

COMMONWEALTH OF PENNSYLVANIA



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November 20, 2018

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

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

Dear Secretary Chiavetta:

Attached for electronic filing are the Reply Comments of the Office of Consumer Advocate in the above-referenced proceeding.

Copies have been served per the attached Certificate of Service.

Respectfully Submitted,

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Certificate of Service
*262625

CERTIFICATE OF SERVICE

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

I hereby certify that I have this day served a true copy of the following document, the Office of Consumer Advocate's Reply Comments, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 20th day of November 2018.

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

REPLY COMMENTS
OF THE
OFFICE OF CONSUMER ADVOCATE

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I. INTRODUCTION

On December 31, 2015, the Pennsylvania Public Utility Commission (Commission) issued a notice of *En Banc* Hearing on Alternative Ratemaking Methodologies at Docket No. M-2015-2518883 (*En Banc* Hearing Notice) to be held on March 3, 2016. The Commission also invited all interested parties to submit Comments no later than March 16, 2016. In the *En Banc* Hearing Notice, the Commission sought testimony and comments primarily in the context of energy efficiency, conservation, and demand response. A number of interested parties, including the Acting Consumer Advocate Tanya J. McCloskey, on behalf of the Office of Consumer Advocate (OCA), testified before the Commission at the March 3, 2016 *En Banc* Hearing. Additionally, the OCA and more than twenty other interested parties submitted initial Comments.

On May 23, 2018, the Commission issued the current Proposed Policy Statement Order (Proposed Order) and sought comments from all interested stakeholders. The Proposed Order summarizes the stakeholders' and the Commission's current views of various alternative ratemaking mechanisms and alternative rate designs. The Order includes a Proposed Policy Statement designed to provide guidelines for utilities considering alternative ratemaking mechanisms and alternative rate designs. Alongside the Proposed Order, Chairman Gladys M. Brown issued a separate Statement. Statement of Chairwoman Gladys M. Brown, Fixed Service Utilities Distribution Rates Proposed Policy Statement, Docket No. M-2015-2518883 (May 3, 2018). Chairman Brown encouraged comments on alternative rate designs that can foster distributed energy adoption while also working to increase capacity utilization in the electric industry. In addition, the Motion of Vice Chairman Andrew G. Place emphasized the need for alternative ratemaking mechanisms and alternative rate designs that address five "first-order" principles, such as performance-based incentive rate designs; performance incentive mechanisms;

various forms of decoupling; and, various forms of demand-based and Time-Of-Use pricing structures.¹ With regard to the natural gas industry, Vice Chairman Place suggested that various weather normalizations and/or revenue decoupling mechanisms may balance utility and consumer needs.²

On June 28, 2018, Governor Tom Wolf signed into law Act 58 of 2018, codified at 66 Pa. C.S. Section 1330. Act 58 provides the Commission with express statutory authority to approve applications by utilities for alternative ratemaking mechanisms. In response to Act 58, several interested stakeholders filed requests to extend the comment period deadline for the current Proposed Order. The Commission granted the requests for an extension on August 14, 2018, which extended the comment period deadline to October 22, 2018. Several interested stakeholders, including the OCA, provided Comments to the Commission's Proposed Order on October 22, 2018.

The OCA submits that the Comments filed by other parties have not changed the OCA's position. As the OCA has previously discussed within this docket, alternative ratemaking mechanisms and alternative rate designs can have detrimental effects on utility consumers.³ Alternative ratemaking mechanisms and rate designs, such as those identified by the Commission and Act 58, are novel to Pennsylvania consumers, and the use of these mechanisms may create

¹ Motion of Vice Chairman Andrew G. Place, at 1, Fixed Service Utilities Distribution Rates Proposed Policy Statement, Docket No. M-2015-2518883 (May 3, 2018).

² The Proposed Policy Statement, Order, and Accompanying Statement of Chairman Brown address energy-related issues with alternative ratemaking and alternative rate designs. For this reason, the primary focus of the OCA Comments will be on energy-related issues.

