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VIA eFiling

Rosemary Chiavetta, Secretary
Commonwealth of Pennsylvania
Pennsylvania Public Utility Commission
Commonwealth Keystone Building, 2nd Floor
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:

Pursuant to the Pennsylvania Public Utility Commission's Tentative Implementation Order entered on August 23, 2018, and the subsequent comments filed by several parties, please accept for consideration, Pennsylvania-American Water Company's Reply Comments in the above captioned proceeding.

Sincerely,

Susan Simms Marsh

Enclosure

cc: Kriss Brown

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**REPLY COMMENTS OF
PENNSYLVANIA-AMERICAN WATER COMPANY**

I. Introduction and Background

Pennsylvania-American Water Company (“Company” or “PAWC”)¹ appreciates the opportunity to submit these Reply Comments following the Pennsylvania Public Utility Commission’s (“Commission’s”) Tentative Implementation Order (“Tentative Order”) entered on August 23, 2018. Several parties, including Pennsylvania-American filed Comments². In these Reply Comments, PAWC will reply to some of the comments provided by other parties.

II. Reply Comments

A. Section 1330(a) Declaration of Policy

Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company in its Comments on pages 3 to 4, discusses the

¹ Pennsylvania-American is a water and wastewater public utility regulated by this Commission, and is engaged in the business of collecting, treating, storing, supplying, distributing and selling water to the public, and collecting, treating, transporting and disposing of wastewater for the public. Water and Wastewater service is furnished by Pennsylvania-American to the public in a service territory encompassing more than 36 counties and 400 communities across the Commonwealth with a combined population of approximately 2,300,000. Pennsylvania-American is a wholly owned subsidiary of the American Water Works Company, Inc.

² Comments filed October 5: Duquesne Light Company, Pennsylvania-American Water Company; October 9: Keystone Energy Efficiency Alliance, et al., Energy Association of Pennsylvania, Metropolitan Edison Company et al., Columbia Gas of Pennsylvania, Inc., 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., Pennsylvania Energy Consumers Alliance et al., PPL Electric Utilities Corporation; October 22: International Brotherhood of Electrical Workers; and October 24, 2018: State Senators John T. Yudichak and Lisa M. Boscola.

Commission proposed Fixed Utility Distribution Rates Policy Statement at Docket No. M-2015-2518883 Order entered May 23, 2017. In light of the passage of Act 58, the companies suggest the Commission reconsider the Proposed Policy Statement. PAWC also believes the Commission should reconsider the Proposed Policy Statement.

In PAWC's Comments on the Proposed Policy Statement filed on October 22, 2018, the Company points out the Proposed Policy Statement was formally issued on May 23, 2018. Approximately one month later, on June 28, 2018, Act 58 became law when it was signed by Governor Wolf. Act 58 amended the Pennsylvania Public Utility Code by adding Section 1330. Section 1330 begins with a "Declaration of Policy" that sets forth legislative findings and declarations that inform the meaning of its subsequent provisions, which, in relevant part, authorize the Commission to approve various forms of alternative rate mechanisms. Act 58 differs from the Proposed Policy Statement in ways that have both legal and practical significance. At the most fundamental level, Act 58 is a duly enacted statute, has the force and effect of law and binds both the Commission and the entities that are subject to the PUC's jurisdiction. In contrast, the Proposed Policy Statement, upon final adoption, would be a "policy statement" that was issued without the formalities required by the Commonwealth Documents Law to promulgate a "regulation."³ Consequently, the Proposed Policy Statement (even if adopted as "final") cannot establish a "binding norm."⁴ Rather, like any statement of policy, it "announces the agency's tentative intentions for the future," and "[w]hen an agency applies the policy in a particular situation, it must be prepared to support the policy just as if the policy statement had never been issued."⁵ When the Proposed Policy Statement was issued, the Commission did not have the

³ 45 P.S. §§ 1201-1202.

⁴ *Dep't of Env'tl. Res. v. Rushton Mining Co.*, 591 A.2d 1168, 1173 (Pa. Cmwlth. 1991).

