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

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|  | Public Meeting held April 25, 2019 |
| Commissioners Present: |  |

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

**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 Implementation Order, the Commission establishes the procedures through which utilities may seek Commission approval of alternative rates and rate mechanisms.

**Background**

On August 23, 2018, the Commission issued a Tentative Implementation Order at this Docket seeking comment on proposals to implement Section 1330 of the Code. The Tentative Implementation Order was published in the Pennsylvania Bulletin on September 8, 2018. *See* 48 Pa.B. 5691.

Interested parties had 30 days from the publication of the Tentative Implementation Order in the Pennsylvania Bulletin to file comments. The following parties filed comments: Advanced Energy Economy Institute (AEEI); State Senator Lisa M. Boscola and State Senator John T. Yudichak; Columbia Gas of Pennsylvania, Inc. (Columbia); Duquesne Light Company (Duquesne); Citizens for Pennsylvania’s Future, Clean Air Council, Keystone Energy Efficiency Alliance, Natural Resources Defense Council, PA Solar Energy Industries Association, Philadelphia Solar Energy Association, and Sierra Club (collectively, E‑Advocates); Energy Association of Pennsylvania (EAP); Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company (collectively, FirstEnergy); Industrial Energy Consumers of Pennsylvania (IEC); Pennsylvania Energy Consumers Alliance, 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, Industrials); International Brotherhood of Electrical Workers (IBEW); Laborers’ District Council of Eastern Pennsylvania (LDC); Office of Consumer Advocate (OCA); Office of Small Business Advocate (OSBA); Pennsylvania‑American Water Company (PAWC); PECO Energy Company (PECO); PPL Electric Utilities Corporation (PPL); and UGI Utilities, Inc. (UGI).

Interested parties had 70 days from the publication of the Tentative Implementation Order in the Pennsylvania Bulletin to file reply comments. The following parties filed reply Comments: AEEI; Duquesne; E‑Advocates; EAP; FirstEnergy; IEC; Industrials; OCA; OSBA; PAWC; PECO; and PPL.

We note that on May 23, 2018, the Commission entered a Proposed Policy Statement Order at Docket No. M‑2015‑2518883 intended to provide guidelines each utility and stakeholder should consider in a Section 1308 rate proceeding to help determine if alternative ratemaking methodologies should be employed, the type of alternative ratemaking to be employed and to what extent it is to be employed.[[1]](#footnote-1) The proposed policy statement was published in the *Pennsylvania Bulletin* on June 23, 2018 at 48 Pa.B. 3739. Comments were initially due within 60 days from the date of publication in the *Pennsylvania Bulletin*, with reply comments due within 90 days of publication. On August 14, 2018, the Commission issued a Secretarial Letter extending the comment period to October 22, 2018 and the reply comment period to November 20, 2018. Various stakeholders have filed comments and reply comments to the proposed policy statement.

The Commission recognizes that the proceeding at Docket No. M‑2015‑2518883 began prior to the passage of Act 58 and that both address policy considerations related to alternative ratemaking methodologies available to utilities. The Commission notes, however, that Act 58 and the proposed policy statement, while addressing utility alternative ratemaking, each have a different function in the process of establishing such rates for utilities. As will be discussed more fully below, Act 58 gave the Commission express statutory authority to approve alternative rate mechanisms for electric, natural gas, and water or wastewater utilities and what notices of such ratemaking requests are to be given to customers. While establishing the Commission’s express statutory authority to approve alternative rate methodologies, Act 58 did not expressly determine which alternative rate methodology, if any, are to be used by which utility.

On the other hand, the proposed policy statement is intended only to give guidance to fixed utilities and interested stakeholders on what is to be considered when investigating alternative ratemaking methodologies in a Section 1308 rate proceeding. While intending to assist utilities and stakeholders, the policy statement does not establish a binding norm, nor does it establish a predicate for the adoption of an alternative rate mechanism by any fixed utility. The Commission is continuing to review the comments submitted under Docket No. M‑2015‑2518883, as well as the comments submitted under the above‑referenced Docket relating to the proposed policy statement and will consider how to proceed, taking into consideration what, if any, impact Act 58 has on the policy statement and how that policy statement will interact with Act 58.

**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).

In the Tentative Order, the Commission noted that we had previously recognized and proposed similar policy goals in the *Fixed Utility Distribution Rates Policy Statement* proceeding at Docket No. M‑2015‑2518883.[[2]](#footnote-2) 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.

