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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:

Attached for filing with the Pennsylvania Public Utility Commission are the Joint Reply Comments of the Pennsylvania Energy Consumers Alliance, Met-Ed Industrial Users Group, Penelec Industrial Customer Alliance, Philadelphia Area Industrial Energy Users Group, PP&L Industrial Customer Alliance, and West Penn Power Industrial Intervenors to the Tentative Implementation Order in the above-captioned proceeding.

If you have any questions concerning this matter, please contact the undersigned. Thank you.

Respectfully submitted,

McNEES WALLACE & NURICK LLC

By

A handwritten signature in blue ink, appearing to read 'Matthew L. Garber', is written over a horizontal line. Below the signature, the name 'Matthew L. Garber' is printed in a black sans-serif font.

Enclosure

c: Chairman Gladys M. Brown (Via First-Class Mail)
Vice Chairman Andrew G. Place (Via First-Class Mail)
Commissioner John F. Coleman, Jr. (Via First-Class Mail)
Commissioner Norman J. Kennard (Via First-Class Mail)
Commissioner David W. Sweet (Via First-Class Mail)
Certificate of Service

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CERTIFICATE OF SERVICE

I hereby certify that I am this day serving a true copy of the foregoing document upon the participants listed below in accordance with the requirements of 52 Pa. Code Section 1.54 (relating to service by a participant).

VIA E-MAIL

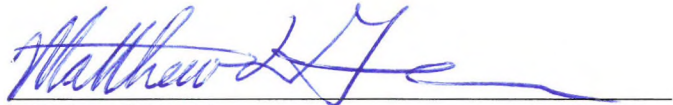
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Dated this 19th day of November, 2018, at Harrisburg, Pennsylvania

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**JOINT REPLY COMMENTS OF THE
PENNSYLVANIA ENERGY CONSUMERS ALLIANCE,
MET-ED INDUSTRIAL USERS GROUP,
PENELEC INDUSTRIAL CUSTOMER ALLIANCE,
PHILADELPHIA AREA INDUSTRIAL ENERGY USERS GROUP,
PP&L INDUSTRIAL CUSTOMER ALLIANCE, AND
WEST PENN POWER INDUSTRIAL INTERVENORS**

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Customer Alliance, and West Penn Power Industrial
Intervenors

Dated: November 19, 2018

I. INTRODUCTION

On June 28, 2018, Pennsylvania Governor Thomas Wolf signed into law Act 58 of 2018 ("Act 58"). Act 58 amends Chapter 13 of the Public Utility Code ("Code") to authorize utilities to request, and the Pennsylvania Public Utility Commission ("PUC" or "Commission") to approve, alternative ratemaking methodologies that adjust rates between rate cases filed pursuant to Section 1308(d) of the Code. Act 58 specifically defines four types of alternative ratemaking (*i.e.*, revenue decoupling, formula rates, performance-based rates, and multiple year rate plans) but also affords flexibility for other forms of alternative ratemaking.¹ Upon signing Act 58, Governor Wolf issued a letter to the Commission.² The Governor's letter emphasized the importance of robust Commission oversight for any mechanisms approved under the new law, including establishing consumer protections prior to the consideration of proposals by individual utilities in rate cases.³ On August 23, 2018, the Commission issued a Tentative Implementation Order ("TIO") relating to Act 58, which was published in the *Pennsylvania Bulletin* on September 8, 2018.⁴

Pursuant to the procedures set forth in the TIO, interested stakeholders were permitted to submit Comments regarding the issues set forth in the TIO. To that end, on October 9, 2018, the Pennsylvania Energy Consumer Alliance ("PECA"), the Met-Ed Industrial Users Group ("MEIUG"), the Penelec Industrial Customer Alliance ("PICA"), the Philadelphia Area Industrial Energy Users Group ("PAIEUG"), the PP&L Industrial Customer Alliance ("PPLICA"), and the West Penn Power Industrial Intervenors ("WPPII") (collectively, the "Industrials") jointly filed

¹ 66 Pa. C.S. § 1330(b)(1).

