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October 22, 2018

Rosemary Chiavetta, Esq., Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, Pennsylvania 17120

Re: Alternative Ratemaking Methodologies
Docket No. M-2015-2518883

Dear Secretary Chiavetta:

Please find enclosed for filing the Comments of the Energy Association of Pennsylvania to the Proposed Policy Statement Order at the above-referenced docket.

Sincerely,

A handwritten signature in blue ink that reads "Terrance J. Fitzpatrick".

Terrance J. Fitzpatrick
President & CEO

cc: Kriss Brown, Esq., Law Bureau
Marissa Boyle, TUS
Andrew Herster, TUS

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Alternative Ratemaking Methodologies -
Fixed Utility Distribution Rates Policy Statement : M-2015-2518883

**COMMENTS OF THE
ENERGY ASSOCIATION OF PENNSYLVANIA TO THE PROPOSED POLICY
STATEMENT ORDER**

I. INTRODUCTION

The Pennsylvania Public Utility Commission (“Commission” or “PUC”) initiated the current proceeding regarding review of alternative ratemaking methodologies (“ARMs”) approximately three years ago with a Secretarial Letter¹ that scheduled an *en banc* hearing in March of 2016. The *en banc* hearing gathered information from experts regarding the value of ARMs, particularly as it relates to removing disincentives for energy utilities to pursue aggressive energy conservation and efficiency initiatives. Following the 2016 *en banc* hearing, the Commission provided an opportunity for interested parties to submit comments and numerous parties, including the Energy Association of Pennsylvania (“Association” or “EAP”) and its electric distribution company (“EDC”) and natural gas distribution company (“NGDC”) members² offered input.

¹ See, Secretarial Letter, December 31, 2015, Docket No. M-2015-2518883

² EAP is trade association with EDC members including Citizens’ Electric Company; Duquesne Light Company; Metropolitan Edison Company; PECO Energy Company; Pennsylvania Electric Company; Pennsylvania Power Company; Pike County Light & Power Company; PPL Electric Utilities Corporation; UGI Utilities, Inc.-Electric Division; Wellsboro Electric Company; and, West Penn Power Company and NGDC members including Columbia Gas of Pennsylvania, Inc.; Pike County Light & Power Company; Leatherstocking Gas Co., LLC, National Fuel Distribution Corp.; PECO Energy Company; Peoples Natural Gas Company LLC; Peoples TWP LLC; Philadelphia Gas Works; UGI Utilities Inc.-Gas Division; and Valley Energy Inc.

On March 2, 2017, the Commission continued this proceeding by issuing a Tentative Order seeking further comments on ARMs and the possible processes to advance adoption and implementation. The Tentative Order set forth a separate set of questions addressed to the electric utilities, the natural gas utilities, and the water and wastewater utilities³; it also identified a number of broad questions on process, legal authority and whether the Commission should consider adoption of a policy statement or a new set of regulations as a means to promote the use of various ARMs. EAP submitted comments to the Tentative Order on May 31, 2017 and submitted reply comments as permitted under the Tentative Order on July 31, 2017.⁴

Thereafter, at the May 3, 2018 Public Meeting, the Commission adopted a Proposed Policy Statement Order with the goal of establishing guidelines for utilities and stakeholders to consider when investigating ARMs “that support efficiency programs and distributed energy resources (DERs), and that also provide utilities with adequate revenue” in the context of a Section 1308 rate proceeding. Proposed Policy Statement Order at p. 5. The Commission envisioned that a base rate proceeding would be the forum for utilities and stakeholders “to identify and implement appropriate rate structures for each rate class. *Id.* Interested parties had 60 days from the publication of the Proposed Policy Statement Order in the *Pennsylvania Bulletin* to file comments which based on a publication date of June 23 established an initial filing date of August 22, 2018.⁵

Prior to the conclusion of the PUC investigation involving ARMs, the Pennsylvania General Assembly considered and passed HB 1782 providing alternative ratemaking for utilities.

³ The Tentative Order clarified that the proceeding examining ARMS did specifically include water and wastewater utilities by including a series of question for those utility industries and their stakeholders to address.

