

August 2, 2018

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

Re: Alternative Ratemaking Methodologies
Docket No. M-2015-2518883
Act 58 of 2018

Dear Secretary Chiavetta:

The undersigned organizations respectfully request that the Commission clarify whether it will utilize the above-referenced alternative ratemaking docket (“Docket”) to implement Act 58 of 2018,¹ Pennsylvania’s recently enacted alternative ratemaking statute.

We believe that the Commission should use the Docket to implement Act 58, and specifically that the draft Policy Statement (“Policy Statement”) now open for comment should be revised to include guidance on revenue decoupling mechanisms, performance-based rates, formula rates, multiyear rate plans, and other ratemaking mechanisms that are allowed under Act 58 but not currently addressed in the Policy Statement.

Three mechanisms authorized by Act 58 (revenue decoupling mechanisms, performance-based rates, and multi-year plans) have been discussed extensively in the Docket and are addressed in the Commission’s Proposed Policy Statement Order (“Proposed Order”). Consequently, enlarging the Policy Statement to address the full range mechanisms authorized by Act 58 would promote administrative efficiency, leverage the work that the Commission has done so far in the Docket, and ensure that the Commission’s policy on alternative ratemaking is unified, cohesive, and internally consistent.

Background

The Commission opened the Docket in December, 2015 by scheduling an *en banc* hearing “to seek information from experts 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.”²

The *en banc* hearing was held on March 3, 2016 and featured testimony by nine witnesses regarding three questions: (1) whether revenue decoupling or other similar rate mechanisms

¹ Act of Jun. 28, 2018, P.L. , No. 58, codified at 66 Pa.C.S.A. §1330, *available at* <http://www.legis.state.pa.us/cfdocs/legis/li/uconsCheck.cfm?yr=2018&sessInd=0&act=58>.

² Notice of En Banc Hearing on Alternative Ratemaking Methodologies, Docket No.: M-2015-2518883 (December 31, 2015).

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.³ The Commission then accepted written comments on these questions from any interested parties. Twenty (20) comment letters were filed by 32 parties on or before March 18, 2016.⁴

In March, 2017, the Commission issued a Tentative Order seeking additional comments on, “and potential processes to advance, alternative rate methodologies that address issues each utility industry is facing.” The Commission initially set a comment period for 45 days, then, upon petition by the Office of the Consumer Advocate, enlarged the comment period to 90 days. On or before June 1, 2017, 25 comments were filed by 46 parties. Another 18 reply comments were filed on or before August 2, 2017.⁵

On the basis of this “extensive record of comments and reply comments,”⁶ the Commission on May 3, 2018 took “its next step in deliberating the future of utility rates”⁷ by issuing a draft Policy Statement on alternative ratemaking, which if finalized will be codified as a new subchapter of 52 Pa. Code Chapter 69 (General Orders, Policy Statements, and Guidelines on Fixed Utilities). The Policy Statement currently consists of three sections: 69.3301 (“Purpose and Scope”), 69.3302 (“Distribution Rate Considerations”), and 69.3303 (“Illustration of possible distribution ratemaking and rate design options for the energy industry”). On June 23, 2018, the Policy Statement and an accompanying Proposed Policy Statement Order were noticed in the Pennsylvania Bulletin for a 60-day comment period.

While these Docket activities were taking place, the Pennsylvania General Assembly passed, and Governor Wolf signed into law, new alternative ratemaking legislation: House Bill 1782, now Act 58 of 2018. The enactment of this statute changes significantly the legal landscape in which the Commission is building its alternative ratemaking policy.

HB 1782 was introduced on September 14, 2017 by Representative Sheryl Delozier and was the subject of a November 20, 2017 hearing before the House Consumer Affairs Committee. The Committee accepted testimony from 14 witnesses at that hearing, including Commission Vice Chairman Place.⁸ On April 11, 2018, the Committee voted to amend and then to approve HB 1782.

As amended, HB 1782 applies to all fixed utilities (electric, gas, and water) and provides, in relevant part, that the Commission “may approve an application by a utility in a base rate proceeding to establish alternative rates and rate mechanisms, including, but not limited to ... (i) decoupling mechanisms; (ii) performance-based rates; (iii) formula rates; (iv) multiyear rate plans; or (v) rates based on a combination of more than one of the mechanisms in subparagraphs

³ *Id.*

⁴ See Proposed Policy Statement Order, 48 Pa.Bull. No. 25 at 3739-40 (June 23, 2018).

⁵ *Id.* at 3740.

⁶ Motion of Vice Chairman Andrew Place, Docket No.: M-2015-2518883 (May 3, 2018).

⁷ Statement of Chairman Gladys Brown, Docket No.: M-2015-2518883 (May 3, 2018).

⁸ See Transcript of House Consumer Affairs Committee Presentation on House Bill 1782, available at http://www.legis.state.pa.us/WU01/LI/TR/Transcripts/2017_0117T.pdf.

(i), (ii), (iii) and (iv) or other ratemaking mechanisms as provided under this chapter.” HB 1782 was then passed by the House of Representatives on May 1 and the Senate on June 22, and signed into law by Governor Wolf on June 28 as Act 58 of 2018.

On June 29, 2018 the Commission issued a press release⁹ concerning Act 58. Among other things, this release stated:

The Commission ... has a concurrent process in place to codify the necessary framework and consumer protections of alternative rate mechanisms in any future base rate proceeding, including soliciting public comment on a proposed policy statement, policies that support the continued efficient use of all energy resources; targeted investment in distribution infrastructure to address the evolution of a distributed energy environment; and the encouragement of least-cost solutions. *With the enactment of Act 58, the Commission is evaluating how to coordinate this alternative ratemaking policy statement process with implementation of the statute.*

(Emphasis added).

