

**Testimony of Carl Wood
On HB 2200 and 2201
To the House Consumer Affairs Committee
Of the Pennsylvania Legislature**

Mr. Chairman and Members:

My name is Carl Wood. I am the National Regulatory Affairs Director for the Utility Workers Union of America (UWUA). My union represents thousands of utility employees in Pennsylvania. I served as a Commissioner of the California Public Utilities Commission from June 1999 through December 2004, encompassing the period of the California Energy Crisis and the state's efforts to recover, which are ongoing. During that time I also served as the Chair of the Consumer Affairs Committee of the National Association of Regulatory Utility Commissioners (NARUC).

I am here representing the Pennsylvania AFL-CIO as well as my own union. My testimony will reflect my experience and observations both as a representative of organized labor and as a Utility Commissioner responsible for consumers and the public interest. My focus, as it should be for the Legislature and for Governor Rendell, will remain on getting good outcomes in terms of rates and service for the consuming public – the working people and working businesses of Pennsylvania.

Every Pennsylvanian is concerned that rates are going to escalate in the near future, driven by utility profiteering. This is inexplicable, since there is an over-abundance of local supply: annual output of Pennsylvania's power plants exceeds annual in-state retail sales by 50 %.¹ **Any legislation enacted by this body should explicitly re-assure the people of Pennsylvania that their state government is working hard to**

¹ Pennsylvania is the third largest generator of electricity, behind Texas and Florida, ahead of California. It is the largest exporter of energy, measured by the difference between in-state net generation and in-state retail sales. US Department of Energy, Energy Information Agency, State Electricity Profiles.

http://www.eia.doe.gov/cneaf/electricity/st_profiles/pennsylvania.html

provide safe and reliable electric service at affordable, just and reasonable rates.

The “procurement plan” process envisioned by amended section 2807(e) should be explicitly described as a “just and reasonable cost” plan.²

AFL-CIO PRINCIPLES

Energy supply is Pennsylvania’s key economic infrastructure in the most basic sense. As infrastructure, the energy supply system represents a permanent investment in Pennsylvania’s economy made by the people of Pennsylvania – who live and work here – for their own well-being. It is a capital intensive activity, backstopped by the ability of Pennsylvanians to pay the costs over the full economic life of the facilities they build. It must not be an occasion for speculative profiteering by traders or other short-timers. Utility profits should be re-invested in Pennsylvania’s long-lived energy infrastructure. HB 2200 and 2201 represent an important beginning, but only a beginning, at regaining control over investment in the state’s energy infrastructure.

The Utility Caucus of the state Labor Federation has developed a set of principles for managing that infrastructure which we believe should guide your deliberations on these important bills. The principles will strengthen and improve conditions within the utility industry for both workers and consumers. I want to sketch the principles briefly, discuss them, and suggest specific amendments to HB 2200 and 2201 that will strengthen the bills and reflect the concerns of the AFL-CIO.

1. The Electric Distribution Companies’ (EDCs’) “Obligation to Serve” must be enforced. The General Assembly must enact legislation that restores the PUC’s authority to direct EDCs to fulfill their social obligation to provide affordable energy for consumers, including low income consumers, and enable it to hold utility companies accountable for operation, maintenance and safety standards.
2. The EDCs’ duties should include planning for and investing in future generation and energy needs. The Provider of Last Resort (POLR) concept is not adequate

² In this regard, a conforming amendment to HB 2201 would strike the word “competitive” wherever it modifies the phrase “procurement plan” in section 2807(e) as proposed to be amended.

and lets the utilities avoid their responsibilities to find the most economical energy for customers who do not shop for power. Conservation programs make good sense. There needs to be information that is open and transparent on cost and price.

3. Enact legislation that would allow for EDCs to build new generation on cost of service recovery, including amortization under utility facility timeframe of 30 years, not 10 years like other market investments. This would reduce consumer exposure to unfair rates.
4. Legislation is needed to address FERC's lack of planning for energy markets and their failure to set wholesale energy rates that are "just and reasonable."
5. There is a serious potential for a labor shortage in all of the utilities, and state law should address in a comprehensive manner the workforce development issue that utility companies face across the state.
6. It is imperative to adopt state-level operating and maintenance standards for generating facilities to ensure reliable electric service, to guarantee a safe, skilled and trained workforce, and to prevent short-term market price volatility and manipulation.

