

November 20, 2018

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

VIA ELECTRONIC FILING

**RE: Alternative Ratemaking Methodologies;
Docket No. M-2015-2518883**

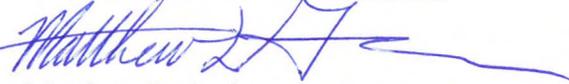
Dear Secretary Chiavetta:

Attached for filing with the Pennsylvania Public Utility Commission are the Joint Reply Comments of the Pennsylvania Energy Consumers Alliance, 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 to the Proposed Policy Statement Order in the above-captioned proceeding.

If you have any questions concerning this matter, please contact the undersigned. Thank you.

Respectfully submitted,

McNEES WALLACE & NURICK LLC

By 
Matthew L. Garber

Enclosure

c: Chairman Gladys M. Brown (Via UPS)
Vice Chairman Andrew G. Place (Via UPS)
Commissioner John F. Coleman, Jr. (Via UPS)
Commissioner Norman J. Kennard (Via UPS)
Commissioner David W. Sweet (Via UPS)
Certificate of Service

CERTIFICATE OF SERVICE

I hereby certify that I am this day serving a true copy of the foregoing document upon the participants listed below in accordance with the requirements of 52 Pa. Code Section 1.54 (relating to service by a participant).

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Dated this 20th day of November, 2018, at Harrisburg, Pennsylvania

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Fixed Utility Distribution Rates : Docket No. M-2015-2518883
Policy Statement :

**JOINT REPLY COMMENTS OF THE
PENNSYLVANIA ENERGY CONSUMERS ALLIANCE,
MET-ED INDUSTRIAL USERS GROUP,
PENELEC INDUSTRIAL CUSTOMER ALLIANCE,
PHILADELPHIA AREA INDUSTRIAL ENERGY USERS GROUP,
PP&L INDUSTRIAL CUSTOMER ALLIANCE, AND
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Dated: November 20, 2018

I. INTRODUCTION

On May 23, 2018, the Pennsylvania Public Utility Commission ("PUC" or "Commission") entered a Proposed Policy Statement Order ("PPS Order") in the above-captioned proceeding. The PPS Order continues a proceeding underway since 2015 to address the topic of alternative ratemaking methodologies. The PPS Order includes a Proposed Policy Statement that identifies factors the Commission proposes to consider in "determining just and reasonable distribution rates" with respect to alternative rate methodologies proposed by utilities.¹

On October 22, 2018, the Pennsylvania Energy Consumers Alliance ("PECA"), the Met-Ed Industrial Users Group ("MEIUG"), the Penelec Industrial Customer Alliance ("PICA"), the Philadelphia Area Industrial Energy Users Group ("PAIEUG"), the PP&L Industrial Customer Alliance ("PPLICA"), and the West Penn Power Industrial Intervenors ("WPPII") (collectively, the "Industrials") filed Joint Comments on the Proposed Policy Statement. In those Joint Comments, the Industrials requested the Commission incorporate certain fundamental customer safeguards into the Proposed Policy Statement, namely: (1) establishing mandatory time limitations on alternative ratemaking mechanisms to ensure such mechanisms would be reviewed in a base rate case on a periodic basis; (2) requiring an earnings-sharing mechanism and reduction to Return on Equity ("ROE") when approving any alternative ratemaking mechanism; (3) requiring alternative ratemaking mechanisms be implemented and recovered on a customer-class basis; and (4) establishing a Rulemaking Docket so specific consumer protections become binding regulations.²

¹ Proposed Policy Statement, *Alternative Ratemaking Methodologies*, Docket No. M-2015-2518883 (Order entered May 23, 2018) ("Proposed Policy Statement").

² Joint Comments of the Pennsylvania Energy Consumers Alliance, 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 to the Proposed Policy Statement Order, *Fixed Utility Distribution Rates Policy Statement*, Docket No. M-2015-2518883 (Oct. 22, 2018) ("Industrials' Joint Comments"), pp. 6-10.

Numerous stakeholders also filed Comments in this proceeding.³ The Industrials submit these Joint Reply Comments to respond to several specific recommendations offered by other stakeholders. First, the Industrials support the Office of Consumer Advocate's ("OCA") recommendation that the Commission require utilities to provide specific consumer protection proposals in rate filings that include alternative ratemaking mechanisms. *See* Section II.A., *infra*. Second, given the countervailing Comments filed by some stakeholders, the Industrials encourage the Commission in its Policy Statement to reaffirm that cost-of-service remains the central consideration in approving an alternative ratemaking mechanism, as set forth in several stakeholders' Comments to this proceeding. *See* Section II.B., *infra*. Third, the Industrials support Pennsylvania State University's ("PSU") Comments recommending that the Proposed Policy Statement reflect the principle that all rates must move toward the elimination of inter-class and intra-class subsidies. *See* Section II.C., *infra*. Fourth, the Industrials support PSU's Comments recommending that alternative ratemaking mechanisms, once approved, must be transparent, accountable, and subject to a rigorous annual audit. *See* Section II.D., *infra*.

