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|  | **PENNSYLVANIA****PUBLIC UTILITY COMMISSION****Harrisburg, PA 17105-3265** |  |

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|  | Public Meeting held August 23, 2018 |
| Commissioners Present: |  |

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| Gladys M. Brown, Chairman |  |
| Andrew G. Place, Vice Chairman |  |
| Norman J. Kennard |  |
| David W. Sweet |  |
| John F. Coleman, Jr. |  |
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| Implementation of Act 58 of 2018 Alternative Ratemaking for Utilities | M‑2018‑3003269 |

**TENTATIVE IMPLEMENTATION ORDER**

**BY THE COMMISSION:**

On June 28, 2018, Governor Wolf signed into law Act 58 of 2018, which amends Chapter 13 of the Pennsylvania Public Utility Code (Code), 66 Pa. C.S. §§ 1301 *et seq*, (relating to rates and distribution systems). Specifically, Act 58 adds Section 1330, 66 Pa. C.S. § 1330 (relating to alternative ratemaking for utilities), that permits the Pennsylvania Public Utility Commission (Commission) to approve an application by a utility to establish alternative rates and rate mechanisms. With this Tentative Implementation Order, the Commission seeks comments on the proposed implementation of Section 1330 of the Code as set forth in this Order.

**DISCUSSION**

**A. Section 1330(a) – Declaration of Policy**

This section sets forth the policy of the General Assembly as follows:

(a) Declaration of policy – The General Assembly finds and declares as follows:

 (1) Innovations in utility operations and information technologies are creating new opportunities for all customers, and it is in the public interest for the commission to approve just and reasonable rates and rate mechanisms to facilitate customer access to these new opportunities while ensuring that utility infrastructure costs are reasonably allocated to and recovered from customers and market participants consistent with the use of the infrastructure.

 (2) It is the policy of the Commonwealth that utility ratemaking should encourage and sustain investment through appropriate cost‑recovery mechanisms to enhance the safety, security, reliability or availability of utility infrastructure and be consistent with the efficient consumption of utility service.

Section 1330(a) of the Code, 66 Pa. C.S. § 1330(a).

The Commission has previously recognized and proposed similar policy goals in the *Fixed Utility Distribution Rates Policy Statement* proceeding at Docket No. M‑2015‑2518883.[[1]](#footnote-1) While not requiring specific action by the Commission, the Commission will consider the policy goals contained in Section 1330(a) of the Code, as well as other applicable policy goals established by statute, regulation or case law, when reviewing requests to change base rates for natural gas distribution companies (NGDCs), electric distribution companies (EDCs), water or wastewater utilities or city natural gas distribution operations.

**B. Section 1330(b) – Alternative Rate Mechanisms**

This section identifies which utilities may seek Commission approval of an alternative rate mechanism, identifies some alternative rate mechanisms and what may be recovered through an alternative rate mechanism. Specifically, Section 1330(b) states the following:

(b) Alternative rate mechanisms.

 (1) Notwithstanding any other provision of law, including, but not limited to, sections 2806.1(k)(2) (relating to energy efficiency and conservation program) and 2807(f)(4) (relating to duties of electric distribution companies), the commission may approve an application by a utility in a base rate proceeding to establish alternative rates and rate mechanisms, including, but not limited to, the following mechanisms:

 (i) decoupling mechanisms;

 (ii) performance‑based rates;

 (iii) formula rates;

 (iv) multiyear rate plans; or

 (v) rates based on a combination of more than one of the mechanisms in subparagraphs (i), (ii), (iii) and (iv) or other ratemaking mechanisms as provided under this chapter.

 (2) An alternative rate mechanism established under this section may include rates under section 1307 (relating to sliding scale of rates; adjustments) or 1308 (relating to voluntary changes in rates) and may provide for recovery of returns on and return of capital investments or, in the case of city natural gas distribution operations, recovery under the cash flow ratemaking method.

