



**Comments of David I. Fein  
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Director of Retail Energy Policy  
On Behalf of Constellation Energy  
Before the House Consumer Affairs Committee  
Public Hearing on the Status of Electric Competition  
August 2, 2011**

**INTRODUCTION**

Good morning Chairman Godshall, Rep. Preston, and Members of this Committee. My name is David I. Fein, and I am Vice President of Energy Policy in Pennsylvania and the Midwest for Constellation Energy and our Director of Retail Energy Policy. Thank you for the opportunity to appear today.

I am here to testify on behalf of Constellation NewEnergy, Inc. (“CNE”) and Constellation Energy Commodities Group, Inc. (“CCG”) (collectively, “Constellation”).

**Background**

CCG and CNE are indirect, wholly-owned subsidiaries of Constellation Energy Group, Inc., a FORTUNE 500 North American energy company with several merchant subsidiaries in addition to CCG and CNE. CCG and CNE have been granted market-based rate authority by the Federal Energy Regulatory Commission (“FERC”) and are buyers and sellers of wholesale electricity and capacity.

CNE is an electric generation supplier (“EGS”), licensed by the Commission to serve Residential, Commercial and Industrial customers in all utility territories in the Commonwealth. CNE is the largest provider of competitive retail electric supply to Commercial, Industrial and Governmental customers throughout the United States. In

Pennsylvania, CNE is providing retail electric service to commercial, industrial, and governmental customers throughout the Commonwealth. For those non-residential customers, CNE is providing a suite of electricity, natural gas, demand response, energy efficiency, and renewable products and services. In addition, CNE recently began offering residential electric service in a number of service territories in the Commonwealth. CCG, meanwhile, is one of the largest suppliers of wholesale electric power to utilities, EGS, municipalities and cooperatives throughout the United States, including wholesale energy supply to the Commonwealth's utilities under the current default service plans and programs.

Constellation has a diverse and active presence in the competitive retail electric market in the Commonwealth as a licensed EGS, a licensed Natural Gas Supplier (NGS), a licensed Curtailment Service Provider (CSP), an owner of generation facilities, and as an active supplier of wholesale electric power and energy to Electric Distribution Companies (EDCs). Constellation has three (3) office locations in Pennsylvania (Fort Washington, Carnegie (Pittsburgh), Philadelphia).

Constellation offers Pennsylvanians:

- Financial stability;
- Corporate commitment;
- A focus on the competitive market, including a strong willingness to commit to ongoing support of the market;
- A regional headquarters that provides easy access to corporate wide resources;
- A national presence that provides the ability to serve customer load in any market;

- Access to market and energy policy expertise, including regular briefings and updates; and
- Women and Minority Business Enterprise participation.

CNE has forged numerous relationships with Chambers of Commerce and Trade Associations throughout the Commonwealth including **Chamber Endorsed** relationships with the Lancaster Chamber of Commerce, the Harrisburg Chamber of Commerce, the Greater Lehigh Valley Chamber of Commerce, the Upper Bucks Chamber of Commerce, the Carbon County Chamber of Commerce, the Montgomery County Chamber of Commerce, and the Main Line Chamber of Commerce. Constellation has **Association Endorsed Relationships** with the Pennsylvania League of Cities and Municipalities, the Pennsylvania Foundry Association, the Association of Independent Colleges and Universities, and ECBM – Insurance Brokers and Consultants. In addition, Constellation is an active **member of the following organizations:** the Greater Philadelphia Chamber of Commerce, BOMA Philadelphia, the Greater Reading Chamber of Commerce, the Erie Chamber of Commerce, the Alternative Fuels Renewable Energies Council, the Greater Philadelphia Hotel Association, the African American Chamber of Commerce of Philadelphia, and the African American Chamber of Commerce of Pittsburgh.

Constellation's energy efficiency business is extremely active in the Commonwealth, including a major project in this very building, as well as projects for Heinz Field, the Westmoreland County Public Housing Authority, Thomas Jefferson University & Hospital, and Armstrong County just to name a few.

Constellation currently serves approximately 30,000 commercial, industrial, and governmental customer accounts in the following service territories: PPL, PECO, Met-Ed, Penelec, Penn Power, Duquesne, and Allegheny West Penn.

