

**BEFORE THE PENNSYLVANIA
HOUSE CONSUMER AFFAIRS COMMITTEE**

Representative Joseph Preston, Jr., Chairman

Testimony of

**SONNY POPOWSKY
CONSUMER ADVOCATE OF PENNSYLVANIA**

**Regarding
House Bill 2200 and House Bill 2201**

**Harrisburg, Pennsylvania
January 31, 2008**

**Office of Consumer Advocate
555 Walnut Street
Forum Place, 5th Floor
Harrisburg, PA 17101-1923
(717) 783-5048 - Office
(717) 783-7152 - Fax
Email: spopowsky@paoca.org
97133**

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 testify here today regarding House Bills 2200 and 2201.

As the statutory representative of Pennsylvania's electric consumers, it is my sincere hope that today's hearing will mark a turning point in the long and ongoing debate over Pennsylvania's energy future. I believe the time has come for the General Assembly to act. The time has come to bring our legislative framework for the electric industry in line with current realities and to establish an improved framework that will benefit Pennsylvania electric consumers, while advancing the Commonwealth's goals of economic security and environmental protection.

In my opinion, House Bills 2200 and 2201 provide that framework, and I am here to support the principles set forth in these Bills in the strongest terms. While I will address at the end of my testimony certain amendments that I think would strengthen or clarify some of the provisions of these Bills, I believe these Bills represent exactly the type of approach that is needed now in order to address some of the concerns that will almost surely arise over the next several years. I would therefore commend Representative McCall and Representative George for their leadership in introducing the legislation, and I look forward to working with the members of this Committee and all members of the General Assembly in seeking to turn this legislative framework into law.

Looking first at the provisions of House Bill 2201, this Bill would require our electric utilities to acquire a "portfolio of long-term, short-term and spot-market" resources in order to provide their customers with generation service "at the lowest reasonable rates on a long term

basis.” This provision would replace the language in the current law passed in 1996 that only requires utilities to “acquire electric energy at prevailing market prices.”

As the rate caps that have protected customers for the last decade expire, it is essential in my view that our utilities provide stable and reasonably priced generation service for the vast majority of customers – particularly residential customers – who continue to purchase generation service from their traditional utility supplier, and who are likely to continue to purchase that service from their utility for the foreseeable future.

Even in neighboring states like Maryland, Delaware, and New Jersey, that have seen substantial rate increases since the end of their legislated rate caps, there has been very little residential shopping for electricity. Most residential customers continue to purchase generation service from their utilities, even in the face of much higher prices.

On behalf of residential customers, I would like to see our utilities taking affirmative steps to provide reliable service at the lowest reasonable cost over time. To the extent that competitive retail marketers can provide service at lower prices, or offer some other benefit that is attractive to consumers, that is all the better. But the goal here is not to force residential customers to switch away from their utility generation supplier. The goal is to provide reliable service at the lowest reasonable price, whether that service is provided by the utility or by a retail competitor.

House Bill 2201 properly shifts the focus of our utilities from simply purchasing generation and passing on to customers the “prevailing market prices” of that generation at a particular point in time, to a portfolio approach that considers the long-term as well as the short-term needs of customers. The inclusion of long-term contracts as a part of a portfolio not only contributes to rate stability for retail customers but will also support the development of new

generation resources in Pennsylvania and the PJM region. That is because new entrants may need the security of long-term contracts to obtain financing to build new plants and thereby bring added competition to the regional wholesale generation market. This additional wholesale competition should in turn benefit Pennsylvania retail customers.

As I have previously testified before this Committee, a growing number of other restructured states – Maryland, Delaware, Connecticut, Maine, Rhode Island, and Illinois – have recently passed new laws that adopt a broader portfolio-type approach to the provision of generation service to residential customers. But in nearly all of those states, the legislative changes occurred only **after** rate caps expired and public demands for action became overwhelming. In Pennsylvania, we still have a narrow window of opportunity to act **before** the rate caps expire for the majority of our utility consumers.

