

COMMONWEALTH OF PENNSYLVANIA
HOUSE OF REPRESENTATIVES

ENVIRONMENTAL RESOURCES AND ENERGY
COMMITTEE HEARING

STATE CAPITOL
EAST WING
ROOM 60
HARRISBURG, PENNSYLVANIA

WEDNESDAY, MAY 27, 2009
1:03 P.M.

PRESENTATION ON CREATING
THE PENNSYLVANIA POWER AUTHORITY

BEFORE:

HONORABLE CAMILLE "BUD" GEORGE, MAJORITY CHAIRMAN
HONORABLE BRYAN BARBIN
HONORABLE DAVID R. KESSLER
HONORABLE GREG VITALI
HONORABLE JOHN T. YUDICHAK
HONORABLE SCOTT E. HUTCHINSON, MINORITY CHAIRMAN
HONORABLE GARTH D. EVERETT
HONORABLE MATT GABLER
HONORABLE RANDY VULAKOVICH

ALSO IN ATTENDANCE:

HONORABLE JOHN R. EVANS
HONORABLE BRENDAN F. BOYLE

* * * * *

DEBRA B. MILLER REPORTING
(717) 439-3785
dbmreporting@msn.com

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

ALSO PRESENT:
E. THOMAS KUHN
MAJORITY EXECUTIVE DIRECTOR
EDWARD P. YIM, ESQ.
MAJORITY LEGAL COUNSEL
JOSEPH A. DEKLINSKI
MINORITY EXECUTIVE DIRECTOR

DEBRA B. MILLER
REPORTER

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I N D E X

TESTIFIERS

<u>NAME</u>	<u>PAGE</u>
TYRONE J. CHRISTY VICE CHAIRMAN, PA PUBLIC UTILITY COMMISSION (PUC).....	7
SONNY POPOWSKY CONSUMER ADVOCATE OF PA.....	34
JOE NIPPER SENIOR VICE PRESIDENT FOR GOVERNMENT RELATIONS, AMERICAN PUBLIC POWER ASSOCIATION (APPA).....	60
VIC SAWICKI SENIOR ENERGY MANAGER, AIR PRODUCTS AND CHEMICALS, INC; CHAIRMAN, RATE CAP EXPIRATION COMMITTEE, INDUSTRIAL ENERGY CONSUMERS OF PENNSYLVANIA (IECPA).....	79
DAVID M. KLEPPINGER, ESQ. ATTORNEY, McNEES, WALLACE & NURICK, LLC; COUNSEL, INDUSTRIAL ENERGY CONSUMERS OF PENNSYLVANIA (IECPA).....	91

SUBMITTED WRITTEN TESTIMONY

* * *

ROBERT F. POWELSON COMMISSIONER, PA PUBLIC UTILITY COMMISSION (PUC).....	99
DOUGLAS L. BIDEN, PRESIDENT TERRANCE J. FITZPATRICK, GENERAL COUNSEL ELECTRIC POWER GENERATION ASSOCIATION.....	105

1 P R O C E E D I N G S

2 * * *

3 CHAIRMAN GEORGE: The Environmental
4 Resources and Energy Committee hearing will commence
5 on this Wednesday, May 27, 2009, at approximately
6 1 o'clock.

7 We have the introduction of our Legislators,
8 and I want you to introduce yourselves when you go
9 around to the left so they know who you are and what
10 area you represent.

11 Starting with you, sir.

12 REPRESENTATIVE YUDICHAK: Thank you,
13 Mr. Chairman.

14 Good afternoon. I'm Representative
15 John Yudichak from Luzerne County.

16 CHAIRMAN GEORGE: Mr. Kessler.

17 REPRESENTATIVE KESSLER: Dave Kessler,
18 southern Berks County.

19 REPRESENTATIVE BARBIN: Bryan Barbin,
20 Cambria County.

21 REPRESENTATIVE VITALI: Greg Vitali,
22 Delaware County.

23 CHAIRMAN GEORGE: Camille George, Clearfield
24 County.

25 REPRESENTATIVE HUTCHINSON: Representative

1 Scott Hutchinson, Venango and a portion of
2 Butler County.

3 REPRESENTATIVE GABLER: Representative
4 Matt Gabler from Clearfield and Elk Counties, the
5 75th District.

6 REPRESENTATIVE EVANS: Representative
7 John Evans from Erie and Crawford Counties.

8 REPRESENTATIVE EVERETT: Garth Everett,
9 Lycoming County.

10 CHAIRMAN GEORGE: Yes, the Chair has agreed
11 to allow the gentleman, Mr. Evans, and another
12 individual who is not a member of the committee by
13 the name of Boyle, who is trying to get here,
14 Brendan Boyle, they are most welcome and will be
15 accorded the same privileges as the committee
16 members. I thank you for your interest.

17 The Commonwealth of Pennsylvania will soon
18 be faced with an energy crisis as rate caps expire
19 and utility prices skyrocket to record-level highs.

20 Combined with today's rising costs of food
21 and fuel, the impending electric rate hikes will
22 place many Pennsylvania residents in economic
23 peril.

24 The Commonwealth's failed attempt at
25 electric deregulation and the competitive marketplace

1 now requires legislative action before our citizens
2 are faced with electric bills more than 40 percent
3 greater than those which they pay today.

4 The competitive wholesale power market
5 exists in name only. This market, which is not
6 regulated at the State level and only loosely
7 overseen at the Federal level by the Federal Energy
8 Regulatory Commission, FERC, is not competitive at
9 all.

10 To all addressing this looming problem, I
11 will soon be introducing the legislation creating
12 the Pennsylvania Power Authority, similar to
13 House Bill 2791 of the 2007-2008 session.

14 This legislation will create a solution to
15 the problems surrounding deregulation by improving
16 the process of procuring electricity and protecting
17 the Commonwealth citizens' economic well-being.

18 I turn to my colleague, Chairman Hutchinson,
19 for remarks, should he have any.

20 REPRESENTATIVE HUTCHINSON: Thank you,
21 Mr. Chairman.

22 Pennsylvania is indeed facing some very
23 challenging times, both just generally and on the
24 economic front, but also, as we move forward with
25 energy, on the energy front.

1 I think it is interesting that for, you
2 know, the second hearing in a row we are faced with a
3 proposal that many believe, myself included, will
4 increase electric costs for the consumers of
5 Pennsylvania.

6 And that is why I think it is important that
7 we air this issue fully and talk about it and really
8 figure out if this is the direction we want to go.
9 So I thank you for scheduling this hearing today and
10 look forward to a lively debate.

11 Thank you, Mr. Chairman.

12 CHAIRMAN GEORGE: The Chair thanks the
13 gentleman.

14 The first individual that will be testifying
15 before this committee is the Honorable
16 Tyrone Christy, Vice Chairman of the Pennsylvania
17 Public Utility Commission.

