

November 21, 2018

**VIA ELECTRONIC FILING**

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

Re: Docket M-2015-2518883, *En Banc Hearing Re Alternative Ratemaking Methodologies*

Dear Secretary Chiavetta:

Please find attached the joint reply comments of the Keystone Energy Efficiency Alliance, NRDC, Sierra Club, PA Solar Energy Industries Association, and Philadelphia Solar Energy Association concerning the Commission's Proposed Fixed Utility Distribution Rates Policy Statement in the above reference docket.

Sincerely,

*Eric Miller*

Policy Counsel  
Keystone Energy Efficiency Alliance

*Mark Szybist*

Senior Attorney & Pennsylvania Advocate  
Natural Resources Defense Council

*Tom Schuster*

Sr. Campaign Representative  
Sierra Club

*Ron Celentano*

President  
PA Solar Energy Industries Assoc.

*Liz Robinson*

Executive Director  
Philadelphia Solar Energy Association

*Logan Welde*

Staff Attorney  
Clean Air Council

## **Comments**

In our initial respective comments,<sup>1</sup> the undersigned organizations expressed general support for the Public Utility Commission's ("Commission") Proposed Policy Statement ("Policy Statement") on alternative ratemaking. In short, we believe that a statement of purpose and scope along the lines of the Commission's proposed section 69.3301, together with a list of factors that the Commission will consider when evaluating utility applications for alternative ratemaking and rate design mechanisms along the lines of proposed section 69.3302, will aid all Pennsylvania stakeholders and help align ratemaking in the Commonwealth with important public policy goals, including but not limited to the increased deployment of energy efficiency and distributed energy resources that will provide ratepayers with greater control of their energy bills. While our respective comments criticized specific elements of the Policy Statement and suggested various modifications, the Commenters believed -- and continue to believe -- that the Policy Statement is a critical tool for guiding utilities and utility ratemaking towards 21st-century models that not only gives utilities a fair opportunity to recover their revenue requirements, but also use energy more efficiency and cut greenhouse gas emissions while protecting vulnerable consumers.

With these reply comments, we would like to emphasize that although some stakeholders have suggested otherwise, there is no inconsistency between the Policy Statement and Act 58, and it is appropriate for the Commission to finalize the Policy Statement to provide substantive guidance regarding the specific factors the Commission will consider in determining whether to approve or deny any proposed alternative rate mechanisms in a utility's general base rate case. Our position reflects similar comments by Advanced Energy Economy Institute, Environmental Defense Fund (EDF), Sunrun, and the American Council for an Energy-Efficiency Economy (ACEEE).

Despite the broad support for the Policy Statement by the majority of stakeholders, a minority of Commenters have asked the Commission to set aside its Policy Statement in favor of an *ad*

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<sup>1</sup> KEEA filed comments on its own behalf, while NRDC, Sierra Club, and Clean Air Council filed joint comments.

*hoc* approach to ratemaking, whereby the Commission would not any estalish any policy on ratemaking until it, and stakeholders, “gain experience” with alternative ratemaking. However, the Commission does not require direct experience with particular *mechanisms* to determine the *policy goals* it will favor when evaluating a ratemaking proposal.

The proponents of setting aside the Policy Statement largely ignore the wealth of information presented in this docket over the past three years, as well as the best practices available from numerous jurisdictions that have already implemented alternative ratemaking mechanisms. Simply stated, alternative ratemaking is not a novel regulatory concept and states know what works and what does not. In fact, 15 states and the District of Columbia have full revenue decoupling for electric utilities, while 23 states have full revenue decoupling for gas utilities.<sup>2</sup> Further, in Appendix A of its comments, ACEEE shared a memorandum prepared for the Commission in April 2018, that provides comprehensive information on the type of mechanisms implemented by other jurisdictions.<sup>3</sup> To ignore the experience of these other jurisdictions and best practices developed over time would expose Pennsylvania ratepayers to needless risk and subject stakeholder to unnecessary expense in rate cases that attempt to reinvent the wheel.

Moreover, “gaining experience” on alternative ratemaking through only individual utility filings in general rate cases is misguided. While general base rate cases serve an essential purpose for utility revenue setting and the continued safe and reliable operation of the utility grid, they are an extremely poor venue for policymaking due to their complexity, cost of participation, and tendency to settle. For example, if a utility were to propose a single rate mechanism in a base rate case, parties would be forced to intervene merely to provide expensive and time consuming expert testimony to discuss whether a particular policy meets the public policy goals of the Commonwealth without any criteria by which to do so. Following the implementation of a base rate case, there would not be a full accounting of the mechanism’s impact until the utility’s next base rate case, which could take approximately 5 years and in any case would

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<sup>2</sup> Berg, W. et al. 2018. “The 2018 State Energy Efficiency Scorecard.” ACEEE. <https://aceee.org/research-report/u1808>.

