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TESTIMONY BEFORE THE
HOUSE CONSUMER AFFAIRS COMMITTEE
ON HOUSE BILL 2200 AND HOUSE BILL 2201

Chairman Preston and members of the Committee, thank you for the opportunity to testify on House Bill 2200, regarding energy conservation, and House Bill 2201, regarding default service.

In order to meet the five-minute time limit, I will highlight only certain parts of my written testimony but will submit the entirety for the record.

HB 2201—Default Service

The recently approved default service regulations promulgated by the Pennsylvania Public Utility Commission ("Commission") do not resolve every issue in the way the Office of Small Business Advocate ("OSBA") would have preferred. However, the regulations are workable and represent a reasonable compromise among sharply competing interests. The OSBA is very concerned that attempting to make major changes in the Commission's procurement strategy through legislation could result in rules which are less favorable to small business customers than the Commission's regulations.

Therefore, the OSBA offers the following comments on specific provisions in HB 2201:

Acquisition by Rate Class

Under the default service regulations promulgated by the Commission, a default service provider ("DSP") must acquire electricity by rate class. The purpose of this requirement is to avoid interclass subsidies, e.g., charging an inflated rate to Small Commercial and Industrial ("Small C&I") customers in order to provide a discount to Residential customers, Large Commercial and Industrial ("Large C&I") customers, or both. The language of HB 2201 would provide similar protection against interclass subsidies.[1] The OSBA can not support any energy legislation without such language.

Prudence Review

HB 2201 would entitle the DSP to recover the contract price of electricity as long as the contract resulted from a Commission-approved competitive procurement process and also did not involve fraud, collusion, or market manipulation.[2] The OSBA does not object to such a guarantee of recovery in those instances in which the Commission approves a definitive procurement plan.

However, the OSBA is opposed to such a guarantee in those cases in which the Commission gives the DSP substantial discretion regarding when to make purchases and how much electricity to buy in each purchase. Under those circumstances, guaranteed recovery of the DSP's costs to acquire electricity would eliminate any incentive for the DSP to control those costs. Therefore, the Commission should retain the authority to

[1] See page 10, lines 18-22, and page 18, lines 21-24.

[2] See page 10, line 23, through page 11, line 8; page 12, lines 7-11; page 13, lines 9-15 and lines 24-27; and page 14, lines 20-23.

disallow the recovery of costs which result from the DSP's failure to exercise that discretion prudently. Without the right of the Commission to carry out such a "prudence review," the ratepayers would be forced to pay for any unsuccessful efforts by the DSP to "outguess the market."[3]

HB 2201 attempts to correct the problem of unreasonable or imprudent decisions by the DSP (and also to address changed circumstances) by allowing the Commission to alter the default service plan on a prospective basis.[4] Unfortunately, HB 2201 provides no explicit right for customers to petition for changes in the plan. Without such language, neither legislators nor their constituents would have the clear right to require the Commission to consider changes in a plan even though that plan is producing unreasonably high rates.[5]

Bilateral Contracts

HB 2201 would allow the acquisition of electricity through bilateral contracts, i.e., no-bid contracts.[6] It is likely to be difficult to develop an accurate projection of market prices over the length of the proposed bilateral contract in order to assure that the bilateral contract price would be consistent with expected wholesale market prices. The effect could be especially unfair to ratepayers if a DSP were to enter a bilateral contract with an affiliate which either owns a power plant or acts as a broker in the wholesale

[3] To authorize (but not require) the Commission to conduct "prudence review," the following sentence should be inserted after "plan." on page 10, line 27: "THE COMMISSION MAY REQUIRE THAT A COMPETITIVE PROCUREMENT PLAN INCLUDE A PROVISION FOR THE DISALLOWANCE OF COSTS RESULTING FROM THE DEFAULT SERVICE PROVIDER'S IMPRUDENCE."

[4] See page 13, lines 5-9.

[5] It is recommended that "The" on page 13, line 5, be deleted and that "UPON ITS OWN MOTION OR UPON PETITION, THE" be inserted in lieu thereof.