18 You may proceed, sir.

19 VICE CHAIRMAN CHRISTY: Thank you,
20 Chairman George, Chairman Hutchinson, and members of
21 the committee.

22 Thank you for the invitation to appear
23 before you this afternoon to present testimony
24 regarding the need for a power authority to minimize
25 the higher electric prices that are facing

1 Pennsylvania.

2 At the outset, I would like to emphasis that
3 my testimony represents my personal views and not
4 those of the commission as a whole.

5 By January 1, 2011, when the last rate caps
6 expire, all Pennsylvania customers will be paying
7 electricity at prices that are derived from the PJM
8 wholesale power market.

9 The problem is that today's PJM does not
10 look anything like PJM looked like back in 1996 when
11 Pennsylvania decided to deregulate. Instead of being
12 primarily the cost-based energy exchange that existed
13 in 1996, PJM has morphed into a highly complex series
14 of artificially established pricing mechanisms, all
15 short term in nature, under which cost bears little
16 or no relationship to wholesale electric prices.

17 Under the new PJM regime, wide volatile
18 price swings can be expected. Just last summer,
19 Pennsylvania was facing a potential rate increase of
20 90 percent, but as Warren Buffett said recently, the
21 economy has fallen off a cliff, and as a result,
22 commodity prices are currently depressed. And today,
23 we would expect electricity price increases of only
24 about 10 to 15 percent if the rate caps expired
25 tomorrow.

1 So in a very perverse manner, the economic
2 crisis does have at least one benefit. If last
3 year's projected rate increases would have
4 materialized, the impact on the Pennsylvania economy
5 would have been devastating. The potential economic
6 transfer from Pennsylvania consumers to the
7 power-generating sector could have been in excess of
8 \$12 billion.

9 I think a large amount of credit is owed to
10 our Consumer Advocate, Sonny Popowsky, for his wisdom
11 10 years ago to insist on a rate cap just in case the
12 promise of lower rates did not materialize under
13 deregulation.

14 So we have temporarily dodged a bullet, but
15 what is important to note is the mechanics that led
16 to those higher prices continue to exist. When our
17 economy recovers, it is realistic to assume that
18 higher electricity prices will result.

19 Under the current framework, the wholesale
20 power market that has evolved since 1996 can be
21 expected to disappoint consumers with extreme
22 volatility and higher-than-necessary prices via the
23 single market clearing prices.

24 These clearing prices result in Pennsylvania
25 coal and nuclear facilities receiving far more than

1 the actual cost of production.

2 Now, these rates are overseen by the Federal
3 Energy Regulatory Commission. We don't regulate
4 them at the PUC. All we do is file comments at the
5 FERC.

6 I think you will hear a little bit later on
7 from the American Public Power Association. They
8 have been very active in Washington and are seeking a
9 reform to these wholesale power price structures down
10 in DC.

11 Higher-than-necessary prices can also be
12 expected due to continued reliance on the "full
13 requirements" approach of providing default service
14 at the retail level. This is an approach that has
15 been adopted by the Pennsylvania Commission.

16 Just to give you an example, I am a customer
17 of Penn Power. Our rate caps have been off now for
18 2 1/2 years. And my default service is 12 1/2 cents
19 a kilowatt-hour, but I am able to buy power at
20 8 1/2 cents a kilowatt-hour. It's a substantial
21 savings, but there is only 12 percent of the
22 residential people who shop.

23 So I think it's incumbent upon the
24 commission to find out better ways to obtain default
25 service for its customers so that those people who

1 have no interest in shopping can actually receive
2 competitive electricity rates.

3 Finally, another reason why I think we will
4 see power prices continue to go in the wrong
5 direction is the absence of long-term contracts.

6 They are just not available in this new
7 regime. And if you have long-term contracts, then
8 you can assure that you can build the next wave of
9 base load, low-running cost generating facilities.

10 All of these concerns can be mitigated by
11 adoption of a consumer-driven power authority that
12 would purchase power from new and existing resources
13 under competitive solicitations with the power
14 provided to the consumers at the authority's cost.

15 Currently, Pennsylvania places its trust in
16 PJM's artificial pricing mechanisms to create these
17 just and reasonable rates for our consumers and to
18 provide the new capacity to provide reliable service
19 to customers.

20 Pennsylvania is one of a small, diminishing
21 number of States that continues to place faith in
22 these newly created pricing mechanisms to meet our
23 consumers' power supply.

24 Of the approximately 20 States that
25 initially adopted deregulation, many have taken some

1 dramatic actions to reverse their decisions,
2 including forming State power authorities.

3 California simply re-regulated after its
4 deregulation attempts failed.

5 Montana is moving forward with
6 re-regulation.

7 Illinois negotiated refunds for consumers
8 and formed a State power authority to take control of
9 its own destiny.

10 And I would note that the State power
11 authority just completed its first auction process,
12 and the results were very encouraging. Consumers
13 received 7 1/2 percent lower rates than under the old
14 auction process.

15 Both Ohio and Michigan have turned the clock
16 back on full-scale deregulation.

17 Virginia refused to continue its
18 deregulation plans and retain control of its
19 generation resources.

20 Connecticut mandated a State auction using
21 long-term contracts to make sure new generation is
22 built to meet shortages that were not being met by
23 deregulation.

24 The Connecticut House of Representatives
25 passed a bill just last week to create a power

1 authority to help control runaway prices in the RTO
2 serving that State.

3 Delaware has gone to full-scale integrated
4 resource planning.

5 In Texas, dramatic price swings and supplier
6 defaults have resulted in at least one legislative
7 initiative to change its single market clearing price
8 structure that is believed to have caused this swing.

9 The Texas Legislature also recently voted to
10 hold back any further plans for deregulation in those
11 parts of the State that have remained regulated.

12 New York, which already has a power
13 authority, also has legislative proposals to address
14 the shortcomings of the single market clearing price
15 embedded in its own RTO pricing scheme.

16 Recently, Maryland Governor O'Malley
17 referred to having faith in the pure market design as
18 being tantamount to hoping the Electricity Good Fairy
19 will show up.

20 I understand that Maryland is moving towards
21 securing its own generation future with less reliance
22 on the market.

23 Last spring, New Jersey Governor Corzine
24 proclaimed that New Jersey can no longer wait and
25 hope that the market will deliver the next wave of

1 power generation resources. In this regard, a power
2 authority was proposed as one vehicle to ensure that
3 new resources are added.

4 My purpose of raising these issues is to
5 highlight the fact that Pennsylvania is in the
6 minority as one of the small number of States that is
7 continuing to proceed with this grand experiment with
8 little to no modification.

9 The lack of activity in Pennsylvania to
10 address the problems in the wholesale electric market
11 is not the norm across the country.