³ The Industrials received and reviewed Comments from the following Stakeholders: Industrial Energy Consumers of Pennsylvania; Consumer Advisory Council; Natural Resources Defense Council, BYD Heavy Industries, CALSTART, Clean Air Council, EVbox, EVgo, Pennsylvania Solar Energy Industries Association, Philadelphia Solar Energy Association, Plug-In America, Siemens, and Sierra Club; Environmental Defense Fund; Pennsylvania-American Water Company; Energy Association of Pennsylvania; Duquesne Light Company; Office of Consumer Advocate; PECO Energy Company; The Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania, Tenant Union Representative Network, and Action Alliance of Senior Citizens of Greater Philadelphia; PPL Electric Utilities Corporation; Alliance for Industrial Efficiency; Columbia Gas of Pennsylvania, Inc.; Pennsylvania State University; American Council for an Energy-Efficient Economy; Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company; Sunrun Inc.; Office of Small Business Advocate; Natural Resources Defense Council, Sierra Club, and Clean Air Council; Advanced Energy Economy Institute; Sierra Club; Greenlots; and Keystone Energy Efficiency Alliance. The Industrials' decision to only respond to specific proposals of certain stakeholders does not indicate the Industrials' agreement on all other stakeholders' positions.

II. REPLY COMMENTS

In general, the Industrials agree with other stakeholders' recommendations that the Commission coordinate its longstanding efforts in this docket with the Act 58 Tentative Implementation Order ("Act 58 TIO") at Docket No. M-2018-3003269. Act 58 provides additional flexibility for natural gas, electric, water, and wastewater utilities to propose alternative ratemaking mechanisms. In doing so, the General Assembly's Declaration of Policy requires such ratemaking mechanisms to continue to honor cost-of-service principles, encourage efficient consumption of energy, and support reliability.⁴

The many Comments filed in this proceeding reflect various and divergent policy objectives for the Commission to consider as part of its Proposed Policy Statement. The focus of the Industrials' Joint Reply Comments is to respond to those stakeholders who suggest that consumer protections or a focus on cost-of-service principles are unnecessary when reviewing alternative ratemaking methodologies. Rather, as set forth herein, the Industrials, along with other stakeholders, continue to remind the Commission that cost-of-service principles remain the core of utility ratemaking; this polestar has not changed with the passage of Act 58. Maintaining cost-of-service principles in the context of alternative ratemaking requires transparency, accountability, and a commitment to consumer protections. For these reasons, the Industrials contend that consumer protections should not only be robust and specific but also enshrined in regulation, rather than merely expressed as Commission policy.⁵

⁴ 66 Pa.C.S. § 1330(a).

⁵As set forth in the Industrials' Joint Comments, this position is consistent with Governor Thomas Wolf's recommendation in his letter to the PUC dated June 28, 2018. The Governor stated:

I further understand that the Commission intends to conduct a robust public comment process and **formally adopt appropriate requirements prior to considering any rate proceeding proposing alternative rate mechanisms**. This process will allow the Commission to further clarify the consumer protections—such as periodic review and oversight of any automatic adjustments—that it will **require** in this new context, and will allow stakeholders to weigh in with concerns, and

A. The Industrials support the Office of Consumer Advocate's recommendation that the Commission require utilities to provide specific consumer protection proposals in any alternative ratemaking methodology filings.

As a preliminary matter, the Industrials agree with the Commission that alternative ratemaking mechanisms must be proposed and adjudicated within the confines of a base rate proceeding.⁶ In its Comments, the OCA supports the Commission's proposed policy in Section 69.3302(b), which provides that any utility seeking to implement an alternative ratemaking mechanism must address each consideration outlined by the Commission in Section 69.3302(a) of the Proposed Policy Statement as part of the utility's initial filing.⁷ In addition, the OCA proposes that the Commission establish seven additional informational requirements that utilities must file at the outset of a rate case if such a rate case also includes a request for an alternative ratemaking mechanism. The additional informational requirements proposed by OCA include "the specific metrics and reporting that will be used to measure the utility's performance" and "the consumer protections proposed for the mechanism."⁸

The Industrials agree with OCA's proposal to require utilities to identify and propose specific consumer protections for any alternative ratemaking mechanism. As noted by PSU, the

provide greater certainty to utilities about the new mechanisms that will be considered. I believe that **formalizing the consumer protections that will apply** in the context of alternative ratemaking is in the best interest of the Commonwealth and urge the Commission to move forward expeditiously.