**1. Comments**

Commenters addressing the implementation of the declaration of policy stated that the policy goals in the *Fixed Utility Distribution Rates Policy Statement* proceeding at Docket No. M‑2015‑2518883 should be reconciled with the declaration of policy articulated in Act 58, while other commenters assert that the policy goals in each proceeding are consistent.[[3]](#footnote-3) Commenters also agreed with the Commission’s position to consider all policy goals provided for in law and regulation.[[4]](#footnote-4) While agreeing with the Commission’s position to consider all policy goals, some commenters requested that the Commission should be more explicit in articulating the policy goals.[[5]](#footnote-5) Yet other Commenters suggest the Commission should consider policies that promote strong labor protections, quality job creation and workplace safety.[[6]](#footnote-6) Finally, Commenters suggested that the Commission should promote performance based rates to improve safety, reliability, service and quality.[[7]](#footnote-7)

**2. Disposition**

As stated in the TIO, 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. The Commission declines to state or establish in this proceeding more specific policy goals to be considered in future base rate proceedings. We note that Section 1330 of the Code applies to NGDCs, EDCs, water or wastewater utilities and city natural gas distribution operations, for which more specific policy goals may vary based on the needs of the utility and its customers at any given point in time. Regarding the policy goals articulated in the *Fixed Utility Distribution Rates Policy Statement* proceeding at Docket No. M‑2015‑2518883, the Commission will address those policy goals in that proceeding.

**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).

**1. Base Rate Proceeding**

In the TIO, the Commission proposed 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 interpreted 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 interpreted 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 interpreted 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 noted 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.

**a. Comments**

Commenters agree with the Commission’s interpretations of Section 1330(b).[[8]](#footnote-8) UGI, however, asserts that base rate filings under Section 1308 that do not affect more than 5% of the customers and that do not involve amounts in excess of 3% of the total gross annual interstate operating revenues of the public utility are still subject to full Commission review and provide interested parties with the same ability to be heard. UGI, asserts, therefore, that the Commission should not limit the approval of such mechanisms to the subset of base rate cases that constitute a general rate increase under Section 1308(d). UGI further asserts that requiring approval in a general rate case is not required to fulfil the Commission’s obligation to prescribe the specific procedures for the approval of an application to establish alternative rates as the Commission already has established procedures applicable to base rate cases which do not constitute a general rate increase.[[9]](#footnote-9)

UGI states alternative rate mechanisms can include rates subject to automatic adjustment authorized under Section 1307 of the Code and that Act 58 clearly requires such alternative rate mechanisms to be the context of base rate cases. UGI states, however, that Section 1307 rate mechanisms, once established, should be able to operate and be reviewed in Section 1307 proceedings, and Section 1308 base rate proceedings. UGI posits that if an NGDC were to propose an alternative rate mechanism for the recovery of purchased gas costs, and the mechanism was approved in a Section 1308 base rate case, it is presumed that the NGDC would be permitted to operate the alternative purchased gas cost recovery mechanism subject to review in Section 1307 filings.[[10]](#footnote-10)

PPL also asserts that the language of Section 1330(b)(1) referring to a base rate proceeding contemplates any Section 1308 base rate proceeding and should not be limited to Section 1308(d) proceedings. PPL further asserts that establishing a Section 1307 mechanism in the context of an initial Section 1308 proceeding is consistent with other established 1307 mechanisms. PPL states that it has specific experience with this interpretation with respect to two of its existing automatic adjustment clauses – the Competitive Enhancement Rider (CER) and the Storm Damage Expense Rider (SDER), both of which operate under the construct set forth in Section 1307, after being approved in a Section1308(d) proceeding. PPL notes that Act 58 provides that the Commission may approve an application to establish alternative rates and rate mechanisms including, but not limited to the types defined in Act 5, and that rates may be based on a combination or more than one mechanism.[[11]](#footnote-11)

OCA asserts that a Section 1308(d) general rate proceeding is the correct forum. OCA states that a 1308(d) proceeding will draw the largest and most diverse group of stakeholders and ordinarily provides the greatest opportunity for individual ratepayer participation, while rate filings under other Sections of 1308 generally draw little involvement from the rate-paying public and tend to draw fewer intervenors, making such proceedings not in the public interest. OCA asserts that a Section 1308(d) proceeding is the best and most reasonable forum for the evaluation of a utility’s return of equity within the investigation of all the components of the utility’s revenues and expenses.[[12]](#footnote-12)

**b. Disposition**

The Commission adopts the interpretation of Section 1330(b)(1) as requiring utilities seeking to obtain Commission approval of an alternative rate or rate mechanism under Section 1330 of the code, 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 clarifies that the reference to Section 1307 in Section 1330(b) as simply permitting subsequent changes or adjustments to a previously approved alternative rate mechanism through a subsequent Section 1307 proceeding. The Commission noted 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 1307 rate filing.