[6] See page 10, lines 8-17.

market. Therefore, any contract between a DSP and its wholesale affiliate should be the result of actual competitive bidding rather than the result of bilateral negotiations.[7]

Long-Term Contracts

HB 2201 would authorize the use of contracts of up to 20 years in length to serve up to 20% of the DSP's load.[8]

The goal of minimizing long-term default service rates through long-term contracts is inconsistent with the goal of letting customers switch in and out of default service freely. A long-term contract could be load-following (with all risks borne by the wholesale supplier), but such a contract would be very expensive. Unfortunately, the alternative (a contract for a fixed block of power on a non-load-following basis) could lead to disastrous results. For example, assume that a DSP decides that "lowest reasonable long-term costs" means that it should invest in a new coal-fired baseload plant (with carbon capture), and that the DSP enters into a contract for such a plant. While the plant is being constructed, natural gas prices fall significantly and electricity market prices plummet, thereby rendering the coal plant contract uneconomic. If all the default service customers can freely shop and a significant number of them do shop, the DSP will be forced to collect the uneconomic contract cost from a diminishing number of default service ratepayers. Such a result would be very similar to the rate increases imposed on customers as a result of the high-cost nuclear plant investments and non-utility generation ("NUG") contracts in the days of full regulation.

[7] It is recommended that ", SHALL NOT BE WITH AN AFFILIATED INTEREST" be inserted after "provider" on page 10, line 12, and that "SHALL" be inserted after "and" on page 10, line 12.

[8] See page 11, lines 9-12.

However, if the General Assembly decides to authorize long-term contracts, HB 2201 should at least be amended to make clear that such contracts must be the result of real competition.

For example, bilateral contracts (which, by definition, are not competitively bid) should not qualify as long-term contracts. Unfortunately, under HB 2201, entering a no-bid bilateral contract would qualify as "competitive procurement" as long as the DSP could prove that the contract price is "no greater than the cost of otherwise obtaining generation in the wholesale market."[9] It is impossible to predict with confidence what the market price of electricity will be over a 20-year period. Therefore, to protect the ratepayers from paying an inflated price for a long-term contract, HB 2201 should be amended to make clear that a long-term contract must be competitively bid and may not be the result of bilateral negotiations.[10]

Early Procurement

HB 2201 would explicitly require the Commission to permit a DSP to acquire a quantity of electricity up to three years prior to the delivery of any of that electricity to ratepayers.[11] The Commission approved such a plan for PPL, i.e., the purchase of electricity in 2007, 2008, and 2009 for delivery in 2010. However, the bids received by PPL in 2007 were significantly higher than the market price of electricity delivered in 2007. That suggests that wholesale suppliers added a substantial premium to their bids because of uncertainty about what market prices will actually be in 2010. Based on the

[9] See the combined effect of the phrase "competitive procurement processes" on page 10, line 3, and the language on page 10, lines 8-17.

[10] It is recommended that "OF UP TO FIVE YEARS" be inserted after "contracts" on page 10, line 8.

[11] See page 15, lines 17-21.

PPL experience, it is uncertain that advance procurement will produce the best rates for customers. Therefore, the Commission should retain the discretion to decide whether or not to allow advance procurement.[12]

Fixed Rates

HB 2201 would require that small business customers be offered a one-year fixed rate for default service generation.[13] The OSBA supports this requirement. However, the OSBA anticipates significant opposition from electric generation suppliers ("EGSs"). Therefore, a possible compromise would be to provide the one-year fixed rate to only those small business customers who are least likely to shop, i.e., those with a maximum peak load of 25 kilowatts or less.[14]

Reconciliation

HB 2201 would give the DSP the right to recover its default service costs through a reconcilable automatic adjustment clause.[15] This provision would guarantee that the DSP would not recover more through default service rates than the DSP spends to acquire default service electricity (plus reasonable administrative costs). However, HB 2201 would also give the DSP the option to recover its default service costs without reconciliation.[16] It is unlikely that a DSP would waive reconciliation unless the DSP were convinced that its approved default service rates were likely to be higher than the

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[12] It is recommended that "MAY" be substituted for "shall" on page 15, line 17.

[13] See page 18, lines 12-15.

[14] To implement such a compromise, "CUSTOMERS" should be inserted after "residential" on page 18, line 14, and "WITH A MAXIMUM REGISTERED PEAK DEMAND OF 25 KILOWATTS OR LESS" should be inserted after "customers" on page 18, line 14.