Letter from Governor Thomas Wolf to the Pennsylvania Public Utility Commission (June 28, 2018) ("Letter from Governor Thomas Wolf"), p. 2 (emphasis added). See Comments of the Pennsylvania Energy Consumers Alliance, et al., Implementation of Act 58 of 2018 Alternative Ratemaking for Utilities, Docket No. M-2018-3003269 (Oct. 9, 2018), Attachment No. 1.

⁶ Proposed Policy Statement, § 69.3301, 3303(a); PPS Order, pp. 26-27; Industrials' Joint Comments, pp. 6-7; Joint Reply Comments of the Pennsylvania Energy Consumers Alliance, et al., *Implementation of Act 58 of 2018 Alternative Ratemaking for Utilities*, Docket No. M-2018-3003269 (Nov. 19, 2018), p. 6. See also The Pennsylvania State University's Comments to Proposed Policy Statement, *Alternative Ratemaking Methodologies*, Docket No. M-2015-2518883 (Oct. 22, 2018) ("PSU Comments"), p. 4.

⁷ Comments of the Office of Consumer Advocate, *Alternative Ratemaking Methodologies*, Docket No. M-2015-2518883 (Oct. 22, 2018) ("OCA Comments"), p. 21.

⁸ *Id.*

amount of time allotted to parties in which to litigate a base rate case is limited and constrained by statute.⁹ Utilities proposing alternative rate mechanisms must be required to provide ample information and data with their proposals, rather than waiting for consumer advocates or other parties to request such information in discovery.¹⁰ Sound public policy requires the Commission to ensure that each utility proposes specific consumer protections at the outset of any rate filing in which an alternative rate mechanism is proposed.¹¹ For these reasons, the Industrials respectfully request that the Commission adopt the OCA's proposed informational requirements, including a clear and detailed explanation of the utility's proposed consumer protections for any alternative ratemaking mechanism it proposes in its rate application.

In contrast to the OCA's approach, PECO Energy Company ("PECO") argues that not all factors in Section 69.3302 are applicable to every methodology and that utilities proposing alternative ratemaking mechanisms should not be required to address each factor.¹² The Industrials note that PECO's position would make information on these factors optional, illustrating the inadequacy of relying on Policy Statements. The Commission's statements in such documents can be disregarded in future proceedings as non-binding requests or as suggestions by this

⁹ PSU Comments, pp. 10-11.

¹⁰ PSU proposes a new section 3302(c) of the Proposed Policy Statement, which would require utilities "to give notice and details of any proposed alternative ratemaking mechanism . . . at least three months prior to the filing of their alternative rate mechanism" in a rate case. *Id.*, p. 11.

¹¹ As discussed more fully in the Industrials' Joint Comments, the Commission should establish concrete protections for consumers commensurate with the advantages for utilities provided by alternative ratemaking. These consumer protections should be developed through a Rulemaking Docket so as to be binding on future Commissions and to provide a reliable set of standards for all water, wastewater, electric, and gas utilities in Pennsylvania. Industrials' Joint Comments, pp. 5, 10. Importantly, other stakeholders provide support for such robust consumer protections in their Comments. For example, the Office of Small Business Advocate ("OSBA") proposes in its Comments that a reduction in ROE should always be evaluated by the Commission in the context of an alternative ratemaking proposal. Comments to the Proposed Policy Statement Order by OSBA, *Alternative Ratemaking Methodologies*, Docket No. M-2015-2518883 (Oct. 22, 2018) ("OSBA Comments"), p. 6. For its part, OCA proposes that utilities be required to identify their proposed consumer protections and consumer education plan with any alternative ratemaking mechanism, in addition to identifying metrics and reporting that will be used to measure the mechanism's performance.

¹² Comments of PECO Energy Company, *Alternative Ratemaking Methodologies*, Docket No. M-2015-2518883 (Oct. 22, 2018) ("PECO Comments"), pp. 4-5.

Commission. Alternative ratemaking is a fundamental shift in policy that should be carefully set forth in regulations to ensure an appropriate balance between and among the various stakeholders' interests. Therefore, the Industrials urge the Commission to reject PECO's proposal and, instead, open a Rulemaking Docket to establish basic, concrete consumer protections to match the flexibility provided to utilities with alternative ratemaking.