⁴ Comments filed to the Tentative Order on May 31, 2017 were extensive and reply comments focused only on a limited number of critical points which EAP found necessary to either reiterate or counter. Silence on other issues/proposals raised in the initial round of comments should not be regarded as agreement or endorsement and the Association reserves its right to oppose any and all issues not specifically addressed in its reply comments.

⁵ See, Proposed Policy Statement Order, May 23, 2018, Docket No. M-2015-2518883.

Governor Wolf signed the legislation on June 28, 2018 as Act 58 of 2018 (“Act 58”) which then became effective on August 27, sixty days following the Governor’s approval. Act 58 added a new section 1330 to the Public Utility Code which directed, *inter alia*, the Commission within six months of the effective date “to prescribe the specific procedures for the approval of an application to establish alternative rates.” 66 Pa. C. S. § 1330(d). On August 23, 2018, the Commission issued a Tentative Implementation Order (“TIO”) under a separate docket number to initiate implementation of Act 58 and sought written comments thirty (30) days after publication in the *Pennsylvania Bulletin* with reply comments due forty (40) days thereafter.⁶ Publication occurred on September 8th; written comments regarding the implementation of Act 58 were due on October 8, 2018, and reply comments are due on November 19, 2018. EAP submitted comments and reserves the right to file reply comments at the TIO docket.

At the request of a number of stakeholders, the Commission issued a Secretarial Letter on August 14, 2018 extending the time period for filing comments/reply comments to the Proposed Policy Statement Order establishing October 22 as the new date for filing comments and November 20 as the date for filing reply comments. The Secretarial Letter recognized that passage of Act 58 occurred during the Commission’s examination of ARMs, that the issues raised in its Proposed Policy Statement Order were complex, and that additional time for public input on the policy proposals would facilitate a more thorough record and better inform all interested parties including the Commission.⁷

EAP files these comments to address issues and concerns raised by the Proposed Policy Statement Order.

⁶ See, Tentative Implementation Order, August 23, 2018, Docket No. M-2018-3003269

⁷ See, Secretarial Letter dated August 14, 2018 at Docket No. M-2015-2518883. *Accord*, a press release issued by the Commission on June 29, 2018 regarding passage of Act 58 and noting that the Commission was evaluating how to coordinate its proposed policy statement with implementation of the statute.

II. COMMENTS

A. **The time is not ripe to adopt a policy statement on alternative rate mechanisms or rate design.**

Given the complexity of proposals and concepts detailed in its proposed policy statement, the immediacy of the directive of the General Assembly regarding implementation of Act 58, and the benefits that will result in concluding these two proceedings seriatim rather than concurrently, EAP urges the Commission to focus its current efforts on the implementation of Act 58 and defer further consideration of the Proposed Policy Statement Order. In support of this request to forestall issuance of a policy statement at this juncture, EAP offers the following for consideration:

- Act 58 is broader in scope and more comprehensive than the ongoing investigation at the PUC, which is focused primarily on ARMs that promote efficient use of energy and water and that promote distributed energy resources.
- Act 58 clarifies the Commission's legal authority to consider and approve an ARM proposed by a utility in a base rate proceeding, thus eliminating the questions raised regarding legality by parties during the proceeding initiated in December 2015.
- Act 58 does not mandate any particular ARM, nor does it favor one particular mechanism over any other, nor does it require that all utilities within a given industry adopt any particular mechanism. Instead, the law provides flexibility for certain utility industries to propose an ARM in a base rate proceeding for the PUC to consider based on established ratemaking concepts, *see* 66 Pa. C. S. §§ 1330 (b)(2) and (3).

- Act 58 provides for customer notice, maintains the Commission’s full ratemaking authority, and preserves all requirements and protections of a Section 1308 base rate proceeding, *see* 66 Pa. C. S. §§ 1330 (c) and (e) and 66 Pa. C.S. § 1308.
- Implementation of Act 58 and consideration/resolution of actual proposals filed by utilities under the new section 1330 will provide the Commission and interested parties invaluable opportunity to identify substantive issues, consider resolutions and gain experience in the operation of approved ARMs that could inform a future policy statement, if necessary, addressing alternative rates and ratemaking mechanisms.

