



800 North Third Street, Suite 205, Harrisburg, Pennsylvania 17102
Telephone (717) 901-0600 • Fax (717) 901-0611 • www.energypa.org

November 20, 2018

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 Proposed Policy Statement Order at the above-referenced docket.

Sincerely,

A handwritten signature in black ink, appearing to read "Nicole W. Gear", with a long horizontal flourish extending to the right.

Nicole W. Gear
Mananager, Policy & Research

cc: Kriss Brown, Esq., Law Bureau
Marissa Boyle, TUS
Andrew Herster, TUS

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Alternative Ratemaking Methodologies -
Fixed Utility Distribution Rates Policy Statement : M-2015-2518883

**REPLY COMMENTS OF THE
ENERGY ASSOCIATION OF PENNSYLVANIA TO THE PROPOSED POLICY
STATEMENT ORDER**

I. INTRODUCTION

The Pennsylvania Public Utility Commission (“Commission” or “PUC”) initiated the current proceeding regarding review of alternative ratemaking methodologies (“ARMs”) approximately three years ago with a Secretarial Letter¹ that scheduled an *en banc* hearing in order to gather information from experts regarding the value of ARMs, particularly as it relates to removing disincentives for energy utilities to pursue aggressive energy conservation and efficiency initiatives. Following the *en banc* hearing, the Commission provided an opportunity for interested parties to submit comments; after review of this input, the Commission continued this proceeding by issuing a Tentative Order seeking further comments on ARMs and the possible processes to advance adoption and implementation.

At the May 3, 2018 Public Meeting, the Commission adopted a Proposed Policy Statement Order with the goal of establishing guidelines for utilities and stakeholders to consider when investigating ARMs “that support efficiency programs and distributed energy resources (DERs), and that also provide utilities with adequate revenue” in the context of a Section 1308

¹ See, Secretarial Letter dated December 31, 2015 at Docket No. M-2015-2518883.

rate proceeding. Proposed Policy Statement Order at p. 5. Interested parties had 60 days from the publication of the Proposed Policy Statement Order in the *Pennsylvania Bulletin* to file comments which based on a publication date of June 23 established an initial filing date of August 22, 2018.²

Prior to the conclusion of the PUC investigation involving ARMs, however, the Pennsylvania General Assembly considered and passed – and Governor Wolf signed – HB 1782 providing alternative ratemaking for utilities. This Act 58 of 2018 (“Act 58”), effective August 27, 2018, added a new Section 1330 to the Public Utility Code which directed, *inter alia*, the Commission within six months “to prescribe the specific procedures for the approval of an application to establish alternative rates.” 66 Pa. C. S. § 1330(d). On August 23, 2018, the Commission issued a Tentative Implementation Order (“TIO”) under a separate docket number to initiate implementation of Act 58 and sought written comments thirty (30) days after publication in the *Pennsylvania Bulletin* with reply comments due forty (40) days thereafter.³ Publication occurred on September 8th; written comments regarding the implementation of Act 58 were due on October 8, 2018, and reply comments are due on November 19, 2018.⁴

At the request of a number of stakeholders, the Commission issued a Secretarial Letter on August 14, 2018 extending the time period for filing comments/reply comments to the Proposed Policy Statement Order establishing October 22 as the new date for filing comments and November 20 as the date for filing reply comments. The Secretarial Letter recognized that passage of Act 58 occurred during the Commission’s examination of ARMs, that the issues raised in its Proposed Policy Statement Order were complex, and that additional time for public

² See, Proposed Policy Statement Order, Docket No. M-2015-2518883 entered on May 23, 2018.

³ See, Tentative Implementation Order, Docket No. M-2018-3003269 entered on August 23, 2018.

⁴ EAP submitted comments and reply comments to the TIO, Docket No. M-2018-3003269.

input on the policy proposals would facilitate a more thorough record and better inform all interested parties including the Commission.⁵

The Energy Association of Pennsylvania (“Association” or “EAP”) and its electric distribution company (“EDC”) and natural gas distribution company (“NGDC”) members⁶ offered input throughout the Commission’s investigation into alternative ratemaking methodologies, including at the *en banc* hearing, comments and reply comments to the Tentative Order⁷, and initial comments under this docket to the Proposed Policy Statement. EAP and member utilities have also provided comments and reply comments to the Commission’s Act 58 Tentative Implementation Order. EAP respectfully submits these reply comments on the Proposed Policy Statement to supplement those filed by its individual member utilities.

II. COMMENTS

A. The Commission should align any future policy statement with the flexibility afforded to utilities by Act 58.

a. Purpose and scope of the policy statement should track with the Declaration of Policy contained in the statute.

As expressed in previous comments under this docket, EAP contends that the process for considering and approving alternative ratemaking mechanisms as established in Act 58 supplants the need or basis for adopting the proposed policy statement, particularly at the current time. The

⁵ See, Secretarial Letter dated August 14, 2018 at Docket No. M-2015-2518883. *Accord*, a press release issued by the Commission on June 29, 2018 regarding passage of Act 58 and noting that the Commission was evaluating how to coordinate its proposed policy statement with implementation of the statute.