Regarding the comments of PPL and UGI that Section 1330(b) permits the Commission to approve an application by a utility to establish an alternative rate or rate mechanism through other Section 1308 proceedings, the Commission is not persuaded by their arguments. To begin with, we note that while PPL asserts that the Commission has approved alternative rates such as its CER and SDER riders, PPL acknowledges that these riders were introduced and approved in a Section 1308(d) proceeding at Docket No. R-2012-2290597. This reinforces the Commission’s interpretation of Section 1330(b). Furthermore, neither PPL nor UGI provide persuasive arguments that the Legislature’s use of the phrase “base rate proceeding” as involving anything less than a comprehensive or extensive examination of a utility’s total revenues, expenses, taxes, capital costs and rate structure. As the OCA points out, 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 proposal.

We further find that the term “alternative rate” is not defined in the Code and is a rather amorphous term that could apply to many types of rates. Section 1330(f), does however, define several alternative rate mechanisms, such as decoupling mechanism, formula rates, multiyear rate plan and performance‑based rates. These definitions make reference to distribution rates and revenue requirements in a manner that indicates that Section 1330 is intended to address comprehensive base rate proceedings.[[13]](#footnote-13) While these defined alternative rate mechanisms, by definition allow for adjustments in rates without another full base rate proceeding, they are predicated on the fact that the rates are initially determined in a base rate proceeding that initially establishes the utility’s revenue requirements consistent with well established ratemaking principles.

Accordingly, the Commission declines to adopt the interpretation put forth by PPL and UGI. With that said, the Commission notes that Section 1330(e) specifically states that “[n]othing in this section shall be construed as limiting the existing ratemaking authority of the commission or be construed to invalidate or void any rate mechanisms

approved by the commission prior to the effective date of this section.” 66 Pa. C.S. § 1330(e). As such, it is not the intent of the Commission to preclude utilities from proposing rates permitted under existing law.

**2. Other Provisions of Law**

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 noted that the word “notwithstanding” means “in spite of.”[[14]](#footnote-14) Accordingly, the Commission proposed 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 proposed 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.

**a. Comments**

Commenters also agree with the Commission’s interpretations of Section 1330(b) regarding its effect on other provisions of law.[[15]](#footnote-15) Some Commenters request that the Commission should explicitly provide that the limitations of Section 2806.1(k) and 2807(f)(4) relating to the recovery of decreased revenues do not restrict recovery of such revenues through alternative rates or rate mechanisms considered and approved by the Commission under Section 1330(b), including reconcilable adjustment charges consistent with Section 1307 of the Code.[[16]](#footnote-16) FirstEnergy argues that the pre‑existing restrictions on recovery of lost distribution revenues contained within Act 129 is explicitly acknowledged by Act 58, yet an exception is clearly established to allow that, in circumstances where an alternative ratemaking mechanism is proposed, in the context of a base rate proceeding, under Section 1308 of the Code. FirstEnergy goes on to argue that an EDC could not propose and be granted a mechanism for such recovery through its EE&C or other such proceeding filed under Act 129, this exception allows for establishment of a mechanism under certain discrete instances that will offer the Commission further scrutiny of the proposal – a concern the General Assembly was affirmatively intending to address by including this revision to the bill in the course of its passage.[[17]](#footnote-17)

EAP also asserts that subsection 1330(b)(2) authorizes the Commission to allow the recovery of decreased revenues resulting from the reduction of energy consumption or reduction of demand under Act 129 via a reconcilable adjustment charge consistent with Section 1307 of the Code. EAP requests that the Commission clarify and expand its statement in the TIO to avoid any future argument that Section 1307 mechanisms or

adjustment charges are not available to recover lost revenues attributable to Act 129 in the context of a request in a base rate proceeding.[[18]](#footnote-18)

IEC asserts that the prohibitions in Sections 2806.1(k)(2) and 2807(f)(4) are express prohibitions against the consideration of particular utility accounting items, specifically, lost or decreased revenues, as recoverable costs. IEC also asserts that this prohibition of a category of costs is not the same as prohibition of an alternative rate mechanism. IEC states that a plain reading of Section 1330(b) appears to indicate the Legislature’s intent to address and supersede existing prohibitions of alternative ratemaking structures and not the inclusion of lost or decreased revenues as recoverable costs.[[19]](#footnote-19)

OCA states that Sections 2806.1(k)(2) and 2807(f)(4) are the result of Act 129, which allows EDCs to establish automatic surcharges to recover the costs of energy efficiency, demand response and smart meter programs. OCA asserts that the General Assembly, however, declared that such cost recovery shall not include “decreased revenues of an electric distribution company due to reduced energy consumption or changes in energy demand,” 66 Pa. C.S. § 2806.1(k)(2). OCA recognizes that alternative ratemaking mechanisms, such as rate decoupling, may inherently provide EDCs with some recovery of revenues that are attributable to reduced energy consumption or changes in energy demand. OCA, however, argues 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 recovery only such revenues.[[20]](#footnote-20)

**b. Disposition**

The Commission is not persuaded by either arguments proffered by OCA or the EDCs. 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.”[[21]](#footnote-21) Accordingly, the Commission interprets 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 interprets 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, despite the prohibitions in Section 2806.1(k)(2) and 2807(f)(4) of the Code.

