

STATEMENTS OF POLICY

Title 52—PUBLIC UTILITIES

PENNSYLVANIA PUBLIC UTILITY COMMISSION

[52 PA. CODE CH. 69]

[M-2015-2518883]

Fixed Utility Distribution Rates

The Pennsylvania Public Utility Commission (Commission), on July 11, 2019, adopted a policy statement that is intended to identify factors the Commission will consider in determining just and reasonable distribution rates that promote the efficient use of electricity, natural gas or water, the use of distributed energy resources; and reduce disincentives for efficient use and resources to ensure adequate revenue to maintain the safe and reliable operation of fixed utility distribution systems.

Public Meeting held
July 11, 2019

Commissioners Present: Gladys Brown Dutrieuille, Chairperson; David W. Sweet, Vice Chairperson; Norman J. Kennard; Andrew G. Place, statement follows; John F. Coleman, Jr.

*Fixed Utility Distribution Rates Policy Statement;
M-2015-2518883*

Final Policy Statement Order

By the Commission:

On May 23, 2018, the Pennsylvania Public Utility Commission (Commission) issued for comment a Proposed Policy Statement that identifies factors the Commission will consider in determining just and reasonable distribution rates that promote the efficient use of electricity, natural gas or water, and the use of distributed energy resources, as well as reduce disincentives for such efficient use and resources and ensure adequate revenue to maintain the safe and reliable operation of fixed utility distribution systems. The Proposed Policy Statement included the addition of a new section at Section 69.3303 that provides illustrations of possible distribution ratemaking and rate design options for electric distribution and natural gas distribution companies. With this Order the Commission adopts the Fixed Utilities Distribution Rates Policy Statement as set forth in Annex A to this Order.

Background

At the March 3, 2016 en banc hearing, the Commission sought information from interested parties on the efficacy and appropriateness of alternative rate methodologies, such as revenue decoupling. Invited participants, including researchers, energy companies and consumer advocates testified before the Commission, giving their views on three specific topics. These topics enquired: (1) whether revenue decoupling or other similar rate mechanisms can encourage energy utilities to better implement energy efficiency and conservation programs; (2) whether such rate mechanisms are just and reasonable and in the public interest; and (3) whether the benefits of implementing such rate mechanisms outweigh any associated costs. The following witnesses provided testimony at the hearing: Hough Gilbert Peach, PhD, H. Gil Peach & Associates, LLC; Eric Ackerman, Director of Alternative Regulation at Edison Electric Institute; Tanya J. McCloskey, Acting Pennsylvania Consumer Advocate; Paula

A. Strauss, Director of Regulatory Strategy and Support, NiSource, Inc.; Mark Newton Lowry, PhD, President of Pacific Economics Group, on behalf of Natural Resources Defense Council; Richard Sedano, Principal and US Programs Director of The Regulatory Assistance Project; Scott R. Koch, Financial Analyst, PPL Electric Utilities Corp. (PPL); Eric Miller, on behalf of the Keystone Energy Efficiency Alliance (KEEA), the Clean Air Council and Natural Resources Defense Council (NRDC); and David F. Ciarlone, PE, on behalf of the Industrial Energy Consumers of Pennsylvania.

Following the March 3rd hearing, the Commission allowed for any interested party to submit written comments under this docket by no later than March 16, 2016. The following parties submitted written comments and supplied additional input on the issue of revenue decoupling in Pennsylvania: Duquesne Light Company (Duquesne); PECO Energy Company (PECO); UGI Distribution Companies (UGI); Citizens' Electric Company of Lewisburg, PA and Wellsboro Electric Company (Citizens' and Wellsboro); Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company (collectively, FirstEnergy); Citizens for Pennsylvania's Future (PennFuture); KEEA; Energy Freedom Coalition of America; Environmental Defense Fund (EDF); Sierra Club; Pennsylvania Utility Law Project (PULP); AARP Pennsylvania; Northeast Energy Efficiency Partnerships; Citizen Power, Inc.; Office of Consumer Advocate (OCA); Office of Small Business Advocate (OSBA); Energy Association of Pennsylvania (EAP); National Association of Water Companies; Industrial Energy Consumers of Pennsylvania, Duquesne Industrial Intervenors, Met-Ed Industrial Users Group, Penelec Industrial Customer Alliance, Penn Power Users Group, Philadelphia Area Industrial Energy Users Group, PP&L Industrial Customer Alliance, and West Penn Power Industrial Intervenors (Industrials); and The Pennsylvania State University (PSU).

On March 2, 2017, the Commission issued a Tentative Order at the above-referenced Docket to continue the investigation by seeking comment on, and potential processes to advance, alternative rate methodologies that address issues each utility industry is facing. Specifically, the Commission sought comments on what alternative rate methodologies each electric distribution company (EDC), natural gas distribution company (NGDC), and water and wastewater utilities currently employ. In addition, the Commission sought comment on what alternative rate methodologies should be employed by each utility type, addressing the advantages, disadvantages, effects on low-income and income-challenged customers, efficiency programs, frequency of rate cases, interaction with existing rate mechanisms and methodology for implementation. Finally, the Commission noted that utilities had proposed alternative rate methodologies in base rate proceedings and sought comment on whether the Commission should adopt policy statements or rulemakings identifying guidelines for preferred alternative rate methodologies for each utility type and rate class.

The following parties filed written comments to the Tentative Order: AARP; Advanced Energy Economy Institute (AEEI); Alliance for Industrial Efficiency (AIE); American Council for an Energy-Efficient Economy (ACEEE); American Eagle Paper Mills, ArcelorMittal, E-Finity Distributed Generation, Cargill, Ecolab, Schneider Electric, Sheet Metal & Air Conditioning Contractors'

National Association of Pennsylvania, and Veola North America (collectively, CHP Advocates); Aqua Pennsylvania, Inc. (Aqua); The Bureau of Investigation and Enforcement (I&E); Valley Energy, Inc., Citizens' and Wellsboro (collectively, VCW); Columbia Gas of Pennsylvania, Inc. (Columbia); Duquesne; EAP; FirstEnergy; Industrials; KEEA; National Fuel Gas Distribution Corp. (NFG); NRDC; NRDC, Sierra Club, and Clean Air Council (collectively, Council); OCA; OSBA; PECO; Peoples Natural Gas Company LLC and Peoples TWP LLC (collectively, Peoples); Philadelphia Gas Works (PGW); PPL; PULP; and UGI Distribution Companies (UGI).