⁵ *Id.*, quoting *Pac. Gas & Elec. Co. v. Fed. Power Comm'n*, 506 F.2d 33 (D.C. Cir. 1974).

opportunity to consider either the General Assembly's Declaration of Policy in Act 58 or the express authorizations of alternative ratemaking methods that Section 1330 added to the Public Utility Code. As a consequence, there is now explicit legislative authorization for the Commission to approve a wide range of alternative ratemaking mechanisms. PAWC urges the Commission to proceed cautiously in deciding whether to issue a final Policy Statement.

B. Section 1330(c) – Customer Notice

PAWC, in its Comments, supported the Commission's proposed revision to the notice language provided for in 52 Pa. Code § 54.45(b)(1)(i). The Office of Consumer Advocate (OCA) on pages 7 to 9 of its Comments discusses customer notification. The OCA believes the bill insert should include more detail. Specifically, the OCA suggests the bill insert should include how "a customer may mitigate or offset any potential surcharges or rate hikes." Public utilities should not be responsible for providing in the bill insert how customers may mitigate or offset any potential surcharges or rate increase. Public utilities have an obligation to provide quality service at just and reasonable rates approved by the Commission. To the extent there needs to be an advocate for the mitigation or offset of potential surcharges or rate increase, the responsibility should fall on the public advocates who have the duty of representing the interest of consumers including residential and small businesses.

Additionally, the OCA suggests the Commission require public utilities to provide the OCA and the Commission's Bureau of Consumer Services ("BCS"), for review and comment, the Notice of Proposed Rate Changes. The Commission existing regulations, at 52 Pa Code § 53.45(b)(1)(i), prescribe the notice public utilities are required to provide to customers regarding proposed rate changes. There is no existing regulatory requirements to provide said notice to the OCA and BCS for review and comment. In order to meet the notice requirements under Act 58, the

Commission in its Tentative Order is proposing public utilities use the notice requirements as provided for in 52 Pa Code § 53.45(b)(1)(i) with revisions related to alternative rate mechanism. As with the existing regulations, public utilities have a legal obligation to adhere to the Commission's regulations. The same legal obligation will exist under a Final Implementation of Act 58 of 2018 Alternative Ratemaking for Utilities Order. As such there is no legal or regulatory need for additional review and oversight by the OCA and BCS.

C. Section 1330(d) – Commission

PAWC, in its Comments, agreed with the Commission that base rate proceedings include an in-depth review and examination of public utility companies' financial status and operations. On pages 10 to 12 of the OCA's Comments, the OCA discusses filing requirements. The OCA suggests a need for additional filing requirements in order to "properly consider an alternative rate mechanism in the timeframe allotted for the consideration of a Section 1308(d) rate case." The OCA further comments that an "intervenor like the OCA in Section 1308(d) base rate proceedings are already under significant time pressure from compact litigation schedules." All of the information a public utility is currently required to submit as part of a base rate proceeding is detail and comprehensive. Any issue the OCA may have with a "compact litigation" schedule should not be addressed in the context of this matter but rather with the Office of Administrative Law Judge.

The OCA, in its Comments, contends public utilities must include adequate consumer protections in the alternative rate mechanism filing in order for the mechanism to be deemed just and reasonable and in the public interest. The OCA offers eight examples of consumer protections it believes should be considered. Neither Act 58 nor the Commission's Tentative Order references consumer protection. The OCA proposed a capped adjustment; however, the legislature did not

include such a requirement as a condition for alternative rate mechanism. The OCA is seeking to add requirements outside of the four corners of Act 58 and the Tentative Order. As another example, the OCA proposed a reduced ROE to reflect reduced risk to the utility. This is an attempt to have the Commission adopt legal conclusions without the benefit of an evidentiary hearing and subsequent Commission Opinion and Order addressing the issue. PAWC notes that it is always cognizant of its customers and provides quality service at just and reasonable rates as approved by the Commission.

The OCA, at pages 13 to 15 of its Comments, asserts the Commission must require public utilities provide “sufficient consumer education.” Once again, the OCA is attempting to introduce requirements that were not spelled out in Act 58 or the Tentative Order. Nevertheless, PAWC has and continues to engage in customer education. This, however, does not mean PAWC and other public utilities should be required to submit an education plan as part of its alternative rate mechanism filing.

III. CONCLUSION

Pennsylvania American Water Company appreciates the opportunity to provide comments on the proposed implementation of Section 1330 of the Public Utility Code, 66 Pa. C.S. § 1330.

Respectfully submitted,



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