[15] See page 10, lines 23-27.

[16] See page 10, line 27, through page 11, line 1.

DSP's actual costs. To avoid the higher rates which would result from that type of gamesmanship, it is recommended that the option to recover default service rates without reconciliation be deleted.[17]

Phase-In

HB 2201 would require every electric distribution company ("EDC") to propose a phase-in of sizable increases in generation rates upon expiration of the rate caps.[18] Numerous EDCs, e.g., Duquesne, Penn Power, UGI, Citizens', Wellsboro, and Pike, are already out from under rate caps and presumably are to be exempt from the phase-in. Therefore, HB 2201 should be amended to make it clear that the phase-in requirement applies to only those EDCs which are under a generation rate cap on the effective date of the legislation.[19]

Under HB 2201, a customer would have the right to choose whether or not to participate in such a phase-in.[20] However, it is possible that HB 2201 could be read to permit an EDC to place a customer into a phase-in program and require the customer to take affirmative action to be excluded.

The OSBA agrees that participation in a prepayment program, a deferral program, or a combination of the two, should be voluntary. In that regard, many Small C&I customers are likely to focus on immediate cost increases and may be reluctant to pay in advance for a rate increase which may turn out to be smaller than predicted. Similarly,

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[17] It is recommended that the sentence beginning with "The" on page 10, line 27, and extending through page 11, line 1, be deleted.

[18] See page 21, lines 15-25.

[19] It is recommended that "UNDER A GENERATION RATE CAP ON THAT EFFECTIVE DATE" be inserted after "company" on page 21, line 16.

[20] See page 21, lines 26-27; page 22, lines 16-18; and page 22, lines 19-21.

many Small C&I customers may prefer to "take the hit" all at once rather than to pay interest on that portion of the rate increase which would be deferred. In either case, however, a Small C&I customer should not be required to take positive action to be excluded from the phase-in plan. Rather, positive action by the customer should be required only if the customer wishes to be included.[21]

HB 2201 implies that a deferred payment is to be recovered by the DSP from the customer involved.[22] However, HB 2201 also implies that a DSP is to recover all of its deferred costs from the totality of its ratepayers.[23] Consequently, it is likely that a DSP would be permitted to charge all ratepayers for any shortfall created by an individual customer's failure to pay that customer's share of the deferred costs. In that regard, it is recommended that that each rate class be responsible for only the shortfall caused by customers in that class. Otherwise, if a Large C&I customer were to go out of business before paying off the deferred amount owed by that customer, the impact on Residential and Small C&I customers to make up the shortfall could be substantial.[24]

Finally, HB 2201 would require a full refund to a customer who leaves default service prior to receiving the full benefit of a prepayment plan.[25] Because the DSP would

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[21] It is recommended that "AND SHALL ONLY BE PROVIDED WITH THE AFFIRMATIVE CONSENT OF THE CUSTOMER" be inserted after "voluntary" on page 21, line 27, and after "voluntary" on page 22, line 18.

[22] See page 22, lines 22-26.

[23] See page 22, line 27, through page 23, line 1.

[24] It is recommended that the following sentence be inserted after "provider." on page 23, line 1: "RECOVERY OF ANY UNCOLLECTED PORTION OF THAT REGULATORY ASSET SHALL BE ON A CLASS-SPECIFIC BASIS."

[25] See page 23, lines 2-5.

have the use of the prepaid funds, the credit or refund to a customer should include interest.[26]

Consumer Education

HB 2201 would reactivate the Council for Utility Choice ("Council") and make that body responsible for approving and overseeing consumer education plans.[27] The OSBA has two problems with this proposal. First, the membership of the Council is oriented toward residential customers rather than both residential and business customers.[28] Second, the Commission (rather than the Council) is the body which should approve (or disapprove) education plans and the rate increases necessary to fund those plans. To address these problems, the OSBA recommends that HB 2201 be amended to eliminate the Council's role as the ultimate decisionmaker.[29]

Technical Changes

The OSBA also recommends the following technical changes:

The word "PRICES" should be substituted for "costs" on page 5, line 23, and on page 6, line 14.