The following parties filed reply comments to the Tentative Order: AEEI; ACEEE; Columbia; Duquesne; EAP; FirstEnergy; KEEA; NFG; OCA; OSBA; PECO; Peoples; Pennsylvania-American Water Company (PAWC); PPL; PSU; and Strata Policy. The parties provided various comments on the appropriateness of alternative rate methodologies such as revenue decoupling, lost revenue adjustment, straight-fixed-variable pricing, cost trackers, choice of test years, multiyear rate plans, demand charges, standby and backup charges, and demand side management performance incentives.

On May 3, 2018, the Commission adopted the Motion of Vice Chairman Andrew G. Place that set forth the Fixed Utilities Distribution Rates Proposed Policy Statement at 52 Pa. Code §§ 69.3301—69.3303. On May 23, 2018, the Commission entered the Proposed Policy Statement Order at Docket No. M-2015-2518883 that described the various alternative rate methodologies in detail as well as seeking comments on the Proposed Policy Statement. Comments on the Proposed Policy Statement were due within 60 days of the publication in the *Pennsylvania Bulletin*, with reply comments due 90 days after publication. The Proposed Policy Statement was published in the June 23, 2018 *Pennsylvania Bulletin* at 48 Pa.B. 3739.

On June 28, 2018, Governor Wolf signed into law Act 58 of 2018, that amended 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 added Section 1330, 66 Pa.C.S. § 1330 (relating to alternative ratemaking for utilities), that permits the Commission to approve an application by a utility to establish alternative rates and rate mechanisms. The Commission initiated an Act 58 implementation proceeding at Docket No. M-2018-3003269 on August 23, 2018.¹

On August 2, 2018, representatives of the Natural Resources Defense Council, Citizens for Pennsylvania's Future, PA Solar Energy Industries Association, Keystone Energy Efficiency Alliance, Clean Air Council and Philadelphia Solar Energy Alliance filed a joint request that the comment period deadline be extended by 60 days to October 22, 2018, noting the passage of Act 58 that addresses alternative ratemaking. On August 6, 2018, the AEEI filed a response to the above-referenced August 2, 2018 letter, indicating support for the 60-day extension to the comment deadline, also citing the passage of Act 58 as a reason. Finally, on August 9, 2018, the Pennsylvania Environmental Council filed a request that the comment period deadline be extended by 60 days, also noting the passage of Act 58 that addresses alternative ratemaking. On August 14, 2018, the Commission issued a Secretarial Letter granting the requests to extend the comment period by 60 days. Comments to the May 23, 2017 Proposed Policy Statement Order were due by October 22, 2018, with reply comments due by November 20, 2018.

¹ See Implementation of Act 58 of 2018 Alternative Ratemaking for Utilities, Tentative Implementation Order at Docket No. M-2018-3003269, entered August 23, 2018.

The following parties filed written comments to the Proposed Policy Statement Order: ACEEE; AEEI; AIE; Consumer Advisory Council to the Pennsylvania Public Utility Commission (CAC); Columbia; Council; Duquesne; EAP; EDF; FirstEnergy; Greenlots; 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 Intervenor (IA); Industrial Energy Consumers of Pennsylvania (IECPA); KEEA; The Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania, Tenant Union Representative Network and Action Alliance of Senior Citizens of Greater Philadelphia (Low Income Advocates); NRDC; OCA; OSBA; PAWC; the Pennsylvania Environmental Council (PEC); PECO; PPL; PSU; Sierra Club; and Sunrun, Inc. (Sunrun).

The following parties filed reply comments to the Proposed Policy Statement Order: AEEI, Duquesne, EAP, IA, KEEA, OCA, OSBA, PAWC, PECO, PPL, and PSU.

On April 25, 2019, the Commission adopted the Act 58 Implementation Order.² In the Act 58 Implementation Order the Commission stated the following:

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 methodologies, 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 [Docket No. M-2018-3003269] 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.

Act 58 Implementation Order at 3-4.

Discussion

In the Proposed Policy Statement Order, the Commission found that a consistent theme expressed in the comments submitted under Docket No. M-2015-2518883 is that the Commission should not take a one-size-fits-all

² See Implementation of Act 58 of 2018 Alternative Ratemaking for Utilities, Implementation Order at Docket No. M-2018-3003269, entered April 25, 2019.

approach, with some parties suggesting that we establish guidelines.³ The Commission agreed 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. The Commission also agreed that establishing guidelines that each utility and stakeholder should consider in a Section 1308 rate proceeding would be helpful in determining if, the type or types of, and to what extent alternative ratemaking methodologies should be employed.⁴

A. Purpose and Scope

Initially, the Commission proposed a paragraph setting forth the purpose and scope of the Policy Statement. This paragraph was intended to establish what the Commission views as important policy initiatives that must be considered in designing and establishing rates for all classes of fixed utility customers. It was not intended to convey all policy initiatives that are to be considered, or that these policy initiatives are to be considered above all other ratemaking principles, but to identify these policy initiatives as important to the Commission.