³ See generally Testimony of Tanya J. McCloskey, Acting Consumer Advocate, Regarding Alternative Ratemaking Methodologies, Docket No. M-2015-2518883 (Feb. 25, 2016); OCA Comments on Alternative Ratemaking Methodologies, Docket No. M-2015-2518883 (March 16, 2017); OCA Comments on the Proposed Implementation of Act 58, Docket No. M-2018-3003269 (Oct. 9, 2018); OCA Comments on Alternative Ratemaking Methodologies, Docket No. M-2015-2518883 (Oct. 22, 2018).

substantial consumer confusion as a result. Alternative ratemaking mechanisms also function as risk-shifting mechanisms that move financial risk away from utilities and onto consumers. Additionally, the alternative rate designs discussed in the Commission's Proposed Order and Policy Statement can negatively impact customers, particularly customers who are unable to respond to the rate design by shifting or controlling usage.

II. REPLY COMMENTS

In addition to the OCA, numerous other stakeholders submitted Comments to the Commission's Proposed Order.⁴ In these Reply Comments, the OCA will respond to some of the positions put forward by other Commenters in this matter. The OCA's silence on a particular issue or position of another Commenter should not be viewed as assent or acquiescence to such a position.

A. Alternative Rate Designs And Ratemaking Mechanisms.

The OCA notes that many Commenters distinguished between alternative rate designs and alternative ratemaking mechanisms.⁵ The OCA agrees that alternative rate designs and alternative

⁴ In addition to the OCA, the following parties also filed Comments to the Commission's Proposed Policy Statement Order: the Industrial Energy Consumers of Pennsylvania (IECP), the Consumer Advisory Council (CAC), the Natural Resources Defense Council (NRDC), the Environmental Defense Fund (EDF), Pennsylvania-American Water Co. (PAWC), the Energy Association of Pennsylvania (EAP), Duquesne Light Co., PECO Energy Co., the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA), PPL Electric Utilities Corp., the Alliance for Industrial Efficiency (AIE), Columbia Gas of Pennsylvania, the Pennsylvania State University, the American Council for an Energy-Efficient Economy (ACEEE), Metropolitan Edison Co. (Met-Ed), Pennsylvania Electric Co., Pennsylvania, Power Co., West Penn Power Co., Sunrun, Inc., the Office of Small Business Advocate (OSBA), the Sierra Club, the Clean Air Council, Advanced Energy Economy Institute (AEEI), Greenlots, the Keystone Energy Efficiency Alliance (KEEA), and the Energy Consumers Alliance (ECA).

⁵ CAUSE-PA Comments on Alternative Ratemaking Methodologies, Docket No. M-2015-2518883, at 6-7 (Oct. 22, 2018); PPL Comments on Alternative Ratemaking Methodologies, Docket No. M-2015-2518883, at 4 (Oct. 22, 2018); AEE Comments on Alternative Ratemaking Methodologies, Docket No. M-2015-2518883, at 1 (Oct. 22, 2018); Greenlots Comments on Alternative Ratemaking Methodologies, Docket No. M-2015-2518883, at 2 (Oct. 22, 2018); KEEA Comments on Alternative Ratemaking Methodologies, Docket No. M-2015-2518883, at 8-10 (Oct. 22, 2018).

rate mechanisms are related, but fundamentally separate, concepts. Moreover, the OCA agrees with the Keystone Energy Efficiency Alliance that the concepts of alternative rate design and alternative ratemaking mechanisms have become blurred over the course of this docket and that the Commission should clarify these definitions.⁶ Broadly, ratemaking mechanisms are the methods by which a utility's revenue requirement is determined, such as revenue decoupling, whereas rate designs are the pricing processes by which a utility recovers that revenue requirement from its customers, such as Straight Fixed Variable (SFV) pricing. The OCA agrees with Greenlots that the majority of this docket has focused on rate designs, not ratemaking mechanisms.⁷

The distinction between alternative rate designs and ratemaking mechanisms is important. As the OCA noted in its October 22, 2018 Comments, rate designs like SFV pricing and demand charges may create a disincentive for consumers to engage in energy efficiency and conservation efforts and may fail to provide consumers with adequate price signals.⁸ The OCA agrees with those Commenters that argue against the imposition of demand charges on residential consumers.⁹ Demand charges fail to provide residential consumers with adequate price signals because the majority of residential consumers simply have no way of knowing when peak demand periods are

⁶ KEEA Comments on Alternative Ratemaking Methodologies, Docket No. M-2015-2518883, at 8-10 (Oct. 22, 2018).