 (3) Capital costs and expenses recovered through alternative rates and rate mechanisms shall be reasonable and prudently incurred and used and useful in providing service. Nothing in this paragraph shall be construed to prohibit or limit the recovery of revenue, as appropriate, under a commission‑approved performance‑based rate plan.

Section 1330(b) of the Code, 66 Pa. C.S. § 1330(b).

The Commission proposes to interpret Section 1330(b)(1) as requiring utilities seeking to obtain Commission approval of an alternative rate or rate mechanism to do so initially through a Section 1308(d), 66 Pa. C.S. § 1308(d) (relating to voluntary changes in rates), general rate proceeding. In particular, the Commission interprets the phrase, “a base rate proceeding” in subsection 1330(b)(1) as referring to a Section 1308(d) proceeding. A Section 1308(d) proceeding provides for an extensive examination of a utility’s total revenues, expenses, taxes, capital costs and rate structure. Such proceedings, in which the statutory advocates, affected customers and others participate, represent an ideal vehicle for a careful and well‑documented examination of any alternative ratemaking proposals. While subsection 1330(b)(2) states that “[a]n alternative rate mechanism established under this section may include rates under Section 1307…or 1308,” the Commission interprets this as permitting rate adjustments in accordance with Section 1307 under parameters established through the initial Section 1308 proceeding approving the alternative rate mechanism.

Furthermore, the Commission interprets the reference to Section 1308 as simply permitting subsequent changes or adjustments to a previously approved alternative rate mechanism through a subsequent Section 1308 proceeding. The Commission notes that this interpretation does not preclude or restrict in any way the ability of any party or the Commission from fully reviewing, in accordance with applicable statutory, regulatory and case law, a utility’s subsequent Section 1308 rate filing.

Regarding the language in subsection 1330(b)(1) stating that “[n]otwithstanding any other provision of law, including, but not limited to, sections 2806.1(k)(2) … and 2807(f)(4),” the Commission notes that the word “notwithstanding” means “in spite of.”[[2]](#footnote-2) Accordingly, the Commission proposes to interpret this section as in spite of any other provision of law, including, but not limited to, Sections 2806.1(k)(2) … and 2807(f)(4)…, the Commission may approve an application by a utility in a base rate proceeding to establish alternative rates and rate mechanisms.

Section 2806.1(k)(2) of the Code relates to EDC cost recovery for the Act 129 energy efficiency and conservation plans. Section 2806.1(k)(2) states that “decreased revenues of an [EDC] due to reduced energy consumption or changes in energy demand shall not be a recoverable cost under a reconcilable automatic adjustment clause.” Section 2807(f)(4) of the Code relates to EDC cost recovery for their Act 129 smart meter technology deployment plans. Section 2807(f)(4) states in part that “[i]n no event shall lost or decreased revenues by an [EDC] due to reduced electricity consumption or shifting energy demand be considered any of the following: (i) A cost of smart meter technology recoverable under a reconcilable automatic adjustment clause under section 1307(b) … (ii) A recoverable cost.” These two sections apply only to EDCs. As such, the Commission proposes to interpret the “notwithstanding” language in Section 1330(b) as permitting the Commission to approve an application by any utility, including EDCs, to establish alternative rates and rate mechanisms, in spite of the prohibitions in Section 2806.1(k)(2) and 2807(f)(4) of the Code.

Finally, regarding subsections 1330(b)(2) and (3) the Commission proposes to interpret subsection 1330(b)(2) as providing self-explanatory direction as to what revenue may be recovered through alternative rates and rate mechanisms. The Commission proposes to interpret subsection 1330(b)(3) as also providing self‑explanatory direction as to what capital costs and expenses may be recovered through alternative rates and rate mechanisms, so long as those costs and expenses are “reasonable and prudently incurred and used and useful in providing service.” This is, of course, a fundamental principle of public utility law in Pennsylvania.