1. Comments

The CAC supports the proposal that new rate designs be implemented in the context of a base rate case, must reflect traditional ratemaking principles, and must consider consumer impacts.⁵ IECPA notes that both Act 58 and the Proposed Policy Statement have specified that all alternative rate methodologies must still produce rates that are just and reasonable and both have provided clear policy objectives that alternative ratemaking mechanisms must achieve. IECPA states that it supports these clear delineations of policy goals and objectives but recommends that further concrete steps be taken and proposes that the Commission adopt the Performance Incentive Mechanism Design Process proposed by the Minnesota Office of Attorney General in a Minnesota Public Utility Commission proceeding.⁶

NRDC states that it supports the proposed policy goal of harmonizing utility ratemaking with the identified policy initiatives to ensure that future capital investments by utilities are not at odds with the initiatives. NRDC notes, however, that the Commonwealth will likely experience substantial growth in utility loads due to electric vehicles and other electrification initiatives and that rates should be designed to promote both.⁷ EDF recommends that the Commission provide more detailed direction to utilities on policy goals that future electricity rates are expected to advance and that the Commission initiate a separate proceeding on grid modernization as other states have done.⁸

PAWC asserts that the Act 58 legislative findings and declarations differ in material respects from the statement of purpose and scope that appears in the Proposed Policy Statement. PAWC notes that Section 1330 states that it is the "policy of the Commonwealth that utility

ratemaking should encourage and sustain investment. . . to enhance the safety, reliability or availability of utility infrastructure consistent with the efficient consumption of utility service." PAWC then asserts that the Proposed Policy Statement does not include such an affirmation and offers at least one stated purpose that, absent further elucidation that is not provided elsewhere in the Proposed Policy Statement, could be considered inconsistent with Act 58. While not directly identifying the inconsistency, PAWC implies in a footnote that the Proposed Policy Statement's purpose to avoid future capital additions, without more information, appears to PAWC to be in tension with the legislative findings and declarations of Act 58.⁹

Columbia, Duquesne, EAP, FirstEnergy, PECO and PPL state that Act 58 is much broader and includes mechanisms that support a wide variety of programs and policies, e.g., ones that increase security and resiliency, ensure adequate recovery for maintaining infrastructure, and support customer access to new technologies. Columbia, Duquesne, EAP, PECO and PPL recommend either a revision or reconciliation of the two proceedings in favor of the path set forth with the passage of Act 58. Columbia, Duquesne, EAP, PECO and PPL believe that capital investment or the transfer of that capital investment to innovative technologies should be entertained as better options available under Act 58 than strict avoidance of capital investment.¹⁰

NRDC agrees that when the Commission reviews utility rate requests, it may consider other applicable policy goals established by statute, regulation or case law in addition to those set forth in Act 58. NRDC also believes that the differences between the declaration of policy in Act 58 and the Proposed Policy Statement are not necessarily inconsistent, and that they can be harmonized by the Commission. NRDC further believes that it is important for the Commission to speak to the discrepancies directly and reconcile them clearly. NRDC suggests that the Proposed Policy Statement should endorse the goal of beneficial electrification of Pennsylvania's transportation and building sectors and encourage strategic utility investments that serve this purpose.¹¹

KEEA recommends that the Commission explicitly identify those policy initiatives it alludes to in the Proposed Policy Statement, while clarifying the policy statement's relationship with the policy goals articulated in Act 58. KEEA specifically requests that the Commission explicitly identify the Act 129 Energy Efficiency and Conservation Programs and the Alternative Energy Portfolio Standards as state programs that alternative ratemaking should promote. Next, KEEA recommends that the Commission indicate that its statement of purpose and scope in the Proposed Policy Statement will also serve as guidance for the implementation of Act 58.¹² AEEI is in broad agreement with the initial comments filed by KEEA. AEEI further states that the Proposed Policy Statement is complementary to the Act 58 Tentative Implementation Order but is sympathetic to suggestions to harmonize some of the language between the two.¹³

⁹ PAWC Comments at 8.

¹⁰ Columbia Comments at 4–6, Duquesne Comments at 4-5 and Reply Comments at 4-5, EAP Comments at 7-8 and Reply Comments at 3–8, FirstEnergy Comments at 3-4, PECO Comments at 3 and Exhibit A, and PPL Comments at 2–5 and Reply Comments at 2-3.

¹¹ NRDC Comments at 9–12.

¹² KEEA Comments at 6–8 and Reply Comments at 4.

¹³ AEEI Reply Comments at 1 and 3.

³ See Columbia Reply Comments at 2; Council Comments at 6-7; Duquesne Comments at 5 and Reply Comments at 8-9; EAP Comments at 3 and Reply Comments at 2-3; FirstEnergy Comments at 20; I&E Comments at 2, 8, 9; NFG Reply Comments at 2, 6; Industrials Reply Comments at 9; KEEA Reply Comments at 3-4; OSBA Comments at 11; Peoples Comments at 3-4 and Reply Comments at 3; PAWC Reply Comments at 1-2; PECO Comments at 3 and Reply Comments at 1, 3–6; PGW Comments at 1-2, 10; PPL Comments at 2 and Reply Comments at 2; PSU Reply Comments at 3-4, 10-11; UGI Comments at 4-5; and VCW Comments at 3 and Reply Comments at 1.

⁴ See Fixed Utility Distribution Rates Policy Statement, Proposed Policy Statement Order at Docket No. M-2015-2518883, entered May 23, 2018 (Proposed Policy Statement Order) at 26.

⁵ CAC Comments at 5.

⁶ IECPA Comments at 2–5.

⁷ NRDC Comments at 2–5.

⁸ EDF Comments at 1–13.

2. Disposition

To begin with, the Commission does not agree with the Commenters who assert that the passage of Act 58 supersedes or in any way prevents the Commission from promulgating a policy statement that addresses alternative rate mechanisms for fixed utilities. These Commenters cite to no statutory or case law to support this position. The basis for their assertion is that the Policy Statement conflicts with the policy declarations of Act 58, in that Act 58 is much broader and includes mechanisms that support a wide variety of programs and policies, e.g., ones that increase security and resiliency, insure adequate recovery for maintaining infrastructure, and support customer access to new technologies.¹⁴ Other Commenters assert that the phrase “avoid future capital investments” in the Policy Statement is inconsistent with a utility’s duty to provide safe and reliable service.¹⁵ These assertions are dubious in that they lack any recognition or sense of the context in which the purpose and scope of the Policy Statement was offered.

