018-3003269

² Comments of EAP, at 3 (Oct. 8 2018) Docket No. M-2018-3003269

decide what policy *goals* it will favor, when reviewing ratemaking proposals. And with respect to mechanisms, Pennsylvania is not starting with a blank slate. Take, for example, revenue decoupling. As of August, 2018 decoupling had been approved for 41 electric utilities in 17 states and 64 gas utilities in 26 states.³ Consequently, there is an extensive body of evidence concerning the effects of different kinds of decoupling mechanisms, some of which has been placed on the record in the Commission’s alternative ratemaking docket. The same is true of various other types of ratemaking mechanisms. This body of evidence gives the Commission an ample foundation for promulgating non-binding criteria for the review of alternative ratemaking mechanisms.

The Commenters support the request made by EAP “in the alternative,” and also made by the Duquesne Light Company, that the Commission “align the concepts contained in the Proposed Fixed Rates Policy Statement with Act 58.” On the other hand, Commenters strongly disagree with EAP’s suggestion that the Proposed Policy Statement is in conflict with Act 58 and “inflexible.” Policy statements are flexible by nature (if they are applied inflexibly, they are liable to be struck down as improperly promulgated regulations). And as we and others (e.g., the Advanced Energy Economy Institute) have respectively elaborated in earlier comments in this docket and the alternative ratemaking docket, Act 58 and the Proposed Policy Statement are in fact not in conflict, and the Commission can easily resolve any differences and apparent inconsistencies between them in the final Policy Statement. The Commission’s Consumer Advisory Council has also taken the position that the Act 58 TIO and the Policy Statement are complementary.

Additionally, Commenters agree that, as several other stakeholders recommended, the Commission should more explicitly clarify the relationship between Act 58 and Section 2806.1(k) and 2807(f)(4). For example, the PECO Energy Company (“PECO”) requested that the Commission make clear that the recovery of lost revenue is permitted under section 1307 of the Public Utility Code pursuant to alternative ratemaking mechanisms authorized in

³ See Natural Resources Defense Council, *Electric and Gas Decoupling in the U.S.* (Aug. 2018) *available at*, <https://www.nrdc.org/sites/default/files/decoupling-maps-package-01.18.17.pdf>

accordance with Act 58's requirements.⁴ Commenters -- who strongly support full revenue decoupling and oppose lost revenue adjustment mechanisms that do not provide for excess earnings to be returned to consumers -- agree with this request, and believe that such a determination would resolve any uncertainty as to whether utilities are permitted to recover lost revenues associated with the implementation of their Act 129 energy efficiency and conservation programs.

Conclusion

The Commenters appreciate the opportunity to submit these reply comments to the Commission, and applaud the Commission's continued commitment to advancing alternative ratemaking in Pennsylvania. The Commenters would ask the Commission to reject EAP's assertion that policy guidance concerning alternative ratemaking and Act 58 implementation is premature, and that the Commission should decide to "align the concepts contained in the Proposed Fixed Rates Policy Statement with Act 58."

⁴ Comments of PECO Energy Company, Docket No. M-2018-3003269 at 2 (Oct. 9 2018).