**C. Section 1330(c) – Customer Notice**

This section establishes requirements for utilities to provide additional notice to customers regarding an application for an alternative rate or rate mechanism, and information regarding the Commission decision and the approved rates. Specifically, Section 1330(c) states the following:

(c) Customer Notice

 (1) A utility shall notify a customer of all of the following:

 (i) The filing of an application under subsection (b)(1).

 (ii) The commission’s decision on the application.

 (iii) A summary and, if applicable, a schedule of the rate adjustments that will occur as a result of the commission’s approval of a utility application under subsection (b) and the effective date of the adjustments.

 (iv) Any other information required by the commission by regulation or order.

 (2) Notice shall be provided through customer bill inserts and posted on the utility’s publicly accessible Internet website.

Section 1330(c) of the Code, 66 Pa. C.S. § 1330(c).

The Commission’s regulation at 52 Pa. Code § 53.45 (relating to notice of new tariffs and tariff changes) dictates the notice utilities are required to provide to customers upon the filing of a new tariff, tariff supplement or tariff revision that constitutes a general rate increase within the meaning of 66 Pa. C.S. § 1308(d). To meet the new requirement in subsection 1330(c)(1)(i) for a utility to notify customers of the filing of an application for an alternative rate or rate mechanism, the Commission proposes to require utilities to include the following revisions to the notice language contained in 52 Pa. Code § 53.45(b)(1)(i) (relating to notice of proposed rate changes):

*NOTICE OF PROPOSED RATE CHANGES*

To Our Customers:

 (company) is filing a request with the Pennsylvania Public Utility Commission (PUC) to increase your (type of service) rates as of (date). This notice describes the company’s rate request, the PUC’s role, and what actions you can take.

 (company) has requested an overall rate increase of $ \_\_\_\_\_ per year. **This filing also includes a request for approval of the following alternative rate mechanism(s): (state the alternative rate mechanism(s)) in accordance with 66 Pa. C.S. § 1330 (relating to alternative ratemaking for utilities). If the alternative rate mechanism(s) is approved as filed, the impact would be (provide a summary of the rate impacts by customer class).**

If the company’s entire request is approved, the total bill for a residential customer using (state typical usage level) would increase from $\_\_\_\_\_\_ to $\_\_\_\_\_ per month or by \_\_%.

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To meet the new requirements in subsection 1330(c)(2) that the utility shall provide notice through customer bill inserts and a posting on the utility’s publicly accessible website, the Commission proposes that a utility seeking an alternative rate or rate mechanism, must provide bill inserts as prescribed in 52 Pa. Code § 53.45(4) (relating to alternative method) in lieu of 52 Pa. Code § 53.45(2) (relating to by written or printed notice). In addition, the Commission proposes to require the utility to post this notice on its publicly accessible website. The Commission also proposes the requirement that the utility provide a link to this notice on the utility’s customer home page and any page dedicated to a customer class and that this link be prominently displayed.

To meet the new requirements in subsections 1330(c)(1)(ii) and (iii) that the utility must notify customers of the Commission’s decision and provide a summary of the approved alternative rate or rate mechanism, the Commission proposes that the utility include this information on the utility’s tariff pages listing modifications of existing rules, regulations and rates as prescribed in 52 Pa Code § 53.22 (relating to list of modifications). Specifically, the Commission proposes that these tariff pages identify the Commission’s order approving the Section 1330 alternative rate or rate mechanism and include the caption, docket number and order entry date. In addition, the Commission proposes that these tariff pages include a summary of the Commission‑approved Section 1330 alternative rate and rate mechanism, in plain language, and, if applicable, a schedule of the rate adjustments that will occur and the effective dates of any adjustments.

Regarding the requirements of subsection 1330(c)(2), the Commission proposes that the utility distribute the tariff pages containing the list of modifications to customers through a bill insert. In addition, the Commission proposes to require the utility to provide a link to this portion of the utility’s tariff on the utility’s customer home page and any page dedicated to a customer class and that this link be prominently displayed.

**D. Section 1330(d) – Commission**

This section requires the Commission to prescribe, by regulation or order, specific procedures for the approval of an application to establish alternative rates. Specifically, Section 1330(d) of the Code states the following:

(d) Commission – 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.

