



Thomas J. Sniscak
(717) 236-1300 x224
tjSniscak@hmslegal.com

Christopher M. Arfaa
(717) 236-1300 x231
cmArfaa@hmslegal.com

100 North Tenth Street, Harrisburg, PA 17101 Phone: 717.236.1300 Fax: 717.236.4841 www.hmslegal.com

July 31, 2017

VIA ELECTRONIC FILING

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

In re: Alternative Ratemaking Methodologies; Docket No.: M-2015-2518883;
THE PENNSYLVANIA STATE UNIVERSITY'S REPLY COMMENTS

Dear Secretary Chiavetta:

Enclosed for filing with the Pennsylvania Public Utility Commission is The Pennsylvania State University's Reply Comments in the referenced matter. Copies have been served in accordance with the attached Certificate of Service.

If you have any questions regarding this filing, please do not hesitate to contact me.

Very truly yours,

Thomas J. Sniscak
Christopher M. Arfaa
William E. Lehman

Counsel for The Pennsylvania State University

TJS/CMA/das
Enclosures

cc: Gladys M. Brown, Chairman
Andrew G. Place, Vice Chairman
David W. Sweet, Commissioner
John F. Coleman, Jr., Commissioner
Robert F. Powelson, Commissioner
Honorable Charles E. Rainey, Jr.
Per Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Alternative Ratemaking Methodologies

Docket No. M-2015-2518883

**REPLY COMMENTS OF
THE PENNSYLVANIA STATE UNIVERSITY**

Thomas J. Sniscak, Attorney ID No. 33891
Christopher M. Arfaa, Attorney ID No. 57047
HAWKE MCKEON & SNISCAK LLP
100 North Tenth Street
Harrisburg, PA 17101
tjsniscak@hmslegal.com
cmarfaa@hmslegal.com
Telephone: (717) 236-1300
Facsimile: (717) 236-4841

Counsel for
THE PENNSYLVANIA STATE UNIVERSITY

DATED: July 31, 2017

The Pennsylvania State University (Penn State or PSU) submits these reply comments for the Pennsylvania Public Utility Commission (Commission) to consider in reviewing the efficacy and appropriateness of alternative ratemaking methodologies. These reply comments respond to certain comments filed on May 31, 2017, in response to the Commission's Tentative Order entered March 2, 2017, in the above-captioned proceeding.

I. INTRODUCTION

A. Procedural History.

Pursuant to a Secretarial Letter dated December 31, 2015, the Commission held an *en banc* hearing on March 3, 2016 to seek information from selected participants regarding the efficacy and appropriateness of alternative ratemaking methodologies, such as revenue decoupling, that remove disincentives that might presently exist for energy utilities to pursue aggressive energy conservation and efficiency initiatives. These invited participants presented testimony and answered Commissioners' questions on the following rate issues: (1) whether revenue decoupling or other similar rate mechanisms encourage energy utilities to better implement energy efficiency and conservation programs; (2) whether such rate mechanisms are just and reasonable and in the public interest; and (3) whether the benefits of implementing such rate mechanisms outweigh any costs associated with implementing the rate mechanisms. Pursuant to the Secretarial Letter, on March 16, 2016, PSU and other interested parties submitted written comments for the Commission to consider in reviewing the efficacy and appropriateness of alternative ratemaking methodologies.¹

¹ The Commission also published a non-exhaustive list of topics concerning alternative ratemaking mechanisms designed to guide the discussion. See Secretarial Letter to Interested Parties re Notice of *En Banc* Hearing on Alternative Ratemaking Methodologies, Docket No. M-2015-2518883 (Dec. 31, 2015) (attachment).

On March 2, 2017, the Commission entered a Tentative Order seeking further comments on a number of issues concerning “the reasonableness and efficacy of employing certain rate methodologies specifically for electric, natural gas, and water and wastewater utilities.”² and Vice Chairman Place issued a Statement requesting comment on specific proposals for alternative ratemaking mechanisms for electric and natural gas utilities. Pursuant to Secretarial Letter issued March 23, 2017, comments were due on May 31, 2017, and reply comments are due July 31, 2017. Twenty-four separate sets of initial comments were filed by a diverse group of stakeholders. PSU filed a letter stating that since the answers to the legal and policy questions posed by the Commission and Vice Chairman Place depend in large part upon information held by individual utilities, PSU would not file initial comments but instead would file reply comments provided by the Tentative Order and March 23, 2017, Secretarial Letter.

