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July 31, 2017

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 Reply Comments of the Energy Association of Pennsylvania to the Tentative Order entered on March 2, 2017 at the above-referenced docket.

Sincerely,

A handwritten signature in black ink that reads "Donna M.J. Clark".

Donna M.J. Clark
Vice President & General Counsel

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Alternative Ratemaking Methodologies

:

M-2015-2518883

**REPLY COMMENTS OF THE
ENERGY ASSOCIATION OF PENNSYLVANIA TO THE TENTATIVE ORDER
ENTERED ON MARCH 2, 2017**

I. INTRODUCTION

The Pennsylvania Public Utility Commission (“Commission” or “PUC”) initiated the current proceeding with a Secretarial Letter¹ that scheduled an *en banc* hearing in March 2016. The hearing examined information from experts regarding the value of alternative ratemaking methodologies, particularly as it relates to removing disincentives for energy utilities to pursue aggressive energy conservation and efficiency initiatives beyond those currently achieved through programs such as required under Act 129. Following the March 2016 hearing, the Commission provided an opportunity for interested parties to submit comments under this docket by March 16, 2016. Numerous parties, including the Energy Association of Pennsylvania (“Association” or “EAP”) and its electric distribution company (“EDC”) and natural gas distribution company (“NGDC”) members filed comments.²

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

On March 2, 2017, the Commission continued this proceeding by issuing a Tentative Order seeking further comments on alternative ratemaking methodologies and the possible processes to advance adoption and implementation. The Tentative Order sets forth a separate set of questions addressed to the electric utilities, the natural gas utilities, and the water and wastewater utilities; it also identifies 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 alternative ratemaking methodologies. EAP submitted comments to the Tentative Order on May 31, 2017 and now submits these Reply Comments to address a number of issues raised by commentators.³

EAP requests that in any future regulatory action taken as a result of the current investigation, the Commission maintain its focus on flexibility, continue the practice of considering alternative ratemaking mechanisms in base rate cases or other utility initiated proposals, and eschew recommendations that favor the establishment of a preferred methodology for each utility type under particular circumstances. EAP does not support an approach that would result in prescriptive guidelines, a mandate or dictate a “one size fits all solution” and is concerned that any regulatory next step whether it be via a policy statement or a rulemaking not result in a monolithic approach to this issue. EAP also notes that based on the comments submitted there are a number of viewpoints concerning the Commission’s legal authority to approve certain alternative ratemaking mechanisms, particularly a decoupling mechanism, and reiterates its suggestion to seek clarification and further direction from the legislature on this

Distribution Corp.; PECO Energy Company; Peoples Natural Gas Company LLC; Peoples TWP LLC; Philadelphia Gas Works; UGI Central Penn Gas, Inc.; UGI Penn Natural Gas, Inc.; UGI Utilities Inc.; and Valley Energy Inc.
³ Comments filed to the Tentative Order on May 31 were extensive and these reply comments focus only on a limited number of critical points which EAP believes need to be either reiterated or countered. 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 addressed in these reply comments that fall within the scope of this proceeding.

topic. Much has changed in the utility industry since the enactment of Act 129 and it may be prudent, at a minimum, to revisit the manner in which EDCs (and some would argue NGDCs)⁴ can recover lost revenue resulting from energy efficiency and/or demand reduction programs.

Further, EAP incorporates its initial set of comments filed to the Tentative Order and directs the Commission to reply comments filed by its individual member EDCs and NGDCs to supplement the positions set forth in its reply comments. EAP strongly supports the points raised by its member companies particularly as they counter commentators' suggestions that alternative ratemaking mechanisms inevitably disadvantage low-income customers, negatively impact consumer protections and reliability or that, to the extent an alternative rate mechanism arguably reduces financial risk, utility ROEs should automatically be lowered.

II. REPLY COMMENTS

A. EAP Supports Flexibility Not Mandates or Prescriptive Regulation in the Context of Reviewing, Approving and Implementing Proposals for Alternative Ratemaking Mechanisms.