² *Letter from Governor Thomas Wolf to the Pennsylvania Public Utility Commission* (June 28, 2018) ("*Letter from Governor Thomas Wolf*"). See Comments of the Pennsylvania Energy Consumers Alliance, *et al.* ("Industrials Comments"), *Implementation of Act 58 of 2018 Alternative Ratemaking for Utilities*, Docket No. M-2018-3003269 (Oct. 9, 2018), Attachment No. 1.

³ *Id.*

⁴ Tentative Implementation Order ("TIO"), *Implementation of Act 58 of 2018 Alternative Ratemaking for Utilities*, Docket No. M-2018-3003269 (Aug. 23, 2018); 48 Pa. Bull. 5691 (Sept. 8, 2018).

Comments with the PUC. The Industrials' Comments focused on the consumer safeguards necessary for any alternative ratemaking mechanisms approved by the Commission.⁵

Pursuant to the procedural schedule, the Industrials now submit these Joint Reply Comments in response to several issues raised in the Comments of other stakeholders.⁶ As set forth more fully in these Joint Reply Comments, the Industrials propose that, contrary to Duquesne Light Company's ("Duquesne") position, mandated consumer protections must accompany any alternative ratemaking proposal. Requiring such protections addresses the concerns of customers while still affording the utilities the flexibility provided by Act 58. Moreover, the Industrials posit that the best means by which to implement these protections is through a Rulemaking Docket that comports with the General Assembly's requirement that the procedures under Act 58 be specific. *See* Section II.A., *infra*.

In addition, contrary to UGI Utilities, Inc.'s ("UGI") argument, the Industrials submit that the Commission's position of allowing for the establishment of alternative ratemaking methods only in Section 1308(d) proceedings is just and reasonable, as only 1308(d) proceedings provide the ability for an extensive examination of the utility's revenue, expenses, and capital, all of which are needed prior to approving an alternative ratemaking methodology. *See* Section II.B., *infra*. Moreover, UGI's recommendation, to permit modification of an already approved alternative

⁵ Industrials Comments, pp. 4-8.

⁶ The Industrials received and reviewed Comments from the following Stakeholders: Duquesne Light Company; Pennsylvania-American Water Company; Keystone Energy Efficiency Alliance, Natural Resources Defense Council, Citizens for Pennsylvania's Future, Clean Air Council, Sierra Club, Philadelphia Solar Energy Association, and PA Solar Energy Industries Association; Energy Association of Pennsylvania; Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power; Columbia Gas of Pennsylvania; Laborers' District Council of Eastern Pennsylvania; Advanced Energy Economy Institute; Industrial Energy Consumers of Pennsylvania; PECO Energy Company; Office of Consumer Advocate; UGI Utilities, Inc.; PPL Electric Utilities Corporation; International Brotherhood of Electrical Workers; and Senators John T. Yudichak and Lisa M. Boscola. The Industrials' decision to only respond to specific proposals of certain stakeholders does not indicate the Industrials' agreement on all other stakeholders' positions.

ratemaking methodology outside of a 1308(d) proceeding, would do nothing more than allow for an "end run" around the extensive analysis needed and provided for as part of a base rate proceeding. *See* Section II.C., *infra*.

Finally, the Industrials concur with the positions of several other Stakeholders noting that cost-of-service is the polestar for setting a utility's rates. While policy may play a role in such review, the Commission must ensure that the concerns of stakeholders are met by providing that an alternative ratemaking methodology, if approved, addresses and adheres to cost-of-service principles. Moreover, implementing the consumer protections proposed by the Industrials would help to ensure that cost-of-service concerns are adequately addressed. *See* Section II.D., *infra*.

II. REPLY COMMENTS

As set forth in the Industrials' Comments, the Commission must ensure that the implementation of alternative ratemaking methodologies reinforces the need for utility accountability, ratemaking mechanisms that adhere to cost-of-service principles, and robust consumer protections to ensure these principles are faithfully applied over the long term.⁷ The Industrials' Joint Reply Comments respond to those stakeholder positions that would limit the aforementioned protections, while also recognizing those stakeholder positions that seek to ensure such protections.