### **The Commonwealth of Pennsylvania Is A National Leader on Energy Policy**

Constellation believes that retail electric competition is alive and well in the Commonwealth, and Pennsylvania is widely acknowledged as a thought leader on energy policy across the U.S. Constellation commends this Committee for its ongoing oversight and engagement on matters of importance to the electric industry. From Constellation's perspective, one of the primary reasons why Pennsylvania has made such tremendous strides and is viewed as a leader on energy policy is the General Assembly's and the Public Utility Commission's high degree of regulatory certainty and consistent policy leadership.

The consistent pro-competitive policy direction from the Commission and the Legislature provides a high degree of regulatory certainty, which is of critical importance to all current and future market participants in Pennsylvania. There is a tremendous potential for new, innovative approaches to meet Pennsylvanian's electric needs. But if potential market entrants and their investors fear that the "rules will change" over and over, it becomes far too risky to invest scarce capital.

Pennsylvania has made an extremely successful transition from capped default service rates to a more fully competitive market. With the rate caps having expired for the remainder of EDCs at the beginning of 2011, Pennsylvanians are beginning to see robust market development in a number of EDC service territories, though the results

are somewhat mixed in other parts of the state. The Commonwealth now boasts over 200 licensed EGSs.

With restructuring of the electric industry in Pennsylvania, it was extremely logical to have EDCs in the role of default service providers. This was especially the case when the decision was made to embark on a lengthy transition period before transitioning to market rates. Default service has acted as a valuable safety net during this transition period into market rates and out from under rate caps. With the appropriate structures for each customer class, clear and transparent pricing, strong affiliate rules, enhanced customer education efforts, and the timely provision of necessary data and information, default service has and can continue to effectively facilitate the ability of customers to choose electricity products and services that are tailored to their individual needs.

Given what still has to be recognized as the very recent move away from capped rates to market-based rates, the customer switching statistics have been robust in the PPL Electric Utilities Corporation (“PPL Electric”) and PECO Energy Company (“PECO”) service territories, though results have somewhat lagged in other service territories. In PPL Electric’s territory alone, approximately 40 percent of residential customers have moved away from the utility’s default service to an alternative supplier. That is a rather astounding number in less than 18 months, given the pace of progress seen historically in other newly opened markets. The Pennsylvania Office of Consumer Advocate maintains statistics for customer shopping across the Commonwealth, which evidence these positive results.<sup>1</sup>

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<sup>1</sup> See <http://www.oca.state.pa.us/Industry/Electric/elecstats/ElectricStats.htm>.

It should be recognized that, for a variety of reasons, some customers (and possibly many in certain territories) feel more comfortable buying electricity from their utility regardless of the market structure. Many have referred to this as the “status quo bias.” Nevertheless, if any barriers or consumer bias exist under the current model, they most definitely vary by customer class. Not surprisingly, commercial, industrial and governmental customers have shown a strong propensity to understand, evaluate and select competitive retail electric service from an EGS.

As you are undoubtedly aware, and as you have heard Chairman Powelson and others comment on earlier, the Commission has initiated an investigation into the current status of the retail electric market. Last week, the Commission issued an Order setting forth the 2<sup>nd</sup> phase of that investigation. These actions by the Commission once again reaffirm the Commonwealth’s commitment to promoting competitive markets.

**Competitive Electricity Markets**  
**Have and Will Continue to Benefit Pennsylvania**

Competitive retail and wholesale markets continue to represent the best way to ensure that Pennsylvania consumers receive reliable electric power and have access to innovative products and services from a broad pool of suppliers that may best meet each customer’s individual needs, while simultaneously assuring the affordability and reliability of supply as competitive markets continue to grow.

Robust competition in wholesale and, in turn, retail markets keeps costs as low as possible and produces the following benefits that customers and policymakers are seeking:

- *Innovative products and services from a broad pool of suppliers that may best meet each customer’s individual needs;*

- *Advancements in reliability, conservation, renewable energy development, and the ability of customers to purchase green power products;*
- *A platform to promote demand response and home and business energy efficiency and other innovations that are superior to traditional cost-of-service regulation;*
- *The ability and information to make decisions and have choices regarding their electric power needs;*
- *The confidence that those that choose not to shop will nevertheless benefit from PJM Interconnection, L.L.C.'s ("PJM") broader competitive markets through competitively-set default service rates. Customers – even those that do not shop – must receive reliable electricity at rates that are the result of downward competitive pressure through a competitive procurement process to obtain the lowest competitive costs for electricity supply from winning bidders in a pool of qualified suppliers; and*
- *The assurance that consumers will never face future stranded costs as a consequence of monopoly investments in infrastructure. The Commonwealth's reliance largely on load following full requirements contracts for wholesale default service supply bolsters this benefit.*