DIRECT INVESTMENT IN RELIABLE FACILITIES, INCLUDING GENERATION FACILITIES SPECIFICALLY

HB 2201 requires each utility that serves retail load to develop a procurement plan with a reasonable planning horizon, as part of its obligation to serve. It makes consumers the financial backstop for the plan by mandating cost recovery for energy acquired in accordance with the plan. 2807(e)(3) Further, it presumes that energy acquired pursuant to the plan is "deemed to be the lowest reasonable rates on a long-term basis." 2807(e)(6) Unfortunately, the options for consumers under HB 2201 plan process are more limited than current law, and the bill fails completely to articulate furnishing reliable service as an element of the obligation to serve.

Current law requires utilities to "produce or acquire" electric energy for their customers, as an element of the obligation to serve. Section 2807(e)(1) This requirement is unchanged by HB 2201, but the procurement process envisioned by the bill (in section 2807(e)(2)) omits the direct production of energy as an element of energy supply. This is a mistake. (See below, Reducing the Role of Wholesale Markets and

FERC.) Rather than limiting utility options, the current range of options including direct production and direct investment in supply should be preserved. The obligation to serve in 2807(e)(1) should be expanded to include maintaining an appropriate reserve margin and meeting explicit inspection, maintenance and repair requirements for transmission and distribution facilities.

The duty of the PA PUC in this regard should be concomitantly clarified by amending section 2804(1) to direct it expressly to develop operation and maintenance standards for transmission and distribution facilities and for facilities for the generation of electric energy located in Pennsylvania, over 50 megawatts in size.³ This will give consumers a specific operational commitment that the PA PUC and the utilities will attend to reliability.

ENERGY CONSERVATION AND SMART METERING INITIATIVES

The two bills promote a significant investment in energy efficiency, conservation and other demand-side interventions as an important element in Pennsylvania's energy economy going forward. HB 2200 proposes aggressive conservation and efficiency goals and an independent administrator for large-scale energy conservation and efficiency programs, delivered through third parties including utilities, to achieve the goals. HB 2201 mandates significant new investment in smart metering and the energy efficiency and demand-side programs that smart metering will enable. 2807(e)(16)

These programs can be very effective but they are labor intensive and require strong, ongoing relationships with customers, particularly in monitoring, measuring and evaluating effectiveness as envisioned by HB 2200. The bills envision a central role for utilities, both through the smart metering infrastructure that they must install and operate and as third-party providers of cost-effective conservation and demand-side programs.

³ The Federal Power Act expressly withdraws "facilities for the generation of electric energy" from FERC's jurisdiction. FPA section 201(b), 16 USC section 824(b). California's experience in this regard has been salutary. See, Cal. Pub. Util. Code section 761.3.

Utilities have economies of scale and scope, the regular customer contact and the trained workforce to deliver these programs effectively, as the legislation anticipates. **The legislation should direct that utility employees perform installation and maintenance work on utility provided facilities such as smart metering. If third parties other than utilities are utilized in delivering any of these programs, the legislation should direct that the skill level and compensation levels of employees in the programs be comparable to those of utility employees.** This will assure that energy infrastructure investment provides the local economic and jobs boost that we expect.

REDUCING THE ROLE OF WHOLESALE MARKETS AND FERC

The role of markets, competition and the redundancies which they assume is a secondary consideration to assuring the people of Pennsylvania that their electricity will be reliable and affordable. Exclusive reliance on wholesale markets subject to the jurisdiction of FERC – as SB 2201 appears to assume – is a fundamental error, based on profoundly mistaken assumptions. The jury is no longer out on whether FERC’s current regime for regulating wholesale markets has failed.

In December, 41 groups representing the entire gamut of American consumers⁴ – from AARP to the Ohio Hospital Association to the Wisconsin Paper Council – requested the FERC to undertake a fundamental examination of the failure of organized wholesale markets to provide just and reasonable rates for consumers. Their specific concerns reflect issues raised by numerous utilities and Commissions throughout PJM, and include assertions that:

- sellers are earning super profits in FERC-supervised organized markets, beyond what is lawful under the legal “just and reasonable” standard;
- Rates that consumers are paying in RTO regions where the super profits are being earned are higher than rates in regulated areas, due in part to seller market power;

⁴ “Request of AARP et al. to Expand Scope of Section 206 Proceeding,” in FERC Dockets AD-07-7-000 and RM07-19-000, *Wholesale Competition in Regions with Organized Markets*. There are 41 signatories including national associations such as the American Iron and Steel Institute, American Chemistry Council, Electricity Consumers Resource Council (ELCON), Portland Cement Association; National Association of State Utility Consumer Advocates.

- Increases in prices and super profits have not attracted new investment in supply;
- FERCs ratemaking methodology is based on presumed conditions that are “at variance with reality,” including market power; significant barriers to long-term contracting; and significant barriers to market entry and exit.