B. Penn State’s Position as to procedure and substance.

Penn State has dedicated a specific investment of \$60 million to energy savings programs over the next five years, and Penn State plans to improve its overall energy utilization by 20 percent over the next 10 years. Pennsylvania’s energy utilities are essential partners in Penn State’s sustainability, energy efficiency and conservation efforts. Penn State therefore applauds the Commission’s initiative in investigating the extent to which alternative ratemaking methodologies might remove not only disincentives that might presently exist that dissuade energy utilities from aggressively pursuing energy conservation and efficiency initiatives, but also incentives that might exist for energy utilities to resist or oppose end users’ energy conservation and efficiency measures.

² *Alternative Ratemaking Methodologies*, Docket No. M-2015-2518883, Tentative Order at 14 (March 2, 2017) (Tentative Order).

In its March 16, 2016 comments, PSU observed that three important points had emerged from the diverse viewpoints presented to the Commission at the *en banc* hearing: (1) revenue decoupling – in some form – would likely mitigate the negative impact of demand-side side energy efficiency measures on utilities’ ability to meet their revenue requirements and invest in critical infrastructure; (2) before the Commission can adopt an alternative ratemaking methodology such as decoupling, a number of legal, economic and policy issues must be resolved based upon careful consideration of the particular characteristics of Pennsylvania’s energy utilities and their respective customers; and (3) due to the multiplicity of revenue decoupling mechanisms available and the need to take each utility’s individual characteristics into account, it is not possible on this record to provide definitive answers to the questions posed by the Commission.

The Tentative Order widened the scope of this proceeding to include alternative rate mechanisms in addition to revenue decoupling, and the initial comments filed in response to the Tentative Order present a correspondingly-wider range of proposals. However, despite the much wider scope of the Tentative Order and the March 31, 2017 comments, the same three fundamental points remain:

- First, alternative rate methodologies in some form – would likely mitigate the negative impact of demand-side energy efficiency measures on utilities’ ability to meet their revenue requirements and invest in critical infrastructure.
- Second, before authorizing or implementing any alternative rate methodology, a number of legal, economic and policy issues must be resolved based upon careful consideration of the particular characteristics of Pennsylvania’s energy utilities and their respective customers.

- Third, due to the multiplicity of alternative rate methodologies available and the need to take the individual characteristics of each individual utility and each customer class into account, it is not possible on this record to provide definitive answers to the questions posed by the Commission.

At the gate, PSU submits there is the need for Legislation before the Commission can adopt alternative regulation of the sort advocated by many of the utility commentators. Also, a number of commenters in this proceeding invite the Commission to proceed to adopt various alternative ratemaking methodologies without further delay. The Commission should decline these invitations. As explained in these Reply Comments:

- (a) the Commission should hold evidentiary hearings before proceeding further with alternative rate methodologies to present evidence and to *allow for stakeholders to test the claims made in the comments, rather than to rely on the unsubstantiated anecdotal facts or claims that many of the commentators offer;*
- (b) any legislative proposals should be developed in a collaborative, inclusive, open and transparent manner much as the Commission did in including all stakeholders in developing the electric and gas competition acts; and,
- (c) alternative rate methodologies should be considered and implemented on an individual utility basis, without subsidies between ratepayer classes, and subject to periodic review to see if the many benefits touted by most of the utility commentators actually materialize.

II. REPLY COMMENTS

A. The Commission Should Hold Evidentiary Hearings Before Proceeding Further With Alternative Rate Methodologies

The Tentative Order, in addition to requesting comments on specific alternative rate methodologies and utilities' implementation of them, requested parties to comment on whether the Commission should proceed either by issuing policy statements identifying guidelines for preferred alternative rate methodologies, or by initiating rulemakings to require a specific alternative rate methodology for specific utility types or specific rate classes.³ A number of commenters suggest that the Commission adopt a policy statement,⁴ convene stakeholder working groups,⁵ or consider enabling legislation.⁶ PSU submits that before the Commission decides whether to take further steps towards consideration, authorization or implementation of alternative rate methodologies – whether by adopting a policy statement, commencing a rulemaking, or requesting further authority from the General Assembly – it must create an evidentiary record on which to test or challenge the many claims of benefits or detriments made in the Comments and to allow the Commission to base its decision on the best information *for Pennsylvania* rather than the anecdotal statements by many commentators.

The Commission's fundamental ratemaking responsibility is to ensure that every rate demanded or received by any public utility is just and reasonable, and in conformity with the Public Utility Code and the regulations and orders of the Commission.⁷ In addition, Act 129 charges the

³ Tentative Order at 19.

⁴ *See. e.g.*, Comments of Alliance for Industrial Efficiency at 4; Comments of OSBA at 11.