⁶ 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 Distribution Corp.; PECO Energy Company; Peoples Natural Gas Company LLC; Peoples TWP LLC; Philadelphia Gas Works; UGI Utilities Inc.-Gas Division; and Valley Energy Inc.

⁷ Comments filed to the Tentative Order on May 31, 2017 were extensive and reply comments focused only on a limited number of critical points which EAP found necessary to either reiterate or counter. 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 specifically addressed in its reply comments.

Commission's own Tentative Implementation Order of Act 58⁸ allows for all the current rate filing rules and procedures to apply when a utility seeks to propose an ARM. Many commenters, including EAP, its member companies, and other stakeholders, agree that the Commission's proposal to utilize existing regulation in review of these proposals in the context of a base rate proceeding are sufficient.⁹

However, to the extent the Commission wishes to proceed with implementing a policy statement on alternative ratemaking, it must align with Act 58 which clearly enunciates the policy of the General Assembly. As proposed, the policy statement's goals, Section 69.3301 (*purpose and scope*), do not align with the policy goals of Act 58. *See* Section 1330(a). Where the Commission has focused its current investigation on how alternative rates can incentivize or remove disincentives for energy efficiency and promote distributed energy resources ("DER"), Act 58 recognizes that alternative ratemaking should not *only* "facilitate customer access to these new opportunities" but also ensure "that utility infrastructure costs are reasonably allocated to and recovered from customers and market participants" as well as "encourage and sustain investment through appropriate cost-recovery mechanisms to enhance the safety, security, reliability, or availability" of utility service. *See* Section 1330(a). The Commission's Proposed Policy Statement is considerably narrower in scope, focusing only on "Federal and State policy initiatives" of energy efficiency and DER.¹⁰

⁸ Docket No. M-2018-3003269.

⁹ Comments of EAP to the PPS, p. 6 state "By requiring that any ARM proposal be offered within a base rate proceeding, Act 58 ensures that the Commission will examine and consider approval of the mechanism in the broader context of determining just and reasonable utility rates." Similarly, the Commission's TIO on Act 58 recognizes that "the established law, rules and procedures for filing and seeking approval of a new rate, including alternative rates and rate mechanisms, under a Section 1308 general base rate proceeding appear to be adequate." Tentative Implementation Order, Docket No. M-2018-3003269, p. 9.

¹⁰ *See* Proposed Policy Statement at Section 69.3301.

If a policy statement is to be finalized, EAP recommends the Commission revise the language of its purpose and scope to align with the stated goals of the General Assembly as enacted by Act 58. Other commenters agree with EAP on this point.¹¹ As the General Assembly is the policy-making body of the Commonwealth, the Commission must align its implementation of alternative rates with current law. This alignment will also help avoid any confusion or added complexity for utilities wishing to make alternative ratemaking proposals and for stakeholders interested in participating in proceedings to consider said proposals.¹²

b. Policy statement should support use of alternative ratemaking for capital investment, as expressly provided for in statute.

As currently proposed, the Commission’s policy statement invites only those alternative ratemaking proposals that, among other objectives, might “avoid future capital investment.” This proposed guideline stands in opposition to current statute which indicates that it is the policy of the Commonwealth of Pennsylvania that any alternative ratemaking “should *encourage* and sustain investment through appropriate cost-recovery mechanisms to enhance the safety, security, reliability, or availability of utility infrastructure....”¹³ In its comments, Columbia points out that for its service territory “no rate making mechanism will alter the fact that nearly 20% of [its] inventory of pipe is either bare steel or cast iron, which is nearing the end of its

¹¹ Comments of PPL to the PPS, p. 3 state “the Company believes that it is inappropriate to define the foundation of alternative ratemaking mechanisms, the state's policy regarding ratemaking fundamentals, and Section 1308 rate cases around the adoption of energy efficiency.” *See also*, Comments of Duquesne Light Company to the PPS, p.5; Comments of Keystone Energy Efficiency Alliance to the PPS, p. 5; Comments of PECO Energy Company to the PPS, p.3; Comments of Columbia Gas of Pennsylvania to the PPS, p. 4; and Comments of NRDC Joint Commenters to the PPS, pp. 8-9.

¹² Comments of EAP to PPS, p.7 state “EAP suggests that it is neither effective public policy nor necessary in light of Act 58 to establish additional, conflicting and/or prescriptive criteria for a class of rate designs narrowly focused on the efficient use of energy or the use of distributed energy resources. Rather it would be prudent pursuant to the existing law and regulations governing base rate proceedings to allow the Commission and stakeholders/interested parties to gain experience as ARMs are proposed and considered under Act 58. The Commission, after such consideration and experience, could at some future date consider issuing a policy statement if needed that would augment its implementation of Act 58 and/or set forth broad policy goals.”

