

**BEFORE THE PENNSYLVANIA
HOUSE CONSUMER AFFAIRS COMMITTEE**

Comments Of

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CONSUMER ADVOCATE OF PENNSYLVANIA**

Regarding

Status of Competitive Electricity Markets in Pennsylvania

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**Chairman Godshall, Chairman Preston
and Members of the House Consumer Affairs Committee**

My name is Sonny Popowsky. I have served as the Consumer Advocate of Pennsylvania since 1990, and I have worked at the Office of Consumer Advocate since 1979. Thank you for inviting me to provide comments to this Committee on the status of competitive markets in the Pennsylvania electric industry.

It has been 15 years since the General Assembly passed, and Governor Ridge signed into law, the landmark legislation that opened the generation portion of the Pennsylvania electric industry to competition. No longer would Pennsylvania consumers be forced to purchase all of their electric service from vertically integrated regulated monopolies who generated, transmitted and distributed electricity to captive customers within each of their respective service territories. Most importantly, as a result of the 1996 Act, while electric utilities would still provide regulated distribution service to all of their customers, those utilities would no longer generate their own power. Rather, in the years after 1996, all of our electric utilities sold or transferred their generation assets either to unrelated third parties or to unregulated corporate generation affiliates. Because the competitive market value of those generation assets was believed to be substantially less than the costs incurred to build them under traditional regulation, the utilities were permitted to recover the “stranded costs” related to those assets over a lengthy transition period. At the same time, in order to prevent consumers from being charged for both stranded costs and for potentially higher market generation prices in the event competition did not reduce prices as expected, rate caps were put in place for the period in which stranded costs were recovered. As the Members of this Committee are well aware, the last of those rate caps (and the last stranded recovery charges) expired at the end of 2010.

From the perspective of residential electric consumers, I would submit that the transition to a competitive electric generation market generally has been a positive one. As of January 1, 2011, 100% of Pennsylvania residential consumers are receiving competitively-priced generation service. This is true whether those customers are buying that competitively-priced generation through their utility in the form of “default” service, or through an alternative retail marketer. I cannot over-emphasize the importance of this fact. If one of the questions before this Committee is what percentage of Pennsylvania consumers are now receiving their generation supplies from competitive generation sources, the answer is 100%. Whether customers receive those competitive generation supplies through their utility default service or through an alternative retail marketer, they are benefitting from direct access to competitive wholesale generation markets. This stands in complete contrast to the situation before the 1996 Act, when all residential customers had to purchase generation provided by their vertically integrated monopoly utility, even if that generation was twice as expensive as the generation being provided by the utility next door.

At the same time, as rate caps have ended across Pennsylvania, residential customers now have access to a wide array of competitive retail offerings. According to the most recent Office of Consumer Advocate Electric Shopping Guide, residential customers of PPL can now choose from more than 75 retail offers provided by more than two dozen separate licensed suppliers. Most of these offers provide discounts from the PPL default rate, and include both variable and fixed rates of different lengths, as well as a host of different renewable or “green” generation products. In response to these offers, as of July 20, 2011, over 489,000, or 39.9% of PPL residential customers had switched from PPL to an alternative generation supplier. Residential shopping levels have also been high in the service territories of Duquesne (29.1%), Penn Power

(20.0%), and PECO (19.0%). Statewide, according to the PUC Website, as of July 20, 2011, over one million (1,016,804), or 20.5% of residential electric consumers were being served by alternative electric generation suppliers.