The Commission declines to provide further guidance on this issue as both the OCA and the EDCs appear to be addressing specific costs that may, or may not, be permitted to be included in determining an EDC’s revenue requirement. The Commission declines to make a binding ruling on this issue in this proceeding as such a determination is fact dependent and can only be addressing in a proceeding that affords all interested parties an opportunity to present and cross‑examine evidence and fully brief the issues and the law.

**3. Covered Costs and Expenses**

Regarding subsections 1330(b)(2) and (3) the Commission proposed 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 proposed 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.

**a. Comments**

Commenters also agree with the Commission’s interpretations of Section 1330(b)(2) and (3).[[22]](#footnote-22) LDC suggests that Project Labor Agreements, local hiring targets and Best Value Contracting should be utility practices supported by utility alternative ratemaking.[[23]](#footnote-23) IBEW suggests that alternative rate mechanisms would allow utilities to increase reliability, perform maintenance and make investments in modern technology while increasing safety for workers and the public.[[24]](#footnote-24) State Senators Lisa M. Boscola and John T. Yudichak state that alternative rates and rate mechanisms can better align utility rates with performance outcomes that improve safety, reliability, service and quality and that implementation of Act 58 must include strong training and protective standards.[[25]](#footnote-25)

The OCA, IEC and Industrials request that the Commission establish specific consumer protections that should apply to utility alternative rate mechanisms.[[26]](#footnote-26) AEEI requests that the Commission develop specific guidance on what is to be included in utility alternative ratemaking proposals.[[27]](#footnote-27) PECO, Duquesne, EAP, PPL and FirstEnergy state that the Commission should maintain the flexibility provided in Act 58 for utilities to propose rate mechanisms and rate designs that fit their individual financial and operational needs and not impose specific customer protections.[[28]](#footnote-28)

**b. Disposition**

The Commission interprets subsection 1330(b)(2) as providing self-explanatory direction as to what revenue may be recovered through alternative rates and rate mechanisms. The Commission interprets 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.

The Commission declines to set additional requirements, parameters or customer protections in this proceeding as requested by various commenters. The Commission finds that Section 1330 has broad application to electric, natural gas, water and wastewater utilities, whereas, the commenters’ proposals were specific to EDCs. The Commission also finds that Section 1330 provides for a variety of alternative ratemaking mechanisms, whereas, the commenters’ proposals addressed specific forms of alternative ratemaking mechanisms. Establishing such additional requirements, parameters or customer protections in this proceeding is inappropriate. Such binding norms can only be established through legislation, rulemaking or adjudication.

In this proceeding, the Commission is simply providing guidance on how Act 58 will be implemented. Of note, Act 58, did not include the additional requirements, parameters or customer protections commenters’ requested. The Commission also declines to initiate a rulemaking through this proceeding. Again, the Commission notes that many of the suggested requirements, parameters and customer protections address specific utility functions or rate mechanisms that the utilities may or may not propose to implement. The Commission finds that at this time, it would not at this time be the best use of the interested stakeholders’, utilities’ or the Commissions’ resources to establish through rulemaking requirements for functions or rate mechanisms that may never be implemented by any utility. Accordingly, the Commission finds that such requirements, parameters and customer protections are best addressed in an adjudicated base rate proceeding based on the rate mechanism proposed by the utility and the facts associated with that utility and its proposed rates.

**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 proposed 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 proposed 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 proposed to require the utility to post this notice on its publicly accessible website. The Commission also proposed 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 proposed 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 proposed 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 proposed 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 proposed that the utility distribute the tariff pages containing the list of modifications to customers through a bill insert. In addition, the Commission proposed 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.

**1. Comments**

Duquesne suggests that any notice contain plain language explanations of the rate recovery method and that the Commission be flexible in its interpretation of the notification requirements. Duquesne and FirstEnergy disagree with the proposal to

distribute tariff pages to customers via a bill insert and suggests that the bill inserts contain explanations of adjustments consistent with the requirements of 52 Pa. Code § 53.45, as is currently done.[[29]](#footnote-29)

EAP, PECO, PPL and Columbia generally agree with the proposal to require utilities to include revisions to the notice language in 52 Pa. Code § 53.45(b)(1)(i), noting that the changes clearly state that the company’s rate filing includes a request for approval of an alternative rate mechanism and provides a summary of the rate impacts by customer class. EAP, PECO also agree with the requirement that utilities provide a link to the notice sent via bill insert on its customer home page, which will ensure availability of the message to those customers who receive e‑bills, pay their utility bill via automatic payment, or otherwise miss the insert. PPL does not object to including a link on its customer home page, however, it does have concerns with including links on any page dedicated to a customer class. EAP, PECO, PPL and UGI, however, do not believe it is good practice or necessary to include copies of the tariff pages as part of the bill insert, as it would increase costs and not currently mandated. EAP, PECO, PPL and Columbia suggest that utilities be allowed to include in the bill inserts the information required by Subsection 1330(c)(1) and an explanation of how to access the tariff pages via electronic means.[[30]](#footnote-30)