12 Most States have simply remained regulated
13 under the traditional vertically-integrated
14 structures, and these States have no intention of
15 deregulating now.

16 However, as I just mentioned, many of those
17 States that embarked upon the electric restructuring
18 have taken various steps to try to ensure that their
19 customers receive power at just and reasonable
20 rates.

21 In contrast, Pennsylvania, again, we have
22 basically turned over the control over the
23 reliability of our power supply -- what gets built,
24 when it gets built, and where it gets built -- to
25 short-term market forces.

1 Planning for the reliability of electric
2 supplies is a long-term proposition, but the market
3 that is in place -- PJM's pricing mechanisms for
4 wholesale power -- is a short-term market, and there
5 is the rub. It is folly to rely on a short-term
6 market to produce positive long-term results.

7 There have been virtually no
8 capital-intensive base load generating plants built
9 in Pennsylvania since the generation of electricity
10 was deregulated in 1996.

11 Nearly all of the new capacity has either
12 been gas-fired or wind, and for different reasons,
13 neither of these resources is conducive for driving
14 down wholesale power prices in Pennsylvania.

15 Just prior to adopting deregulation in 1996,
16 Pennsylvania was at the end of a large,
17 capital-intensive build-out of base load generating
18 facilities.

19 A significant number of new nuclear units
20 had been added to the generation mix, including
21 Susquehanna, Beaver Valley, Limerick, and the Perry
22 generating units.

23 In addition, the last wave of our new
24 capital-intensive facilities came on line from waste
25 coal-fired facilities under our highly successful

1 IPP program.

2 Under this program, all of the development,
3 construction, and operation risks were transferred to
4 third parties under performance-based contracts.

5 Pennsylvania was well on its way to shifting
6 the risk of power generation facility performance to
7 third parties instead of ratepayers, as it had done
8 under the old rate-base return of methodology. But
9 that approach was abandoned in favor of relying upon
10 the short-term PJM market.

11 Well, that was then, and now if you turn the
12 page and look at where we are today, and reserve
13 margins are dropping, and customers will be paying
14 higher rates, not lower rates, for power when the
15 rate caps expire, despite having paid the stranded
16 costs from the very units that the customers
17 essentially will be buying back at cost much higher
18 than the actual cost to produce the power.

19 In addition, new capital-intensive power
20 generation is not being built in Pennsylvania because
21 the short-term PJM market is not structured to
22 support capital-intensive projects.

23 Somewhere in this framework, we need to make
24 accommodation for long-term contracts under
25 competitive solicitations, with pricing high enough

1 to support the next set of generation facilities
2 without paying all legacy plants the same price that
3 the new facilities receive under the current pricing
4 schemes.

5 So why create a power authority? Well, by
6 creating a State power authority or a purchasing
7 agency, new generating plants can be built to supply
8 power to consumers at contractual rates that bear
9 more of a reasonable relationship to the actual cost
10 of producing power.

11 This can be done through a series of
12 competitive solicitations for the construction of new
13 power plants that would provide power at
14 contract-based rates rather than at prices that are
15 the product of the PJM market.

16 Adopting that approach, that was what we
17 used here at the commission with our IPP program in
18 the 1980s, where we shifted the development,
19 construction, and operating risk.

20 Whether you like deregulation or hate it, I
21 believe the end product of what we have done is that
22 we have placed our large consumers at a competitive
23 disadvantage to their competitors in States where
24 they are regulated and they have lower-priced
25 offerings.

1 We used to have economic development riders
2 that we used to retain and attract businesses in
3 Pennsylvania, but those are no longer available to
4 us.

5 So I'm deeply concerned that this State is
6 losing its ability to compete and its ability to
7 attract and retain businesses without a reasonably
8 priced and a stable electricity supply arrangement.

9 Just last month, a large employer in the
10 Penn Power service area, Signature Aluminum, who
11 employed about 275 people, they finally closed shop,
12 due in part to a significant rise in power prices.

13 AK Steel, which employs approximately
14 1,500 people in my hometown of Butler, is having
15 second thoughts of installing a \$150 million electric
16 arc furnace due to this volatile power price
17 situation.

18 Alcoa, one of our finest corporate citizens,
19 which was forced to close its plant in Frederick,
20 Maryland, when the electric rate caps came off in
21 that State, has testified how uncapped electricity
22 rates in Pennsylvania would impose significantly
23 higher electricity costs on their Lancaster plant
24 than those paid by their competitors in other
25 States.

1 Other industrial customers are in the same
2 position, and make no mistake about it: this is a
3 very serious threat to the Pennsylvania economy.

4 In conclusion, I would like to commend
5 Chairman George, Chairman Hutchinson, and the members
6 of this committee for your consideration of a power
7 authority as a tool to help Pennsylvania consumers
8 obtain just, reasonable, and stable electric rates.

9 Thank you, and I welcome any questions that
10 you may have.

11 CHAIRMAN GEORGE: I thank the gentleman for
12 his testimony.

13 I will recognize those that raise their
14 hands to be recognized.

15 The gentleman, Mr. Hutchinson.

16 REPRESENTATIVE HUTCHINSON: Thank you.

17 Thank you, Mr. Christy.

18 I was curious, you did state in your
19 testimony that you live in an area that the caps have
20 come off, and you indicated that you are paying a
21 lower rate than the default rate. But then on the
22 other hand you say that competition cannot be
23 expected to produce savings.

24 I'm trying to figure out which it is. You
25 know, can it produce savings or can it not?

1 VICE CHAIRMAN CHRISTY: Well, first off, the
2 default rate that I mentioned to you is -- in my
3 case, I use such few kilowatt hours because, thank
4 God, my kids turn the lights off occasionally -- it's
5 12 1/2 cents. But I can shop for power, and I have
6 been able to get it at 8 1/2 cents.

7 The problem is that in the residential
8 sector, most residential customers just don't seem to
9 care. I don't know how else to say it.

10 REPRESENTATIVE HUTCHINSON: I guess if they
11 don't care, why is it incumbent upon us to worry
12 about them then? I think---

13 VICE CHAIRMAN CHRISTY: But my point is
14 that I think we could do a much better job with
15 our default service, getting it under
16 least-cost-purchasing protocol.

17 What we do under our "full requirements"
18 approach is, we will have auctions to buy power 2 to
19 3 years in advance, and then we ask the suppliers to
20 take the risk of an unknown level of customer demand,
21 and that's a risk premium that is placed on that
22 default service. And I think that's an expensive
23 risk premium, because as soon as we establish those
24 default rates, then people offer generally 10 percent
25 lower than those rates.

1 And I'm very concerned about particularly
2 the elderly that don't understand what we are doing
3 here and might not understand completely how to shop,
4 that they end up paying higher rates than they
5 otherwise would have if we would do our job under a
6 better least-cost-purchasing strategy for them.