The relationship *between* the wholesale and retail markets is particularly important to keep in mind as the Commission considers competitive structures in the Commonwealth. Pennsylvania's reliance to date on competitive wholesale markets (e.g., in PJM) has assured that its consumers have not only received competitive pricing actively administered and monitored by PJM, FERC and market participants, but that customers have received adequate and reliable service. PJM is responsible for ensuring the reliable operation of the electricity system in a multi-state region by managing transmission, generation and demand response assets. The state's default service structures to date have done well by addressing reliability and any actions that affect reliability through this regional resource, as PJM assures the most effective and cost-efficient solutions for reliability, spreading the responsibility across the broader region. For these reasons, the Commonwealth must ensure that neither the wholesale nor the retail market is compromised in pursuit of promoting the other.

Constellation has extensive experience entering into and participating in competitive retail and wholesale markets throughout the country. Based on this experience Constellation has found that, to a large degree, the adoption of certain tariff and business practices will lead to more robust development of the competitive retail market which will inure to the benefit of all consumers. It is with that backdrop that Constellation has urged the Commission to take actions to eliminate barriers to the continued development of competitive retail electric markets.

Regardless of whether the Commission decides to fundamentally alter the current default service function, the operating rules – allowing EGSs that seek to enter Pennsylvania’s market and offer retail generation service – must be non-discriminatory and must not unduly favor the incumbent EDC. Otherwise, the efficiencies, innovations and potential cost savings of a fully competitive retail market will not be realized. Similarly, investments in wholesale market infrastructure may be negatively affected by discriminatory interventions in the market.

### **Recommendations for Improvements to the Competitive Retail Market**

Constellation has provided the Commission with a number of recommendations to improve the competitive retail market in the Commonwealth. Some of those recommendations include:

- ***Proper Unbundling and Allocation of Costs*** - In a well-functioning competitive market, all costs associated with providing default service should be identified and recovered through default service rates. The Act expressly requires that charges for generation, transmission and distribution be fully unbundled.<sup>2</sup> Likewise, the default service regulations require default service rates to include the sum of all generation and transmission related default service costs.<sup>3</sup> Some of these costs include

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<sup>2</sup> 66 Pa. C.S. § 2804(3); *Lloyd v. Pa. P.U.C.*, 904 A.2d at 1010, 1013-14 (Pa.Cmwlt. 2006).

<sup>3</sup> *Default Service Final Rulemaking Order* at 26; 52 Pa. Code § 54.187(a).

administrative costs such as billing, collection, education, regulatory, litigation, tariff filings, working capital, information system and associated administrative and general expenses related to default service.<sup>4</sup> The purpose for ensuring that all costs associated with providing default service are included in default service rates is to prevent EDCs from gaining a competitive advantage by paying for these costs through distribution revenues and, therefore, creating default service rates that do not accurately reflect market rates and, in turn, erecting barriers to competition. At present, it is not entirely clear what specific costs each of the EDCs are allocating or tracking as they relate to the EDCs' roles as default service providers. In fact, since the original restructuring cases, it does not appear that the Commission has had the opportunity to ensure that such costs are properly allocated to the generation, distribution and transmission functions. Such costs' data is firmly in the possession of the EDCs and the Commission and Commission Staff should require a full and complete unbundling of the EDCs' rate structures to ensure proper allocation of costs. Under such an examination, EDCs should be guaranteed full-cost recovery of all just and reasonable costs. This examination of EDCs' rate structures should be done on some regular interval, as costs change over time. If default service rates do not fully reflect all of the costs associated with providing generation service, it can place EGSs at a competitive disadvantage to EDCs. Furthermore, without knowing the magnitude of costs that need to be properly allocated to the generation function, and thus made avoidable for shopping customers, it is hard to determine whether and to what extent a barrier to competition exists.

