

I. INTRODUCTION

The Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA), together with Tenant Union Representative Network (TURN) and Action Alliance of Senior Citizens of Greater Philadelphia (Action Alliance) (collectively “the Low Income Advocates”), file the following comments in response to the Public Utility Commission’s (Commission) May 23, 2018 Proposed Policy Statement Order at this docket.¹ The Policy Statement Order proposes a new policy statement that identifies factors the Commission will consider in setting rate and revenue designs in future rate cases for “fixed utilities,” i.e., electric, natural gas, and water distribution utilities. In addition, the Commission provides what it describes as possible distribution ratemaking and rate design options specifically for energy utilities.

CAUSE-PA is a statewide unincorporated association of low-income individuals which advocates on behalf of its members to enable consumers of limited economic means to connect to and maintain affordable water, electric, heating, and telecommunication services. CAUSE-PA membership is open to moderate- and low-income individuals residing in the Commonwealth of Pennsylvania who are committed to the goal of helping low-income families maintain affordable access to utility services and achieve economic independence and family well-being.

The Tenant Union Representative Network (TURN) is a not-for-profit corporation with many low and lower income members. TURN’s mission is to advance and defend the rights and interests of tenants and homeless people. TURN’s goal is to guarantee all

¹ Fixed Utility Distribution Rates Policy Statement, Docket No. M-2015-2518883, Proposed Policy Statement Order, May 23, 2018 (“Policy Statement Order”).

Philadelphians equal access to safe, decent, accessible, and affordable housing. Action Alliance of Senior Citizens of Greater Philadelphia (Action Alliance) is a not-for-profit corporation and membership organization whose mission is to advocate on behalf of senior citizens on a wide range of consumer matters vital to seniors, including utility service. As part of advancing the respective interests of tenants and seniors, TURN and Action Alliance advocate on behalf of low and moderate income residential customers of public utilities in Philadelphia in proceedings before the Commission.

The Low Income Advocates thank the Commission for the opportunity to file comments to its proposed Policy Statement.

II. BACKGROUND

The Commission's Policy Statement Order has a history stretching back to December 31, 2015, when the Commission initiated this docket by Secretarial Letter and scheduled an *en banc* hearing for March 2, 2016, for the purpose of exploring Alternate Ratemaking Methodologies.² On March 3, 2016, pursuant to the Secretarial Letter, the Commission held its *en banc* hearing, at which it heard from invited experts regarding the general efficacy and appropriateness of alternative ratemaking methodologies, such as revenue decoupling. Other interested stakeholders were invited to submit comments to be filed March 16, 2016.

The Pennsylvania Utility Law Project (PULP), counsel for CAUSE-PA, filed comments on behalf of its low income clients generally on March 16, 2016. In relevant part, PULP's comments focused on the need to carefully consider the impact of alternative

² See Notice of *En Banc Hearing* on Alternative Ratemaking Methodologies, Docket No. M-2015-2518883, Sec. Ltr., December 31, 2015.

rate methodologies on low and moderate income customers.³ PULP also provided a detailed assessment of the impact that certain alternatives (including decoupling mechanisms, straight fixed variable pricing, and incentive-based ratemaking) would have on low income communities and the corrosive effect that such ratemaking tools would have on the considerable investments made to date by residential ratepayers to adopt comprehensive energy efficiency measures through Act 129 programming. Comments were also filed by a number of other interested stakeholders, including public utilities, consumer advocates, environmental groups, and industrial customer groups.

On March 2, 2017, the Commission issued a Tentative Order, seeking additional comments from interested stakeholders on several alternative ratemaking methodologies, including revenue decoupling; lost revenue adjustment mechanism (LRA); straight fixed / variable (SFV) pricing; cost trackers (surcharges or riders); choice of test year; multiyear rate plans; demand charges; standby and backup charges; and DSM performance incentive mechanisms.⁴ The Tentative Order requested that comments address whether any regulated electric, gas, or water/waste water utilities are currently using the identified alternative rate methodologies, and/or whether utilities should adopt any such methodologies in the future.⁵ In relevant part, the Commission requested that commenters specifically address whether these methodologies would affect low income or income-challenged consumers.⁶

³ See Comments of the Pennsylvania Utility Law Project to the December 31, 2015 Notice on Alternate Ratemaking, Docket No. M-2015-2518883, March 16, 2016 (“PULP 2016 Comments”).