PAWC supports the proposed revision to the notice language provided for in 52 Pa. Code § 53.45(b)(1)(i) and the requirement to provide bill inserts provided for in 52 Pa. Code § 53.45(4). PAWC, however, requests that the Commission permit utilities to use direct mail in lieu of bill inserts. PAWC supports the requirement to post the notice on the public utility’s website as well as providing a link to the notice on the customer and customer class designated home page.[[31]](#footnote-31)

AEEI notes that there is a distinction between “rate design” and “ratemaking,” with the former describing the electricity rates and tariffs that apply to specific customers, whereas the latter describes the general process for setting utility revenue requirements. AEEI also notes that an outcome of a utility application under Section 1330 may be new or modified retail customer tariffs, but this is not a necessary outcome. AEEI states that the use of multi-year rate plans or performance incentives will not necessarily require utilities to modify customer tariffs. AEEI suggests that while customers must be notified of tariff changes, the notice guidelines should avoid creating customer confusion. AEEI also suggests that the notice language should be flexible enough to describe the full range of possible rate designs that may be implemented and should include information about tools, services and other information available to help customers manage their energy usage and costs.[[32]](#footnote-32)

OCA supports early and effective notice to customers and agrees that the initial notice must include information on the alternative ratemaking proposal. OCA, however, is concerned that the requirements may provide insufficient notice. OCA suggests that the notice should describe in plain language how the alternative ratemaking mechanism operates and the goal of the mechanism. In addition, the OCA suggests that the bill inserts should include a plain language narrative of how the mechanism will impact a customer’s utility bill and how a customer may mitigate or offset any potential surcharges or rate hikes. OCA further suggests that the notices should be provided to the Commission’s Bureau of Consumer Services and the OCA for review and comment before being sent to customers.[[33]](#footnote-33)

OCA also submits that instead of providing only a notice of a Commission decision by providing the relevant tariff pages, the utility should be required to include information on the final and approved alternative ratemaking mechanism in a conspicuous bill insert printed in plain language. OCA asserts that this notice should also be provided to the Commission’s Bureau of Consumer Services and the OCA for review and comment before being sent to customers.[[34]](#footnote-34)

OSBA agrees that customer notice of proposed alternative ratemaking is critical, however, OSBA is concerned that requiring the inclusion of tariff pages in a bill insert would be costly, unduly burdensome and create customer confusion. OSBA asserts that including information with the bill inserts regarding how customers may electronically access tariff pages is an adequate and appropriate alternative. OSBA recommends that a working group of interested stakeholders be created to discuss notice requirements and report any consensus to the Commission.[[35]](#footnote-35)

PPL and Duquesne object to OCA’s suggestion to include additional levels of detail in the initial notice as such information may cause confusion. In addition, PPL objects to providing the same level of detail upon approval of the rate mechanism. PPL asserts that this level of detail may cause customers to struggle to understand how the proposal changed and why, or they may assume that they have already been notified of the changes and disregard any messaging on the final approved mechanism. PPL and PAWC also oppose having OCA and the Commission’s Bureau of Consumer Services review and comment on the notices, noting the strict timing limitations on the notices required by 52 Pa. Code § 53.45(a). PPL further notes that it currently and on a consistent basis provides customers with information on steps to mitigate or offset the impact of new rates on their bill.[[36]](#footnote-36)

**2. Disposition**

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 will 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 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 66 Pa. C.S. § 1330(b) and the effective date of the adjustments).**

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 \_\_%.

\*\*\*\*\*

The Commission agrees with EAP, PECO, PPL and Columbia that the proposed changes to the notice language contained in 52 Pa. Code § 53.45(b)(1)(i) that more closely matches the language in Subsection 1330(c)(1). In addition, the Commission agrees with Duquesne, EAP, PECO, PPL and Columbia that the utilities be given some flexibility in how they describe the proposed alternative rate mechanism and its impacts, noting that the summary and impacts will vary depending on the proposed rate mechanism. Accordingly, we revised the changes to the notice language contained in 52 Pa. Code § 53.45(b)(1)(i) to mirror the language in 66 Pa. C.S. § 1330(c)(1)(iii).

The Commission will not require that the notice describe in plain language how the alternative ratemaking mechanism operates, the goal of the mechanism, a narrative of how the mechanism will impact a customer’s utility bill or how a customer may mitigate or offset any potential surcharges or rate hikes as suggested by the OCA. We agree with PPL and Duquesne that this level of detail may confuse customers. In addition, we decline to adopt the OCA’s suggestion that the notices be provided to the Commission’s Bureau of Consumer Services and the OCA for review and comment before being sent to customers. The Commission agrees with PPL and Duquesne that the current regulations do not require such a review, nor does the timing requirements of 52 Pa. Code § 53.45 permit an adequate review.