In its Tentative Order, the Commission acknowledged that various alternative ratemaking methodologies have already been approved for use by Pennsylvania utilities and “are designed to provide for just and reasonable rates under certain policy, economic and resource circumstances, [but] not all are applicable to each type of utility or all utilities within a particular utility type.” Tentative Order at p. 14. EAP’s comments agreed with the Commission, stressing that the need for flexibility in the approach to ratemaking cannot be overstated. “Changes to the economy and resource availability are a given and what works best today to craft a reasonable rate structure that achieves policy goals, while at the same time serving utility ratepayers and shareholders,

⁴ See, e.g. OCA Comments at pp. 24 -25.

may not work in all future circumstances which today are unknown and not easily predictable.” EAP Comments at p. 3. EAP and its members support the existing process whereby the alternative ratemaking methodology or methodologies are proposed first by the utility via a petition filed before the Commission and the Commission is empowered to consider the alternative(s) in the context of a due process proceeding following the presentation of evidence from interested parties, i.e. utilities, ratepayers, statutory advocates and others with standing to participate. Comments filed by the Commission’s Bureau of Investigation & Enforcement (“I & E”) and the Office of Small Business Advocate (“OSBA”) agree with and advocate for this approach as well.⁵

For example, in the context of discussing decoupling, I&E stated that the current practice “which allows each utility to propose fully or partially decoupled rates through a base rate proceeding as the utility sees fit, is still the most appropriate practice.” I&E Comments at p. 5. I&E supports a case-by-case approach to determine whether a particular ratemaking mechanism as initially proposed by the utility would meet the statutory standard of “just and reasonable”. “Absent the utility actually proposing one of these [alternative] methods and providing all supporting information to review, it is impossible to determine which, if any [alternative method], would be appropriate to implement in Pennsylvania.” *Id.* Similarly, OSBA concludes in its comments that any next step should not impose strict requirements and the preferred course of action “will afford utilities the flexibility to propose any new methodologies that make sense

⁵ EAP believes that OCA would support the current case-by-case approach for implementation of any alternative ratemaking mechanism to a specific utility as opposed to a one size fits all approach although EAP acknowledges that OCA would advocate for certain consumer protections in the course of the proceeding. *See*, OCA Comments at pp. 19 – 21. EAP, however, does not agree with either OCA’s rather tortured legal analysis that the Commission does not have authority to approve decoupling generally nor the conclusion reached by OCA that there is “no discernible benefit to further alternative ratemaking methodologies in any of the utility industries and the Commission should not further entertain consideration of these mechanisms at this time.” *See*, OCA Comments at pp. 4-5 (emphasis added).

taking into account their industry and other individual circumstances, including existing alternative ratemaking approaches already employed. Furthermore, any proposed ratemaking changes can be vetted by interested stakeholders and the Commission on a case-by-case basis rather than attempting to find a one-size-fits all framework.” OSBA Comments at p. 11.

The flexible approach supported by the Commission, EAP and its members as well as the statutory advocates is in contrast to the single-minded path forward advocated by other commentators, namely KEEA, and in the joint comments submitted by the NRDC, Sierra Club and Clean Air Council. The comments filed by these stakeholders focus exclusively on policies supporting energy efficiency programs as the basis for supporting a particular alternative ratemaking methodology, i.e. revenue decoupling, and propose implementation across the Commonwealth via a Commission mandate without the due process protections afforded by individual utility proceedings such as a base rate case. EAP strongly opposes any effort to adopt such a narrow and prescriptive approach to ratemaking, alternative or otherwise. As already recognized by the Commission, alternative ratemaking mechanisms can be implemented to support various policy objectives, energy efficiency being just one,⁶ and establishing and prioritizing policy objectives is part of individual utility proceedings, such as a base rate case, where the positions of all stakeholders can be considered and appropriately balanced to achieve a result which advances the public interest and addresses the revenue requirements of the utility. *See*, Tentative Order at p. 14.

⁶ There are a multitude of policy objectives which the Commission considers in the context of rate proceedings including, reliability of service and facilities, updating and replacing infrastructure, addressing the impact of rates on low-income customers via utility payment assistance programs (CAP) and utility sponsored weatherization (LIURP), 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 a mandate implementing any one universal ratemaking mechanism would upend the rate setting process which 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.