While the perspectives expressed and information collected during the investigation into ARMs may be relevant in the context of considering certain future utility proposals in yet to be filed base rate proceedings, EAP maintains that the Proposed Policy Statement Order does not reflect the breadth of possible mechanisms envisioned by the General Assembly in passage of HB 1782. Commission focus and resources should now be dedicated to implementation of Act 58.

B. The General Assembly requires the Commission to focus resources on the implementation of Act 58 and the Proposed Policy Statement is not aligned with that statutory objective.

As stated in comments filed at the TIO docket, EAP supports the PUC implementation proposal that would adopt and apply the procedures, regulations, and practices which govern existing base rate proceedings as the specific procedures for the approval of an application to establish alternative rates under Act 58. Section 1330 provides that the Commission consider approval of a utility-proposed ARM in a base rate proceeding, which is already guided by and

subject to clearly established requirements, procedures, and protections that include affording consumers, statutory advocates, and other interested parties the ability to participate in the proceeding. Following intervention, interested parties have a variety of methods to challenge the utility request and convince the Commission to deny or modify the utility proposal, i.e. such as conducting discovery, presenting evidence and witnesses, cross-examining witnesses, and filing briefs and reply briefs. The criteria for establishing a need for a change in rates or rate design, burden of proof, and the type of information or data that is to be submitted by the utility at the start of the proceeding are all delineated in existing statute and regulation. Base rate proceedings will provide the forum to raise, consider, and require consumer protections concerning ARMs and Act 58 assures that customers will have notice of these proceedings and their outcomes. 66 Pa. C. S. § 1330 (c). By requiring that any ARM proposal be offered within a base rate proceeding, Act 58 ensures that the Commission will examine and consider approval of the mechanism in the broader context of determining just and reasonable utility rates.

Further, Act 58 includes a number of alternative ratemaking mechanisms, but the list is not exclusive. The Act empowers and enables the Commission to consider “rates based on a combination of more than one of the mechanisms in subparagraphs (i), (ii), (iii) and (iv) or other ratemaking mechanisms as provided under this chapter.”⁸ The General Assembly provided flexibility to individual utilities to propose a mechanism or combination of mechanisms that fit its service territory, meet the needs of its customer demographics and facilitate access to new technologies, account for its obligations regarding safety, security and reliability and ensure recovery of costs that are reasonably allocated to customers and market participants. *See*, 66 Pa. C.S. § 1330(a).

⁸ 66 Pa. C. S. § 1330 (b)(1)(v).

In contrast, the Proposed Policy Statement Order promotes mechanisms that focus on the efficient use of electricity, natural gas and water and on the use of distributed energy resources and then lists numerous, detailed “relevant factors” that utilities will need to establish and explain so as to convince the Commission to consider such mechanisms. EAP suggests that it is neither effective public policy nor necessary in light of Act 58 to establish additional, conflicting and/or prescriptive criteria for a class of rate designs narrowly focused on the efficient use of energy or the use of distributed energy resources. Rather it would be prudent pursuant to the existing law and regulations governing base rate proceedings to allow the Commission and stakeholders/interested parties to gain experience as ARMs are proposed and considered under Act 58. The Commission, after such consideration and experience, could at some future date consider issuing a policy statement if needed that would augment its implementation of Act 58 and/or set forth broad policy goals.

C. The Proposed Policy Statement as entered by the Commission on May 23, 2018 does not reflect Act 58.

Section 69.3301 (*purpose and scope*) of the Proposed Policy Statement does not reflect the Declaration of Policy contained in Act 58 as codified at 66 Pa. C.S. § 1330 (a). The Proposed Policy Statement is limited to ARMs that promote efficient use of electricity, natural gas, and water as well as policy initiatives to promote distributed energy resources. Act 58, however, is much broader and includes ARMs that support a wide variety of programs and policies, e.g., ones that increase security and resiliency, insure adequate recovery for maintaining infrastructure, and support customer access to new technologies. There are a multitude of policy objectives which the Commission can and does consider in the context of rate proceedings including reliability of service and facilities, updating and replacing infrastructure, addressing

the impact of rates on low-income customer via utility payment assistance programs and utility-sponsored weatherization programs, assuring utilities cost recovery and a fair return on equity, supporting competitive wholesale and retail markets, as well as promoting energy efficiency and conservation programs. EAP contends that even the suggestion of an “illustrative” ratemaking mechanism at this juncture would ultimately risk upending the existing rate setting process that seeks to reflect and balance these various (and sometimes conflicting) public policies in the context of the unique attributes of a specific utility service territory.