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 will require a utility seeking an alternative rate or rate mechanism, to provide bill inserts as prescribed in 52 Pa. Code § 53.45(b)(4) (relating to alternative method) in lieu of 52 Pa. Code § 53.45(b)(2) (relating to by written or printed notice). We agree with PAWC’s request that the Commission permit utilities to use direct mail in lieu of bill inserts. In addition, the Commission will require the utility to post this notice on its publicly accessible website. The Commission will also require that the utility provide a link to this notice on the utility’s customer home page. In recognition of the fact that each utility’s websites are unique, as asserted by PPL, we will not dictate how a utility is to provide notice to individual customer classes on its website but simply require that the utility provide a link to the notice in a manner that allows any customer to see and access the link upon initial access to the utility’s website, at a minimum.

To meet the new requirements in subsections 1330(c)(1) and (2) that the utility must notify customers of the Commission’s decision, the Commission will require utilities to provide a plain language summary of the Commission’s decision and the approved alternative rate or rate mechanism and, if applicable, a schedule of the rate adjustments that will occur as a result of the Commission’s approval of the utility’s application under 66 Pa. C.S. § 1330(b) and the effective dates of the adjustments. In addition, the Commission will require the utility to provide a link to this plain language summary of the Commission’s decision and the approved alternative rate or rate mechanism and, if applicable, a schedule of the rate adjustments that will occur on the utility’s customer home page. Again, we will not dictate how a utility is to provide notice to individual customer classes on its website but simply require that the utility provide a link to the notice in a manner that allows any customer to see and access the link upon initial access to the utility’s website, at a minimum.

The Commission will not require the utility to provide tariff pages to customers as bill inserts. The Commission agrees with the commenters that noted that this requirement would be costly and unduly burdensome and confusing to customers.

**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 proposed 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,[[37]](#footnote-37) 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(e) of the Code, 66 Pa. C.S. § 1330(e). The Commission postulated 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 did not propose any additional specific procedures unless or until their need becomes apparent.[[38]](#footnote-38)

Finally, the Commission recognized 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 postulated 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 did not propose any additional specific procedures regarding such adjustments at this time.

**1. Comments**

Duquesne and FirstEnergy agree that this approach is logical and well‑understood by utilities, statutory advocates and other interested stakeholders. Duquesne also agrees that Section 1330 of the Code does not alter and will not change the well‑established burden of proof standards placed on a utility seeking to change its rates through a Section 1308 base rate proceeding. Duquesne further agrees that the information provided pursuant to 52 Pa. Code § 53.53 is quite comprehensive and far‑reaching and, unless or until proven otherwise, will provide the requisite information that the Commission needs to fairly and fully evaluate any alternative mechanism proposal. Finally, Duquesne agrees that the parameters for any adjustments or reconciliations required by an alternative rate mechanism should be part of the final Commission action in the Section 1308(d) base rate proceeding and do not require any additional specific regulations at this time.[[39]](#footnote-39)

PAWC agrees that base rate proceedings include an in‑depth review and examination of a public utility’s financial status and operations. PAWC also states that the information a public utility is required to submit as part of a base rate proceeding is detailed and comprehensive, as such, no additional filing requirements are needed. PAWC also notes that it is cognizant of its customers and provides quality service at just and reasonable rates as approved by the Commission. PAWC also states that it has and continues to engage in customer education and asserts that utilities should not be required to submit an education plan as part of an alternative rate mechanism filing.[[40]](#footnote-40)

E‑Advocates agree that Section 1330(d), whereby a utility seeking to use or employ an alternative rate or rate mechanism must do so through a Section 1308(d) base rate proceeding and is consistent with Pennsylvania jurisprudence that places the burden on utilities to show that tariff proposals are just and reasonable. E‑Advocates also agree that base rate cases allow for interested stakeholders to participate in an in‑depth examination of a utility’s financial status, as well as proposed policies, ratemaking and rate‑design structures that would impact ratepayers.[[41]](#footnote-41)

IEC concurs with the Commission’s interpretation of Section 1330(d). OCA also agrees with the Commission’s interpretation. OCA, OSBA, IEC and Industrials, however, submit that the Commission should use its authority under Subsection 1330(d) to create specific procedures concerning filing requirements, consumer protections, and consumer education plans when utilities apply for alternative ratemaking mechanisms.[[42]](#footnote-42)

PPL, PECO and EAP again note that it is its position that the reference to “a base rate proceeding” in Section 1330(b)(1) contemplates any Section 1308 base rate proceeding and should not be limited to Section 1308(d) proceedings. PPL believes the processes for base rate cases under Section 1308 and automatic adjustment clauses under Section 1307 are well established and familiar to stakeholders. PPL also supports the position that the information required by 52 Pa. Code § 53.53 is comprehensive and will meet the needs to support a proposal for any alternative rate or rate mechanism. PPL also agrees that the details of reconciliation for a given permissible mechanism be established in the context of the 1308 base rate proceeding as this is the most efficient and effective method.[[43]](#footnote-43)

**2. Disposition**

To meet requirements of Section 1330(d), 66 Pa. C.S. § 1330(d), the Commission will 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.