⁴ See Alternative Ratemaking Methodologies, Docket No. M-2015-2518883, Tentative Order entered March 2, 2017 at 6-12. (“March 2017 Order”).

⁵ March 2017 Order at 15-18.

⁶ Id.

Accompanying the Commission's March 2, 2017, Tentative Order were separate substantive statements from Commissioner David W. Sweet and Vice Chairman Andrew G. Place. Commissioner Sweet's statement generally underscored the need for specific comments regarding the impact of alternative rate methodologies on low income and income-challenged customers, and emphasized that **alternatives must “provide real, not just theoretical, benefits to ratepayers without harming the most vulnerable portion of the population.”**⁷

In response to this order, on May 31, 2017, PULP filed additional comments specifically addressing its concern with proposals that would impose a residential demand charge and reiterated its concerns about alternative rate designs in light of the challenges faced by low income consumers, and an assessment of the potential impact of decoupling, straight fixed / variable pricing, and incentive-based rate structures on low and moderate income individuals.⁸ Comments were filed by various other parties.

On May 23, 2018, in response to the testimony provided at the *en banc* hearing and the two previous rounds of comments, the Commission issued its Policy Statement Order which “identifies factors [the Commission] will consider in determining just and reasonable distribution rates that promote the efficient use of electricity, natural gas or water, the use of distributed energy resources, reduce disincentives for such efficient use and resources and ensure adequate revenue to maintain the safe and reliable operation of fixed utility distribution systems.”⁹

⁷ March 2017 Order, Stmt. of Comm'n'r Sweet at 1 (emphasis added).

⁸ See Comments of the Pennsylvania Utility Law Project to the March 2, 2017 Tentative Order, Docket No. M-2015-2518883, May 31, 2017 (“PULP 2017 Comments”).

⁹ Policy Statement Order at 2.

In parallel with the Commission’s activities, the Pennsylvania General Assembly enacted House Bill 1782, which was signed into law on June 28, 2018, as Act 58 of 2018. Act 58 added Section 1330 to Title 66 and specifically authorized various alternative ratemaking methodologies that could be approved by the Commission in the context of general base rate proceedings. Included in types of rate mechanisms authorized by Act 58 are decoupling mechanisms, performance-based rates, formula rates, and multiyear rate plans. Act 58 is effective as of August 27, 2018, and requires that within six months of that date the Commission, “by regulation or order” to “prescribe the specific procedures for approval of an application to establish alternative rates.”¹⁰ While not explicitly directed at implementing Act 58, the Commission’s Policy Statement Order provides guidance to utilities and the public about the specific factors that the Commission will consider in determining whether to approve or deny any proposed alternative rate design in a utility’s general base rate case.

III. COMMENTS

A. The Commission correctly determined that it would not favor one rate approach over another.

It bears noting that the issues under consideration in the Commission’s Policy Statement Order and Act 58 fall into two general camps, each raising separate concerns. First, there are *ratemaking* principles that seek to address distribution utilities’ needs for stable, predictable revenue in order to meet Federal and State policy objectives, improve economic efficiency, avoid future capital investments and maintain safe and reliable

¹⁰ 66 Pa. C.S. § 1330(d) (eff. Aug. 27, 2018).

operations. Many of the alternative rate mechanisms identified in Act 58 and discussed in the Policy Statement Order fall into this category and essentially deal with how much revenue is collected, when revenue is collected, and how adjustments to revenue collection are made. For example, decoupling mechanisms, performance-based rates, formula rates, multiyear rate plans, lost revenue adjustments, weather normalization adjustments and revenue per customer proposals would fall into this category. Each of these ratemaking alternatives seeks to meet a targeted revenue requirement. This objective, whether accomplished through a traditional flat volumetric rate or an alternative ratemaking design, can and must accommodate and preserve appropriate consumer protections.