⁵ *See. e.g.*, Comments of Aqua Pennsylvania at 7-8; Comments of Keystone Energy Efficiency Alliance (KEEA) at 9-10.

⁶ *See. e.g.*, Comments of PECO Energy at 22; Comments of PPL Electric Utilities Corp. at 25.

⁷ *E.g.* 66 Pa. C.S. § 1301.

Commission with the responsibility of reviewing, approving and monitoring electric distribution companies' energy efficiency and conservation plans to reduce energy demand and consumption within the Commonwealth.⁸ The Commission also administers conservation and efficiency policies with respect to other utilities. To date, the Commission has succeeded in balancing and fulfilling these diverging goals admirably through countless determinations in rulemakings, rate case proceedings, and investigations. In order to change course, the Commission must find, based upon substantial evidence, that such change is needed in order meet its statutory responsibilities with respect to rates, efficiency and conservation.

A number of parties have urged the Commission to implement, or to seek legislative authority to implement, various alternative rate methodologies that would constitute major changes to Pennsylvania's regulatory ratemaking framework.⁹ Conversely, opponents of such major changes have argued that there is no need to adopt any additional alternative rate methodologies at this time.¹⁰ While PSU agrees with commenters who suggest that it is possible that some forms of alternative rate methodologies may promote increased energy efficiency and conservation by

⁸ 66 Pa. C.S. § 2806.1(a).

⁹ See, e.g., Comments of Advanced Energy Economy (AEE) Institute at 2 (supporting implementing broad performance incentive mechanisms); AEE Institute, "Performance-Based Regulation for Pennsylvania," *passim* (same); Comments of American Council for an Energy-Efficient Economy (ACEEE) at 1 (PUC should approve full revenue decoupling for gas and electric utilities in Pennsylvania.); Comments of Columbia Gas of Pennsylvania, Inc. (Columbia Gas) at 7-12 (supporting Revenue Normalization Adjustment Charge, Levelized Distribution Charge, and Weather Normalization Adjustment); Comments of KEEA at 8-10 (PUC should pursue full decoupling and performance incentives); Comments of National Resources Defense Council, Sierra Club, and Clean Air Council (NRDC) at 8-13 (PUC should implement performance incentives and full revenue decoupling); Comments of PECO Energy at 22 (PUC should authorize "revenue per customer" decoupling model for certain customer classes); Comments of PPL Electric Utilities Corp. (PPL Electric) at 23 (multi-year rate plan with full revenue decoupling is most appropriate to address the needs of the Company and its customers); Comments of Valley Energy, Citizens' Electric Company of Lewisburg, PA, and Wellsboro Electric Company at 3 (PUC should expand definition of "basic customer costs" that can be collected through a fixed charge approve movement to modified fixed/variable pricing for all utilities, or, in the alternative, solely for small utilities).

¹⁰ See, e.g., Comments of American Association of Retired Persons (AARP) at 1-2; Comments of Office of Consumer Advocate (OCA) at 2-4, 10-12.

removing disincentives, PSU also agrees with the commenters who observe that there has been no demonstration that such methodologies are, in fact, needed to meet Pennsylvania's energy efficiency and conservation goals, or that such methodologies will produce just and reasonable rates.

For example, a number of Pennsylvania's electric and gas utilities, together with various advocacy groups, support adoption of some form of revenue decoupling, lost revenue adjustment mechanism (LRAM), or performance incentive mechanism (PIM).¹¹ While these commenters offer various theoretical arguments for adoption of these methodologies, and some provide anecdotes from other jurisdictions, none offers any concrete evidence that a new, alternative rate methodology is actually *needed*, either to allow a Pennsylvania utility to earn its authorized revenue requirement, or to achieve the Commonwealth's energy efficiency and conservation goals. To the contrary, as other commenters have observed, revenue decoupling and LRAMs have the potential to substantially shift costs to, and thus impact the rates and stability of charges to, very large customers that, like PSU, already actively manage their energy usage. Thus, features like the LRAM may reduce the incentive for very large customers to implement energy efficiency and conservation programs.¹² In addition, depending on the circumstances implementation of revenue

¹¹ See, e.g., Comments of ACEEE at 1 (PUC should approve full revenue decoupling for gas and electric utilities in Pennsylvania.); Comments of Columbia Gas at 7-12 (supporting RNA, LDC, and WNA); Comments of KEEA at 8-10 (PUC should pursue full decoupling and performance incentives); Comments of NRDC at 8-13 (PUC should implement performance incentives and full revenue decoupling); Comments of PECO Energy at 22 (PUC should authorize "revenue per customer" decoupling model for certain customer classes); Comments of PPL Electric at 23 (multi-year rate plan with full revenue decoupling is most appropriate to address the needs of the Company and its customers); *but cf.* Comments of UGI Utilities at 9 (UGI is generally pleased with the existing array of rate options available to it For some EDCs in some circumstances new rate approaches, such as rate decoupling, may make sense. However, UGI does not believe that such rate alternatives should be mandated or would make sense for all EDCs.).