The issue is not whether wholesale markets exist or are “competitive” by somebody’s definition, however “at variance with reality.” The issue is whether the rates that sellers demand and receive are just and reasonable. Consumers all over the country agree that they are not. FERC has not yet responded.

Reducing Pennsylvania’s exposure to wholesale markets, where rates are based on bidding strategies and gaming, provides some protection to Pennsylvania’s public from depending on the “mercy” of profit-maximizing marketers, empowered to raise rates to unconscionable levels by a federal bureaucracy for whom cost transparency, accountability and rate moderation seem to be alien concepts.

Reducing exposure is accomplished by direct investment in generating facilities by state jurisdictional electric distribution utilities, financed through utility and public mechanisms. **This is a necessary element of any rational plan for procurement of electricity in Pennsylvania. HB 2201 should be amended to make direct investment by vertically integrated distribution utilities, subject to traditional rate regulation by the PA PUC, an option for electric supply.**

HB 2201 has another weakness vis-a-vis wholesale markets that must be corrected. That is the arbitrary limit of 20 % of supply to be furnished through negotiated long-term contracts. **This arbitrary limit must be removed.** Under the provisions of the bill, the remainder of the supply must be obtained through bid-based methodologies: auctions, RFPs and spot-market purchases. This mandated over-reliance on bid-based pricing, rather than cost-based pricing is a recipe for disaster. FERC-jurisdictional wholesale markets exhibit two particular vices that FERC has refused to remedy: a

refusal to address withholding of supply⁵, and reliance on bids that are unrelated to actual costs of providing service under the traditional cost-based “just and reasonable” standard.⁶

The Ohio PUC (PUCO) recently told the FERC that it intends vigorously to protect Ohio consumers through enforcement activity, and that it requires access to wholesale market data in real time, including bidding patterns that might show collusion or gaming.⁷ **The Pennsylvania PUC’s capabilities in this area should be strengthened, including giving it a specific responsibility to assure that wholesale rates and contracts are specifically determined by the FERC to be just and reasonable on a cost-of-service basis before giving them effect in retail rates, and directing PA PUC to utilize all of its legal authority under the Federal Power Act to get**

⁵ Withholding was at the heart of the California Energy Crisis. Withholding took two forms in the Western Energy Crisis: **economic withholding** through the device of demanding unreasonably high prices and **physical withholding** through the device of refusing to make physical supply available. See, Final Report on Price Manipulation in Western Markets – Fact Finding Investigation of Potential Manipulation of Electric and Natural Gas Prices, issued March 2003 by the FERC Staff, pp. VI-45 et seq. for a description and discussion of economic and physical withholding. FERC enables withholding by refusing to put a “must offer” requirement in place in markets where it has control, despite the obvious reliability and market power issues, because sellers object. *Market Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services*, Order 697 in Docket RM07-4-000 (June 21, 2007), Para. 27, 61 FERC P.61,295 . The practice of raising rates through the device of withholding has not ended with the Western Energy Crisis. It remains an effective device for profiteering sellers, with the apparent connivance of the FERC. See, “Editorial: Shocking Rip-off,” New York Daily News, November 24, 2007. FERC still refuses to require power plants to offer output, a matter of particular importance in Pennsylvania, where abundant supplies exist and shortage justifying rate increases must be artificially created.

⁶ As asserted in the 41 Party Request.

⁷ Comments of the Public Utilities Commission of Ohio in FERC Dockets AD-07-7-000 and RM07-19-000, *Wholesale Competition in Regions with Organized Markets*, pages 15-20. FERC has yet to respond. But see, “Order Accepting Information Policy Revision,” in *New England ISO*, Docket ER07-1245 (October 18, 2007) 121 FERC P. 61,035, permitting access to data 3-months after-the-fact and anonymous.

information bearing on the “just-and-reasonable” issue and bring it to the FERC and the federal courts.⁸

The PA PUC should be directed to strengthen its working relationships with its counterparts in Ohio, Maryland, New Jersey, Illinois and the other PJM states in these efforts. Until wholesale markets are providing just and reasonable rates under traditional cost-of-service principles, reducing exposure to wholesale markets through direct investment and long-term negotiated contracts where possible, and aggressively pursuing remedies at FERC are needed to reassure Pennsylvania’s consumers that state government is doing the best it can to protect the public.

That concludes my testimony. I am prepared to work with you and your staff to develop language to embody each of the suggestions I have made in this testimony. Thank you for this opportunity to speak to you today.

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⁸ C.f., Federal Power Act section 201(g)(federal court enforcement of state regulators’ requests for information); section 209(c) (duty of FERC to disclose information to state regulators.)