- ***Plain Vanilla Default Service*** - If the EDCs are going to remain the default service providers, each should offer only a single product to each customer class and should not provide multiple rate options such as time-of-use ("TOU") rates for certain classes of customers, or optional fixed-price products for the largest commercial and industrial customers. The competitive market and EGSs are fully able to provide these varied products to consumers, and allowing (or requiring) EDCs to offer these additional products to customers can act as a barrier to competition. Requirements such as these create additional "default service" product options and are counterproductive to encouraging customers to receive generation supply from the competitive markets in order to exercise their ability to choose.
- ***Improved Data and Information*** - A constant struggle with providing electric service to customers is the acquisition of data. As the Commission has recognized, "it is essential that alternative suppliers of retail generation service have the non-discriminatory access to customer data and utility facilities necessary to fulfill the legislative goal of a

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<sup>4</sup> 52 Pa. Code § 69.1808.

competitive retail market for generation in Pennsylvania.”<sup>5</sup> While EDCs are always going to be the provider of this data, regardless of the default service structure, improving on the mechanism to deliver and the timeliness of the data would enhance suppliers’ ability provide superior service to customers. Moreover, standardization of transfer processes across the state, where feasible, would provide additional benefits. For instance, if there is a website for a supplier to acquire this data at all times, it will make the acquisition of this data both timely as well as inexpensive by allowing for automation rather than varied and inconsistent manual processes. Additionally, communication remains a cornerstone of an effective competitive market place. If buyers and sellers cannot reach each other to make offers and acceptances, and speak in the same “language,” commerce will be impeded and, even if it can take place, additional and unnecessary costs will be incurred. Therefore, it is of utmost importance that EDCs and EGSs seeking to sell electricity to end-users exchange information in an accurate and consistent manner. In order to do this, EGSs must first have the information they need on the customer bases they wish to serve. EGSs *must* be able to have timely, reliable and precise information on EDCs’ customers. To assist in improving communications and data, Constellation recommended that the Commission adopt a uniform system/set of data and information that EDCs are required to provide to EGSs. Unnecessary delays in the provision of this data and information can have an effect on EGSs’ ability to contract with customers, render invoices and provide other services to consumers. Ultimately, given the fact that pricing may change during the intervening time, a customer and/or its intended EGS may be economically harmed. If EGSs do not receive timely and accurate delivery of interval data, this not only impacts suppliers’ ability to provide price quotations to customers, but also frustrates EGSs’ ability to issue invoices to customers on a timely basis, which inconveniences customers and increases suppliers’ costs.

- ***Uniformity in Setting Default Service Rates*** - Furthermore, making sure that all default service rates are set within similar time frames, under similar pricing structures, and implementing other commonalities will help consumers better understand the market and make educated shopping choices. For customers with accounts in several utility service territories in Pennsylvania, one consistent approach or program across the state would make it easier for them to understand and make more comprehensive and coordinated purchasing decisions. Moreover, a single, uniform schedule and approach would better enable EGSs to prepare and advertise offers across the Commonwealth, rather than only in limited EDC territories.

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<sup>5</sup> See, *Opinion and Order in re: PPL Electric Utilities Corporation Retail Markets*, Commission Docket No. M-2009-2104271 (issued Aug. 6, 2009) (“2009 PPL Electric Retail Market Order”).

- ***Appropriate Implementation of Net Metering*** - As the number of customers in Pennsylvania installing net metering devices to take advantage of on-site solar or wind grows, the lack of EDI standards around net meter devices causes confusion for customers, EGS and EDCs. For example, some customers with net meter devices have the capability to generate more electricity than they consume in a given bill period. Because EGSs have no way to identify accounts with net meter devices in advance, some EGSs may discover that a customer has a net meter device only after the customer has received their first bill. EDCs across the state are not identifying inflow and outflow kWhs in a consistent manner when transmitting customer usage to their EGSs via EDI.
- ***Appropriate Modifications to Act 129*** - Act 129, while well-intentioned, has been somewhat of an impediment to a more robust development of retail competition. Act 129 has erected certain barriers to EGSs being able to more broadly offer demand response and energy efficiency products and services. As noted earlier herein, as long as the EDCs are allowed (or even required) to provide varied and additional generation-related products – including the types of energy efficiency and demand response offerings contemplated in Act 129 – EGSs will be placed at a competitive disadvantage and the full benefits of retail competition will not be realized.
- ***Improved Consumer Education*** - Consumer education remains a critical pillar of a vibrant competitive retail market for electricity in Pennsylvania. The market with the greatest number of shopping choices is of no use if no one knows that it exists. Therefore, it is necessary that the Commission, the EDCs, EGSs and others undertake a sustainable program of customer education to make sure that consumers know not only that rate caps have expired, but that choices now exist for all electric power end-users. Such a comprehensive program should educate consumers and not market any brand of electric power. It should begin immediately so that consumers are aware of their choices for electric power and are educated as to how to contact EGSs. Bill inserts, media, advertising and the internet should all be utilized.
- ***Regulatory Certainty*** - Part of what makes it easier for EGSs to compete is to understand the model against which they must compete. Providing a long-term, stable procurement schedule with regulatory certainty will allow EGSs to better position themselves against the default service supplier that procures its supply in a well known and predictable way. By understanding that the default service paradigm is stable and will remain stable for a number of years, EGS ultimately will be able to better forecast opportunities and market themselves to consumers.