It is not my position that the use of a portfolio approach will magically eliminate the need for rate increases in 2010 and 2011 when rate caps expire for the remainder of our Pennsylvania electric utilities. Even the most well-managed portfolio will reflect the fact that costs have risen in the wholesale markets in which our utilities will be acquiring the resources to serve their customers. It is my position, however, that it must be the goal of our utilities – it must be their job – to provide stable, secure service to their customers at rates that reflect the lowest cost resources that are available to them over time in the competitive wholesale markets. This is not a new idea in Pennsylvania, by the way. Our regulated natural gas utilities have been purchasing their gas supplies for residential customers in the competitive wholesale natural gas markets for decades and they have been required since 1984 to purchase that natural gas pursuant to a “least cost procurement” policy under Sections 1307(f) and 1318 of the Public Utility Code.

The fact that electric rates may be expected to rise even under the portfolio supply approach of House Bill 2201 brings me to the reason I also support House Bill 2200, which addresses the demand side of the electric rate equation. I often tell consumers that there are two parts to every utility energy bill. The first part is the price per unit of energy -- kilowatt hour of electricity, cubic feet of natural gas -- and these prices are set either by regulators or by market forces over which the customer has very little control. The second part of the bill though is the number of kilowatt hours of electricity or cubic feet of natural gas that the customer actually uses, and there most customers do have some greater control. To the extent that consumers can use energy more efficiently, they can reduce their overall utility bills, even if the price per unit of that energy goes up. House Bill 2200 provides a framework to assist electric utility customers in turning that energy efficiency potential into a reality.

House Bill 2200 establishes goals for cost-effective programs to reduce growth in overall electricity usage and in particular to reduce energy usage in the peak 100 hours of the year. This latter goal is noteworthy because of the manner in which prices are established in the wholesale market and the disproportionate impact that high peak energy and capacity prices have on the costs that all Pennsylvania electric consumers ultimately have to pay.

I believe there is a substantial untapped store of energy efficiency and demand response resources that are less costly than much of our electric generation today. These energy efficiency and demand response resources will become even more cost-effective to consumers, however, if the cost of generation increases at the end of our rate caps. Moreover, even that calculation does not take into account the higher generation costs that will almost certainly result when we as a Nation begin to recognize the cost of emitting carbon dioxide and other greenhouse gases into the earth's atmosphere. To the extent that the General Assembly can act now to help

Pennsylvania consumers meet their future needs through cost effective energy efficiency and demand response programs, the benefits to those consumers can be enormous, particularly when the cost of carbon dioxide emissions are added to the cost of electric generation from fossil-fueled power plants that set the wholesale market price of electricity in most hours of the year.

Regarding the details of House Bill 2200, I support the approach in the Bill, which utilizes a Commission-approved program administrator to oversee the development of energy efficiency and demand response programs within each electric distribution company service territory. The Bill also relies on “a system of third party entities” to deliver the energy efficiency and demand-side response programs, although it states that an electric distribution company may be such a third-party entity. Finally, the Bill calls on the electric distribution companies to cooperate fully with the system administrator and third party entities to ensure that the programs are successfully deployed.

I believe there are two principled approaches to the development and deployment of energy efficiency and demand side programs to serve electricity customers. Under one approach, the utility itself is responsible for the development and implementation of the programs; under the alternative approach, the programs are designed and implemented by a third party. I think either approach can work under the appropriate regulatory and legal framework. The benefit of utilizing an outside program administrator, however, as proposed in House Bill 2200, is that it helps to overcome the inherent conflict of interest that a utility faces when it is asked to design programs that will reduce its own sales. Because of the manner in which electric distribution rates are set in Pennsylvania (and in most other states), when sales of electricity increase (all other things being equal), the utility’s distribution service profits between base rate cases also increase. The opposite is also true. That is, when a utility decreases sales, its

distribution profits between rate cases are reduced. In recent years, several states have concluded that, because of this inherent conflict, the utility itself might not be the best choice to provide energy efficiency and demand reduction services. Those states have turned instead to outside entities and independent third parties to plan and implement these programs. These entities do not have the same conflicting incentives that face the utilities themselves. As contemplated as in House Bill 2200, these entities can be judged solely on their ability to provide energy savings to utility customers. Indeed, House Bill 2200 explicitly requires that the compensation of the third party entities who deliver the programs will be “tied to defined goals for performance regarding program activities accomplished, energy cost savings on a per-customer basis and utility-wide basis and overall energy and peak demand reduction.”

