

COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE

555 Walnut Street, 5th Floor, Forum Place
Harrisburg, Pennsylvania 17101-1923
(717) 783-5048
800-684-6560

FAX (717) 783-7152
consumer@paoca.org

November 19, 2018

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

Re: Proposed Implementation of Act 58
Docket No. M-2018-3003269

Dear Secretary Chiavetta:

Attached for electronic filing are the Reply Comments of the Office of Consumer Advocate in the above-referenced proceeding.

Copies have been served per the attached Certificate of Service.

Respectfully Submitted,

/s/ Darryl A. Lawrence
Darryl A. Lawrence
Senior Assistant Consumer Advocate
PA Attorney I.D. # 93682
E-Mail: DLawrence@paoca.org

Enclosures:

cc: Kriss Brown, Law Bureau
Marissa Boyle, Bureau of Technical Utility Services
Andrew Herster, Bureau of Technical Utility Services
Certificate of Service
*262167

CERTIFICATE OF SERVICE

Re: Proposed Implementation of Act 58 : Docket No. M-2018-3003269

I hereby certify that I have this day served a true copy of the following document, the Office of Consumer Advocate's Reply Comments, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 19th day of November 2018.

SERVICE BY E-MAIL & INTER-OFFICE MAIL

Carrie B. Wright, Esquire
Bureau of Investigation & Enforcement
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

SERVICE BY E-MAIL & FIRST CLASS MAIL, POSTAGE PREPAID

Elizabeth R. Triscari, Esquire
Office of Small Business Advocate
300 North Second Street, Suite 202
Harrisburg, PA 17101

Michael D. Klein, Esquire
Cozen O'Connor
17 North Second Street, Suite 1410
Harrisburg, PA 17101
(National Association of Water Companies-PA Chapter)

Terrance J. Fitzpatrick, Esquire
Donna M.J. Clark, Esquire
Energy Association of Pennsylvania
800 North Third Street, Suite 205
Harrisburg, PA 17101

Susan Simms Marsh, Esquire
Pennsylvania-American Water Company
800 West Hersheypark Drive
Hershey, PA 17033

Shelby A. Linton-Keddie
Duquesne Light Company
800 North 3rd Street, Suite 203
Harrisburg, PA 17102

/s/ Darryl A. Lawrence
Darryl A. Lawrence
Senior Assistant Consumer Advocate
PA Attorney I.D. # 93682
E-Mail: DLawrence@paoca.org

Barrett C. Sheridan
Assistant Consumer Advocate
PA Attorney I.D. # 61138
E-Mail: BSheridan@paoca.org

Christine Maloni Hoover
Senior Assistant Consumer Advocate
PA Attorney I.D. # 50026
E-Mail: CHoover@paoca.org

J.D. Moore
Assistant Consumer Advocate
PA Attorney I.D. # 326292
E-Mail: JMoore@paoca.org

Counsel for:
the Office of Consumer Advocate
555 Walnut Street
5th Floor, Forum Place
Harrisburg, PA 17101-1923
Phone: (717) 783-5048
Fax: (717) 783-7152
Dated: November 19, 2018
*262168

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Proposed Implementation of Act 58 : Docket No. M-2018-3003269

REPLY COMMENTS OF THE
OFFICE OF CONSUMER ADVOCATE

Darryl A. Lawrence
Senior Assistant Consumer Advocate
PA Attorney I.D. # 93682
E-Mail: DLawrence@paoca.org

Christine Maloni Hoover
Senior Assistant Consumer Advocate
PA Attorney I.D. # 50026
E-Mail: CHoover@paoca.org

Barrett C. Sheridan
Assistant Consumer Advocate
PA Attorney I.D. # 61138
E-Mail: BSheridan@paoca.org

J.D. Moore
Assistant Consumer Advocate
PA Attorney I.D. # 326292
E-mail: JMoore@paoca.org

Tyler R. Beaston
Legal Intern
E-Mail: TBeaston@paoca.org

Counsel for:
Tanya J. McCloskey
Acting Consumer Advocate

Office of Consumer Advocate
555 Walnut Street
5th Floor, Forum Place
Harrisburg, PA 17101-1923
Phone: (717) 783-5048
Fax: (717) 783-7152
Dated: November 19, 2018

I. INTRODUCTION

On June 28, 2018, Governor Tom Wolf signed into law Act 58 of 2018, codified at 66 Pa. C.S. Section 1330, which provided the Pennsylvania Public Utility Commission (Commission) with express statutory authorization to consider applications by utilities in Pennsylvania to use various alternative ratemaking mechanisms. To address the Commission's responsibilities as to the newly-enacted Act 58, the Commission entered a Tentative Implementation Order. Implementation of Act 58 of 2018 Alternative Ratemaking for Utilities, Tentative Implementation Order, Docket No. M-2018-3003269 (Issued Aug. 23, 2018). Through the Tentative Implementation Order, the Commission sought comments on the Commission's proposed interpretation and implementation of Act 58.