The Commission has not yet made any further public statement concerning how it will coordinate the alternative ratemaking policy statement process with the implementation of Act 58. Comments on the Policy Statement and Proposed Order are currently due on August 22.

The Alternative Ratemaking Docket and Act 58

Before the enactment of Act 58, uncertainty concerning the Commission’s authority to approve alternative ratemaking mechanisms was a constant theme in the Docket, especially with respect to revenue decoupling and performance incentive mechanisms.

In 2017, NRDC sought to clarify the scope of the Commission’s authority and foster consensus among interested parties on the issue by commissioning a legal analysis by West Virginia University Law Professor James M. Van Nostrand.¹⁰ Uncertainty and disagreement persisted, however. Moreover, in some cases (e.g., the case of revenue decoupling), nearly all parties acknowledged that there were significant statutory limits on the Commission’s authority.

Because it was drafted before the enactment of Act 58, the Commission’s Proposed Order and Policy Statement reflect these limits and uncertainties. The Proposed Order reflects them by discussing revenue decoupling, performance incentives, and multiyear plans while noting the uncertainty regarding the Commission’s legal authority to approve these methodologies. Revenue decoupling “may not be authorized by the Public Utility Code for certain fixed utilities in certain circumstances.”¹¹ Any multiyear rate plan proposal would be expected “to include

⁹ “PUC to Begin Process of Implementing Alternative Ratemaking Legislation Following Approval by Governor & General Assembly” (June 29, 2018), available at http://www.puc.pa.gov/about_puc/press_releases.aspx?ShowPR=4055.

¹⁰ James M. Van Nostrand, “Authority of the Pennsylvania Public Utility Commission to Implement Incentives with Respect to Energy Efficiency and Conservation, Renewable Electricity Generation, and Alternatives to Traditional Rate Regulation” (April 3, 2017), available at <http://www.puc.state.pa.us/pcdocs/1522413.pdf>.

¹¹ Proposed Policy Statement Order, 48 Pa.Bull. No. 25 at 3742.

legal justification.”¹² Any performance incentive mechanism “will need to demonstrate ... the Commission’s authority to approve it.”¹³ The Policy Statement itself does not even go this far. It stops short of even mentioning rate adjustment methodologies like revenue decoupling, performance incentives, and multiyear plans. Instead, it focuses narrowly on rate *design*.

With the enactment of Act 58, many if not all, of the limits and uncertainties concerning the Commission’s legal authority to approve alternative ratemaking methodologies have been eliminated. As Vice Chairman Place observed in his November, 2017 testimony before the House Consumer Affairs Committee testimony, the legislation provides “clear authority for the commission to approve alternative ratemaking and rate design methodologies.”

It goes without saying that any Policy Statement adopted by the Commission concerning alternative ratemaking should be based on the law as it is now, not as it was before Act 58. Thus, the question for the Commission is whether it will revise the Policy Statement in accordance with Act 58 and implement the Act by adopting the Statement in an Order, or instead abandon the Docket in favor of a new regulatory rulemaking.

Legally speaking, Act 58 allows for either approach, providing that “[n]o later than six months after the effective date of this subsection, the commission, *by regulation or order*, shall prescribe the specific procedures for the approval of an application to establish alternative rates.”¹⁴ (Emphasis added). As a practical matter, however, opening a new docket would be an inefficient use of administrative time and resources. Since the Commission opened the Docket in December, 2015, hundreds of pages of testimony and comments have been filed on alternative ratemaking methodologies, many of them concerning revenue decoupling, performance-based rates, and multiyear plans. The Commission has reviewed those submissions, expressed some thoughts concerning them in the Proposed Policy Statement Order, and would be well-positioned after an additional round of comments focused on Act 58 – and especially formula rates – to address these ratemaking methodologies in the Policy Statement. On the other hand, commencing a regulatory rulemaking to implement Act 58 would be duplicative and unnecessary.

Conclusion

For the reasons stated above, the undersigned organizations respectfully request that the Commission:

- 1) Affirm that it will implement Act 58 by revising the draft Policy Statement in the alternative ratemaking Docket to address revenue decoupling mechanisms, performance-based rates, multiyear plans, formula rates, and such other Act 58-authorized mechanisms as the Commission may deem advisable,
- 2) Enlarge the scope of the current comment period in the Docket to include Act 58 implementation and request additional comments on revenue decoupling mechanisms, performance-based rates, multiyear rate plans, formula rates, and such other Act 58-authorized mechanisms as the Commission may deem advisable, and

¹² *Id.* at 3744.

¹³ *Id.* at 3745.

¹⁴ 66 Pa.C.S.A. §1330(d)

- 3) In light of the enlarged scope of the comment period, extend the deadline for comments by 60 days, to October 22, 2018.

Thank you very much.

Sincerely,

Mark Szybist

Senior Attorney and Pennsylvania Advocate
Natural Resources Defense Council

Eric Miller

Staff Attorney
Keystone Energy Efficiency Alliance

Rob Altenburg

Director, Energy Center
Citizens for Pennsylvania's Future

Logan Welde

Staff Attorney
Clean Air Council

Ron Celentano

President
PA Solar Energy Industries Assoc. (PASEIA)

Liz Robinson

Executive Director
Philadelphia Solar Energy Association

cc: Kriss Brown, Esq.
Marissa Boyle
Andrew Herseter