<sup>3</sup> *Id.* Appendix A

provide “experience” for only one of innumerable ratemaking permutations. To prevent this outcome, it is essential that the Commission articulate evaluation criteria for alternative rate mechanisms *via* its proposed Policy Statement.

In addition to the practical considerations, as a matter of law the Commission is well within its authority to issue a proposed policy statement alongside Act 58, and there is no requirement that the Commission set aside the Policy Statement and take Act 58 implementation “point-by-point.” Under the Public Utility Code, the Commission has the authority to supervise and regulate all public utilities doing business within this Commonwealth,<sup>4</sup> and may exercise its authority either through the issuance of legally binding regulations pursuant to section 501(b) or through the issuance of policy statements in accordance with the Commonwealth Documents Law.<sup>5</sup> That statute defines “statement of policy” as “any document, except an adjudication or a regulation, promulgated by an agency which sets forth substantive or procedural personal or property rights, privileges, immunities, duties, liabilities or obligations of the public or any part thereof, and includes, without limiting the generality of the foregoing, any document interpreting or implementing any act of Assembly enforced or administered by such agency.”<sup>6</sup>

The Commission’s Policy Statement on alternative ratemaking, being a policy statement, will not be binding on any fixed utility that requests approval of an alternative ratemaking mechanism.<sup>7</sup> On the other hand, because the Policy Statement will not have the force of a regulation, the Commission has, as supervisor of Pennsylvania’s public utilities under section 501, broad discretion to express in the Policy Statement how it believes utilities should be responding to current technological, economic, and social developments.

In exercising this discretion, however, the Commission must, as noted above, bear in mind its

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<sup>4</sup> 66 Pa.C.S. § 501(b)

<sup>5</sup> See 45 P.S. § 1102(13)

<sup>6</sup> 45 P.S. § 1102(13)

<sup>7</sup> See., e.g., *Borough of Bedford v. Com., Dept. of Environmental Protection*, 972 A.2d 53 (Pa. Commw. 2009).

duties under Article I, Section 27 of the Pennsylvania Constitution. Both in the Act 58 Implementation Order and the Policy Statement, the Commission should signal cognizance of its duty to act in a manner consistent with Article I, Section 27 of the Pennsylvania Constitution when reviewing alternative ratemaking requests by fixed utilities. At a minimum, this means considering the impacts that ratemaking methodologies – alternative and conventional – will have on how much energy is consumed in the Commonwealth, how clean that energy is, and how customers are enabled and incentivized to reduce their consumption and take advantage of clean energy resources.

The draft Policy Statement was published before Act 58 was passed, and was originally based on the Commission's authority before Act 58. The fact that Act 58 expands the Commission's authority while offering minimal policy guidance in no way negates the need for the Commission to interpret its authority and offer guidance to stakeholders as to how it intends to exercise its authority to balance a multitude of policy outcomes. Quite the contrary, there is even more need for a clear Policy Statement post Act 58 to provide guidance for stakeholders to evaluate alternative ratemaking proposals.

While the Commenters strongly disagree with any proposal to set aside the policy statement, we do agree with many utility commenters that urged portions of the proposed policy statement be "harmonized" with Act 58 to avoid an confusion. Policy statements are flexible by nature (if they are applied inflexibly, they are liable to be struck down as improperly promulgated regulations). And as we and others (e.g., the Advanced Energy Economy Institute) have respectively elaborated in earlier comments in this docket and the alternative ratemaking docket, Act 58 and the Proposed Policy Statement are in fact not in conflict, and the Commission can easily resolve any differences and apparent inconsistencies between them in the final Policy Statement. The Commission's Consumer Advisory Council has also taken the position that the Act 58 TIO and the Policy Statement are complementary.

## **Conclusion**

The Commission's Proposed Policy Statement provides reasonable criteria that will guide the evaluation of alternative ratemaking in Pennsylvania. Moreover, it reflects the knowledge gained from more than three years of stakeholder participation where they have had the opportunity to make their viewpoints clear, and provide best practices from jurisdictions with more experience with such mechanisms than the Commonwealth. Finally, the policy statement is a proper and essential use of Commission authority to provide guidance to regulated utilities on complex topics that will affect every ratepayer in the Commonwealth. For those reasons, the Commenters urge the Commission to move forward with its proposed policy statement and harmonize it with Act 58.