In accord with the Tentative Implementation Order, on October 9, 2018, the OCA submitted its Comments. In those Comments the OCA discussed several key issues as to the implementation of Act 58, including: the important policy goals that must be considered in conjunction with any potential alternative ratemaking mechanism; the need to only approve and/or modify any alternative ratemaking mechanism within the context of a Section 1308(d) base rate case; the fact that nothing in Act 58 has overruled the core prohibition in Act 129 that an EDC may not create a surcharge or other rate mechanism solely for the purpose of recovering lost revenues due to conservation or smart meter deployments; the importance of providing consumers with plain language notices as to any proposal to implement an alternative ratemaking mechanism and a further notice and explanation in the event such a mechanism is approved for use; the need for additional filing requirements in a Section 1308(d) rate case for any utility proposing to institute an alternative ratemaking mechanism; the need to consider and implement all necessary consumer

protections as part of any alternative ratemaking mechanism; and, the need for utilities to provide a comprehensive consumer education plan as part of any alternative ratemaking proposal.

In addition to the OCA, numerous other stakeholders submitted Comments to the Commission's Tentative Implementation Order.¹ In these Reply Comments the OCA will respond to some of the positions put forward by other Commenters in this matter. The OCA's silence on a particular issue or position of another Commenter should not be viewed as assent or acquiescence to such a position.

II. REPLY COMMENTS

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

(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.

¹ In addition to the OCA, the following parties filed Comments to the Commission's Tentative Implementation Order: the Advanced Energy Economy Institute (AEE Institute); the Laborers' International Union of North America (LIUNA); the Office of Small Business Advocate (OSBA); Met-Ed Industrial Users Group, Penelec Industrial Customer Alliance, Philadelphia Area Industrial Energy Users Group, PP&L Industrial Customer Alliance, and West Penn Power Industrial Intervenors (collectively, the Industrial Customers); the Energy Association of Pennsylvania (EAP); PECO Energy Company (PECO); UGI Distribution Companies (UGI); Keystone Energy Efficiency Alliance (KEEA); Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company (collectively, FirstEnergy); Columbia Gas of Pennsylvania, Inc. (Columbia or Columbia Gas); PPL Electric Utilities Corporation (PPL); Duquesne Light Company (Duquesne Light); the Industrial Energy Consumers of Pennsylvania (IECPA); the International Brotherhood of Electrical Workers (IBEW); and, State Senator John T. Yudichak and State Senator Lisa M. Boscola.

66 Pa. C.S. § 1330(a) (emphasis added). The OCA notes while that many of the other Commenters agreed with the Commission’s stated intentions to consider the policy goals found in Section 1330(a) as a general matter, the OCA submits that the policy goals as articulated by the General Assembly need to be recognized and incorporated into the current implementation of Act 58.

As the OCA discussed in its Comments and further amplifies here in these Reply Comments, the OCA agrees with the Commission that alternative ratemaking mechanisms should only be considered within a Section 1308(d) proceeding.² Such an interpretation is consistent with the General Assembly’s stated policy goals of ensuring that any alternative ratemaking mechanism must be consistent with the reasonable allocation of costs and that such mechanisms promote the efficient consumption of utility service. The implementation of these policy goals, while at the same time ensuring that any resulting rates are just and reasonable, is best accomplished through broad and robust stakeholder participation as is routinely evident in a Section 1308(d) proceeding.

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

1. 1308(d) Proceedings Are Necessary.

In the Tentative Implementation Order, the Commission proposed to interpret Subsection (b)(1) as requiring utilities to seek initial approval for alternative ratemaking mechanisms through a Section 1308(d) general rate proceeding.³ In the filed Comments, the OCA and the majority of other commenters agreed that a 1308(d) general rate proceeding is the correct forum for review and analysis of any proposed alternative ratemaking mechanism.⁴ UGI and PPL, however, argued

² See, OCA Comments at 4-5.

³ Tentative Implementation Order at 2-4.