Constellation acknowledges that many of these issues will be the subject of 2<sup>nd</sup> phase of the Commission's investigation.

### **Changes to the Current Default Service Structure**

As noted before this Committee, the Commission, as part of 2<sup>nd</sup> phase of its investigation, will be investigating how or whether to alter the current form of default service or whether to direct someone other than the EDC to provide default service. If the Commission ultimately makes such changes, Constellation has recommended that the Commission adhere to the following set of ten (10) core principles:

- 1. Default service shall include only essential, plain-vanilla service.** There should only be a single default service or "POLR" rate for each customer class. The actual default service or POLR product may vary by customer class (fixed-price or variable) but there should not be multiple product offerings for a particular customer class. Therefore, TOU rates, energy efficiency offerings, demand response products and optional fixed-price products for certain customer classes shall not be offered as part of the default service or POLR structure, as those products are readily available from EGSs in the competitive retail market.
- 2. Existing wholesale default service supply contracts shall not be compromised or negatively affected in any way.** Great care must be taken to ensure that existing wholesale supply contracts are not compromised, put at risk or, worse yet, abrogated.
- 3. A reasonable transition shall be developed.** A reasonable transition period shall be adopted to ensure adequate time to accommodate any necessary market, structural and operational reforms that are going to be put in place as a result of any changes to the current default service structure.
- 4. Explicit market progress metrics shall be developed and utilized.** Explicit criteria and metrics shall be developed to evaluate the continuing development of the competitive retail market by customer class (e.g., switching statistics, number of suppliers, types of products and services, etc.).
- 5. Termination of default service procurement by the EDC shall be carefully considered.** Any policy decision to eliminate the role of the EDC as the default service provider shall be determined through a formal PUC Order that relies upon a demonstration or satisfaction of the criteria and metrics adopted pursuant to criteria #4 above.

6. **Market structures and any transition shall continue to rely upon competitive procurements.** If the Commission decides to remove the EDC from the default service role; any alternative default service structure should rely upon a direct, transparent, and competitively procured retail supply structure.
7. **Some form of POLR construct shall be retained.** - Even if the Commission eliminates the existing EDC default service procurement structure, there will still need to be a system developed for providing Provider of Last Resort service.
8. **The needs of Universal Service customers shall be explicitly considered.** All customers shall be eligible for retail supply contracts with an EGS, including low income customers. In the event that the Commission terminates the current EDC default service procurement structure, any new structure should explicitly define provisions for supplying low income and senior consumers.
9. **New consumer protections may need to be developed.** Any additional consumer protection requirements or other rules shall be developed and implemented in conjunction with the termination of the EDC's role in default service procurement.
10. **EGSs shall not be required to bear the burden of others' uneconomic investments.** No provisions shall be made for requiring EGSs to support the recovery of uneconomic investments, subsidized generation projects, or similar investments.

Constellation intends to be an active participant during the Commission's investigation.

### **CONCLUSION**

Constellation appreciates this opportunity to testify before this Committee and is confident that its recommendations will promote continued development of the Commonwealth's competitive retail and wholesale markets, for the ultimate benefit of Pennsylvania's consumers. We look forward to participating in the Commission's investigation and working with all stakeholders to further enhance the development of the competitive electricity markets throughout the Commonwealth.

Constellation is confident that the end result of this investigation will promote continued development of competition in the Commonwealth for the benefit of all consumers. If so, EGSs will be able to offer customers an ever-increasing number of service options to meet customers' needs, resources, budget requirements, environmental or sustainability initiatives and price-hedging strategies. These products will be individually customized to meet the household and business goals, risk appetites, and needs for each individual consumer.