Specifically, we note that any assertion by a commenter that a Commission Policy Statement with the phrase “avoid future capital investment” is tantamount to the Commission abdicating its duty and responsibility to ensure that utilities provide safe and reliable utility service is simply nothing more than hyperbole and lacks credibility. As AEEI recognized, well-designed distribution rates can indeed avoid or defer certain capital investments, especially if used in conjunction with new ratemaking approaches that incentivize utilities to seek out non-traditional solutions to distribution system needs, such as non-wires alternatives.¹⁶

The Commission agrees with the Commenters who assert that the Policy Statement is complementary to Act 58, but may need to be harmonized with Act 58.¹⁷ To begin with, we note that the declaration of policy in Act 58, 66 Pa.C.S. § 1330(a), sets forth general utility regulatory principles such as safety, security, reliability, and availability of utility infrastructure. See 66 Pa.C.S. § 1330(a)(2). Act 58 also references general utility cost recovery principles consistent with the customers’ use of the utility’s infrastructure and the requirement that rates be just and reasonable. See 66 Pa.C.S. § 1330(a)(1).

While referencing these general utility principles, Act 58 also recognizes the changing environment in which utilities operate and how customers interact with and use the services provided by utilities. Specifically, Act 58 recognizes that “[i]nnovations in utility operations and information technologies are creating new opportunities for all customers, and [that] 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.” 66 Pa.C.S. § 1330(a)(1). Finally, while Act 58 states that “utility ratemaking should encourage and sustain investment through appropriate cost-recovery mechanisms to enhance the safety, security, reliability or availability of utility infrastructure,” it also states that such enhancements must “be consistent with the efficient consumption of utility service.” 66 Pa.C.S. § 1330(a)(2).

While not using the exact terminology or phraseology found in Act 58, the Policy Statement’s purpose and scope contains these same principles and considerations. Both

address efficient use of utility services and promote access to innovations and technologies that facilitate such efficiencies. In particular, the Policy Statement has efficient use of utility service as being promoted by rate designs.¹⁸ Both address cost recovery to promote safe and reliable utility service and appropriate allocation of such costs through just and reasonable rates. With that said, the Commission agrees that as we now have Act 58, we should harmonize the language in the Policy Statement with that of Act 58.

The Commission finds that the changes to the purpose and scope of the Policy Statement appropriately address the concerns raised that the statement should be harmonized with the declaration of policy found in Act 58. Like the declaration of policy in Act 58, the purpose and scope of the Policy Statement begins with noting the impact that new technologies and information have in promoting the efficient use of utility services. The inclusion of ratemaking mechanisms in the purpose and scope aligns with the language used in Act 58 and clarifies that the Policy Statement is intended to recognize a broad scope of possible rate mechanisms and rate designs. We also make it abundantly clear that the purpose of the Policy Statement is to avoid future capital investments that become unnecessary due to new technologies and system efficiencies, including distributed energy resources, and the ability to collect more detailed information on the operation of distribution systems.

Finally, we recognize security as one of the purposes for the new ratemaking mechanisms or rate designs, as it was recognized in Act 58. We stress that the purpose and scope of the Policy Statement is intended to provide guidance on some of the issues that the Commission will consider when reviewing alternative ratemaking mechanisms and rate designs. It is not meant to be all encompassing or to replace, supersede or overturn well-established ratemaking law, regulation or principles.

B. Distribution Rate Considerations

Next, we address the guidelines for specific issues that the Commission will consider in reviewing the rates and proposed rate structures filed by fixed utilities. In the Proposed Policy Statement Order we noted that the utility landscape is evolving rapidly, none more rapidly than the electric industry. Increased penetration of distributed energy resources and electric vehicles present both a challenge and an opportunity for regulators and utilities. From a challenge perspective, the increased adoption of these technologies will likely work to decrease utilities’ distribution system capacity utilization, which is the ratio of peak demand to average demand, placing significant headwinds on distribution rates. However, the electricity industry has an opportunity to utilize the portfolio of new technologies such as advanced metering, advanced grid monitoring, energy efficiency, demand response and smart thermostats to better accommodate the evolving demand profiles created by this new energy landscape.

Accordingly, we highlighted that the Policy Statement includes a general provision related to the impact of capacity utilization. As a measure, capacity utilization can be used to judge the efficiency of an electric distribution system. We are interested in consideration of rates by our electric utilities which can work to increase distribution system capacity utilization to foster system efficiency and insulate customers from rate increases. We

¹⁴ See Columbia Comments at 4–6, Duquesne Comments at 4-5 and Reply Comments at 4-5, EAP Comments at 7-8 and Reply Comments at 3–8, FirstEnergy Comments at 3-4, PECO Comments at 3, and PPL Comments at 2–5 and Reply Comments at 2-3.

¹⁵ See PAWC Comments at 1–9.

¹⁶ AEEI Reply Comments at 3.

¹⁷ See KEEA Comments at 6–8 and Reply Comments at 4, and AEEI Reply Comments at 1 and 3.

¹⁸ While the Proposed Policy Statement did reference the avoidance of future capital investments as being promoted by rate designs, in this context such avoidance is due to efficiencies, not to prevent replacement or expansion of pipes or wires required for safe, secure and reliable utility service as some Commenters assert.

encouraged parties to comment on rate designs that can foster distributed energy adoption while also working to increase capacity utilization to potentially guide the Commission to more specific policy statement provisions.