The second category concerns *rate design* and principally applies to electric distribution utilities. This is not addressed in Act 58, but is addressed in the Commission's Policy Statement Order where, for example, the Commission proposes that electric distribution utilities can "propose critical peak pricing or similar demand-based programs."¹¹ These rate design proposals come with their own concerns that are separate from concerns about ratemaking. These pricing structures deal less with the utility's overall revenue requirements than with structuring billing and collections to reflect certain supposed characteristics of customers' energy consumption.

The Low Income Advocates will not separately detail their concerns about each alternative ratemaking mechanism mentioned in the Policy Statement Order. In 2016 and 2017, PULP submitted comments that addressed many of the ratemaking proposals discussed in the Policy Statement Order.¹² The Low Income Advocates share the concerns

¹¹ Policy Statement Order at 31, Proposed § 69.3303(c).

¹² See supra n. 3 and n. 8 citing PULP 2016 Comments and PULP 2017 Comments.

detailed in PULP’s comments and incorporate them by reference. The Low Income Advocates acknowledge and appreciate that the Commission shares some of these concerns.

For example, regarding revenue decoupling the Commission acknowledged that it results in just and reasonable rates only under certain circumstances where the plan includes “appropriate consumer safeguards” such as “(1) a revenue adjustment cap (to limit the consumer’s rate adjustment exposure) and (2) a reduced return on equity (to reflect possible reduced business risks for the utility).”¹³ Furthermore, the Commission recognized that without these and other consumer safeguards, revenue decoupling “may not be appropriate, may not result in just and reasonable rates, or may not be authorized by the Public Utility Code.”¹⁴ Specifically, the Commission recognized that these rate designs “may adversely impact customers who, due to personal circumstances, are unable to take advantage of efficiency or conservation measures to reduce their consumption.”¹⁵

Regarding lost revenue adjustment (LRA) mechanisms that allow utilities to recoup revenue that is lost because of decreasing load – through conservation or otherwise – the Commission found that “any utility proposing an LRA will need to demonstrate that the proposed rate does not discourage efficiency measures, **does not conflict with the Public Utility Code** and will enjoy consumer acceptance.”¹⁶ This is critically important because, notwithstanding Act 58 of 2018, there remain open questions as to whether lost revenue

¹³ Policy Statement Order at 11.

¹⁴ Id.

¹⁵ Id.

¹⁶ Policy Statement Order at 13 (emphasis added).

adjustment mechanisms are permissible under the Public Utility Code, thus, any such proposal requires the highest scrutiny from the Commission prior to acceptance.¹⁷

Regarding straight fixed / variable (SFV) – which imposes higher fixed charges on a customer’s bill that do not vary based on consumption – the Commission recognized the potential that high fixed charges could provide a disincentive for conservation or efficiency efforts and that any utility proposing SFV cost recovery “will need to demonstrate that the proposed rate does not discourage efficiency measures, appropriately aligns costs in accordance with cost causation principles, and does not inappropriately impact low-income customers or appropriately mitigates such impacts.”¹⁸ The Commission made similar observations about each of the other alternative ratemaking mechanisms discussed in its Policy Statement Order.¹⁹

The Low Income Advocates are encouraged by the Commission’s acknowledgment that utility ratemaking is not just about the needs of the utility but must consider the public’s acceptance of new rate designs and mitigate the impact of those rate designs on low income and other customers. The needs of customers are critical. The reality is that low income customers are particularly vulnerable to higher utility bills for essential electric and gas

¹⁷ See Comments of the Office of Consumer Advocate to Proposed Implementation of Act 58 at Docket M-2018-3003269, submitted October 9, 2018 at 6-7 (“[T]he prohibitions contained within Section 2906.1(k)(2) and 2807(f)(4) still operate to preclude an EDC from recovering decreased revenue that are *solely* attributable to reduced energy consumption or changes in energy demand through a separate automatic adjustment mechanism, such as lost revenue adjustment clauses, that would be specifically designed to recover only such revenues.”) (emphasis in original); see also, Comments of Industrial Energy Consumers of Pennsylvania to Proposed Implementation of Act 58 at Docket M-2018-3003269, submitted October 9, 2018 at 4 (“IECPA is concerned that the Commission [may believe] an alternative rate mechanism *for the purpose of awarding a utility lost or decreased revenue* is now appropriate or permissible. To the extent that this is indeed the Commission’s intent, IECPA disagrees.”) (emphasis in original).