The Public Utility Code provides that in any Section 1308 proceeding, the utility has the burden of establishing the justness and reasonableness of tariff proposals. 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,[[44]](#footnote-44) 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(e) of the Code, 66 Pa. C.S. § 1330(e). The Commission finds, 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 proceedings are adequate to meet the Section 1330 requirements. Accordingly, the Commission will not propose any additional specific procedures unless or until their need becomes apparent.[[45]](#footnote-45)

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 finds 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.

Regarding the assertions by PPL, PECO and EAP that the reference to “a base rate proceeding” in Section 1330(b)(1) contemplates any Section 1308 base rate proceeding and should not be limited to Section 1308(d) proceedings, as discussed in Section B.1.b. of this Order, the Commission is not persuaded by their arguments. We, however, again note that that Section 1330(e) specifically states that “[n]othing in this section shall be construed as limiting the existing ratemaking authority of the commission or be construed to invalidate or void any rate mechanisms approved by the commission prior to the effective date of this section.” 66 Pa. C.S. § 1330(e). As such, it is not the intent of the Commission to preclude utilities from proposing rates permitted under existing law.

Regarding the requests by OCA, OSBA, IEC and Industrials that the Commission should use its authority under Subsection 1330(d) to create specific procedures concerning filing requirements, consumer protections, and consumer education plans when utilities apply for alternative ratemaking mechanisms, as discussed in Section B.3.b. of this Order, the Commission is not persuaded by their arguments. The Commission finds that Section 1330 has broad application to electric, natural gas, water and wastewater utilities, whereas, the commenters’ proposals were specific to EDCs. The Commission also finds that Section 1330 provides for a variety of alternative ratemaking mechanisms, whereas, the commenters’ proposals addressed specific forms of alternative ratemaking mechanisms. Establishing such additional requirements, parameters or customer protections in this proceeding is inappropriate.

**E. Section 1330(f) – Definitions**

This section defines decoupling mechanism, multiyear rate plan, performance‑based rates and utility. In particular, the term 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. The Commission received no comments in opposition to this interpretation and will adopt it.

**Conclusion**

This Implementation Order outlines the key portions of Act 58, 66 Pa. C.S. § 1330, that the Commission is required to administer and provides guidance to the public and utility industry regarding how these provisions are interpreted by the Commission and how they are to be implemented. The Commission thanks the stakeholders for their through and insightful comments on this important legislation; **THEREFORE,**

**IT IS ORDERED:**

1. That the Commission hereby adopts the interpretation and implementation of Section 1330 of the Public Utility Code, 66 Pa. C.S. § 1330, as set forth in this Order.

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 and all parties that filed comments in this proceeding.