1. Comments

CAC supports the inclusion of considerations on how the rates will impact low-income customers, how they impact customer rate stability principles, whether they include appropriate consumer protections, and whether the rates are understandable and acceptable to consumers. CAC suggests that we add specific language on how the rates improve affordability for low-income customers and how they decrease termination rates for low-income customers.¹⁹ IECPA suggests that the Commission adopt a Performance Incentive Mechanism Design Process that was proposed to the Minnesota Public Utilities Commission by the Minnesota Office of Attorney General for use in developing alternative ratemaking mechanisms.²⁰

OCA states that safeguards like the considerations enumerated in the proposed Section 69.3302 are required to ensure that consumers are protected. OCA also submits that utilities must provide sufficient information to satisfy the following filing requirements: (1) identification of the regulatory policy goals to be achieved by the alternative rates; (2) identification of the desired regulatory outcomes more efficiently or effectively than traditional base rate treatment; (3) identification of the specific metrics and reporting that will be used to measure the utility's performance; (4) identification of the tangible benefits to consumers, the costs to consumers, and other impacts on consumers; (5) identification of the consumer protections proposed for the mechanism; (6) presentation of the consumer education plan and the cost of the plan; and (7) information responsive to the topics and issues contained in the Proposed Policy Statement. OCA asserts that including these requirements will ensure that adequate information is available to consider any proposal.²¹

OSBA suggests that the fifth and sixth considerations should be modified to include cost-effective efficiency measures. OSBA further suggests that if the Commission were to delete Section 69.3303 the following consideration should be added: "How the rates impact the business risk faced by the utilities and how that reduced risk should be reflected in the allowed cost of capital." OSBA states that the factors enumerated under Section 69.3302 are critical and necessary for the Commission to evaluate whether the proposed rates are just, reasonable and in the public interest.²²

KEEA suggests that for the first consideration the Commission should include language that places an emphasis on long-term cost causation. Regarding the second consideration, KEEA requests that the Commission clarify whether the term "capacity utilization" is the same as, or similar to, the concept of "peak demand reduction." KEEA disagrees with the inclusion of the third consideration because it may implicate demand-like charges for residential customers. KEEA suggests that for the fourth consideration the Commission separate inter-class and intra-class cost shifting into two different considerations as intra-class cost shifting is a product of rate design and inter-class cost shifting is a product of cost-of-service studies. KEEA suggests that the Commission add a

caveat to the fifth consideration that it should not add additional disincentives for customer deployment of energy efficiency programs.²³

The Low Income Advocates support the inclusion of the considerations but propose changes. First, the Low Income Advocates suggest that any party to a rate case seeking to impose an alternative rate structure or design should be required to address these considerations, not just the utility. Second, the Low Income Advocates and OCA suggest that the fifth consideration should require a showing of how the rates encourage and incentivize efficiency programs. Lastly, the Low Income Advocates and OCA suggest that the seventh condition should recognize that the proponent of the alternative rate design should demonstrate that the design improves affordability for low-income customers and is designed to decrease termination rates for low-income customers.²⁴

PSU suggests that the first consideration should be modified to add a provision that cost of service studies that include load characteristics of distributed generation be required to justify allocations of costs and that the cost of service studies be required to provide substantial evidence that rates are non-discriminatory, just and reasonable. Regarding the fourth consideration, PSU suggests that the phrase "limit or" should be eliminated to make clear that rates should not move from current subsidies to larger subsidies. PSU also suggests that the Policy Statement should provide for periodic review of decoupling or any alternative rate regulation. Finally, PSU and AI suggest that subsection 69.3302(b) be modified to add a provision that requires an annual audit and review during each of the first five years of an alternative rate mechanism to ensure they are promoting infrastructure investment, efficiency and conservation, and reliability. PSU suggests that this review should be open for participation by all parties to the rate case and that after the first five years, such audits should occur over a reasonable interval determined by the Commission. Finally, PSU suggests that utilities should be required to give notice of any proposed alternative rate mechanism at least three months prior to filing the rate case.²⁵

Columbia states that the first consideration should ensure that it matches cost incurrence with recovery from the customer group that causes cost incurrence, and that the proposed rate design should be judged by the effectiveness in yielding authorized total revenue requirement, yielding the recovery of fixed cost through fixed recovery and variable cost through variable recovery. Regarding the fourth consideration, Columbia submits that additional consideration should be given to the fairness of the apportionment of total cost to the rate class based on cost incurrence to limit or eliminate inter-class cost shifting. Columbia suggests that the fifth consideration should be changed as follows: "How the rate design eliminates the inherent disincentive for a utility with volumetric distribution charges to offer an energy efficiency program," asserting that the goal of energy efficiency programs is to reduce customer consumption. Regarding the seventh consideration, Columbia asserts that it should be eliminated because it disregards the principle of fairness by shifting fixed cost recovery to higher use residential customers based solely on income.²⁶

Duquesne and FirstEnergy state that the factors listed step beyond the provisions of 66 Pa.C.S. § 1308 and attempt to impose narrow, subjective standards on utility

¹⁹ CAC Comments at 5-6.

²⁰ IECPA Comments at 3-5.

²¹ OCA Comments at 21.

²² OSBA Comments at 6 and Reply Comments at 3, 5.

²³ KEEA Comments at 10-18.

²⁴ Low Income Advocates Comments at 10-13, and OCA Reply Comments at 10.

²⁵ PSU Comments at 5-11, and AI Reply Comments at 9-10.

²⁶ Columbia Comments at 6-10.

ratemaking evaluation that are neither based on record evidence nor shown they are needed. Duquesne and FirstEnergy further state that 52 Pa. Code §§ 53.52 and 53.53 already identify a series of items that should be provided for the Commission to properly evaluate a requested change in terms and conditions of service and that most of the remaining items listed in the proposed Section 69.3302 are already addressed during the rate case proceeding, either in the initial filing or in subsequent data requests, evidentiary hearings or briefs, thereby making them unnecessary as a practical matter. FirstEnergy further states that the third consideration also conflicts with traditional ratemaking principles with respect to analysis of cost allocation.²⁷

PECO states that while it believes the factors identified highlight useful issues for consideration, PECO believes several revisions are appropriate to clarify the application of this section. PECO suggests that the Commission clarify that the guidelines under Section 69.3302 apply only to alternative rates and rate mechanisms that may be proposed in a Section 1308 proceeding. PECO notes that not all of the factors apply to every alternative rate or rate mechanism and suggests that the Commission revise Section 69.3302 to provide that the Commission may consider the listed factors in determining just and reasonable rates and eliminate the requirement that a utility address all of the factors. Finally, PECO states that the Proposed Policy Statement provides no guidance as to how customer acceptance could be established and recommends that factor 13 be removed and that the phrase “and comports with Pennsylvania law” also be removed as superfluous.²⁸

