

## **Talking Points Regarding House Bill 1782**

### **Bad For PA Employers, Businesses and Energy Consumers**

1. Pennsylvania legislature amended the Public Utility Code to add the Distribution System Improvement Charge, and the legislature specifically detailed the process, goals and consumer protections for this alternative rate mechanism to compensate the utilities for the replacement of aging infrastructure. The consumer protections included: (i) resets to zero if the utility earned a rate of return on equity that exceeded the PUC authorized rate of return set in its' rate case (66 Pa. C.S. § 1358(b)(3)); (ii) caps the total revenue increase to customer costs that can be imposed through the mechanism (§1358(a)); (iii) confirms that the petition for a DSIC can be approved, modified or rejected (§1355); (iv) requires a long term infrastructure improvement plan and asset optimization plan to detail the infrastructure that will be replaced; and (v) exempts customers that do not use the "eligible property". HB 1782 authorizes a vast expansion of the use of alternative rate mechanisms, including mechanisms for new infrastructure projects, but does not contain similar consumer protections.
2. Currently, if a utility wants to change rates, it needs to file a case with the PUC, during which consumers can challenge the size of the rate increase and the allocation of the increase among customer classes. If the legislature authorizes alternative rate mechanisms, the only way for consumers to challenge the rate changes pursuant to the mechanism is for the consumer to file a complaint. There is no guidance in the bill about whether the utility still needs to prove that the increase is needed. This lack of guidance may indicate that the burden shifts to the consumer to prove that the rate increase is not needed or not reasonable. And, there is also no guidance about whether the consumer can challenge the increase because the utility is earning more than its last PUC authorized return on equity.
3. In subsection (d), the bill states that: "No later than six months after the effective date of this subsection, the commission, by regulation or order, shall prescribe the specific procedures for the approval of an application to establish alternative rates". The section discusses "procedures," but does not indicate if "procedures" means simply the process for the utility to present the alternative mechanism for approval. Because it is not defined, it could be interpreted to be only the "process", as the word "procedures" seems to indicate. Thus, the initial order may not address required consumer protections to accompany the mechanism, or the criteria that the Commission will use to evaluate the proposal. In sum, "procedures" seems to indicate the process, rather than the consumer protections.

4. It will be very challenging for the commission to complete a rulemaking to issue “regulations” within six months when it often takes more than a year to complete the process required under the Administrative Procedure Act. Because of this, the only option may be for the PUC to implement the bill through an order, rather than regulations. Even if the PUC issues an initial order which includes consumer protections, a subsequent Commission may change the order without an opportunity for customer input through a hearing as would be the case to change a regulation.
5. There is a legislative role in the promulgation of regulations. The legislature does not have a role in the issuance of a PUC order. If the legislature is not going to specifically include consumer protections in the Act, then it needs to ensure that it has continuing oversight in the implementation of this issue by requiring the PUC to promulgate regulations.
6. There is no guidance regarding the criteria that the commission must use in evaluating an alternative rate mechanism. For example, the Commission has the ability to ignore “any provision of the law” in establishing the mechanism, as Section (b)(1) states. If existing law can be ignored as the bill clearly states, it is possible that any portion of the Public Utility Code that is not specifically mentioned in the bill as being required for the alternative mechanisms can be disregarded. Although the “declaration or policy” references “just and reasonable” rates and subsection (b)(3) states that capital costs must be “used and useful”, the bill does not reference other key ratemaking concepts such as the prohibition against rates being “unduly discriminatory”.
7. During the existing rate case process, the PUC schedules public input hearings to seek input from consumers about the rate increase and the utility’s service. This is often a valuable opportunity for customer service issues to be aired and addressed while the utility has the motivation to remove any opposition to its request for an increase. HB 1782 does not provide for the alternative mechanisms to include public input hearings on the rate changes.
8. HB 1782 benefits the utilities while energy consumers, especially those that use utility services for manufacturing and to employ thousands of Pennsylvanians, are disadvantaged and will be hurt by the effect of this bill. There are no changes that were made to this bill since it was introduced in the House to incorporate the consumer protections requested by multiple consumer stakeholders, who all continue to oppose HB 1782 in its current form.
9. HB 1782 allows for variable expenses that change outside of a rate case and does not benefit businesses that are looking for cost stability.