Section 69.3302 (*distribution rate considerations*) of the Proposed Policy Statement is similarly superseded or replaced in Act 58 by the requirement that an application for an ARM be made by a utility in a base rate proceeding, which has well-established requirements, legal standards and protections as described above. Act 58 explicitly requires a Section 1308 proceeding to establish any alternative rate or rate mechanism, therefore all the requirements and protections of that section established by the Commission and reinforced by case law would still apply. Further, an alternative rate mechanism established under section 1330 “may include rates under Section 1307 (relating to sliding scale of rates; adjustments) or 1308 (relating to voluntary changes in rates) and may provide for recovery of returns on and return of capital investments or, in the case of city natural gas distribution operations, recovery under the cash flow ratemaking method.” 66 Pa. C. S. § 1330 (b) (2). Thus, decisions, rules and procedures governing approval and implementation of such rates under sections 1307 and 1308 as well as the recovery of returns on and return of capital investments will be applicable under section 1330.

EAP contends that developing ARM-specific criteria such as detailed in the Proposed Section 69.3302 will unnecessarily impede the flexibility the General Assembly established via Act 58 for proposing and analyzing ARMs. A number of the factors set forth in this proposed

section are too narrow under Act 58⁹ while others create “standards” which are neither objective nor data-based, but promote subjective criteria, such as non-expert opinion, as evidence to support a finding of just and reasonable rates.¹⁰ Another section appears to be an attempt to alter the burden of proof in *all* base rate proceedings under Section 1308¹¹; this would violate existing law. EAP maintains that the identified “relevant factors” in the proposed policy statement do not accord with the intent of Act 58. The types of information and evidence needed to support any given proposal under Act 58 is best developed in the context of a specific ARM proposal examined in a base rate proceeding rather than in a policy statement that predates the enactment of Act 58 and is focused on a particular class of ARMs.

The Proposed Policy Statement’s Section 69.303 (*illustration of possible distribution ratemaking and rate design options for the energy industry*) is similarly rendered moot by the enactment of Act 58. EAP is concerned that despite the best intentions of the current Commission, the “illustration” will be construed to establish a preference for particular mechanisms at the expense of others, restricting flexibility and imposing requirements that may not be necessary or relevant in all applications by an energy utility for an ARM. The “illustrations” may further be rendered inapplicable as technologies and methodologies develop. Again, Act 58 requires that the application for an ARM be considered in a base rate proceeding which provides ample opportunity for interested parties and statutory advocates to challenge the utility’s request and propose solutions before an Administrative Law Judge who weighs the evidence, applies the law and issues a decision that is then considered and analyzed by the

⁹ Proposed Policy Statement at § 69.3302 (a)(2),(5),(6), and (7).

¹⁰ Proposed Policy Statement at § 69.3302 (a)(13) which would consider whether the ARM is “understandable and acceptable to consumers” as a criteria for establishing “just and reasonable distribution rates that promote the efficient use of electricity, natural gas or water, as well as the use of distributed energy resources.”

¹¹ Proposed Policy Statement at § 69.3302 (b).


Commissioners. EAP contends that the processes and protections embodied in a base rate proceeding will allow for the consideration of a multitude of ARMs as envisioned in Act 58 and that, at this time, there is no basis for or benefit in the creation of a policy that would prescribe a preferred ARM for either natural gas or electric distribution companies.

III. CONCLUSION

EAP appreciates the opportunity to provide comments throughout the Commission's investigation into the application of alternative ratemaking methodologies. For the reasons stated above, EAP now respectfully asks the Commission to refrain from acting further on its Proposed Policy Statement and rather focus on the implementation of Act 58.

Respectfully submitted,


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