PPL states that while it appreciates the effort to raise awareness of some of the considerations, this section adds more confusion than clarity. PPL states that the considerations obligate a utility to develop evidence defending how, when, and where it addressed each of the 13 items either within or beyond the requirements in 52 Pa. Code §§ 53.52 and 53.53 (pertaining to the documentation required when filing a Section 1308 base rate case proceeding).²⁹

AEEI states that performance incentive mechanisms and performance-based rates, along with multi-year rate plans, can further align the financial interests of utilities with desired policy outcomes and customer benefits. AEEI further states that performance incentive mechanisms can incent desired utility activities such as (1) safety and reliability, (2) customer access to data, (3) energy efficiency, (4) peak load reduction, (5) third-party resource deployment, and (6) interconnection of distributed energy resources.³⁰

2. Disposition

To begin with, the Commission declines to adopt specific ratemaking mechanisms, rate designs, consumer protections or review procedures with this statement of policy as they fall outside the scope of this proceeding. In essence, these Commenters are seeking the adoption of binding norms but, as PSU points out, a statement of policy is not binding like a regulation.³¹ In addition, the purpose of this Policy Statement is to provide guidance on issues the Commission will consider when reviewing proposed alternative ratemaking mechanisms and rate designs. Accordingly, the Commission will not adopt any

of the specific ratemaking mechanisms, rate designs, consumer protections or review procedures as part of this proceeding. To do so would be contrary to the Commission’s intent to avoid a one-size-fits-all approach that limits the flexibility of the utilities, consumer advocates, stakeholders and the Commission to develop alternative ratemaking mechanisms and rate designs in a transparent manner in accordance with each utility’s unique circumstances.

The Commission also disagrees with Commenters who state that the factors listed step beyond the provisions of 66 Pa.C.S. § 1308 and attempt to impose narrow, subjective standards on utility ratemaking evaluation that are neither based on record evidence nor shown they are needed. We note that the considerations listed in Section 69.3302 in no way set standards; they simply identify issues the Commission will consider in a rate case. They neither establish the weight to be given to each consideration nor a particular outcome. The weight to be given and any outcome on any issue will be determined based on the substantial competent and credible evidence developed during the rate case proceeding. We also find it significant that, as Duquesne and FirstEnergy point out, 52 Pa. Code §§ 53.52 and 53.53 already identify a series of items that should be provided to the Commission in order for the Commission to properly evaluate a requested change in terms and conditions of service and that most of the remaining items listed in the proposed Section 69.3302 are already addressed during the rate case proceeding, either in the initial filing or in subsequent data requests, evidentiary hearings or briefs. As such, any burden that the Policy Statement may impose on a utility should be minimal and should serve to provide guidance to utilities and stakeholders on the issues and concerns they should focus their efforts on in developing and proposing alternative rate mechanisms and rate designs.

With that said, the Commission agrees with various Commenters that Section 69.3302 of the Policy Statement should be refined to better effectuate the Commission’s intent. Specifically, we revise Section 69.3302 to make it clear that this Policy Statement relates to alternative distribution ratemaking mechanisms and rate designs that promote the purpose and scope of the Policy Statement as well as the objectives of 66 Pa.C.S. § 1330 (relating to alternative ratemaking for utilities). We eliminate the reference to efficient use of electricity, natural gas or water, as well as to distributed energy resources to avoid unintentionally limiting the scope of the Policy Statement to just these considerations.

We make it clear that the Policy Statement is applicable to both alternative ratemaking mechanisms, such as revenue decoupling, straight fixed/variable and multiyear rate plans, as well as rate designs, such as demand charges and time-of-use rates. We disagree with OCA that the Policy Statement should focus only on ratemaking mechanisms.³² We find again that to limit the Policy Statement as proposed by OCA is contrary to our intent to avoid a one-size-fits-all approach and limit the flexibility of the utilities, consumer advocates, stakeholders and the Commission in developing or reviewing alternative ratemaking mechanisms and rate designs in a transparent manner in accordance with each utility’s unique circumstances. The intent is not only to provide guidance for alternative rates and ratemaking mechanisms identified in 66 Pa.C.S. § 1330, but also to provide guidance for other alternative rate designs and ratemaking mecha-

²⁷ Duquesne Comments at 5-6 and Reply Comments at 6, and FirstEnergy Comments at 5-7.

²⁸ PECO Comments at 4-5.

²⁹ PPL Comments at 5-6.

³⁰ AEEI Comments at 13.

³¹ PSU Reply Comments at 4-5.

³² OCA Reply Comments at 4-7.

nisms, noting that 66 Pa.C.S. § 1330(e) specifically does not limit the Commission's existing ratemaking authority.

Next, we change "will" to "may" to acknowledge that not all of the 14 considerations are applicable to all alternative ratemaking mechanisms or rate designs or to all utilities. This change also recognizes that each case is different in that the weight to be given and the outcome of each consideration will depend on the substantial competent and credible evidence developed during the rate case proceeding, as well as the purpose of the proposed alternative ratemaking mechanism and rate design.

We also remove the reference to acceptance by consumers and compliance with law in the thirteenth consideration. We agree with PECO that it is difficult to determine what acceptance means and that the phrase "and comports with Pennsylvania law" is superfluous as all rates must comply with the law.

Finally, we add a consideration that specifically relates to improvements in utility reliability. We find that the effectiveness of the statement of policy will be improved with the inclusion of utility reliability considerations. We agree with AEEI that in the context of performance incentive mechanisms, the Commission can consider the performance of reliability indices when designing rates. As such, we find it prudent to include the following provision under Section 69.3302(a) of the Policy Statement: "How the ratemaking mechanism and rate design will support improvements in utility reliability."

We decline to adopt other changes to the various considerations proposed by various Commenters. Their suggested changes attempt to steer the utilities, stakeholders and the Commission toward a specific result that limits flexibility in designing alternative ratemaking mechanisms and rate designs, which is contrary to the intent of the Policy Statement. We note that nothing, including this Policy Statement would preclude parties from raising these issues and concerns in a rate case proceeding.