⁴ See, e.g., Comments of Duquesne Light and EAP.

that a 1308(d) proceeding was not necessary in order to establish an alternative ratemaking mechanism.⁵ The OCA disagrees.

A 1308(d) general rate proceeding is the correct forum for a number of reasons. First, a 1308(d) proceeding will draw the largest and most diverse group of stakeholders and ordinarily provides the greatest opportunity for individual ratepayer participation through public input hearings. The OCA submits that this level of public participation is a critical element at this time, as the potential implementation of alternative ratemaking mechanisms will require a great deal of consumer education and information sharing as most such mechanisms will be new to Pennsylvania consumers. In addition, it has been the OCA's experience that rate filings under other Sections of 1308 generally draw little involvement from the rate-paying public and also tend to draw fewer intervenors from other stakeholder groups.

Further, as discussed in the OCA's Comments any form of alternative ratemaking mechanism that may be proposed must start from the approval of a just and reasonable revenue requirement level. Alternative ratemaking mechanisms may also serve to lessen the overall risk profile of the utility involved, if approved. As such, corresponding downward adjustments to the utility's return on equity (ROE) component will need to be addressed in order for the resulting rates to meet the just and reasonable standard. A Section 1308(d) proceeding would be the best and most reasonable forum for this ROE evaluation to take place within the investigation of all the components of the utility's revenues and expenses.

Moreover, in the Tentative Implementation Order the Commission added support to its proposed use of a 1308(d) proceeding by citing to the filing requirements at 52 Pa. Code

⁵ PPL Comments at 2-3; UGI Comments at 4-5.

Section 53.53.⁶ In its Comments, the OCA submitted that additional filing requirements should be implemented for any utility seeking to establish an alternative ratemaking mechanism, as the existing Section 53.53 requirements will likely fall short of providing the information that will be needed in order to create a full and complete record for the Commission’s review when considering an alternative ratemaking proposal. UGI’s and PPL’s position that any Section 1308 proceeding would suffice to institute an alternative ratemaking mechanism would also necessarily significantly reduce the information requirements to accompany such a filing. The OCA submits that such a process is not in the public interest nor would it serve the best interests of intervenors in such a proceeding as time consuming and costly layers of discovery would likely be needed.

2. Specific Act 129 Protections Remain.

As to Section 1330(b)(1), the Order proposed to interpret the “notwithstanding” language within Section 1330(b)(1) as permitting “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)[.]”⁷ Numerous parties addressed this part of the Order in their comments. Duquesne’s Comments indicated agreement with the plain meaning of the Order on this issue – EDCs are now eligible under Act 58 to establish alternative ratemaking mechanisms.⁸ EAP and PECO both indicated in their respective Comments that further clarification was needed from the Commission as to whether EDCs can now seek lost revenue recovery under Act 58 caused by Act 129 smart meter and conservation activities through an alternative ratemaking mechanism.⁹ FirstEnergy and PPL,

⁶ Tentative Implementation Order at 9.

⁷ Order at 5.

⁸ Duquesne Comments at 4.

⁹ EAP Comments at 4; PECO Comments at 2-3.

however, definitively concluded in their respective Comments that the Act 129 prohibitions as to lost revenue recovery has now been decided by the Order and such prohibitions have been erased through the passage of Act 58.¹⁰

Conversely, IECPA argues that the specific provisions of Act 129 control here and that EDCs have no ability through alternative ratemaking mechanisms to recover lost revenues from Act 129 smart meter or conservation activities.¹¹ In the OCA's view, the Order provides that all utilities, including EDCs, have the ability to propose alternative ratemaking mechanisms. Thus, an EDC can propose an alternative ratemaking mechanism; however, to the extent that such a mechanism seeks to *solely* recover lost revenues attributable to Act 129 programs, the Order provides no definitive indication that the Commission's intent was to set aside the Act 129 mandates on this issue.

As such, the OCA continues to support the view as set out in its Comments:

that the prohibitions contained within Section 2806.1(k)(2) and 2807(f)(4) still operate to preclude an EDC from recovering decreased revenues that are *solely* attributable to reduced energy consumption or changes in energy demand through a separate automatic adjustment mechanism, such as lost revenue adjustment clauses, that would be specifically designed to recover only such revenues.¹²

3. Section 1307 Rate Mechanisms Should Only Be Created Or Modified Within A Section 1308(d) Rate Case.

As discussed, the majority of Comments provide support for the idea that any alternative ratemaking mechanism should only be considered for approval within a Section 1308(d) proceeding. Several Commenters also discussed the creation of Section 1307 alternative

¹⁰ FirstEnergy Comments at 4; PPL Comments at 3-4.