7 REPRESENTATIVE HUTCHINSON: The only other
8 question I will ask you at this time is, you
9 indicated that there is no incentive under the
10 deregulated regime to build new capacity, new
11 capital-intensive projects. Isn't the single market
12 clearing price mechanism the way that we can get new
13 capacity built?

14 If cost-effective generation, base load
15 generation, can recoup their costs through this
16 single market clearing price, don't you think
17 investors would be willing to build new capacity in
18 Pennsylvania?

19 VICE CHAIRMAN CHRISTY: Initially, the
20 single market clearing price was set up in that
21 fashion, to provide some extra funds to help
22 encourage new generation. And what was found is that
23 was not enough to encourage new generation, and so
24 RPM was also developed.

25 But even with a robust single market

1 clearing price in RPM, because of the uncertainty in
2 where the rates are headed -- I mean, they go up and
3 down like the roller coaster -- it makes it extremely
4 difficult to finance a capital-intensive power plant
5 like that.

6 I have personally financed power plants with
7 a long-term contract that I was able to take to the
8 bank, and because of that, I was able to get the
9 financing. I had a multitude of sources to go to
10 because they knew that I had a surety of a certain
11 revenue that would make the plant concept work.

12 Conversely, I have also financed plants that
13 have been done on a merchant basis where we didn't
14 have a long-term contract, and it was night and day
15 trying to obtain financing.

16 One, it was extremely difficult to find
17 those sources; and number two, it was a lot more
18 expensive to find those sources of capital.

19 So I think the best way to get consumers the
20 lowest possible prices is to allow the developers to
21 have a long-term performance-based contract. If you
22 don't produce, you don't get paid, period. That's
23 what I liked about our IPP program.

24 But I also think that gets them lower-cost
25 financing. And that long-term contract, in my

1 opinion, is needed because the single market clearing
2 prices are up and down too much.

3 REPRESENTATIVE HUTCHINSON: Thank you,
4 Mr. Chairman.

5 CHAIRMAN GEORGE: Before I recognize the
6 next interrogator -- the gentleman, Mr. Boyle, whom
7 we have agreed to allow to sit with us, and we didn't
8 introduce the gentleman, Mr. Vulakovich. Welcome,
9 gentlemen.

10 The next individual -- we will not go in
11 any particular order -- will be the gentleman,
12 Mr. Everett.

13 REPRESENTATIVE EVERETT: Thank you,
14 Mr. Chairman.

15 And thank you, Mr. Christy, for coming here
16 today.

17 One question that I have is, in your
18 testimony you stated that natural gas is not
19 conducive to driving down the price of wholesale
20 electricity.

21 Is that based upon this new Marcellus gas
22 find? I mean, Pennsylvania has just been identified
23 as the largest source of new natural gas in
24 North America and possibly the world, and it would
25 seem to me that with that natural resource available

1 to us, that natural gas-fired plants in Pennsylvania
2 would be the future of generating power in
3 Pennsylvania.

4 Do you have any comment on that?

5 VICE CHAIRMAN CHRISTY: Yes; you make a
6 great point.

7 Last year, in my opinion, one of the reasons
8 why the market prices went so high was natural gas
9 separated significantly from the price of coal and
10 nuclear-fired generation. And as a result, when
11 natural gas is on the margin, it creates a higher
12 price.

13 And you are right, if we can develop the
14 Marcellus Shale reserve and if it can produce the way
15 that some of the experts believe that it can, I think
16 that can help to mitigate natural gas prices. It
17 only makes sense: more supply, that should drive down
18 the prices. And that would clearly help the single
19 market clearing price.

20 Absolutely; there is no question about that.

21 REPRESENTATIVE EVERETT: The other question
22 I have is related, I believe.

23 If we had an authority like is being
24 proposed, who would determine what type plants would
25 be brought on line?

1 Would that be determined by, I would say
2 politicians and bureaucrats and appointees, or would
3 that be the market determining what is the most
4 efficient way to produce electricity?

5 Or what is the political, you know, source
6 of the day that has been determined to be, you know,
7 the way that people want to go as opposed to what is
8 most efficient?

9 VICE CHAIRMAN CHRISTY: I think it is very,
10 very important that the governing structure of any
11 power authority would keep it in the hands of the
12 consumers who are paying the bills to make the
13 decisions.

14 And no disrespect to our Representatives,
15 but it would be better to keep the politicians out of
16 the authority. Let it be the people who are paying
17 the bills -- a member of the Consumer Advocate, a
18 member of the Small Business Advocate, and a member
19 of the industrial sector -- to make those decisions
20 on what type of solicitations that they want to issue
21 in order to get competitive supplies of power.

22 Because I, too, share your concern that too
23 much meddling on the political front could ruin an
24 opportunity to get the lowest-cost prices for
25 consumers under competitive solicitations.

1 CHAIRMAN GEORGE: Has the gentleman
2 concluded?

3 REPRESENTATIVE EVERETT: Yes, sir. Thank
4 you.

5 CHAIRMAN GEORGE: I would like to add,
6 Mr. Chairman, it wasn't the politicians that allowed
7 two utilities to go, one to Minnesota to buy a
8 hydroelectric and the other to buy a coal-fire in
9 Illinois, that could have been placed in Clearfield
10 County or Cambria or Bedford, just as a matter of
11 information.

12 Thank you.

13 REPRESENTATIVE EVERETT: You're welcome,
14 sir.

15 CHAIRMAN GEORGE: The gentleman, Mr. Gabler.

16 REPRESENTATIVE GABLER: Thank you very much,
17 Mr. Chairman.

18 I'll stay back from the microphone. This
19 one is really sensitive.

20 Commissioner, I appreciate your testimony.
21 I know you started out with your qualification that
22 the views that you presented are your own and not the
23 rest of the commission.

24 I just wanted to ask if you could comment on
25 what you think your fellow Commissioners would also

1 believe about this concept.

2 VICE CHAIRMAN CHRISTY: Well, I'm a little
3 hesitant to try to speculate.

4 I think there are some members that share my
5 concern with the wholesale power market structures.
6 I think there are some that believe that the
7 wholesale market structures are fine.

8 And where they are at on the State power
9 authority, I don't know if they'll support that or
10 not. I don't think they have seen the details of it
11 yet to form their final opinion.

12 But they may not be as strong as I believe
13 that we need the power authority.

14 REPRESENTATIVE GABLER: Thank you.

15 And then my other question is, and this kind
16 of dovetails a little bit with Representative
17 Everett's question, and that is, I'm concerned that
18 in getting the State into a business like this, how
19 can we be sure that it actually will result in
20 decreased costs to the consumer, especially when you
21 consider altogether tax money that might need to be
22 laid out in order to make these investments as well
23 as the price of electricity in general?