⁷ Greenlots Comments on Alternative Ratemaking Methodologies, Docket No. M-2015-2518883, at 2 (Oct. 22, 2018).

⁸ OCA Comments on Alternative Ratemaking Methodologies, Docket No. M-2015-2518883, at 10-12, 14-18 (Oct. 22, 2018).

⁹ ACEEE Comments on Alternative Ratemaking Methodologies, Docket No. M-2015-2518883, at 7 (Oct. 22, 2018); Sunrun, Inc. Comments on Alternative Ratemaking Methodologies, Docket No. M-2015-2518883, at 6-7 (Oct. 22, 2018); NRDC et al. Comments on Alternative Ratemaking Methodologies, Docket No. M-2015-2518883, at 14-15 (Oct. 22, 2018); KEEA Comments on Alternative Ratemaking Methodologies, Docket No. M-2015-2518883, at 12-13 (Oct. 22, 2018).

occurring.¹⁰ “Smart” appliances that can respond to energy price signals and adjust accordingly are not ubiquitous and may be completely inaccessible to low-income consumers. As a result, a residential demand charge may act “more as a kind of ‘gotcha’ rate that arbitrarily bases each customer’s bill on the customer’s usage at a particular point in time which the customer may not even know is occurring.”¹¹ As the OCA and others have explained in this docket, mandatory demand charges for residential consumers have been wholly rejected or withdrawn by regulatory commissions across the nation.¹² The OCA also disagrees with ACEEE that critical peak pricing is a more appropriate alternative to mandatory demand charges.¹³ Like mandatory demand charges, the OCA submits that critical peak pricing should not be imposed on residential consumers.

The OCA also agrees with the Natural Resources Defense Council, Sierra Club, and Clean Air Council that the use of SFV pricing is inappropriate for residential consumers.¹⁴ As the OCA has noted in other Comments, SFV pricing and high fixed customer charges remove incentives for

¹⁰ OCA Comments on Alternative Ratemaking Methodologies, Docket No. M-2015-2518883, at 14 (Oct. 22, 2018); PULP Comments on Alternative Ratemaking Methodologies, Docket No. M-2015-2518883, at 6-7 (May 31, 2017).

¹¹ AARP Comments on Alternative Ratemaking Methodologies, Docket No. M-2015-2518883, at 3 (May 31, 2017); see also PULP Comments on Alternative Ratemaking Methodologies, Docket No. M-2015-2518883, at 4-5 (May 31, 2017) (discussing the impact of residential demand charges on low-income consumers).

¹² See OCA Comments on Alternative Ratemaking Methodologies, Docket No. M-2015-2518883, at 14-15 (Oct. 22, 2018); AARP Comments on Alternative Ratemaking Methodologies, Docket No. M-2015-2518883, at 2 (May 31, 2017); KEEA Comments on Alternative Ratemaking Methodologies, Docket No. M-2015-2518883, at 12 (Oct. 22, 2018).

¹³ ACEEE Comments on Alternative Ratemaking Methodologies, Docket No. M-2015-2518883, at 6-7 (Oct. 22, 2018).