¹⁸ Policy Statement Order at 17.

¹⁹ See Policy Statement Order at 16 (discussing multiyear rate plans); 21 (discussing demand charges); 23 (discussing standby rates); 25 (discussing performance incentives).

service and often have a tenuous ability to maintain essential utility services under traditional rate structures. Any alternative to traditional rate structures should, at a minimum, not exacerbate this problem. Indeed, rates must be designed to actually assist low income households to afford and maintain essential utility services.

B. The proposed distribution rate considerations require further clarification.

In its Policy Statement Order, the Commission set forth proposed distribution rate considerations.²⁰ The Low Income Advocates support the inclusion of these considerations in the policy statement but offer the following suggested changes.

First, any party to a distribution utility rate case who is seeking to impose an alternative rate structure or rate design – whether it is the utility or another party – should be required to specifically address in testimony each of the rate considerations that are ultimately adopted as a part of the policy statement. In other words, consideration of these factors should be an explicit part of the filing rather than simply guidance for the Commission to use in determining whether the rates are just and reasonable.

Second, the proposed considerations should be modified to avoid ambiguity. For example, Section 69.303(a) (5) currently requires the consideration of “[h]ow the rates limit or eliminate disincentives for the promotion of efficiency programs.” The Low Income Advocates believe that proponents of alternative rate designs should not only have to show how the new rate designs limit or eliminate disincentives for energy efficiency, but they also should be required to show how they *encourage and incentivize* efficiency programs. A new rate design that encourages efficiency is far preferable to one that

²⁰ Proposed Policy Statement § 69.3302.

discourages efficiency. Thus, Low Income Advocates suggest that the language of section 69.303(a) (5) be modified to state: “How the rates encourage and incentivize the promotion of efficiency programs and/or limit or eliminate disincentives for efficiency programs.”

In Section 69.3302(a) (7), the Commission requires consideration of “[h]ow the rates impact low-income customers and support consumer [sic] assistance programs.”²¹ Low Income Advocates appreciate that the Commission has specifically recognized that the impact of the rate design on low income customers and Customer Assistance Programs (CAPs) is a crucial factor in assessing whether an alternative rate design is just and reasonable. Low income customers already face sometimes insurmountable hurdles in keeping service connected. Data from 2016, the last year in which data is publically available, shows that low-income customers had a significantly higher termination rate as compared to the larger group of residential customers.

²¹ Low Income Advocates assume that this section contains the typographical error noted above and that the phrase should be “customer assistance programs” rather than “consumer.”

Figure 1 – 2016 Total Number of Terminations and Termination Rate²²

	RESIDENTIAL CUSTOMERS		CONFIRMED LOW-INCOME	
	Terminations	Reconnections	Termination	Reconnection
Electric	205,237 households	162,990 households	95,437 households	66,842 households
	4.1% Termination Rate	79.4% Reconnection rate	15.2% Termination Rate	70% Reconnection rate
Natural Gas Utilities	90,163 households	61,086 households	46,278 households	29,714 households
	3.5% Termination Rate	67.8% Reconnection rate	10.6% Termination Rate	64.2% Reconnection rate

Low Income Advocates submit that any alternative ratemaking design proposals must demonstrate that resulting rates will not exacerbate this termination crisis. Preferably, any alternative should be designed to close the gap in termination rates between low income households and all residential households. Thus, the Low Income Advocates believe that section 69.3302(a)(7) should include language recognizing that the proponent of an alternative rate design should be able to demonstrate that the rate design proposed improves affordability for low income customers and is designed so as to decrease termination rates for low income customers.