24 VICE CHAIRMAN CHRISTY: Again, it's how you
25 set up the power authority.

1 As an example, under our independent power
2 program in the 1980s, we didn't have to put up any
3 money. All we had to do was to issue long-term
4 contracts and let private industry step up to the
5 plate and take all the development and financing and
6 operation risk of those facilities.

7 And I think that's the model that works the
8 best, is to shift that responsibility to the third
9 parties for the development, financing, and operation
10 of the facilities.

11 REPRESENTATIVE GABLER: Thank you,
12 Mr. Chairman. I am complete.

13 CHAIRMAN GEORGE: You are done?

14 REPRESENTATIVE GABLER: Yes.

15 CHAIRMAN GEORGE: Thank you.

16 The gentleman, Mr. Barbin.

17 REPRESENTATIVE BARBIN: Thank you,
18 Mr. Chairman.

19 And thank you, Vice Chairman Christy for
20 your testimony today.

21 I have reviewed your testimony, and I have
22 also reviewed the Consumer Advocate's testimony
23 which has indicated that power authorities have been
24 set up in Illinois and other nearby contiguous
25 States.

1 My question is this: If we are in the
2 middle of a recession and we know that we have
3 obligations that have been imposed by this 1996
4 legislation, good or bad, and we are looking at rate
5 caps expiring, would I understand your testimony to
6 mean that if we have a power authority, we will be
7 able to reduce some costs regardless of whether
8 we choose to extend caps or whether we mitigate
9 caps?

10 Because in this context, a power authority
11 would provide long-term contracting abilities which
12 would have an overall reduction of price of
13 electricity, and it would also allow for financing
14 which would have, instead of having full load
15 capabilities, you would be able to go to peak load
16 capabilities.

17 Is that correct?

18 VICE CHAIRMAN CHRISTY: I think that the
19 power authority construct will make sure that you
20 get, in my opinion, more fairer rates at the end of
21 the day.

22 What it costs to build a plant is what you
23 are going to be paying for it. What it costs to run
24 that plant is what you are going to be paying for
25 it.

1 Under the current scheme, it is based upon
2 the single market clearing price, which can produce
3 some very high rates, despite the fact that, as an
4 example, nuclear facilities might only cost 2 cents
5 to run fully depreciated, yet they are being able to
6 receive 9 cents a kilowatt-hour through the market.

7 So I think consumers at the end of the day
8 would be better off having control of the asset so
9 that, let's just say we did a long-term contract with
10 a nuclear plant. Once we paid off the nuclear power
11 plant, we would own it and we would be getting that
12 power at 2 cents.

13 So on a long-term basis, we will save money
14 under this approach, but it also brings stability to
15 the table at the end of the day.

16 REPRESENTATIVE BARBIN: Well, why I'm asking
17 this question is, there has been a lot of discussion
18 in the national news about the fact of why our oil
19 price always seems to go up. And one of the answers
20 that we received from industry is that the oil
21 refinery capacity that we have in the United States
22 is almost up to 100 percent. We just don't have new
23 refineries.

24 Now, does that same logic apply here under
25 the power authority idea, which is, if we had a power

1 authority, we could have new facilities; if we had
2 new facilities, we would have more likely sources of
3 electricity, which would drive down the price.

4 VICE CHAIRMAN CHRISTY: You raise a very
5 good point.

6 If, as an example, Duquesne Light pulled out
7 of PJM and they had 1400 megawatts of demand that was
8 normally included in PJM's auctions, when they pulled
9 that 1400 megawatts out, it dropped the capacity
10 price market from \$171 per megawatt a day down to
11 \$110 per megawatt a day. It was like a \$61 megawatt
12 difference just by removing some supply. And that
13 effect across the board in Pennsylvania resulted in a
14 \$934 million savings for the entire Pennsylvania.

15 So your point that if you added a little
16 more supply, that can help drive down the prices for
17 everyone. So even though it may cost more money to
18 build a brand-new refinery than, say, the current
19 market price for refineries, that by building that
20 new unit, you are bringing some stability to the
21 system that will hopefully drive down the prices over
22 time.

23 REPRESENTATIVE BARBIN: And one follow-up.

24 Isn't it fair to say then that if we are
25 faced with rate caps coming off all across the

1 Commonwealth, that we would be in a much better
2 position if we had new generation facilities which
3 could be produced or could be financed if we had this
4 authority now rather than 5 years from now?

5 VICE CHAIRMAN CHRISTY: Absolutely. The
6 sooner we start, the better off that we would be,
7 because this is not a silver bullet to solve the
8 problem overnight. It will take many years. But the
9 sooner, the better.

10 REPRESENTATIVE BARBIN: Thank you,
11 Mr. Christy.

12 And thank you, Mr. Chairman.

13 CHAIRMAN GEORGE: Mr. Christy, just a little
14 bit on what has been asked, and there was a question
15 about did you think that the rates would continue to
16 spiral regardless.

17 Isn't it true under the procurement
18 procedure that was put in the deregulation bill that
19 five or six companies within a given period can bid
20 at an auction and all of them pay a different
21 kilowattage, and at the end result, they all get what
22 the highest was charged. Is that not true?

23 VICE CHAIRMAN CHRISTY: Yes.

24 The example that I use in my testimony is,
25 you can have, say, a load of 10,000 megawatts, and if

1 you get 9,999 megawatts at 2 cents from the coal and
2 nuclear sector, then if you had to add 1 more
3 megawatt of a natural gas-fired facility at 10 cents,
4 then all 10,000 get the 10-cent figure. And that is
5 where I think, over the long term, that is not going
6 to serve Pennsylvania well, that kind of pricing
7 structure.

8 CHAIRMAN GEORGE: And isn't it also factual,
9 sir, that because of that gimmick, if I may call it
10 that, that it was answered in that that extra money
11 would go along to create additional kilowattage, and
12 that money that would be held in the PJM, that from
13 the time of deregulation there has not been one more
14 plant built in Pennsylvania and no advancement on the
15 existing plants have been added to give us anymore
16 kilowattage. Isn't that also factual?

17 VICE CHAIRMAN CHRISTY: Yeah. My
18 understanding is that the single market theory or
19 pricing design was designed to provide extra money as
20 an inducement for people to build their generation.

21 Now, there has been new generation added in
22 Pennsylvania, but over 90 percent of it has been very
23 inexpensive, high-cost natural gas-running
24 facilities, and by adding more gas to your fleet, you
25 just exacerbate the single market clearing price.

1 Now, right now with gas being in a depressed
2 state, it's not too bad. But if gas prices run back
3 up, we are right back where we were last summer.

4 CHAIRMAN GEORGE: You know, it is also a
5 theory in business that supply and demand basically
6 controls price. But that hasn't been factual under
7 deregulation, has it?