¹¹ IECPA Comments at 4-5.

¹² OCA Comments at 6.

ratemaking mechanisms and the need for these mechanisms to, at least preliminarily, only be created within a Section 1308(d) proceeding.¹³ UGI and PPL, however, advocate for the ability to not only create alternative ratemaking mechanisms within any Section 1308 proceeding, but also that 1307 mechanisms can be adjusted and reviewed outside of a 1308 proceeding.¹⁴ The OCA disagrees with UGI and PPL on this issue.

In the OCA's experience, typical 1307 review proceedings draw a very limited pool of stakeholders and are generally analyzed and investigated on very tight time frames. The OCA submits that the Commission should carefully consider authorizing any type of alternative ratemaking mechanism that could include automatic revenue recovery, within a stand-alone 1307 proceeding. On this point the OCA agrees with IECPA's Comments, that any 1307 type alternative ratemaking mechanism should only be implemented or modified within a Section 1308(d)¹⁵ proceeding.¹⁶

C. Section 1330(c)—Customer Notice.

In the Tentative Implementation Order, the Commission proposed revisions to the Notice of Proposed Rate Changes, codified at 52 Pa. Code § 53.45(b)(1)(i), to include information relating to a utility's request for an alternative ratemaking mechanism. Order at 6. Further, the Commission proposed that, after a Commission decision on an alternative ratemaking application, the utility be required to provide notice to its customers by way of modified tariffs sent to consumers as bill

¹³ IECPA Comments at 3-4; FirstEnergy Comments at 4.

¹⁴ UGI Comments at 6; PPL Comments at 2-4.

¹⁵ The OCA notes that given the time limitations of a Section 1308(d) rate case, it is possible that the full design and implementation of a particular alternative ratemaking mechanism may not be able to be completed within the normal timeframes for these proceedings and additional processes could be required.

¹⁶ IECPA Comments at 3-4.

inserts. Id. at 7. As set out in its Comments, the OCA strongly supports initiatives to provide consumers with timely and adequate information as to any potential alternative ratemaking mechanisms.¹⁷ To that end, the OCA advocated for plain language messaging to consumers at the inception of any potential alternative ratemaking mechanism as part of any revisions to the Notice of Proposed Rate Changes, and also a further plain language explanation as to the operation of the mechanism and possible bill impacts upon implementation. As to the design of these communications, the OCA submitted that drafts of same should be shared with the Commission's Bureau of Consumer Services (BCS) and the OCA prior to any finalization and mailing from the utilities.¹⁸

The other parties who submitted Comments on this issue were almost unanimous on one facet of the notice process, and that was sending tariff pages is likely not the most effective way to adequately communicate with customers in this area.¹⁹ The OCA agrees.

The OCA submits that the proposed changes to the Notice of Proposed Rate Changes that utilities are required to provide to customers at the start of a rate case should include a clear, plain language description of any alternative ratemaking mechanisms that is being proposed. Further, upon the approval of the alternative ratemaking mechanism the utility should be required to provide an additional plain language description of the mechanism approved, how it operates and potentially how customers' bills may be affected. As part of that bill insert, several Parties indicated that links should be provided to the utility's actual tariff to the extent that customers wish to review those materials.²⁰ The OCA has no objection to including these links, however, the

¹⁷ OCA Comments at 7-9.

¹⁸ Id.

¹⁹ See, e.g., Comments of Duquesne and EAP.

²⁰ See, e.g., Duquesne Comments at 7.

inclusion of a link to tariff pages should in no way be deemed a substitute for the plain language notice as discussed herein and in the OCA's Comments.²¹

D. Section 1330(d)—Commission Requirement To Act In Accord With Act 58.

Under Act 58, the Commission has the authority to modify or supplement the type and quantum of information that a utility must file under its current regulations at 52 Pa. Code § 53.53 when the utility is proceeding under Section 1308(d). In the Tentative Implementation Order, the Commission concludes that its current filing requirements in this regard are sufficient and no additional requirements are necessary. Order at 9. The majority of Commenters agreed with this approach.²² The OCA respectfully disagrees.

The OCA submits that the Commission should take this opportunity to expand the current filing requirements associated with a Section 1308(d) proceeding, and also formalize certain key consumer protections and consumer education requirements that would need to be a part of any application for an alternative ratemaking mechanism.