C. *Illustration of Possible Distribution Ratemaking and Rate Design Options*

Finally, we proposed possible ratemaking and rate design options for electric and natural gas distribution companies. As previously noted, Section 69.3303 recognizes that the changing energy landscape necessitates rate designs that address a few first-order principles:

1. Policies must support the continued efficient use of all energy resources.
2. The evolution of a distributed energy environment requires substantial and well-targeted investment in distribution infrastructure.
3. Policies must encourage least-cost solutions, with cost recovery based on long-term cost causation.
4. Rate design should embrace, where feasible, the additional capabilities enabled by smart meter deployment.
5. Finally, as noted by the OCA, "costs are variable in the long run."³³ Therefore, it may be appropriate for energy utilities to design rates in a manner that minimizes the long-term costs of serving existing and new loads. Given the substantial and ongoing Long-Term Infrastructure Improvement Plan spending by the electric and natural gas utilities, a long-term approach to rate design may be appropriate.

³³ See OCA Reply Comments at 12.

Given these principles, the Commission noted that several new approaches in the electric industry could be advanced. These include, but are not limited to, performance-based incentive rate designs, performance incentive mechanisms, various levels of decoupling, and variations of demand-based and time-of-use pricing options, such as critical peak pricing.

Given current advanced metering constraints in the natural gas industry, models such as a weather normalization adjustment³⁴ or a revenue per customer adjustment,³⁵ if proposed and implemented with care, could balance utility and consumer needs by just and reasonable means that better ensure utility revenue recovery and system use. On the electric utility side, critical peak pricing and demand-based programs that use average usage over critical peak periods as demand-based billing determinants may offer a proper balance of these interests.

For these reasons, the Commission proposed the addition of the new Section 69.3303 to illustrate these principles for consideration. The inclusion of this section was not to signal, nor be interpreted as signaling, any predilection by the Commission to favor one proposal over another or any predetermination by the Commission that the proposal of one of these examples comes with any presumption of approval. We noted that, as evidenced in this proceeding, there are a variety of rate designs that address the needs of a changing utility landscape. We also felt it was important to note options that are grounded in ratemaking principles and may help customers and utilities move forward to minimize future long-term costs, allocate capital more efficiently, and achieve important policy objectives. Again, we noted that these guidelines were not meant to be the only issues the Commission will consider in any rate case, or that they are to be considered above all other ratemaking principles, but to identify these policy issues as important to the Commission. These guidelines are intended to ensure that these issues are considered and addressed to ensure that we have the most appropriate rates for the changing utility environment.

1. *Comments*

Comments on the section proposing illustrations of possible distribution ratemaking and rate design options were almost universally for eliminating it in its entirety. The primary reasons for eliminating the section is the fact that it causes confusion and, despite the disclaimers, suggests the Commission's preference for the illustrated rate designs.³⁶

2. *Disposition*

We agree with the Commenters who suggest that this Section be eliminated as it could cause more confusion than help to illustrate the issues to be considered. In addition, we agree that the illustrations, as written, improperly indicate a preferred outcome without having substantial competent evidence to support the outcome. Finally, we find that the illustrations could tend to limit the options available to utilities, which is contrary to the intent of the Policy Statement.

³⁴ Weather normalization adjustments have been implemented by both Columbia Gas of Pennsylvania, Inc. since 2012 and Philadelphia Gas Works since 2002. See Columbia Reply Comments at 3-4 and PGW Comments at 4.

³⁵ Revenue per customer adjustments have already been implemented in other states such as Ohio, Maryland, Massachusetts and Virginia; therefore, there is a history of experience from which to draw if proposing effective revenue per customer adjustments to benefit both customers and utilities. See Columbia Comments at 6.

³⁶ See CAC Comments at 6-9; NRDC Comments at 18-19; PAWC Reply Comments at 4-5; EAP Comments at 9-10 and Reply Comments at 6-7; Duquesne Comments at 6-7 and Reply Comments at 6; OCA Comments at 21-22 and Reply Comments at 7-9; Low Income Advocates Comments at 13-15; PPL Comments at 6; PSU Reply Comments at 6; and FirstEnergy Comments at 6-8.

Conclusion

The Commission finds that there are considerable shifts in the rate-setting environments for electric, natural gas, and water utilities. For evidence of such shifts, we need to look no further than the increased adoption of rooftop solar, increased investment in natural gas fueled microturbine combined heat and power units, and the significant movement toward consolidation in the water and wastewater industries. Based on the foregoing discussion, the Commission adopts this Policy Statement regarding Distribution Rates. We thank all the interested stakeholders for their helpful, thorough and informative comments on this important issue; *Therefore*,

It Is Ordered That:

1. The Final Policy Statement as set forth in Annex A is adopted.
2. The Law Bureau shall submit this Order and Annex A to the Governor's Budget Office for review of its fiscal impact.
3. The Law Bureau shall deposit this Order and Annex A with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.
4. The Final Policy Statement shall become effective upon publication in the *Pennsylvania Bulletin*.
5. A copy of this Order, together with Annex A, be served on all jurisdictional electric distribution companies, all jurisdictional natural gas distribution companies, all jurisdictional water and wastewater utilities, the Office of Consumer Advocate, the Office of Small Business Advocate, the Commission's Bureau of Investigation and Enforcement and all parties that filed comments under this docket.
6. The contact persons for this matter are Kriss Brown in the Law Bureau, (717) 787-4518, kribrown@pa.gov, Marissa Boyle, (717) 787-7237, maboyle@pa.gov, and Andrew Herster, (717) 783-5392, aherster@pa.gov in the Bureau of Technical Utility Services.

ROSEMARY CHIAVETTA,
Secretary

Fiscal Note: Fiscal Note 57-322 remains valid for the final adoption of the subject regulations.