In my mind, however, electric shopping statistics do not tell the whole -- or even the most important part -- of the story of Pennsylvania electric restructuring. For example, we know that only about five percent of FirstEnergy's Penelec residential customers have switched suppliers. But that is most likely because Penelec's residential default service rates have been low and are tough to beat with substantial savings for residential customers. A story recently appeared in the Altoona Mirror of May 26, 2011, headlined "Electric Rates Falling." That article reported the fact that the rate charged by Penelec to its non-shopping residential customers was dropping by 9% from 7.68 cents per kilowatt hour down to 6.99 cents. A spokesman for FirstEnergy Penelec was quoted in the article as stating: "We are obligated to get the most competitive price on the market for our customers. We are always looking for the best prices. Penelec customers enjoy some of the lowest rates in the state." In my opinion, there is nothing wrong with that. In fact, that is exactly how our electric model is supposed to work. Our electric distribution companies are required by law to acquire generation in competitive wholesale markets to serve their customers at the least cost over time. To the extent that alternative retail competitive marketers can beat those default prices or offer other products, such as renewable generation, that customers want to buy, that is all the better. But relatively low shopping statistics in response to relatively low utility default service prices is not a reason to scrap or seriously weaken the Pennsylvania default service model.

From the perspective of residential customers, I believe it is essential that customers continue to retain the default option to receive competitively-priced service through Companies

like Penelec if they do not wish to shop for electricity or switch to an alternative retail provider. As the Members of this Committee and the General Assembly just recently established through the passage of House Bill 2200, which became Act 129 of 2008, customers who do not choose an alternative supplier have a statutory right to receive default generation service through a PUC-approved competitive procurement process that is designed to ensure the “least cost to customers over time.” 66 Pa.C.S. § 2807(e) (3.1), (3.4). This provision was consistent with the first Declaration of Policy in Act 129 that: “the health, safety and prosperity of all citizens of this Commonwealth are inherently dependent upon the availability of adequate, reliable, affordable, efficient and environmentally sustainable electric service at the least cost, taking into account any benefits of price stability over time and the impact on the environment.” Act 129, 66 Pa. C.S. § 2806.1 *et seq*, pmb1.

As the Declaration of Policy made clear, Act 129 was passed to ensure affordable, reliable electric service for Pennsylvania consumers at the least cost over time. Act 129 was passed in October 2008, prior to the end of rate cap protections for most Pennsylvania consumers. In order to ameliorate potential rate increases, and reach the goal of reasonable and affordable rates, the Act addressed several aspects of generation procurement as well as customer usage that can impact the price of service. Most significantly in the context of this hearing, the Act set forth requirements to ensure that all customers who do not choose to switch to an alternative generation supplier have the right to receive competitively procured default generation service at the least cost over time.

While Pennsylvania residential consumers can continue to receive competitively-priced default service from their utilities (or from an alternative default supplier selected by the PUC), those customers now also have the opportunity to shop for electricity from alternative retail

suppliers. And as I noted above, more than one million residential customers have already taken advantage of that opportunity by switching to alternative generation suppliers. Pennsylvania's overall retail shopping statistics are certainly among the most robust in the Nation. My concern, however, is that some parties have suggested that all customers should be forced to switch to alternative suppliers or that default service should be made less beneficial or attractive to residential customers. While I strongly support efforts to educate residential customers about how they can benefit from shopping for electricity, and to remove any unnecessary barriers to retail choice, I am adamantly opposed to any suggestion that residential customers should be forced to switch to an alternative supplier or be deprived of their right to receive reasonable, competitively-priced default service.

In my view, the ability of consumers to receive retail default service through competitive procurement in wholesale generation markets lies at the very heart of the restructured Pennsylvania electric system. Default service, particularly for residential customers, is what makes it possible for all Pennsylvania consumers to receive the benefits of competitive generation service, whether or not they choose to shop for retail service from an alternative supplier.