¹² See Comments of 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 (Industrial Users Groups) at 22.

decoupling, LRAMs or PIMs could contravene the fundamental requirement that a utility's rates be just and reasonable, violate cost causation principles, and threaten service reliability.¹³

A longstanding principle in Commission proceedings (and Pennsylvania law) is that the proponents of a Commission rule or order modifying Pennsylvania's regulatory ratemaking framework have the burden of proving such modification is necessary and in the public interest.¹⁴ A number of parties offer anecdotal evidence of other states' experiences with various forms of alternate rate methodologies.¹⁵ However, such evidence is insufficient to support major changes in Pennsylvania's ratemaking methodologies such as revenue decoupling and performance incentives. The fact that conservation was increased or rates remained low when a utility adopted an alternate rate methodology in another state does not prove that similar results will occur if the Commission or the General Assembly authorized utilities to use the same methodology to set rates in Pennsylvania. Many factors and circumstances affect conservation programs and rate levels, and there is no evidence that the same factors and circumstances that produced the favorable results touted by proponents of alternative rate methodologies would be present if and when such methodologies were authorized and implemented in this Commonwealth.

The testimony presented by invited witnesses at the *en banc* hearing last year and the comments filed in response to the Tentative Order have been useful in framing the issues to be considered. However, in order to provide the substantial evidence necessary to consider such

¹³ See, e.g., Comments of OCA at 14-15, 24-25; Comments of Industrial Users Groups at 6-8; Comments of OSBA at 6 (revenue decoupling would shift significant risk from utilities to ratepayers and, if authorized by law implemented, should result in a commensurate reduction in a utility's allowed return on equity).

Moreover, PSU agrees that Act 129 currently bars the use of revenue decoupling or LRAMs in the electric industry. See, e.g., Comments filed by AARP, Industrial Users Groups, OCA, and OSBA.

¹⁴ See 66 Pa. C.S. § 332(a).

¹⁵ See, e.g., Comments of ACEEE at 2; *id.* appendix A at 11; Comments of Columbia Gas at 6-7; Comments of Energy Association of Pennsylvania at 4, 6 & n.8; Comments of KEEA at 11; Comments of NRDC at 9 n.7; .

major policy decision, a more formal, on-the-record proceeding is required. The resulting evidentiary record will guide and support the Commission's decision whether and how to proceed with respect to the various alternative ratemaking proposals – whether by policy statement, rulemaking, legislation or some combination thereof. The evidentiary record will also provide a foundation for further action in subsequent collaborative, administrative and/or legislative proceedings.

PSU suggests that in order to create the requisite evidentiary record, while at the same time ensuring transparency and providing all stakeholders the opportunity to be heard, the next phase of this proceeding should be evidentiary hearings regarding the necessity and advisability of pursuing the various alternative rate methodologies under consideration. The proponents of such changes to Pennsylvania's regulatory ratemaking framework, as the parties with the burden of proof, should submit written testimony and exhibits in support of such changes, and those opposing or questioning such changes should have the opportunity to submit written rebuttal testimony and exhibits. As was done in the second phase of the Commission's Investigation into Electric Power Competition, witnesses should present their written testimony at oral hearings.¹⁶

B. Any Legislative Proposals Should Be Developed in Collaborative, Inclusive, Open and Transparent Proceedings.

If after evidentiary hearings or other process the Commission determines that an alternative rate methodology is required to achieve Pennsylvania's energy efficiency and conservation goals, and the methodology is one that requires requiring statutory authorization, such as revenue decoupling, it should invite all interested stakeholders to participate in a collaborative process to develop proposed legislation for the Commission to recommend to the Governor and General

¹⁶ See *Investigation into Electric Power Competition*, Docket No. I-940032, Opinion and Order entered September 27, 1995.

Assembly. It is essential that this process be inclusive, open and transparent so that the interests of all stakeholders are considered and accommodated. The Commission used similar processes to draft legislation to introduce competition into the electric and natural gas industries. By using this inclusive, transparent, consensus-driven approach, the Commission was able to draft recommended legislation that balanced all interests and thus served the *public* interest.