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

**BY THE COMMISSION**

Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: April 25, 2019

ORDER ENTERED: April 25, 2019

1. *See Fixed Utility Distribution Rates Policy Statement*, Proposed Policy Statement Order at Docket No. M‑2015‑2518883, entered May 23, 2018. [↑](#footnote-ref-1)
2. *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-2)
3. Duquesne Comments at 2-3, E‑Advocates Comments at 2 and Reply Comments at 1-2. [↑](#footnote-ref-3)
4. PAWC Comments at 1, FirstEnergy Comments at 3, PPL Comments at 2. [↑](#footnote-ref-4)
5. AEEI Comments at 1-2 and Reply Comments at 1-2, E‑Advocates Comments at 2-3, IEC Comments at 2-3, Industrials Reply Comments at 2, OCA Comments at 3-4 and Reply Comments at 2-3, OSBA Reply Comments at 2. [↑](#footnote-ref-5)
6. IBEW Comments at 1 and LDC Comments at 2-5. [↑](#footnote-ref-6)
7. State Senator Lisa M. Boscola and State Senator John T. Yudichak Comments. [↑](#footnote-ref-7)
8. AEEI Comments at 2-3, Duquesne Comments at 3-4, E‑Advocates Comments at 5, EAP Comments at 2-3, FirstEnergy Comments at 4, IEC Comments at 3-4, Industrials Reply Comments at 6-8, OCA Comments at 4-5, OSBA Reply Comments at 2-3, and PAWC Comments at 2. [↑](#footnote-ref-8)
9. UGI Comments at 4-5. [↑](#footnote-ref-9)
10. UGI Comments at 6. [↑](#footnote-ref-10)
11. PPL Comments at 2-3 and Reply Comments at 3. *See also* PECO Reply Comments at 5 and FirstEnergy Reply Comments at 3-4. [↑](#footnote-ref-11)
12. OCA Reply Comments at 4-5, 7. [↑](#footnote-ref-12)
13. Decoupling mechanism is “[a] rate mechanism that reconciles **authorized distribution rates or revenues** for differences between projected sates used to set rates and actual sales….” Formula rates are “[r]ates that are periodically adjusted based on a predetermined formula without the need for **a full base rate proceeding**.” Multiyear rate plan is “[a] rate mechanism under which the commission **sets base rates and revenue requirements** for a multiyear plan period and authorizes **periodic changes in base rates**….” Performance‑based rates are “[r]ates that are set or adjusted based on a public utility’s financial or operating performance. Such mechanisms can be part of, or in addition to, **existing rate base/rate of return ratemaking or cash flow ratemaking method and may include capital costs and return thereon**.” [↑](#footnote-ref-13)
14. *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-14)
15. AEEI Comments at 2-3, Duquesne Comments at 4, E‑Advocates Comments at 3-5, EAP Comments at 4, FirstEnergy Comments at 4, OCA Comments at 4-7, PAWC Comments at 2 and PPL Comments at 4. [↑](#footnote-ref-15)
16. E‑Advocates Reply Comments at 2-3, EAP Comments at 4 and Reply Comments at 4, PECO Comments at 2-3 and Reply Comments at 3-4, PPL Reply Comments at 3. [↑](#footnote-ref-16)
17. FirstEnergy Reply Comments at 5-6. [↑](#footnote-ref-17)
18. EAP Comments at 4. *See also* PPL Reply Comments at 2-3 and E-Advocates Reply Comments at 2-3. [↑](#footnote-ref-18)
19. IEC Comments at 4-5. [↑](#footnote-ref-19)
20. OCA Comments at 5-7 and Reply Comments at 5-6. *See also* IEC Reply Comments at 3. [↑](#footnote-ref-20)
21. *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-21)
22. Duquesne Comments at 4-5. [↑](#footnote-ref-22)
23. LDC Comments at 1-5. [↑](#footnote-ref-23)
24. IBEW Comments at 1. [↑](#footnote-ref-24)
25. State Senators Lisa M. Boscola and John T. Yudichak Comments at 1-3. [↑](#footnote-ref-25)
26. OCA Comments at 12-13, IEC Reply Comments at 4-5, Industrial Comments at 1-8. [↑](#footnote-ref-26)
27. AEEI Reply Comments at 1-3. [↑](#footnote-ref-27)
28. PECO Reply Comments at 2-3, Duquesne Reply Comments at 2-5, EAP Reply Comments at 2-3, PPL Reply Comments at 4-6, FirstEnergy Reply Comments at 6-7. [↑](#footnote-ref-28)
29. Duquesne Comments at 5-7 and Reply Comments at 5-6, FirstEnergy Comments at 5-6. [↑](#footnote-ref-29)
30. EAP Comments at 5-6, PECO Comments at 4, PPL Comments at 4-6, UGI Comments at 7, and Columbia Comments at 2-3. [↑](#footnote-ref-30)
31. PAWC Comments at 2. [↑](#footnote-ref-31)
32. AEEI Comments at 3. [↑](#footnote-ref-32)
33. OCA Comments at 7-8 and OCA Reply Comments at 7-8. [↑](#footnote-ref-33)
34. OCA Comments at 8-9 and OCA Reply Comments at 8-9. [↑](#footnote-ref-34)
35. OSBA Reply Comments at 3-4. [↑](#footnote-ref-35)
36. PPL Reply Comments at 6-7, Duquesne Reply Comments at 5-6, and PAWC Reply Comments at 3-4. [↑](#footnote-ref-36)
37. 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-37)
38. 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-38)
39. Duquesne Comments at 7-8 and Reply Comments at 3-5, FirstEnergy Reply Comments at 6-7. [↑](#footnote-ref-39)
40. PAWC Comments at 2-3 and Reply Comments at 4-5. [↑](#footnote-ref-40)
41. E‑Advocates Comments at 5. [↑](#footnote-ref-41)
42. IEC Comments at 6 and Reply Comments at 4-6, OCA Comments at 9-15 and Reply Comments at 9‑11, OSBA Reply Comments at 4-6, Industrials Reply Comments at 8-10. [↑](#footnote-ref-42)
43. PPL Comments at 7-8 and Reply Comments at 7-8, PECO Reply Comments at 5, EAP Reply Comments at 4-6. [↑](#footnote-ref-43)
44. 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-44)
45. 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-45)