B. The Commission should clarify that cost-of-service remains the central consideration in approving any alternative ratemaking mechanism.

The Industrials agree with Columbia Gas, the First Energy Companies,¹³ PSU, and other stakeholders who emphasize that rates must be based on cost-of-service.¹⁴ While many policy goals linked with alternative ratemaking mechanisms are discussed in stakeholder comments, nothing in Act 58 changed the core ratemaking principle of cost-of-service.

The Industrials are particularly concerned that the Joint Comments of Sierra Club, Natural Resources Defense Council, and Clean Air Council argue that "cost causation principles" should not be "given undue weight."¹⁵ This contention contradicts established legal precedent, which provides that while policy goals may be considered, they must operate consistent with cost-of-service principles.¹⁶ The *Lloyd* decision firmly established that cost-of-service is the "polestar"

¹³The FirstEnergy Companies commenting in this proceeding are Metropolitan Edison Company ("Met-Ed"), Pennsylvania Electric Company ("Penelec"), Pennsylvania Power Company ("Penn Power"), and West Penn Power Company ("West Penn").

¹⁴ Comments of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company, *Fixed Utility Distribution Rates Policy Statement*, Docket No. M-2015-2518883 (Oct. 22, 2018) ("FirstEnergy Comments"), § 69.3302; Columbia Gas of Pennsylvania, Inc.'s Comments, *Alternative Ratemaking Methodologies*, Docket No. M-2015-2518883 (Oct. 22, 2018) ("Columbia Comments"), p. 8 ("Rates must be designed based on cost incurrence."); PSU Comments, p. 4.

¹⁵ Comments of Natural Resources Defense Council, Sierra Club, and Clean Air Council on Commission's Proposed Policy Statement Concerning Distribution Rates and Alternative Ratemaking Methodologies, *Alternative Ratemaking Methodologies*, Docket No. M-2015-2518883 (Oct. 22, 2018), p. 13.

¹⁶ See *Lloyd v. Pa. PUC*, 904 A.2d 1010, 1019-21 (Pa. Cmwlth. 2006); 66 Pa.C.S. § 1304.

for the Commission under the Public Utility Code.¹⁷ Further, Act 58's Declaration of Policy emphasizes cost-of-service.¹⁸

Any policy goals must work within the core consideration of cost-of-service (*i.e.*, the "polestar" of Commission decision making). For example, PSU suggests that alternative rate mechanisms should consider the Commission's Final Policy Statement on Combined Heat and Power ("CHP").¹⁹ In other words, PSU's comments appropriately seek to align policy goals with cost-of-service principles, rather than pursue policy goals that contradict or disregard cost-of-service principles.

In light of Comments in this docket that seek to diminish the importance of cost-of-service, the Industrials urge the Commission to reaffirm that cost-of-service remains the paramount consideration in ratemaking, whether traditional or alternative, and to ensure that any informational requirements the Commission imposes do not overshadow a utility's duty to show its rates are just and reasonable and align with cost-of-service ratemaking principles.

C. The Commission should reaffirm that all rates must move toward the elimination of inter-class and intra-class subsidies.

In its Comments, PSU recommends the Commission modify the Proposed Policy Statement to more clearly reflect the legal principle that requires a utility to eliminate cost-shifting when allocating any rate increase.²⁰ Specifically, PSU asks the Commission to remove the phrase

¹⁷ *Lloyd*, 904 A.2d at 1020.

¹⁸ 66 Pa.C.S. § 1330(a).

¹⁹ PSU Comments, p. 9. PSU proposes that the Commission add a provision to Section 69.3302(a)(1) requiring that alternative rate mechanisms be based on appropriate cost-of-service studies "that include load characteristics of distributed generation." *Id.*, p. 8. *See also id.*, pp. 5, 9.

²⁰ *Id.*, pp. 6-7.

"limit or" from Section 69.3302(a)(4) to be clear that inter-class subsidies should not be exacerbated through the implementation of an alternative ratemaking methodology.²¹ PSU states:

Currently the Policy Statement provides that one factor the Commission will consider regarding alternative ratemaking is: "(4) How the rates *limit or* eliminate inter-class and intra-class cost shifting." [52 Pa.Code] § 69.3302(a)(4). While Penn State agrees with the Commission that cost-shifting or subsidization is an important factor to be considered, Penn State finds the language "limit or" problematic because it could imply that if cost-shifting or subsidization is limited, it is just and reasonable. That is contrary to law. Cost-shifting or subsidization is discriminatory and cannot be ignored based on other ratemaking factors such as gradualism. The movement must be to elimination under applicable law.²²

The Industrials support PSU's position on this issue. By law, utilities must move toward elimination of cost shifting, both on an inter-class and an intra-class basis.²³ As stated herein, *Lloyd* established cost-of-service as the "polestar" of utility ratemaking, while also ensuring that other policy considerations must not be allowed to overshadow cost-of-service.²⁴ The Commission should clarify that alternative ratemaking mechanisms are not absolved from this legal requirement.