¹⁴ NRDC et al. Comments on Alternative Ratemaking Methodologies, Docket No. M-2015-2518883, at 15-16 (Oct. 22, 2018).

customers to engage in energy efficiency and conservation efforts and may even have the adverse consequence of promoting higher consumption.¹⁵ SFV pricing and high fixed customer charges would also negatively impact low-use and low-income customers by removing the customer's ability to control their bill through decreased usage, and universal service programs may not be sufficient to offset this negative impact.¹⁶ The OCA emphasizes that great care should be taken in considering any proposal for an alternative rate design. As explained in our previous Comments, however, the OCA urges the Commission to wholly reject SFV pricing and mandatory demand charges for residential consumers.¹⁷

B. Section 69.3303.

Many interested stakeholders, including the OCA, agree that Section 69.3303 of the Proposed Policy Statement should be removed entirely.¹⁸ The OCA agrees with these other Commenters that Section 69.3303 creates confusion as the concrete and specific examples of possible rate designs the Commission would consider immediately follows statements from the Commission that it will not favor proposals of any one alternative rate design or ratemaking mechanism proposal over another. Should the Commission move forward with the Proposed Policy Statement, the OCA again urges the Commission to remove Section 69.3303 for the reasons

¹⁵ OCA Comments on Alternative Ratemaking Methodologies, Docket No. M-2015-2518883, at 10-11 (Oct. 22, 2018).

¹⁶ Id. at 11-12.

¹⁷ Id. at 10-12, 14-18.

¹⁸ CAC Comments on Alternative Ratemaking Methodologies, Docket No. M-2015-2518883, at 7 (Oct. 22, 2018); Duquesne Light Co. Comments on Alternative Ratemaking Methodologies, Docket No. M-2015-2518883, at 6-7 (Oct. 22, 2018); CAUSE-PA Comments on Alternative Ratemaking Methodologies, Docket No. M-2015-2518883, at 13-15 (Oct. 22, 2018); PPL Comments on Alternative Ratemaking Methodologies, Docket No. M-2015-2518883, at 6 (Oct. 22, 2018); Met-Ed et al. Comments on Alternative Ratemaking Methodologies, Docket No. M-2015-2518883, at 7-9 (Oct. 22, 2018); See also OSBA Comments on Alternative Ratemaking Methodologies, Docket No. M-2015-2518883, at 9-7 (Oct. 22, 2018) (arguing for elimination of Section 69.3303(c)(1-3)).

provided by our October 22nd Comments and the Comments filed by the other interested stakeholders.

Some Commenters go further and argue that the Proposed Policy Statement in its entirety be withdrawn.¹⁹ These Commenters suggest that instead of going forward with the Proposed Policy Statement, the Commission should focus solely on the implementation of Act 58 of 2018. See Implementation of Act 58 of 2018 Alternative Ratemaking for Utilities, Tentative Implementation Order, Docket No. M-2018-3003269 (Issued Aug. 23, 2018). By focusing on the Tentative Implementation Order, these Commenters argue that the Commission can avoid the apparent conflicts between Act 58 and the Proposed Policy Statement and begin considering proposals for alternative rate designs and ratemaking mechanisms to provide experience and information for future Policy Statements on this issue.

While the OCA did not suggest this approach in our October 22nd Comments, the OCA is not opposed to abandoning the current Proposed Policy Statement and focusing solely on the implementation of Act 58. In our Comments to the Act 58 Tentative Implementation Order, however, the OCA submitted that “[i]nformation responsive to the topics and issues contained in the Commission’s Proposed and/or Final Policy Statement at 52 Pa. Code § 69.3302” should be included in a utility’s initial filing and testimony in support of a proposed alternative rate design or ratemaking mechanism.²⁰ The OCA again emphasizes that a utility must respond to the list of

¹⁹ EAP Comments on Alternative Ratemaking Methodologies, Docket No. M-2015-2518883, at 4-5 (Oct. 22, 2018); Duquesne Light Co. Comments on Alternative Ratemaking Methodologies, Docket No. M-2015-2518883, at 3-4, 8 (Oct. 22, 2018); Columbia Gas Comments on Alternative Ratemaking Methodologies, Docket No. M-2015-2518883, at 4 (Oct. 22, 2018); Met-Ed et al. Comments on Alternative Ratemaking Methodologies, Docket No. M-2015-2518883, at 4 (Oct. 22, 2018).