8 VICE CHAIRMAN CHRISTY: I mean, before I
9 came here, my own merchant, a waste coal plant, the
10 last thing I would want to do is see another
11 coal-fired plant built down the street to depress
12 prices.

13 CHAIRMAN GEORGE: I thank the gentleman for
14 his testimony.

15 The next individual that will provide
16 testimony is the Consumer Advocate of Pennsylvania,
17 Mr. Sonny Popowsky.

18 Welcome, sir. You may proceed.

19 MR. POPOWSKY: Thank you, Chairman George,
20 Chairman Hutchinson, members of the committee, and
21 staff. It's an honor to testify here before this
22 committee.

23 My name is Sonny Popowsky. I'm the Consumer
24 Advocate of Pennsylvania. I have served as the
25 Consumer Advocate since 1990, and I have been a

1 member of the Office of Consumer Advocate since
2 1979.

3 First of all, I would like to commend
4 Chairman George for bringing this issue to the
5 legislative forefront and thank all the members of
6 this committee for holding this important hearing.

7 I also wanted to publicly commend PUC
8 Vice Chairman Ty Christy for his leadership at both
9 the State and at our regional level in seeking
10 solutions to address concerns in the wholesale
11 generation markets that we rely upon to serve
12 Pennsylvania customers.

13 I think it is important for this committee
14 to recognize that Pennsylvania, as Vice Chairman
15 Christy said, is not alone among the restructured
16 electric States in attempting to address these issues
17 at this time. And indeed Pennsylvania is not alone
18 in considering the creation of a State power
19 authority.

20 In my view, State power authorities have
21 been established or proposed in other States to serve
22 one or both of two purposes. Those purposes are,
23 first, the procurement of generation to serve retail
24 customers who don't shop for electricity from
25 unregulated suppliers; and second, the development of

1 long-term contracts for generation, including
2 contracts to construct new generation that can be
3 used to serve retail customers.

4 Earlier this month, for example, on May 14,
5 the Connecticut House of Representatives voted
6 135 to 3 to approve legislation to create the
7 Connecticut Electric Authority.

8 Under that legislation, which is now pending
9 in the Senate in Connecticut, the Electric Authority
10 would oversee the procurement of generation resources
11 by the electric distribution companies and, where
12 necessary, issue requests for proposals for the
13 construction of new generating facilities.

14 The authority would also be empowered to
15 provide financial assistance, including low-interest
16 loans, for the development of new generating
17 facilities, with the generation from those facilities
18 being provided to Connecticut consumers on a
19 cost-of-service basis.

20 Even prior to that pending legislation,
21 Connecticut passed a law in 2007 which required the
22 State's distribution utilities to submit plans to the
23 Public Utility Commission for the construction of
24 new, what is called "peaking" generation, to serve
25 customers, again, on a regulated cost-of-service

1 basis.

2 Pursuant to that law, the utilities issued
3 requests for proposals on a competitive basis, and
4 the Connecticut utility commission issued an order on
5 June 25, 2008, approving the construction of three
6 peaking units totaling 678 megawatts in strategic
7 locations around the State to serve customers to meet
8 the needs that were present at that time.

9 In Illinois, as you heard, the State
10 Legislature has approved or has passed the Illinois
11 Power Agency, which was empowered to develop electric
12 procurement plans to ensure adequate, least-cost
13 service for the customers.

14 The Illinois Power Agency has indeed taken
15 over the responsibility of the utilities to procure
16 that power and, just this month, completed a highly
17 successful procurement process for both traditional
18 and renewable generation resources to serve those
19 utilities' non-shopping customers.

20 In Maryland, a number of bills have been
21 passed, others have been proposed.

22 One of the bills that was passed required
23 the Public Utility Commission in Maryland to study
24 the issue of whether some type of re-regulation was
25 appropriate and what needed to be done to ensure that

1 additional generation was built in Maryland.

2 In Maryland, when the rate caps came off,
3 there were tremendous rate increases, substantial, as
4 much as 72 percent for some in the Baltimore area.
5 Yet the Maryland Commission and the General Assembly
6 were concerned that despite these rate increases,
7 they didn't see new generation being built.

8 They issued a study, and the study
9 concluded, the Maryland Commission study concluded
10 that while the electric generation market was, quote,
11 "lucrative for existing generators," it "is not in
12 the public interest to continue to rely exclusively
13 on market forces to address Maryland's reliability
14 concerns and the high wholesale electricity prices
15 Marylanders pay."

16 The commission in Maryland proposed that it
17 be permitted to order the construction of new
18 long-term or order long-term contracts so that the
19 long-term needs of the State could be met.

20 In New Jersey, there was an Energy Master
21 Plan that was issued. The draft master plan
22 concluded that "We cannot continue to hope that
23 market forces alone will lead to the construction of
24 new plants by the market participants. Neither can
25 we rely on the market to produce the lower-emitting,

1 more efficient plants that we need...."

2 Now, the common thread in this debate in our
3 surrounding restructured States, remember, as
4 Vice Chairman Christy said, there were a little over
5 20 States that went into restructuring. Many of
6 these States, State after State, have come back and
7 said, we need some assurance, notwithstanding the
8 fact that we would like competition to work, we need
9 some assurance that the long-term needs of our States
10 will be met. And that is why they have come up with
11 these solutions, one of which is the development of a
12 power authority.

13 In Pennsylvania, we had a series of hearings
14 last year before the Public Utility Commission about
15 this question of high wholesale market prices. At
16 that time, as you may recall, those prices were
17 extraordinarily high during the summer and fall of
18 last year.

19 At that hearing, we had witnesses for the
20 industrial customers, the municipal customers, who
21 said that under the PJM market clearing price and
22 capacity market, the existing generators were being
23 paid vast sums of money, more than they needed, to
24 compensate them for their costs and the customers
25 were paying too much.

1 At the same time, a spokesman for PJM, our
2 regional interconnection, was quoted as saying that
3 the power prices in the past decade have not been
4 high enough to encourage investment, and that, quote,
5 "If the revenue is not there, the plants don't get
6 built and the lights go out."

7 Now, at a subsequent PUC hearing I testified
8 that the irony of this argument is that I think they
9 are both right. That is, the prices were too high
10 for the existing plants, for the existing generation,
11 but might be too low to attract the kinds of
12 generation that we need to meet our future needs on a
13 timely basis.

14 That is, under the way prices are set in
15 PJM, we have to pay too much to everyone in order to
16 hope that someone will go ahead and build what we
17 need, and yet we don't have the assurance of that new
18 generation, that adequate new generation will be
19 built.

20 An example of this that arose at the time of
21 those hearings was PPL, at the end of last year, PPL
22 Corporation announced that they were abandoning their
23 plans to add 125 megawatts of capacity to the
24 Holtwood hydroelectric station in Lancaster County on
25 the Susquehanna River.