The fact that more than one million Pennsylvania residential electric consumers have already switched to alternative retail suppliers demonstrates that many consumers are willing and able to obtain retail generation products that they find preferable to their utility default service. But not all customers want to shop for electricity, and retail shopping is not an end in itself. Rather, retail shopping is one means provided by the General Assembly to enable Pennsylvania consumers to receive electric generation service at reasonable prices. Another means of securing those benefits is through competitively-procured default service. To the extent that alternative

retail suppliers can offer products that are attractive to consumers, whether through lower prices, cleaner renewable energy, or rates that change either more or less frequently than “plain vanilla” default service, then the consumer benefits provided by the restructured Pennsylvania electric markets will be even greater. That does not mean, however, that customers who do not choose to switch to an alternative supplier should be deprived of their statutory right to receive stable, least cost service over time from a Commission-approved default supplier through a competitive procurement plan.

As I mentioned earlier, Act 129 of 2008 allows the Commission to approve alternative default suppliers other than the electric distribution companies. But any such alternative supplier still must comply with the default service pricing and procurement requirements of Act 129, including the requirement to obtain their generation through a Commission-approved competitive procurement process that is designed to provide service at the least cost to consumers over time. I would note that most electric distribution companies in Pennsylvania provide default service to their non-shopping customers on a dollar-for-dollar cost basis; that is, the utilities purchase power in the competitive wholesale markets and then pass the costs on to retail customers at the same price, with no added margin or profit level for the utility. It is not clear what benefits would accrue to consumers by removing the electric distribution companies from the default service procurement role, but in any case, it is clear that any alternative default supplier must be able to meet all the statutory default service commitments of Act 129.

While I believe that reasonable competitively-priced default service is absolutely essential to the success of the Pennsylvania restructuring model, I also agree that more can and should be done to educate residential consumers about the potential benefits of electric shopping and to make it easier for customers who wish to participate in competitive retail markets to do so.

For many years, my Office has published and distributed a free Electric Shopping Guide that enables residential customers to compare prices for generation service on an apples-to-apples basis and also provides information on important terms of service, including the availability of renewable generation products. I and other members of the OCA staff have participated in numerous consumer forums and legislative programs across the Commonwealth to help consumers learn how to shop for electricity and how to benefit from the restructured Pennsylvania electricity markets. My Office also will be participating fully in the current PUC investigation of retail markets and we look forward to discussing ways to eliminate any unnecessary barriers to customers' ability to choose alternative electric suppliers if they wish to do so.

In our initial Comments filed in the PUC retail market investigation, my Office set forth a number of areas that could be addressed in order to enhance competitive choices. Our proposals included more streamlined enrollment procedures for customers who wish to switch suppliers, better information on utility bills and other communications regarding the distribution company's "Price to Compare" and other necessary shopping information, greater uniformity of supplier tariffs to make it easier for competitive marketers to operate across Pennsylvania, and a number of other suggestions. Proposals made by other parties at the Commission hearing that I believe are worthy of consideration included: providing all new customers and customers moving within a service territory the opportunity to choose an alternative supplier at the time they commence service, and periodically offering customers the ability to voluntarily opt in to aggregation groups established by alternative suppliers. Finally, I was pleased to see the recent decision by the Retail Energy Supply Association (RESA) to develop and promote their own consumer education guide to help consumers in restructured states like Pennsylvania to learn the

benefits of customer choice and how to obtain those benefits. Rather than forcing customers to switch from their incumbent default generation supplier or remove that default option altogether, I believe it is highly preferable to let customers know and understand what choices are available to them and let them make the decision that they believe is in their best interest.

Through the Acts of the General Assembly in 1996 and 2008, the diligent work of the Pennsylvania Public Utility Commission, and the collaborative efforts of utilities, marketers, and consumer representatives, I believe we have come to a point in 2011 where residential electric consumers are well-positioned to benefit from Pennsylvania's competitive electric generation markets. While additional steps can and should be taken to improve those markets in the coming years, I would strongly caution against major legislative or regulatory changes that would deprive consumers of their option to receive default service from their electric distribution companies through Commission-approved competitive procurement processes that are designed to produce the least cost to consumers over time.

Thank you again for the opportunity to present these Comments to the Committee. I would be happy to answer any questions you may have at this time.

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