Section 1330(d) of the Code, 66 Pa. C.S. § 1330(d).

To meet this requirement, the Commission proposes to require a utility seeking to use or employ an alternative rate or rate mechanism under Section 1330 to obtain Commission approval through a Section 1308(d), 66 Pa. C.S. § 1308(d), base rate proceeding which, as noted herein, includes an in‑depth examination of the utility’s financial status and operations.

It is well-established that in any Section 1308 proceeding, the utility has the burden of establishing the justness and reasonableness of tariff proposals. *See* 66 Pa. C.S. §§ 315(a); 1301. The Pennsylvania Commonwealth Court has ruled that the evidence adduced to meet this standard must be substantial. *See* *Lower Frederick Twp. v. Pa. PUC*, 409 A.2d 505, 507 (Pa. Cmwlth. 1980). Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Dutchland Tours, Inc. v. Pa. PUC*, 337 A.2d 922 (Pa. Cmwlth. 1975). It is also well‑established that the burden of proof does not shift to parties challenging a utility’s proposal but remains with the utility throughout the course of the proceeding. *See* *Berner v. Pa. PUC*, 116 A.2d 738 (Pa. 1955). Section 1330 of the Code does not alter or change these well‑established standards placed on a utility seeking to change its rates through a Section 1308 base rate proceeding.

Furthermore, the Commission’s regulation at 52 Pa. Code § 53.53 (relating to information to be furnished with proposed Section 1308(d) general rate increase filings in excess of $1 million) establishes what a utility is to provide when it files a tariff or tariff supplement seeking a general rate increase within the meaning of 66 Pa. C.S. § 1308(d). The information to be furnished in accordance with 52 Pa. Code § 53.53 is quite comprehensive and far-reaching such that the Commission presumes that it encompasses what is required for any base rate proposal, including any alternative rate or rate mechanism.

The Commission notes that utilities have always had the ability to propose,[[3]](#footnote-3) and the Commission has had the ability to approve, alternative rates or rate mechanisms, including the rate mechanisms specifically listed in Section 1330. The General Assembly specifically recognized this in subsection 1330(e) of the Code, 66 Pa. C.S. § 1330(e), where it stated the following:

(e) Construction – Nothing in this section shall be construed as limiting the existing ratemaking authority of the commission or be construed to invalidate or void any rate mechanism approved by the commission prior to the effective date of this section.

Section 1330(3) of the Code, 66 Pa. C.S. § 1330(e). The Commission posits that at the present time, 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 for the Section 1330 requirements.

Accordingly, the Commission will not propose any additional specific procedures unless or until their need becomes apparent.[[4]](#footnote-4)

Finally, the Commission recognizes that some of the alternative rate mechanisms involve annual reconciliation or adjustments. In particular, the definitions of decoupling mechanism, multiyear rate plan and performance‑based rates in subsection 1330(f), 66 Pa. C.S. § 1330(f), specifically allow for periodic adjustments or reconciliation of rates. The Commission posits that the parameters for when and how such adjustments or reconciliations are to transpire, and whether interest is to be applied to any over‑ and under‑collections, are to be established initially in the Section 1308(d) base rate proceeding and subsequently made in accordance with Section 1307 of the Code, 66 Pa. C.S. § 1307, (relating to sliding scale of rates; adjustments).

This was recognized by the General Assembly and codified in subsection 1330(b)(2), 66 Pa. C.S. § 1330(b)(2), which states that “[a]n alternative rate mechanism established under this section may include rates under section 1307 (relating to sliding scale of rates; adjustments) … .” Accordingly, the Commission will not propose any additional specific procedures regarding such adjustments at this time.

**E. Section 1330(f) – Definitions**

This section defines decoupling mechanism, multiyear rate plan, performance‑based rates and utility. In particular, utility as used in Section 1330, is defined in Section 1351 of the Code, 66 Pa. C.S. § 1351. Section 1351 defines utility as “[a] natural gas distribution company, electric distribution company, water or wastewater utility or city natural gas distribution operation.” Accordingly, Section 1330 only applies to these utilities.