To satisfy the legal requirement set forth by *Lloyd*, the Industrials support two practical recommendations by PSU and the Office of Small Business Advocate ("OSBA"). First, to ensure movement toward cost-of-service ratemaking, PSU recommends that cost-of-service studies be required with any alternative rate mechanisms.²⁵ As Act 58 itself states, alternative rate proposals should "ensur[e] that utility infrastructure costs are reasonably allocated to and recovered from customers . . . consistent with the use of the infrastructure."²⁶ The Industrials agree that a cost-of-

²¹ *Id.*

²² PSU Comments, p. 6.

²³ *Lloyd*, 904 A.2d at 1019-20.

²⁴ See Section II.B, *supra*.

²⁵ PSU Comments, p. 8.

²⁶ 66 Pa.C.S. § 1330(a)(1).

service study is a vital step to establish just and reasonable rates and to ensure meaningful movement to cost-of-service.

Second, within the context of addressing revenue decoupling specifically, OSBA seeks to confirm that "the Commission will require that any revenue decoupling mechanism recover variances on a class-by-class basis."²⁷ The Industrials concur with the need for variances to be recovered on a class-by-class basis, and the Industrials submit that such a requirement should be extended to any alternative ratemaking mechanisms approved by the Commission.

In light of the distinct service imperatives and costs attributable to each rate class, the Industrials respectfully request that the Commission clearly require that all alternative ratemaking mechanisms recognize the need to eliminate cost shifting, both on an inter- and intra-class basis, as well as require the recovery of any variances on a class-by-class basis.

D. The Industrials agree with PSU's recommendation that, once approved, alternative ratemaking mechanisms must be transparent, accountable, and subject to rigorous annual audit.

In this proceeding, PSU advocated for several transparency and accountability mechanisms, including: (a) subjecting alternative ratemaking mechanisms to rigorous audit; (b) annual review of rates during the early years of any alternative ratemaking mechanism, and in a reasonable regular timeframe thereafter; and (c) a forum for quality of service issues.²⁸ The Industrials support PSU's position, as all of these mechanisms warrant adoption by the Commission.

As argued by PSU, an alternative rate mechanism or regulation should be subject to a periodic review proceeding to examine justness and reasonableness, determine whether the

²⁷ OSBA Comments, p. 4.

²⁸ PSU Comments, pp. 9-10.

mechanism needs to be adjusted or discontinued, and evaluate the utility's compliance or non-compliance with the objectives of Act 58.²⁹ The Industrials agree. In its Comments in this proceeding, the Industrials provided several examples of the dangers of approving alternative ratemaking mechanisms absent consumer protection mechanisms or regular Commission review.³⁰ The Industrials pointed to the "need for relatively frequent review by the Commission" and proposed full review of an alternative ratemaking mechanism in a base rate case every three to five years.³¹ In addition to review in a base rate case every three to five years, the Industrials support PSU's proposal of an annual audit for alternative ratemaking mechanisms between base rate cases.

These protections are particularly important in the early years of Pennsylvania's exploration of these mechanisms. To afford protection for all consumers, the Industrials respectfully request that the Commission develop regulations requiring regular audits of alternative ratemaking mechanisms and periodic review of such mechanisms in base rate proceedings. A Rulemaking Docket affords the Commission its best opportunity to ensure that, from the very beginning, consumers are treated in a just and reasonable manner in the context of alternative ratemaking.

²⁹ *Id.*

³⁰ Industrials' Joint Comments, pp. 6-7.

³¹ *Id.*, p. 7 (citing *Alternative Electricity Ratemaking Mechanisms Adopted By Other States*, Christensen Associates Energy Consulting LLC (prepared for Public Utility Commission of Texas) (dated May 25, 2016)).

III. CONCLUSION

WHEREFORE, the Pennsylvania Energy Consumers Alliance, the Met-Ed Industrial Users Group, the Penelec Industrial Customer Alliance, the Philadelphia Area Industrial Energy Users Group, the PP&L Industrial Customer Alliance, and the West Penn Power Industrial Intervenors respectfully request that the Pennsylvania Public Utility Commission consider these Joint Reply Comments.

Respectfully submitted,

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