⁷ *See* Industrials Comments, pp. 4-8. Specifically, the Industrials request that the Commission: (1) establish mandatory time limitations on alternative ratemaking mechanisms so such mechanisms will be reviewed in a base rate case on a periodic basis; (2) require an earnings-sharing mechanism and reduction to Return on Equity ("ROE") when approving alternative ratemaking mechanisms; and (3) require alternative ratemaking mechanisms to be implemented in ways that do not shift costs interclass or intraclass, while ensuring such mechanisms are designed on a customer-class basis.

A. Contrary to the position of Duquesne Light Company, additional consumer protections are needed as part of any alternative rulemaking proposal, with implementation preferably occurring through PUC establishment of a Rulemaking Docket.

In its Comments in this proceeding, Duquesne supports the establishment of alternative ratemaking methodologies in Section 1308 base rate proceedings and, citing the TIO, argues that "no additional specific procedures are needed" at this time.⁸ The Industrials, however, respectfully disagree with the TIO and Duquesne on the need for additional specific procedures. With the passage of Act 58, utilities have available to them a variety of options that were not available in the past. While the General Assembly clearly wished to give the Commission more flexibility to address the changing utility landscape, it also directed the Commission to prescribe "the specific procedures for the approval of an application to establish alternative rates."⁹

As discussed more fully in the Industrials' Comments, the Industrials submit that the "specific procedures" referenced in Act 58 should include mandated consumer protections that must accompany any alternative rate methodology proposal.¹⁰ Requiring consumer protections commensurate with the flexibility afforded by Act 58 is a just and reasonable approach to implementing Act 58, as such a combination would allow utilities to benefit in a fair fashion while reducing any harm that could come to customers through such implementation. As stated by the Office of Consumer Advocate ("OCA") in its Comments:

Because of the impact that alternative ratemaking mechanisms can have on consumers . . . the OCA submits that the Commission should use its authority under Subsection (d) to create specific procedures concerning filing requirements, consumer protections, and consumer education plans when utilities apply for alternative ratemaking mechanisms.¹¹

⁸ Duquesne Light Company's Comments, *Proposed Implementation of Act 58*, Docket No. M-2018-3003269 (October 5, 2018), p. 3.

⁹ See 66 Pa. C.S. § 1330(a), (d).

¹⁰ See Industrials Comments, pp. 3-4.

¹¹ Comments of the Office of Consumer Advocate ("OCA Comments"), *Proposed Implementation of Act 58*, Docket No. M-2018-3003269 (October 9, 2018), p. 10.

Moreover, the need for robust, specific, and binding consumer protections is consistent with Governor Wolf's comments in his letter to the Commission. Governor Wolf wrote:

I further understand that the Commission intends to conduct a robust public comment process and formally adopt appropriate requirements prior to considering any rate proceeding proposing alternative rate mechanisms. This process will allow the Commission to further clarify the consumer protections—*such as periodic review and oversight of any automatic adjustments*—that it will **require** in this new context, and will allow stakeholders to weigh in with concerns, and provide greater certainty to utilities about the new mechanisms that will be considered. I believe that **formalizing the consumer protections that will apply** in the context of alternative ratemaking is in the best interest of the Commonwealth and urge the Commission to move forward expeditiously.¹²

In addition, as noted in the Industrials' Comments, the General Assembly provided the Commission the ability to determine whether to establish procedures by regulation or order. When considering how best to address consumer protections, the Industrials submit that a Rulemaking Docket is the approach that best balances customers' and utilities' interests.¹³ Future Commissions may not have the same historical perspective as the current Commission, and a Final Implementation Order leaving all issues to the utilities' rate cases leaves stakeholders without enduring guidance that a regulatory change of this magnitude requires. In contrast, providing specific procedures through a Rulemaking Docket comports with the General Assembly requirement that the Commission's procedures under Act 58 be specific.

Accordingly, the Industrials suggest that the provisions set forth by the General Assembly, the guidance provided by Governor Wolf, and the positions set forth by stakeholders representing the interests of consumers all require that the Commission implement mandated consumer protections that must accompany any alternative ratemaking proposal. Moreover, to ensure a fair

¹² *Letter from Governor Thomas Wolf*, p. 2 (emphasis added).

¹³ Industrials Comments, pp. 7-8.

and equitable balance between customers' and utilities' interests, such consumer protection requirements should be addressed as a Rulemaking Docket.