As I noted at the beginning of my testimony, I do have a few suggested amendments that I respectfully submit would strengthen or clarify the intent of House Bills 2200 and 2201.

First, with respect to House Bill 2200 and the point I just discussed, I am not sure that an electric distribution company should also be a third-party entity (as permitted on page 4, lines 10-11 of HB 2200, PN 3089), at least not in the distribution company’s own service territory. The Bill properly requires each distribution company to cooperate with and assist both the program administrator and the third party entities who deliver the services, but it may be inconsistent with the overall framework of the Bill to allow an electric distribution company to serve as a third party entity in its own service territory.

A second concern I have with House Bill 2200 is the manner in which the goal for energy sales reduction is calculated. At page 8, lines 18-27, the Bill states that, by May 31, 2013, an electric distribution company’s annual sales should be reduced by 2.5%. The 2.5% reduction is not measured against current annual sales, however, but rather it is measured against a PUC

forecast of expected sales for the period June 1, 2012 to May 31, 2013. I would respectfully urge against the use of a load forecast as the base against which future energy reduction goals are determined. Load forecasts reaching five years into the future are simply too speculative to provide a meaningful base. Moreover, if, for example, future sales increase at an annual rate of 1.5%, then the base usage five years from now will be increased by 7.5%, and the 2.5% reduction from that forecast would still leave electric sales growth at 5%. In my view, the goals of the program should be measured against a utility's actual (weather-normalized) sales in a historic or current period. I would note in this regard that the peak demand reduction goals at page 9, lines 6-13, of the Bill are measured against peak demands during the period June 1, 2007 through May 31, 2008. While these peak demand results should be weather-normalized, I believe this is the proper annual period against which both energy efficiency and peak demand reduction goals should be measured.

Finally, under House Bill 2200, at page 12, lines 20-24, the Bill defines the term "electric distribution company" to exclude companies that serve less than 100,000 customers. In Pennsylvania, that would result in the exclusion from this bill of four companies: UGI Electric, Pike County Light & Power, Wellsboro Electric, and Citizens' Electric. While I understand the desire to shield these companies from any additional administrative expenses caused by this legislation, I would not want to see the customers of these companies excluded from the benefits of cost-effective energy efficiency and demand reduction programs. One compromise might be to include the areas served by these small companies in the programs developed by the third party administrators who are serving the much larger utilities that border on, and in some cases surround, these smaller companies. Rather than either ignore or require separate programs for

each of these small companies, it might be more appropriate to allow those companies to share in the costs and benefits of the programs developed for their larger neighboring utilities.

With respect to House Bill 2201 (PN 3090), I have two suggestions. First, on page 10, lines 8-17, the Bill properly includes the use of bilateral contracts as one possible means of securing generation resources, but then states that such contracts shall be entered into “at the sole discretion of the default service provider.” In my view, if the Commission determines that such a contract would represent the lowest cost alternative or is otherwise in the public interest, then it is not appropriate to give the utility veto power over such a contract. I would therefore delete the “sole discretion” language from this provision. Second, on page 13, line 14, the Commission is given up to ten business days to review the results of individual competitive procurement processes, i.e. auctions and requests for proposals, that are conducted by default service providers pursuant to a Commission-approved portfolio procurement plan. Based on discussions with utilities and suppliers, it is my understanding that keeping a bid or proposal like this open for as long as ten days could dramatically increase the cost of such generation to consumers. In the Commission’s current regulations on this issue, the Commission has given itself just one day to review these types of bids. I would suggest that this provision of House Bill 2201 be amended accordingly, to require a one, or at most two, day turnaround for Commission approval of auction results and requests for proposals that are conducted pursuant to a Commission-approved procurement plan.

As I noted at the beginning of my testimony, I am extremely pleased to support the provisions of House Bills 2200 and 2201. I am happy to discuss the modest amendments I have suggested to both of these Bills, but my primary goal today and through the coming weeks is to

see the legislative ideas contained in these two Bills turned into law as soon as all members of the General Assembly have had adequate time to review and consider them.

Thank you again for inviting me to testify here today. I am happy to answer any questions you may have at this time.

97133