The word "RATE" should be substituted for "price" on page 6, line 30.

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[26] It is recommended that ", WITH INTEREST," be inserted after "credit" on page 23, line 4, and after "remainder" on page 23, line 5.

[27] See page 8, lines 5-8.

[28] The membership of the Council consists of the following: the president of the Pennsylvania Energy Association; the Consumer Advocate; the chairperson of the Commission's Consumer Advisory Council; a representative of the Governor's Advisory Commission on African American Affairs; a representative of the Governor's Advisory Commission on Latino Affairs; the executive director of the Pennsylvania Rural Development Council; the executive director of the Community Action Association of Pennsylvania; a member of the staff of the Public Utility Commission; and two professional educators. There is no explicit representation for Small C&I customers on the Council.

[29] It is recommended that "approve and" on page 8, lines 6-7, be deleted.

HB 2200—Energy Efficiency/Demand Response

The OSBA offers the following substantive and technical comments on HB 2200:

1. HB 2200 would define "demand-side response" to include technologies, practices, and strategies which reduce a customer's peak demand or shift that demand from on-peak to off-peak periods and which also reduce that customer's overall consumption.[30] Demand-side response generally includes moving consumption off-peak even if overall consumption remains unchanged. Therefore, it is recommended that lines 6-7 on page 2 be deleted.

2. It is recommended that quotation marks be inserted before "Energy" on page 2, line 12.

3. It is recommended that "COINCIDENT DEMANDS OF" be substituted for "metered consumption for" on page 2, line 25.

4. It is recommended that "PRESENT VALUE OF THE" be inserted before "avoided" on page 2, line 29, and that "PRESENT VALUE OF THE" be inserted before "monetary" the second time "monetary" appears on page 2, line 30.

5. It is recommended that "REDUCE PEAK DEMAND AND ENERGY CONSUMPTION" be substituted for "reduce energy demand and consumption" on page 3, line 9.

6. At one point, HB 2200 implies that the program administrator would make the final decisions regarding which energy efficiency and demand-side response measures should be implemented and which entities should implement those measures.[31] However, HB 2200 also implies that although the program administrator would make

[30] See page 1, line 17, through page 2, line 10.

[31] See page 5, line 2, through page 7, line 15.

recommendations, the Commission itself would make the decisions.[32] It is recommended that HB 2200 be amended to make clear that the Commission (rather than the program administrator) would make the final decisions regarding which energy efficiency and demand-side response measures should be implemented and which entities should implement those measures.[33] Furthermore, to assure periodic review of the program administrator's performance, it is recommended that the legislation be amended to impose a five-year limit on the length of the program administrator's contract with the Commission.[34]

7. HB 2200 provides that the contract costs of energy efficiency and demand-side response measures should be borne by all customers in the appropriate customer class rather than by the individual customers receiving the direct benefits of those measures.[35] The OSBA strongly supports that requirement. However, there may be instances in which the benefit to an individual customer is so significant that it would be appropriate to impose at least part of the cost on that customer. Therefore, the Commission should have the discretion to impose at least part of the cost on that customer.[36]

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[32] See page 7, line 16, through page 8, line 13.

[33] It is recommended that the following sentence be inserted after "commission." on page 5, line 4: "IN ASSIGNING THOSE POWERS AND DUTIES, THE COMMISSION SHALL SPECIFY THE MATTERS WHICH THE PROGRAM ADMINISTRATOR MAY DECIDE WITHOUT PRIOR REVIEW BY THE COMMISSION AND SHALL ARTICULATE STANDARDS TO GOVERN THOSE DECISIONS."

[34] It is recommended that the following sentence be inserted after "administrator." on page 4, line 25: "THE DURATION OF THE AGREEMENT WITH THE PROGRAM ADMINISTRATOR SHALL NOT EXCEED FIVE YEARS, PROVIDED THAT THERE SHALL BE NO LIMIT ON THE NUMBER OF TIMES THAT THE AGREEMENT MAY BE RENEWED."

[35] See page 7, lines 26-29.

[36] It is recommended that "OR CUSTOMER" be inserted after "customer" on page 7, line 29.

Once again, thank you for the opportunity to testify on behalf of the OSBA. I will be happy to answer any questions you may have.