B. Contrary to the position of UGI, a Section 1308(d) proceeding is the appropriate place to deploy and litigate alternative ratemaking mechanisms.

In its Comments, UGI argues that review and approval of alternative ratemaking mechanisms should be allowable in *any* Section 1308 proceeding, not just Section 1308(d) proceedings.¹⁴ The Industrials disagree, as Act 58 and the Commission's interpretation thereto correctly provides that alternative ratemaking mechanisms must only be approved as part of a Section 1308(d) proceeding. The Industrials submit that UGI's proposal is contrary to the General Assembly's intent and should be rejected.

Act 58 states that the Commission may "approve an application by a utility in a base rate proceeding to establish alternative rates and rate mechanisms."¹⁵ Consistent with the Commission's interpretation in the TIO, the term "a base rate proceeding" is commonly used to refer to a general rate increase, which is a Section 1308(d) proceeding.¹⁶ The Commission stated in the TIO that "[a] Section 1308(d) proceeding provides for an extensive examination of a utility's total revenues, expenses, taxes, capital costs and rate structure."¹⁷ For that reason, the Commission correctly interprets Section 1330(b)(1) as "requiring utilities seeking to obtain Commission approval of an alternative rate or rate mechanism to do so initially through a Section 1308(d) . . . general rate proceeding."¹⁸

As recognized by the PUC, a Section 1308(d) proceeding provides the appropriate opportunity for the parties to address and the Commission to review all of the necessary

¹⁴ Comments of UGI Utilities, Inc. ("UGI Comments"), *Implementation of Act 58 of 2018 Alternative Ratemaking for Utilities*, Docket No. M-2018-3003269 (Oct. 9, 2018), pp. 3-5.

¹⁵ 66 Pa. C.S. § 1330(b)(1).

¹⁶ TIO, p. 3.

¹⁷ *Id.*

¹⁸ *Id.*

components that must be considered before an alternative ratemaking methodology can be approved. Moreover, UGI has not provided any basis that should sway the PUC from its position. The Commission's reasoning is sound, and the Commission should retain language clarifying that alternative ratemaking mechanisms must be approved only via Section 1308(d) proceedings.

C. Contrary to UGI's position, because a Section 1308(d) proceeding is the only appropriate place to implement an alternative ratemaking mechanism, a Section 1308(d) proceeding is also the only appropriate place in which to modify an alternative ratemaking mechanism.

As discussed more fully in Section II, B, *supra*, UGI incorrectly suggests that any 1308 proceeding can be utilized to implement an alternative ratemaking methodology. In an extension of that argument, UGI submits that an alternative ratemaking mechanism, once approved, may be modified outside of a 1308(d) proceeding.¹⁹ Similar to the position taken by the Industrials with respect to implementing alternative ratemaking mechanism, the Industrials advise that the only appropriate place to review such mechanisms is in a 1308(d) proceeding.

The purpose of establishing an alternative ratemaking methodology in a base rate proceeding is, as articulated by the Commission, that such proceedings "represent an ideal vehicle for a careful and well-documented examination of any alternative ratemaking proposals."²⁰ Moreover, the PUC notes that once the alternative ratemaking mechanism is approved, 1307 proceedings may be used for calculations, reconciliations, and mathematical rate adjustments based on the approved formula.²¹ UGI's argument, however, attempts to extend the Commission's position beyond the mere permitting of rate adjustment to allow for complete alterations to the alternative rate mechanism itself.²² Unfortunately, UGI's position, if adopted, could allow a utility

¹⁹ UGI Comments, pp. 5-6.

²⁰ TIO, p. 4.

²¹ *Id.*

²² UGI Comments, pp. 2, 5-6.

to make an "end run" around the need to have an alternative rate methodology approved under a 1308(d) proceeding.

As noted above, the Commission correctly interprets Act 58's requirement that an alternative ratemaking methodology only be approved as part of a Section 1308(d) proceeding. While the PUC recognizes that rate adjustments and/or reconciliations may occur outside of a Section 1308(d) proceeding, UGI's position would inappropriately extend this allowance by permitting a utility to receive approval of an alternative ratemaking methodology as part of a 1308(d) proceeding but then allowing the utility to modify the parameters of the methodology through a non-1308(d) proceeding. However, only a Section 1308(d) proceeding contains the level of information and procedure to modify an alternative ratemaking mechanism. Because such a process is inconsistent with the intent of Act 58, UGI's arguments must be rejected.