Statement of Commissioner Andrew G. Place

Before the Commission today is the Final Policy Statement Order in the above-captioned matter. Our review of the staff recommendation includes the extensive record of comments and reply comments to the Commission's Proposed Policy Statement regarding what future ratemaking policy should guide an evolving utility economic landscape—one that is driven by technological change, declining consumption, evolving policy and the need for utility resilience in light of potential physical and cyber threats.

In addition to setting forth the purpose and scope of the policy statement and the distribution rate considerations parties should address with any specific proposal, the Proposed Policy Statement listed a few illustrative rate design and ratemaking mechanism options. Many of the commenters expressed concern that inclusion of illustrative examples was expressing a clear preference for the stated approaches or precluded de facto consideration of other alternatives. Others emphasized the oft stated mantra that "One Size Doesn't Fit All." I want to be clear that it was not my intent to limit the options enumerated in Act 58, nor was it my intent to express a preference at the expense of other creative rate design or ratemaking

mechanisms. Rather, my intention was to provide options for the industry to consider as they address the evolving utility economic landscape.

That said, I continue to be interested in proposals that remove barriers and provide incentives to utilize energy efficiently, encourage development of cost-effective distributed energy resources (DERs), and encourage more efficient use of our energy distribution infrastructure. Currently, we are presented with opportunities to enable emerging technologies, such as energy efficiency and distributed energy systems in the form of solar photovoltaic facilities, batteries, fuel cells, Combined Heat and Power (CHP), and Electric Vehicles (EVs), all of which affect energy distribution systems in both a positive and negative manner.

For example, if EVs draw charging power directly from the grid during peak usage periods, costly investments on the distribution grid may well be required. Conversely, rate designs which encourage off-peak charging, could help improve capacity utilization, and lower overall rates. Similarly, DERs can produce power on-peak and provide other grid services, and help avoid some distribution and transmission investments, while DERs which produce energy off-peak may impose costs on the distribution grid. The point being is to provide proper price signals to encourage the former, and not the latter.

Similarly, customer-based energy efficiency and DER systems may reduce system throughput, thus reducing utility revenues. How do we remove utility disincentives to mitigate these impacts, while encouraging cost effective investments in these distributed technologies?

Despite these emerging technologies, rate design and ratemaking mechanisms have not evolved in Pennsylvania. Providing illustrative examples was intended to encourage innovation to help customers and utilities move forward to minimize future long-term costs, allocate capital more efficiently, and achieve important policy objectives. I hope that the Final Policy Statement, as written, can provide the important guidance to meet these stated policy objectives.

ANDREW G. PLACE,
Commissioner

Annex A

TITLE 52. PUBLIC UTILITIES

PART I. PUBLIC UTILITY COMMISSION

Subpart C. FIXED SERVICE UTILITIES

CHAPTER 69. GENERAL ORDERS, POLICY STATEMENTS AND GUIDELINES ON FIXED UTILITIES

DISTRIBUTION RATES—STATEMENT OF POLICY

§ 69.3301. Purpose and scope.

Federal and State policy initiatives promote the efficient use of electricity, natural gas and water through technologies and information, including distributed energy resources. The purpose of this policy statement is to invite the proposal, within a utility's base rate proceeding, of fixed utility distribution ratemaking mechanisms and rate designs that further promote these Federal and State policy objectives, the objectives of 66 Pa.C.S. § 1330 (relating to alternative ratemaking for utilities), and may include reducing disincentives for promoting these objectives, providing incentives to improve system economic efficiency, and avoiding unnecessary future capital investments while ensuring that fixed utilities receive adequate revenue to maintain the safe, secure and reliable opera-

tion of their distribution systems. At the same time, an alternative rate design methodology should reflect the sound application of cost of service principles, establish a rate structure that is just and reasonable, and consider customer impacts.

§ 69.3302. **Distribution rate considerations.**

(a) In determining just and reasonable alternative distribution ratemaking mechanisms and rate designs that promote the purpose and scope of this statement of policy and the objectives of 66 Pa.C.S. § 1330 (relating to alternative ratemaking for utilities), the Commission may consider, among other relevant factors, the following:

(1) How the ratemaking mechanism and rate design align revenues with cost causation principles as to both fixed and variable costs.

(2) How the ratemaking mechanism and rate design impact the fixed utility's capacity utilization.

(3) Whether the ratemaking mechanism and rate design reflect the level of demand associated with the customer's anticipated consumption levels.

(4) How the ratemaking mechanism and rate design limit or eliminate interclass and intraclass cost shifting.

(5) How the ratemaking mechanism and rate design limit or eliminate disincentives for the promotion of efficiency programs.

(6) How the ratemaking mechanism and rate design impact customer incentives to employ efficiency measures and distributed energy resources.

(7) How the ratemaking mechanism and rate design impact low-income customers and support consumer assistance programs.

(8) How the ratemaking mechanism and rate design impact customer rate stability principles.

(9) How weather impacts utility revenue under the ratemaking mechanism and rate design.

(10) How the ratemaking mechanism and rate design impact the frequency of rate case filings and affect regulatory lag.

(11) If or how the ratemaking mechanism and rate design interact with other revenue sources, such as Section 1307 automatic adjustment surcharges, 66 Pa.C.S. § 1307 (relating to sliding scale of rates; adjustments), riders such as 66 Pa.C.S. § 2804(9) (relating to standards for restructuring of electric industry) or system improvement charges, 66 Pa.C.S. § 1353 (relating to distribution system improvement charge).

(12) Whether the alternative ratemaking mechanism and rate design include appropriate consumer protections.

(13) Whether the alternative ratemaking mechanism and rate design are understandable to consumers.

(14) How the ratemaking mechanism and rate design will support improvements in utility reliability.

(b) In any distribution rate filing by a fixed utility under 66 Pa.C.S. § 1308 (relating to voluntary changes in rates) that proposes an alternative ratemaking mechanism and rate design, the fixed utility shall explain how these factors impact the distribution rates for each customer class.

[Pa.B. Doc. No. 19-1275. Filed for public inspection August 23, 2019, 9:00 a.m.]