**CONCLUSION**

This Tentative Implementation Order outlines the key portions of Act 58, 66 Pa. C.S. § 1330, that the Commission is required to administer and seeks comment from the public and industry regarding how these provisions are interpreted and implemented; **THEREFORE,**

 **IT IS ORDERED:**

1. That the Commission hereby seeks comments on its proposed interpretation and implementation of Section 1330 of the Public Utility Code, 66 Pa. C.S. § 1330.

2. That a copy of this order be served on all jurisdictional electric distribution companies, all jurisdictional natural gas distribution companies and city natural gas distribution operators, all jurisdictional water and wastewater utilities, the Bureau of Investigation and Enforcement, the Office of Consumer Advocate and the Office of Small Business Advocate.

3. That a copy of this Order shall be published in the *Pennsylvania Bulletin* and posted on the Commission’s website at [www.puc.pa.gov](http://www.puc.pa.gov).

4. That written comments referencing Docket No. M‑2018‑3003269 be submitted within 30 days of publication in the *Pennsylvania Bulletin* to the Pennsylvania Public Utility Commission, Attn: Secretary, 400 North Street, Harrisburg, PA 17120. Comments may also be filed electronically through the Commission’s e-File System.

5. That written reply comments referencing Docket No. M‑2018‑3003269 be submitted within 70 days of publication in the *Pennsylvania Bulletin* to the Pennsylvania Public Utility Commission, Attn: Secretary, 400 North Street, Harrisburg, PA 17120. Comments may also be filed electronically through the Commission’s e-File System.

6. That the contact person for this Tentative Implementation Order is Kriss Brown, Assistant Counsel, Law Bureau, kribrown@pa.gov, (717) 787-4518.

**BY THE COMMISSION**

Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: August 23, 2018

ORDER ENTERED: August 23, 2018

1. *See Fixed Utility Distribution Rates Policy Statement*, Proposed Policy Statement Order at Docket No. M‑2015‑2518883, entered May 23, 2018, at 26-27. [↑](#footnote-ref-1)
2. *See* BLACK’S LAW DICTIONARY 1091 (7th ed. 1999). *See also* *Com. v. Sanchez‑Rodriguez*, 814 A.2d 1234, 1238 (Pa. Super 2003). [↑](#footnote-ref-2)
3. The Commission notes that 66 Pa. C.S. §§ 2806.1(k)(2); 2807(f)(4) could have been interpreted as limiting the ability of the large EDCs from employing certain alternative ratemaking mechanisms. [↑](#footnote-ref-3)
4. As previously mentioned, at Docket No. M‑2015‑241883, the Commission has proposed a policy statement that is intended to provide guidance for fixed utilities and interested stakeholders on what the Commission will consider when investigating alternative ratemaking methodologies proposed in Section 1308, 66 Pa. C.S. § 1308, rate proceedings. In that proceeding the Commission stated the following:

A consistent theme expressed in the comments is that the Commission should not take a one‑size‑fits‑all approach, with some parties suggesting that we establish guidelines. We agree with these parties that the type and extent of alternative ratemaking methodologies employed by each fixed utility should be developed in a transparent manner in accordance with each utility’s unique circumstances. We also agree that establishment of the guidelines each utility and stakeholder should consider in a Section 1308 rate proceeding would be helpful in determining if, the types(s) of and to what extent, alternative ratemaking methodologies should be employed.

*See Fixed Utility Distribution Rates Policy Statement*, Proposed Policy Statement Order, Docket No. M‑2015‑2518883, entered May 23, 2018, at 26. The Commission intends to continue the investigation of the appropriateness of this proposed policy statement as such guidance appears, based on the comments submitted under that docket, to remain relevant to utilities and interested stakeholders in future Section 1308 base rate proceedings. [↑](#footnote-ref-4)