D. As confirmed by several stakeholders in this proceeding, cost-of-service principles must remain the "polestar" of establishing rates.

As set forth in the Industrials' Comments, cost-of-service principles must remain the standard for establishing a utility's rates.²³ Several other stakeholders have set forth similar positions in their Comments. For example, both the Industrial Energy Consumers of Pennsylvania ("IECPA") and OCA emphasize the centrality of cost-of-service principles in setting rates.²⁴ As noted by OCA, Act 58 does not alter the "just and reasonable" standard of ratemaking, nor have the traditional burdens of persuasion and production in Section 1308 proceedings been changed.²⁵

The Industrials agree with OCA and IECPA's Comments supporting cost-of-service ratemaking. As determined by the *Lloyd* decision, cost-of-service principles are the "polestar" of

²³ Industrials Comments, pp. 6-7 (citing *Lloyd v. Pa. Public Utility Commission*, 904 A.2d 1010 (Pa. Commw. Ct. 2006)).

²⁴ Comments of Industrial Energy Consumers of Pennsylvania, *Implementation of Act 58 of 2018 Alternative Ratemaking for Utilities*, Docket No. M-2018-3003269 (Oct. 9, 2018), pp. 2-3; OCA Comments, p. 10.

²⁵ OCA Comments, p. 10 (citing 66 Pa. C.S. § 315).

utility ratemaking in Pennsylvania.²⁶ Act 58 reinforces this principle by stating, in the Declaration of Policy, that the Commission should ensure "utility infrastructure costs are reasonably allocated to and recovered from customers and market participants consistent with the use of the infrastructure."²⁷

In its Comments, OCA does not stop with a mere affirmation that rates must be based on cost-of-service principles. The OCA also urges the Commission to "use its authority under [66 Pa.C.S. § 1308(d)] to create specific procedures concerning filing requirements, consumer protections, and consumer education plans when utilities apply for alternative ratemaking mechanisms."²⁸ OCA further requests that the Commission require utilities to "[identify] the consumer protections proposed" for each alternative mechanism."²⁹ These proposals are designed to ensure all alternative mechanisms are just, reasonable, and in the public interest.³⁰

As stated herein, *supra*, the Industrials agree with OCA that consumer protections must accompany any alternative ratemaking mechanism in order to ensure cost-of-service is maintained throughout the life of any established rate. To preserve this vital principle with the implementation of alternative ratemaking, the Commission should establish specific procedures to safeguard all consumers. Specifically, the Industrials request that the Commission: (1) establish mandatory time limitations on alternative ratemaking mechanisms so such mechanisms will be reviewed in a base rate case on a periodic basis; (2) require an earnings-sharing mechanism and reduction to ROE when approving alternative ratemaking mechanisms; and (3) require alternative ratemaking mechanisms to be implemented in ways that do not shift costs interclass or intraclass, while

²⁶ *Lloyd v. Pa. Public Utility Commission*, 904 A.2d 1010, 1020 (Pa. Commw. Ct. 2006); *see also* 66 Pa. C.S. § 1330(a)(1).

²⁷ 66 Pa.C.S. § 1330(a)(1).

²⁸ *Id.*

²⁹ *Id.*, p. 11.

³⁰ *Id.*, p. 12.

ensuring such mechanisms are designed on a customer-class basis.³¹ In order to ensure that such protections are adequately implemented, the Industrials respectfully request the Commission open a Rulemaking Docket for this purpose. Adopting these customer protections is consistent with fundamental principles of cost-of-service ratemaking, which Act 58 does nothing to obviate.

³¹ Industrials Comments, p. 2.

III. CONCLUSION

WHEREFORE, the Pennsylvania Energy Consumers Alliance, the Met-Ed Industrial Users Group, the Penelec Industrial Customer Alliance, the Philadelphia Area Industrial Energy Users Group, the PP&L Industrial Customer Alliance, and the West Penn Power Industrial Intervenors respectfully request that the Pennsylvania Public Utility Commission consider these Joint Reply Comments.

Respectfully submitted,

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