¹³ 66 Pa. C.S. § 1330(a)(2) (emphasis added).

useful life and needs to be replaced.”¹⁴ Regardless of the particulars of cost recovery, Pennsylvania’s utilities *must* incur these costs in order to continue to provide safe and reliable service to customers across the Commonwealth. Discouraging capital investment via any particular rate design is counterintuitive to the mission of the Commission to ensure safe utility access to customers, as well as contrary to programs such as the Distribution System Improvement Charge, which is already in affect and working well to address this particular issue in many areas. Perhaps, as PPL suggests in its comments, the Commission intended to encourage “deferral of typical capital investment or the transfer of that capital investment to innovative technologies.”¹⁵ While this may be appropriate, the merits of any such shifting can be appropriately and thoroughly vetted by the Commission and stakeholders in a base rate case, as contemplated by Act 58 and the Commission’s Tentative Implementation Order of the same.

EAP suggests the Commission should revise any future proposed policy statement on rate design to align with Act 58 in support of utility capital investment. The particulars of any rate mechanism’s objectives can be weighed against other policy goals during the Commission’s evaluation of evidence and argument on a particular utility proposal in the context of a base rate proceeding.

c. Illustrative examples should be eliminated, as suggested by various stakeholders.

In addition, should the Commission move forward and finalize the proposed policy statement, EAP recommends elimination of Section 69.3303 regarding illustration of possible distribution ratemaking and rate design options for the energy industry. As pointed out previously in EAP comments, “even the suggestion of an ‘illustrative’ ratemaking mechanism ...

¹⁴ Comments of Columbia Gas of Pennsylvania to the PPS, p. 5.

¹⁵ Comments of PPL Electric to the PPS, p. 5.

would ultimately risk upending the existing rate setting process that seeks to reflect and balance various (and sometimes conflicting) public policies in the context of the unique attributes of a specific utility service territory.”¹⁶ Other commenters agreed with the assessment of EAP.¹⁷

EAP is concerned that despite the best intentions of the current Commission, the “illustration” will be construed to establish a preference for particular mechanisms at the expense of others, restricting flexibility and imposing requirements that may not be necessary or relevant in all applications by an energy utility seeking approval of an ARM. The “illustrations” may further be rendered obsolete as new technologies and methodologies develop.

B. The Pennsylvania General Assembly established its policy goals regarding alternative ratemaking via Act 58. The PUC does not have broad authority to create or enforce policy goals that effectively limit or restrict the policy goals set by the General Assembly in the statute.

The comments of the Natural Resources Defense Council, Sierra Club, and Clean Air Council (“NRDC Joint Commenters”) misinterpret the Pennsylvania Constitution Article 1 Section 27 and “recent decisions of the Pennsylvania Supreme Court” to mean “that state administrative agencies...have an obligation to consider and apply the provision when making decisions that may affect the environment.”¹⁸ However, the Pennsylvania Public Utility Commission is not charged with overseeing and implementing regulation regarding Pennsylvania’s environment. Moreover, the Pennsylvania Supreme Court made clear in *Robinson Township* that Article 1, Section 27 limits rather than expands the authority of government agencies, and that this constitutional provision does not authorize government

¹⁶ Comments of EAP to the PPS, pp. 9-10.

¹⁷ See also, Comments of the PUC’s Consumer Advisory Council to the PPS, p.9; Comments of the Low Income Advocates to the PPS, pp.13-15; Comments of PPL Electric to the PPS, p.6; Comments of the First Energy Companies to the PPS, p.8; Comments of the Office of Consumer Advocate to the PPS, p.22; and Comments of NRDC Joint Commenters to the PPS, p. 18.

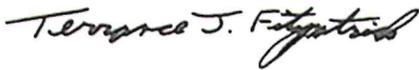
¹⁸ Comments of NRDC Joint Commenters to the PPS, p. 4.

agencies to depart from their enabling legislation.¹⁹ This supports EAP's position that any policy statement by the Commission on ARM must align with all of the policies set out in Act 58.

III. CONCLUSION

EAP appreciates the opportunity to provide comments throughout the Commission's investigation into the application of alternative ratemaking methodologies. For the reasons stated above, EAP now respectfully asks the Commission to withdraw this iteration of a Proposed Policy Statement on alternative ratemaking. Should the Commission wish to move forward, EAP believes the Commission should revise and reissue for further comment a revised policy statement that is appropriately aligned with Act 58 and the suggestions offered above before entry of a final order.

Respectfully submitted,



Terrance J. Fitzpatrick
President & CEO
tfitzpatrick@energypa.org



Donna M. J. Clark
Vice President & General Counsel
dclark@energypa.org

Energy Association of Pennsylvania
800 North Third Street, Suite 205
Harrisburg, PA 17102

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¹⁹ See, *Robinson Township v. Commonwealth*, 83 A.3d 901 (Pa. 2013), note 53.