Additionally, the Low Income Advocates appreciate that the Commission will specifically consider how the proposed rate designs will “impact customer rate stability principles” (§ 69.3302(a) (8)), whether the rate mechanisms include “appropriate consumer protections” (§ 69.3302(a) (12)), and whether the alternative rate mechanism is “understandable and acceptable to consumers” (§ 69.3302(a) (12)). Each of these

²² Report on 2016 Universal Service Programs & Collection Performance of the Pennsylvania Electric Distribution Companies and the Natural Gas Distribution Companies at 10-16.

components is critical to evaluating whether proposed rates and proposed rate designs are just and reasonable.

C. The Commission should eliminate proposed Section 69.3303

In addition to these distribution rate considerations, the Commission also sets forth several illustrations of how rates could be designed. Subsection 69.3303(a) states that utilities “may propose, among others, alternative rate designs and methodologies identified in this subsection,”²³ but adds that such subsection should not be viewed as “signaling any predilection by the Commission . . . or any predetermination of approval by the Commission” of any proposal over another.²⁴ Despite this disclaimer, the Commission specifically lists two categories of proposals. For natural gas utilities, the Commission states that utilities could propose a “weather normalization adjustment and/or revenue per customer ratemaking proposal.”²⁵ For electric distribution utilities, the Commission states that utilities may “propose critical peak pricing or similar demand-based billing determinants.”²⁶

The Commission should eliminate § 69.3303 in its entirety. While the Commission claims not to express any preference in rate design, and that each design proposed must adhere to the principles set forth in § 69.3302, by listing certain rate design proposals and failing to include others the Commission is, in fact, signaling a preference. Utilities or other parties desiring to implement a rate design that the Commission has identified in § 69.3303 will necessarily perceive their proposal to be presumptively favored due to being

²³ Proposed Policy Statement § 69.3303.

²⁴ Id.

²⁵ Proposed Policy Statement § 69.3303(b).

²⁶ Proposed Policy Statement § 69.3302(c).

among those specifically listed. If, in fact, the Commission has not developed a preferred approach then it is unnecessary to list possible proposals in the policy statement. The policy statement should end with § 69.3302 – as modified by the Low Income Advocates’ comments – and allow the utilities and intervenors to propose and analyze rate design in the context of a rate case without any party presuming their proposal to be a favored one.

More significantly, the Low Income Advocates submit that there are serious problems with the proposal to encourage residential critical peak pricing for distribution utilities. In the context of a deregulated generation system like Pennsylvania, critical peak pricing is a crude instrument. For such pricing to be suitable for ratemaking, utilities would have to demonstrate that there are material, coincidental time differentiated peak and off peak costs for residential distribution services, as opposed to generation services. While the Commission lists such factors as “usage over local or nodal substations, feeders, and other related distribution system components during localized peak usage periods” it is not clear how residential demand impacts the short- or long-term costs of these distribution assets during peak periods. Furthermore, it is hard to reconcile such a rate design with the goal that rates be understandable to the average consumer who has to pay the monthly bill.²⁷ In fact, it is difficult to imagine that most consumers would be able to understand or articulate what “local or nodal substations” are or what a “localized peak usage period” is, let alone how their rates would be set using this methodology.

²⁷ Proposed Policy Statement § 69.3302(a) (12).

Thus, rather than specifically list some rate approaches to the exclusion of all others, the Commission should eliminate § 69.3303 in its entirety and end its policy statement with § 69.3302.

III. CONCLUSION

Low Income Advocates agree with the Commission's policy criteria that any alternative rate structure or rate design proposal must: be just and reasonable; assess how the proposal will impact low income customers; promote bill stability; ensure consumer protection; and incentivize energy efficiency. We urge the Commission to adopt the suggested revisions proposed here which will help to clarify how these factors will be considered. Rather than suggest some proposed distribution rate principles over others, the Commission should eliminate its proposed § 69.3303 and end its proposed policy statement at § 69.3302.

The Commission must ensure that any alternative ratemaking proposal does not adversely impact low-income households' ability to remain connected to essential utility service. This requires that alternative rate designs must neither negatively impact on household energy burdens nor erode the ability of low income consumers to save money as they save energy.

Respectfully Submitted,

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