²⁰ OCA Comments on the Implementation of Act 58 of 2018 Alternative Ratemaking for Utilities, Tentative Implementation Order, Docket No. M-2018-3003269, at 10-11 (Oct. 9, 2018).

considerations provided by the Commission in Section 69.3302 at the time of filing for a proposed alternative rate design or ratemaking mechanism. Therefore, should the Commission decide to withdraw the Proposed Policy Statement to focus on the implementation of Act 58, the OCA submits that the list of considerations contained within Section 69.3302 be moved and incorporated within the Commission's Act 58 Tentative Implementation Order. By doing so, the Commission can withdraw the Proposed Policy Statement while still maintaining the safeguards and protections provided by the Commission in Section 69.3302.

C. Consumer Protections.

As the OCA and others have argued, the Proposed Policy Statement, and any alternative rate design or alternative ratemaking mechanism, must include adequate consumer protections. As the OCA has previously discussed, consumer protections such as “revenue adjustment caps, reduced returns on equity, revenue adjustment dead-bands, seasonal adjustment limitations, and adjustment timelines” must all be considered when considering a proposal for an alternative rate design or alternative ratemaking mechanism.²¹ As the OCA stated in its October 22nd Comments, the OCA did not provide a complete list of consumer protections as some protections may be dependent upon the alternative ratemaking method or alternative rate design proposed. The OCA would note several consumer protections beyond those highlighted in the OCA's Comments were specifically proposed by other Commenters. For example, both CAUSE-PA and the CAC proposed that utilities should be required to demonstrate how the proposed rates would improve

²¹ OCA Comments on Alternative Ratemaking Methodologies, Docket No. M-2015-2518883, at 6 (Oct. 22, 2018); see also OSBA Comments on Alternative Ratemaking Methodologies, Docket No. M-2015-2518883, at 6 (Oct. 22, 2018) (indicating that “a necessary consumer protection issue to be addressed is adjustments to RoE to reflect reduced utility business risk”); ECA Comments on Alternative Ratemaking Methodologies, Docket No. M-2015-2518883, at 7-8 (Oct. 22, 2018) (urging a reduction to ROE when implementing an alternative rate design or ratemaking mechanism).

affordability for low-income customers and decrease low-income termination rates.²² CAUSE-PA also recommended that rather than simply require a showing of how alternative rate designs and ratemaking mechanisms eliminate disincentives for EDCs and NGDCs, there should be a showing of how these designs and mechanisms will incentivize energy efficiency and conservation efforts, especially by consumers. The OCA fully agrees with these recommendations and submits that these are critical considerations. ECA recommended that alternative rate designs and ratemaking mechanisms be time limited and that the design or mechanism be reviewed in a base rate case before it continues.²³ Similarly, Penn State recommended that the Commission or a third-party auditor should periodically audit and review alternative ratemaking mechanisms to ensure that the mechanisms are meeting the intended policy objective and result in just and reasonable rates.²⁴ These protections will also be necessary to ensuring that rates remain just and reasonable.

Designing and implementing adequate consumer protections will be critical to the consideration of alternative ratemaking mechanisms and alternative rate designs. The Proposed Policy Statement should explicitly recognize these points. While additional specific consumer protections may be needed, the Commenters have provided some essential protections that must be included in any proposal for an alternative rate design or ratemaking mechanism.

²² CAUSE-PA Comments on Alternative Ratemaking Methodologies, Docket No. M-2015-2518883, at 11-12 (Oct. 22, 2018); CAC Comments on Alternative Ratemaking Methodologies, Docket No. M-2015-2518883, at 5-6 (Oct. 22, 2018).

²³ ECA Comments on Alternative Ratemaking Methodologies, Docket No. M-2015-2518883, at 6-7 (Oct. 22, 2018).

²⁴ Penn State Comments on Alternative Ratemaking Methodologies, Docket No. M-2015-2518883, at 9-10 (Oct. 22, 2018).

III. CONCLUSION

The OCA appreciates the opportunity to provide the Commission with these Reply Comments and looks forward to working with all interested stakeholders in determining the best course of action to take with respect to the Proposed Policy Statement.

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