Recent Actions Involving the Pennsylvania Public Utility Commission

SUMMARY

Pennsylvania regulated public utilities should remain vigilant in the wake of recent changes to Pennsylvania Public Utility Commission regulations and DSIC tax decision from the Commonwealth Court. Utilities should also look for ways to maximize rate recovery through careful analysis of potential alternative ratemaking opportunities given the PUC's recent policy pronouncements. This alert provides an overview of the changes.

DSIC Tax Considerations: In response to the appeal of a recent rate setting proceeding before the Pennsylvania Public Utility Commission ("PUC"), the Pennsylvania Commonwealth Court has ruled that a state law passed as Act 40 of 2016 whereby utilities are required to factor the costs of "any expense or investment" into their rates and also account for any related tax deductions or credits in order to help reduce costs to customers, is not ambiguous, and clearly applies to rates associated with distribution system improvement charges ("DISC"), not simply rates associated with rate base cases. This ruling overturned the findings made by the PUC that the provisions of the statute were not intended to apply to DISC calculations. As a result, utility companies filing for DISC rate approval before the PUC must now not only factor into the costs associated with such rate any expense or investment incurred by the utility but also any related tax deductions or credits.

Approval of Alternative Rates: The PUC has recently established procedures whereby utilities (electric, natural gas, water, wastewater and city natural gas distribution operations) can seek PUC approval for the use of alternative rates and rate mechanisms. This was in response to recent amendments to Chapter 13 of the Pennsylvania Public Utility Code (the "Public Utility Code"). In establishing such procedures, the PUC was careful to make clear that it is providing "guidance" to fixed utilities and interested stakeholders and is not establishing a predicate for the adoption of an alternative rate mechanism by any fixed utility.

The public policy behind this change to the Public Utility Code is to take advantage of innovations in utility operations and information technologies which are creating new opportunities for customers, and to provide a mechanism for just and reasonable rates and rate mechanisms to ensure that utilities are appropriately recovering the costs associated with these new customer opportunities. This change gives utility companies the flexibility to explore alternate rates and rate mechanisms such as decoupling mechanisms, performance-based rates, formula rates, multiyear rate plans, or rates based upon any combination of one or more of these ratemaking mechanisms.

The PUC has determined that such alternative rates must be explored through a base rate proceeding, rather than by way of an application by a utility to establish an alternative rate or rate mechanism. Of note, the PUC also declined to
initiate a rulemaking with respect to this particular proceeding. In the event that the utility proposes to pursue alternative ratemaking, the PUC has also established specific requirements for the utilities to provide additional notice to customers through bill inserts (or direct mail to customers in lieu thereof) and a posting on the utility's publicly accessible website.

**New Residential Customer Standards Regulations:** Also of note, last month the PUC issued new rules and regulations pertaining to standards and billing practices for residential public utility service, which can be found in Title 52 of the Pennsylvania Administrative Code, Chapter 56.\[1\] The utilities should take care to promptly review these new rules to determine whether any changes will be required as a result in procedures, policies, practices or in communications with customers. For example, many utilities have procedures and forms whereby residential customers facing a termination of service may stave off such termination through submission of a validly executed and submitted medical certificate. With these new rules, the PUC has redefined the definitions of the terms, nurse practitioner, physician, and physician assistant, to be consistent with the respective state licensing laws and regulations, thereby broadening who may sign such forms on behalf of customers. In addition, there are also revisions to procedures dealing with security and cash deposits; notices required prior to and grounds for termination of service; winter termination; restoration of service; and utility reporting requirements, among others.

In the wake of new statutes, rules and regulations it is easy for utilities to fall prey to inadvertent errors and omissions with respect to required customer notices or inquiries, which is why the time is now to assess what impact these new changes will have on the utilities’ daily operations, both internally and externally.

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1. The final rules and regulations were published in the Pennsylvania Bulletin, Vol. 49, No. 22, on June 1, 2019.