1 That construction had been planned to begin
2 in 2009, with an expected in-service date of 2012.
3 But in withdrawing their application at that time in
4 December, PPL stated in a press release that, quote,
5 "As we evaluated this project in light of current
6 economic conditions and projections of future energy
7 prices, we reached the conclusion that it is no
8 longer economically justifiable."

9 Now, in my view, and I testified at the
10 time, I thought that the Holtwood addition was
11 exactly the kind of low-operating cost, zero-carbon
12 emitting, Pennsylvania long-term resource that we
13 needed, but because of the changing economics in the
14 PJM markets, PPL was understandably unwilling to make
15 the capital investments necessary to build that plant
16 addition.

17 Now, fortunately, as a result of new tax
18 incentives and potential loan guarantees for
19 renewable energy projects that were contained in the
20 Federal stimulus package that was passed by Congress
21 earlier this year, PPL announced on April 9, 2009,
22 that it was filing a new application with the Federal
23 Energy Regulatory Commission to resume the Holtwood
24 project.

25 The existing Holtwood Dam hydro plant has

1 been generating renewable electricity since 1910, and
2 as stated by PPL in its April 9, 2009, press release,
3 the additional \$440 million expansion will provide
4 enough power to serve 100,000 homes, improve fish
5 lifts that enable migratory fish to reach upstream
6 spawning areas, and create nearly 500 construction
7 jobs.

8 Now, I applaud PPL for taking advantage of
9 the Federal stimulus program to resume the Holtwood
10 project. My concern, though, is that the current
11 economic crisis and the massive Federal stimulus
12 program that was designed to address that crisis is
13 hopefully, hopefully a one-time, once-in-a-lifetime
14 event, and we certainly can't count on that type of
15 stimulus, massive stimulus packages to recur in the
16 future.

17 And in my view, that is where a Pennsylvania
18 Power Authority could play a role in the future.
19 Like I said, one purpose of the power authority would
20 be to encourage and to help to finance new
21 construction and long-term generation contracts that
22 might not result from this operation of the current
23 short-term wholesale markets.

24 This could be done by the authority either
25 on a stand-alone basis through issuing RFPs, requests

1 for proposals, to third parties, or it could be done
2 as part of the default service procurement for
3 Pennsylvania consumers.

4 Now, as we meet here today, as you know, we
5 are fortunate that wholesale energy prices have
6 declined significantly from the extraordinarily high
7 levels of just a year ago. And as a result, it
8 appears that the rate increases that we're facing,
9 that your constituents are facing at the end of this
10 year and next year, will not be as severe as we had
11 previously feared, and this is a welcome development.
12 It's a great relief, I think.

13 But the question remains whether this type
14 of volatile, short-term market will support the
15 long-term investments that are required to meet our
16 future needs.

17 It can take many years to plan and build
18 some types of new generating facilities, yet we have
19 no way of knowing what the short-term wholesale
20 market prices will be when those plants come on line,
21 let alone during their decades of future operations.

22 This is one reason, in my opinion, that we
23 need long-term contracts to provide at least some
24 economic certainty to developers of new electric
25 generation, particularly new market entrants. And as

1 I note above, this is one area where I think a power
2 authority could provide a benefit.

3 This is a critical time for electric
4 consumers in Pennsylvania. I want to thank you for
5 inviting me to submit testimony on these issues, and
6 I look forward to working with you, the members of
7 the committee and the General Assembly, in order to
8 address these extraordinary concerns.

9 Thank you.

10 CHAIRMAN GEORGE: I thank the gentleman for
11 his testimony.

12 At this time, we will turn to the left side
13 to recognize individuals.

14 Mr. Boyle, you are entitled to ask
15 questions, as well as Mr. Evans. We welcome you.

16 The first individual to ask is
17 Representative Yudichak.

18 REPRESENTATIVE YUDICHAK: Thank you very
19 much, Mr. Chairman.

20 Mr. Popowsky, in your testimony you
21 reference that reliable and reasonably priced
22 electricity is essential to the economic well-being
23 of Pennsylvania businesses and Pennsylvania
24 residents, and that is, of course, why we're here
25 today.

1 I think it is critical to the Pennsylvania
2 economy. From small businesses to our large
3 industries to individual families, the price of
4 electricity is going to be a very important part of
5 the bottom line.

6 Do you think -- and it is a phrased
7 reference by Mr. Christy -- that this "artificial
8 pricing mechanism," this artificial market, if you
9 will, if that current system that we are operating
10 under and will be operating when the rates come off
11 in 2011 in northeastern Pennsylvania, is that current
12 system, is it achievable that we can find reasonably
13 priced and reliable energy?

14 MR. POPOWSKY: I think that the biggest flaw
15 in this system is that on an hour-to-hour basis, it
16 arguably sets the economically correct price in that
17 hour.

18 The problem is, when you add it all up, what
19 you end up with is very volatile markets,
20 overcompensation for some generators in the short
21 term, but a lack of adequate assurance that it's
22 even in the utility or that it's even in the
23 generator's interest to build more capacity, more
24 generation, that would have the effect of lowering
25 that price.

1 So that is really the problem, I think, that
2 right now we don't have a system in place to provide
3 assurances that we would get through the type of
4 long-term contracts that I think we should be
5 developing to encourage new entrants to come into
6 that market and add new generation, which would
7 compete with the existing generation and hopefully
8 bring those prices down.

9 REPRESENTATIVE YUDICHAK: And that leads to
10 my next question: that competition that we had hoped
11 would be produced from deregulation, which in large
12 part has not occurred. And your example intrigues
13 me, the Holtwood example of PPL. And PPL in Berwick
14 is looking at another facility that will mean a great
15 deal of new jobs, and we applaud PPL for making that
16 investment.

17 But I wonder what has been left off the
18 table in terms of new generation. It's very
19 important. And I think we have seen folks'
20 bipartisan support for energy independence,
21 Pennsylvania controlling its destiny in terms of
22 creating new energy, and it seems to me that the
23 deregulation efforts have suppressed that
24 competition, suppressed that investment, suppressed
25 that creation of jobs.

1 How do we move forward in recognizing that?
2 Again, Vice Chairman Christy had noted that there has
3 been virtually no capital investment in new
4 generation since '96.

5 MR. POPOWSKY: Well, like he also said,
6 there has been natural gas and wind plants built.

7 The biggest problem that I foresee -- and
8 again, I applaud PPL for resuming the Holtwood plant.
9 I think it will be a great plant addition.