C. Alternative Rate Methodologies Should Be Considered And Implemented On An Individual Utility Basis And Subject to Periodic Review.

PSU agrees that proposals for alternative ratemaking methodologies should be considered in the context of individual utilities' base rate cases or other individualized proceedings.¹⁷ In such a proceeding, the utility would have the burden of proving that the alternative rate methodology both meets the criteria of any enabling legislation and produces rates that are as low or lower than those that would have been produced by traditional methods and are consistent with cost causation principles.

There is little experience with most alternative rate methodologies in Pennsylvania, and their long-term effects on rates are unknown. Therefore, to the extent the Commission approves an alternative ratemaking plan, it should do so on a provisional or pilot basis for a limited term of,

¹⁷ See, e.g., Comments of Bureau of Investigation and Enforcement (I&E) at 6 (Absent the utility actually proposing one of these methods and providing all supporting information to review, it is impossible to determine which, if any, would be appropriate to implement in Pennsylvania.); Comments of Columbia Gas (Each Pennsylvania NGDCs' rate design options should be individually analyzed, as no single rate design is applicable for all circumstances.); Comments of Philadelphia Gas Works at 4-5 (The potential advantages and disadvantages of each of the alternative rate methodologies are best evaluated within the context of each NGDC's needs. Similarly, the effects on rate classes and customers is best evaluated within the context of a regulatory filing requesting a specific alternative rate methodology.); Comments of PPL Electric at 17-18 (It is not prudent to adopt a one-size-fits-all approach to alternative ratemaking. Individual EDCs should have the flexibility to design and implement alternative ratemaking methodologies to address their individual company needs and benefit their customers.); Comments of PECO Energy at 22-23 (the design and administration of NGDC's decoupled rates should be reviewed in the context of a base rate proceeding).

for example, three years. At the end of the term, the utility would have the burden of proving that the plan continues to meet the above criteria.

III. CONCLUSION

Penn State appreciates the opportunity to submit these comments and looks forward to continued participation in this proceeding. PSU respectfully recommends and requests that the Commission:

- (a) hold evidentiary hearings before proceeding further with alternative rate methodologies to present and allow for stakeholders to test the claims made in the comments;
- (b) develop any legislative proposals in collaborative, inclusive, open and transparent manner much as the Commission did in including all stakeholders in developing the electric and gas competition acts; and,
- (c) confirm that any new alternative rate methodologies should be considered and implemented on an individual utility basis, without subsidies between ratepayer classes, and subject to periodic review to see if the many benefits touted by most of the utility commentators actually materialize.

Respectfully submitted,



Thomas J. Sniscak, Attorney ID No. 33891
Christopher M. Arfaa, Attorney ID No. 57047
HAWKE MCKEON & SNISCAK LLP
100 North Tenth Street
Harrisburg, PA 17101
tjsniscak@hmslegal.com
cmarfaa@hmslegal.com
Telephone: (717) 236-1300
Facsimile: (717) 236-4841

Counsel for
THE PENNSYLVANIA STATE UNIVERSITY

DATED: July 31, 2017

CERTIFICATE OF SERVICE

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

VIA ELECTRONIC AND FIRST CLASS U.S. MAIL

Kris Brown
Law Bureau
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 3 West
Harrisburg, PA 17105
kribrown@pa.gov

Marissa Boyle
Andrew Herster
Bureau of Technical Utility Services
Commonwealth Keystone Building
400 North Street, 3 West
Harrisburg, PA 17105
maboyle@pa.gov
aherster@pa.gov

Kristine E. Marsilio
Darryl A. Lawrence
Barrett C. Sheridan
Office of Consumer Advocate
555 Walnut Street, 5th Floor
Forum Place
Harrisburg, PA 17101-1923
kmarsilio@paoca.org
dlawrence@paoca.org
bsheridan@paoca.org

Richard Kanaskie
Bureau of Investigation & Enforcement
Commonwealth Keystone Building
400 North Street, 2 West
Harrisburg, PA 17105
rkanaskie@pa.gov

John R. Evans
Office of Small Business Advocate
300 North Second Street, Suite 202
Harrisburg, PA 17101
jorevan@pa.gov

Mark Szybist
Natural Resources Defense Council
1152 15th Street, N.W., Suite 300
Washington, DC 20005
mszybist@nrdc.org

William H. Roberts
375 North Shore Drive
Pittsburgh, PA 15212
William.h.roberts@peoples-gas.com

*Counsel for Peoples Natural Gas Company
LLC and Peoples TWP LLC*



Thomas J. Sniscak
Christopher M. Arfaa

Dated this 31st day of May, 2017.