1. Filing Requirements.

As noted, the majority of the Commenters agreed with the Commission's initial proposal that the current filing requirements under Section 1308(d) should be sufficient to analyze any alternative ratemaking proposal. As set out in its Comments, the OCA submitted that more information should be required in order to timely and appropriately investigate any such alternative rate mechanism.²³ The Comments of the other Parties on this issue have raised no additional areas

²¹ See, OCA Comments at 7-9.

²² See, e.g., Comments of PPL and IECPA.

²³ See OCA Comments at 10-11.

that require a reply, and accordingly the OCA would direct the reader to its Comments on this issue.

2. Consumer Protections.

The OCA submits that any utility proposing an alternative ratemaking mechanism must include adequate consumer protections in the mechanism for it to be found just, reasonable, and in the public interest. The OCA acknowledges that the potential landscape of alternative ratemaking mechanisms that might be proposed, or combinations thereof, is broad. Accordingly, the specific consumer protections that are necessary may vary based on the type of mechanism proposed. The OCA notes that on this issue the Industrial Customers submitted very detailed Comments and recommended a variety of consumer protections.²⁴

The OCA agrees with the consumer protection measures that the Industrial Customers recommended in their Comments. Specifically, the OCA submits that, among others, the following consumer protections should be a part of any alternative ratemaking mechanism:

- Capped adjustments (i.e. an upper threshold on any percentage increase in rates period over period);
- Specific targeted programs to benefit consumers over and above those programs already in place;
- Reduced ROE to reflect reduced risk to the utility; and²⁵
- Periodic base rate case filings.

²⁴ See, Industrial Customers' Comments. The OCA notes that the Industrial Customers are calling on the Commission to commence an immediate rulemaking. The OCA is not opposed to such a process.

²⁵ The OCA submits that guaranteeing revenue recovery lowers the overall risk of providing service, and thus, lowers the cost of equity requirement.

As the OCA discussed in its Comments, individual alternative ratemaking mechanisms should be dealt with on a case-by-case basis. A one-size-fits-all approach will likely be ineffective, and additional consumer protections beyond those just listed may be necessary based on the specific mechanism proposed and the unique characteristics of the utility involved.

3. Consumer Education.

In its Comments, the OCA submitted that utilities seeking alternative ratemaking mechanisms must be tasked with providing sufficient consumer education about the proposed alternative ratemaking mechanism in order for customers to understand how and why such a proposal is being put forth. As part of this process, the OCA recommended that the utility submit a proposed education plan as part of their filing. The OCA stands ready to work with utilities seeking alternative ratemaking mechanisms to ensure that the utility's ratepayers are adequately informed and educated of the specific ratemaking mechanism sought. The Comments of the other Parties on this issue have raised no additional areas that require a reply, and accordingly the OCA would direct the reader to its Comments on this issue.

E. Conclusion.

The OCA submits that alternative ratemaking mechanisms must achieve public policy goals that are currently not otherwise being achieved with traditional ratemaking, and must comply with the policy directives as outlined by the General Assembly. Alternative rates and rate mechanisms must also provide tangible, identifiable benefits to consumers; provide consumers with a safe and reasonable manner to manage their bills; and ensure that rates and bills always remain just, reasonable, and in the public interest. Safeguards such as the initial filing requirements, consumer protections, and consumer education plans are critical to any

consideration. The OCA looks forward to continuing to work with the Commission and the other stakeholders as to the implementation of Act 58.

III. CONCLUSION

The OCA appreciates the opportunity to provide the Commission with these Reply Comments and looks forward to working with all stakeholders to achieve the best possible means of implementing Act 58. The OCA submits that Act 58 must be implemented in a way that both educates and protects Pennsylvania consumers.

Respectfully Submitted,

/s/ Darryl A. Lawrence

Darryl A. Lawrence
Senior Assistant Consumer Advocate
PA Attorney I.D. # 93682
E-Mail: DLawrence@paoca.org

Christine Maloni Hoover
Senior Assistant Consumer Advocate
PA Attorney I.D. # 50026
E-Mail: CHoover@paoca.org

Barrett C. Sheridan
Assistant Consumer Advocate
PA Attorney I.D. # 61138
E-Mail: BSheridan@paoca.org

J.D. Moore
Assistant Consumer Advocate
PA Attorney I.D. # 326292
E-Mail: JMoore@paoca.org

Tyler R. Beaston
Legal Intern
E-Mail: TBeaston@paoca.org

Counsel for:
Tanya J. McCloskey
Acting Consumer Advocate