B. EAP Supports Utility Initiated Alternative Ratemaking Proposals and Eschews a One-Size-Fits-All Philosophy.

Designing a rate is said to be more art than science as the process reflects the various goals of stakeholders and regulators in a specific proceeding and is also influenced by legislative goals and public policy. In any particular base rate case trade-offs are inevitable and compromise is achieved based on the specific set of facts and circumstances presented and the policy considerations raised in that particular proceeding. At the same time, rates should reflect cost causation and should be structured to fairly allocate costs among (and within) the various rate classes of customers so as to send customers appropriate price signals.⁷

The same approach should be utilized in considering application of a particular alternative rate mechanism or new rate design to a particular utility industry or to an individual distribution company within the industry. Alternative ratemaking mechanisms are only one piece of the puzzle aimed at determining a fair and equitable way for utilities to recover the approved revenue requirement and do not, as some commentators have suggested,⁸ eviscerate consumer protections, reliability standards or the fundamental principles of utility regulation, i.e. a duty to serve and provide access within the service territory, a duty to provide utility service without undue discrimination, and consideration of the ability to pay when setting rates. *See,*

⁷ EAP acknowledges the concerns raised by Commissioner Sweet regarding the impact of any particular alternative rate mechanisms on a utility's low income customers and underscores that one of the primary means through which low-income ratepayers receive financial assistance in Pennsylvania is through the below-cost rates that are provided in utility customer assistance programs (CAP). Benefits provided through those programs (\$400 million annually) far outstrip the grants provided to low-income utility and alternative fuel customers through the federally funded LIHEAP program (\$200 million annually). Likewise utility administered weatherization programs, i.e. LIURP, annually exceed dollars (\$52 million annually) spent by the Department of Community and Economic Development on the federally funded weatherization assistance program (\$52 million annually as compared to \$27 million). Implementation of an alternative rate-mechanism does not necessarily change the availability and funding of current assistance programs.

⁸ *See,* Industrial Energy User Group Comments at pp. 7 – 8 and OCA Comments at pp. 12 -15.

James C. Bonbright, *Principles of Public Utility Rates* at pp. 33 - 35, 136 - 141, and 369 – 385 (1961). Again, EAP contends that the optimum approach in determining whether an alternative rate mechanism is just and reasonable and within the public interest is via individual utility initiated proceedings that provide an opportunity for stakeholder input and afford the Commission the authority to consider the proposal in the context of utility specific circumstances, i.e. size, customer demographics and usage patterns, facilities and infrastructure, and revenue requirements.⁹

C. The Commission Should Exercise Prudence and Encourage Utilities to Propose Alternative Ratemaking Mechanisms as Appropriate and in Connection with Individual Base Rate Filings.

EAP opposes commentator suggestions advocating for a rulemaking and/or a stakeholder working group to reach consensus where possible on one or more policy statements concerning revenue decoupling and/or performance incentive mechanisms. At this point, EAP notes that this proceeding, initiated in 2016, has provided a wealth of input, information and resources for the Commission to consider in the context of utility proposals for alternative ratemaking mechanisms. To the extent that parties continue to disagree concerning Commission authority to approve and implement a particular mechanism, EAP believes that legal questions should be resolved either in the course of a litigated proceeding or via clarifying legislation but not through a generic order, rulemaking, or policy statement providing guidelines for the implementation of

⁹ EAP opposes suggestions made in comments submitted by KEEA and the NRDC that certain forms of revenue decoupling and performance incentive mechanisms should be mandated for EDCs and further opposes the position advanced by OCA that if decoupling is permitted it should be imposed upon all utilities. KEEA Comments at p. 4 and Joint Comments of NRDC, Sierra Club and Clean Air Council at p. 8 -12. *See also*, OCA Comments at p. 57 providing that if revenue decoupling is implemented for NGDCs, it should apply to all customer classes without exception.

any particular mechanism. Additional collaborative efforts are not likely to sway the entrenched positions of a number of the commentators. EAP believes that, at most, the Commission should generally encourage individual utilities to offer proposals or pilots at their option in the context of upcoming base rate proceedings; this could be accomplished in a final order in the instant proceeding.

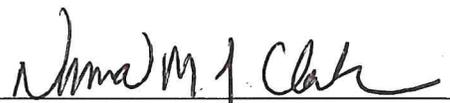
III. CONCLUSION

EAP appreciates the opportunity to provide reply comments to the Tentative Order and reiterates that, in considering the issue of alternative ratemaking methodologies, the Commission provide maximum flexibility for the utility to propose rate design changes that achieve individual utility goals and account for the differences in service territories, operations and customer demographics. EAP maintains that the current process involving utility initiated proceedings that seek approval of a revenue requirement and rate design is the appropriate way to consider and adopt alternative rate mechanisms.

Respectfully submitted,



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