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DATE: May 18, 2016
TO: Members of the Senate of Pennsylvania
FROM: Terrance J. Fitzpatrick, President & CEO
RE: Support for House Bill 1436, PN 2690

The Energy Association of Pennsylvania (EAP) supports passage without amendment of HB 1436, PN 2690, which would increase investment and bring Pennsylvania in line with the vast majority of other states by calculating a utility's federal tax liability on a "stand-alone" basis in a rate case.

The Internal Revenue Code allows a group of affiliated companies to file a consolidated tax return, which results in lower tax liability for the group than if the companies had filed individually. When a utility is part of a consolidated return, a rate proceeding determines how the group's tax liability should be apportioned in order to allocate the utility's share. The most fair and appropriate way to address this is to evaluate each company based upon its own circumstances – the stand-alone approach.

Pennsylvania is one of a small and shrinking number of states that apply a "consolidated tax adjustment" (CTA) in this situation, which results in tax losses from unregulated affiliates being used to reduce the rates of utilities, even though utility customers did not make any investments in the unregulated affiliate. Just as the rates of a utility may not be increased to recover the losses of an unregulated affiliate, so too utility rates should not be decreased based upon tax losses arising from operations of an unregulated affiliate.

The stand-alone approach is followed in a strong majority of states, including those usually considered either predominately progressive or conservative, such as: California, Massachusetts, New York, Maryland, the District of Columbia, Colorado, Minnesota, North Carolina, Wyoming, Arizona, and Virginia. West Virginia is the only other state with a CTA policy similar to Pennsylvania's.

If this legislation is passed, its impact would occur over a number of years and only when utilities file rate requests for consideration by the Public Utility Commission. Some utilities would not be affected at all. For the others, federal tax expense is just one of the many issues considered by the Commission in setting rates.

We respectfully request your support for passage of House Bill 1436, PN 2690.