10 The biggest concern is a company like PPL,
11 let's say, or Exelon or FirstEnergy, they have
12 existing sites in Pennsylvania where they can build
13 those plants. It's a lot easier to add another unit,
14 even at a nuclear plant, than it is to start one from
15 scratch. It's a lot easier to add hydroelectric at
16 Holtwood than it would be to build a new dam on the
17 Susquehanna.

18 So I think it's difficult for new entrants
19 to come into this market to compete, and especially
20 if they don't have access to long-term contracts.
21 And they are just going to have to come in and take
22 whatever that market price is, and some days it is
23 4 cents and some days it is 10 cents.

24 Whereas if they had assurance of long-term
25 contracts, it would be easier for them to get the

1 full financing they need to get those plants built
2 and to hopefully compete with the incumbents that we
3 have currently operating in Pennsylvania and in our
4 region.

5 REPRESENTATIVE YUDICHAK: So that short-term
6 market mentality really is suppressing our ability to
7 add new generation, create new jobs, create new
8 plants.

9 MR. POPOWSKY: I think it certainly does not
10 create the environment we need to encourage the new
11 investment, the new long-term investments that we
12 need.

13 REPRESENTATIVE YUDICHAK: Thank you.
14 Thank you, Mr. Chairman.

15 MR. POPOWSKY: Thank you, Representative
16 Yudichak.

17 CHAIRMAN GEORGE: I thank the gentleman.
18 The gentleman, Mr. Kessler.

19 REPRESENTATIVE KESSLER: Thank you,
20 Mr. Chairman.

21 When you say "long-term contract," can you
22 put a timeframe on that, please?

23 MR. POPOWSKY: I think we are talking about
24 10 years or more. That is a contract where a
25 generator would know that they have somebody to sell

1 it to for 10 years at some reasonable basis based on
2 their costs of building the plant there, their
3 expected fuel costs, and a fair return on their
4 investment.

5 I think something like a 10-year contract
6 would probably be adequate in most cases, but it
7 could be longer.

8 REPRESENTATIVE KESSLER: So could a 10-year
9 contract be written prior to a plant being built so
10 that way that plant can go to their banker and say,
11 here's a 10-year contract; I need to borrow X amount
12 of money to build a plant---

13 MR. POPOWSKY: Exactly.

14 REPRESENTATIVE KESSLER: ---before they get
15 the money?

16 MR. POPOWSKY: Exactly. That is right.

17 With the assurance of the contract, if you
18 had an authority, perhaps they could assist in the
19 financing.

20 But as I see it, it is more that we are
21 trying to enable more competition from new
22 generators, and with that contract in hand, you are
23 right, they can go to the bank and build those
24 projects.

25 And that's what I think we were talking

1 about in places like Connecticut, where those plants
2 were not actually built by the utilities. They were
3 built by independent competitive generators. But
4 they were built with the knowledge that they had an
5 order from the Public Utility Commission that said
6 that these plants were to be built in New Haven and
7 Bridgeport and Fairfield where they were needed and
8 that they would have a contract to pay for that.

9 REPRESENTATIVE KESSLER: Thank you.

10 Thank you.

11 CHAIRMAN GEORGE: Has the gentleman
12 concluded?

13 REPRESENTATIVE KESSLER: Yes.

14 CHAIRMAN GEORGE: Just one question from the
15 Chair.

16 In your opinion, could the power authority
17 act as a check against possible abuse of market
18 power?

19 MR. POPOWSKY: I think that is possible,
20 because it could encourage -- I think the more
21 competition you have, the more entrants, the more
22 market entrants you have, particularly new market
23 entrants, the better chance we have of protecting
24 against any excess market power by the existing
25 generators.

1 And I think that the authority, for the
2 reasons I said, could help bring those additional new
3 entrants into the market.

4 CHAIRMAN GEORGE: I thank you.

5 The gentleman, Mr. Hutchinson.

6 REPRESENTATIVE HUTCHINSON: Thank you.

7 Lots of questions I could ask, but in the
8 interests of time, I'm trying to get to the important
9 ones.

10 I guess the one that really sticks out for
11 me, and you have talked a lot about how long-term
12 contracts could help the situation, many of us are
13 very skeptical of the ability of folks sitting in
14 Harrisburg and buying power, building generation
15 plants, with no market check, as it were, on what
16 they are doing, with the consumers on the back end
17 being the ones who are the failsafe, meaning they
18 would be paying for it no matter what happens,
19 especially if you look at what has happened in the
20 last year.

21 You know, if a Pennsylvania Power Authority
22 last summer had thought, well, we better lock in
23 these rates right now because they are only going to
24 go up from here, and if they had bought 10-year
25 contracts going forward, it would look really foolish

1 today.

2 But I guess the nub of my question is, why
3 do we need a power authority to have long-term
4 contract ability by generators? Why can't that be
5 done another way? And I think you know the answer to
6 that. But, you know, a willing buyer and a willing
7 seller, for example, could do it without the
8 intermediation of a Pennsylvania State Government
9 power authority.

10 Could you comment on that for us?

11 MR. POPOWSKY: Sure.

12 It could be done, but I guess it's not being
13 done. And perhaps Mr. Sawicki will be testifying on
14 behalf of the industrial customers as to their
15 efforts -- I mean, residential customers can't go out
16 and do it.

17 REPRESENTATIVE HUTCHINSON: Right.

18 MR. POPOWSKY: You know, individual
19 customers. So we look to the utility or to perhaps
20 an external agency like an authority.

21 I think the utilities -- and again, you
22 would have to ask them -- I think they are reluctant
23 to enter into long-term contracts for the reasons you
24 mentioned. They are afraid that if things go south,
25 they will be second-guessed.

1 But we tried to, if you remember in
2 House Bill 2200, we tried to make it clear that they
3 couldn't be second-guessed, but nevertheless, I think
4 they are still concerned about that.

5 We are not relying totally on a bureaucracy
6 here. Again, as Vice Chairman Christy said, I think
7 the ideal situation is the authority puts out
8 requests for proposals and tries to get all the
9 competitive generators to come in and bid for that.
10 And the projects that would be selected would be the
11 ones that produced the lowest competitively bid
12 price.

13 You would need someone here to review the
14 bids and make sure and decide when to issue the bids;
15 that is true. But the idea would be, I think, to try
16 to inject as much competition as you could into the
17 actual construction and operation of the plants.

18 CHAIRMAN GEORGE: Has the gentleman
19 concluded?

20 REPRESENTATIVE HUTCHINSON: Yes. Thank
21 you.

22 CHAIRMAN GEORGE: I thank the gentleman.
23 The gentleman, Mr. Everett.

24 REPRESENTATIVE EVERETT: Thank you,
25 Mr. Chairman.

1 On the issue of the long-term contracts, so
2 you got this 10-year contract, and you are the
3 generator and you won the RFP and everything was
4 working perfectly. And then my costs of production
5 -- I'm the producer -- my costs of production
6 suddenly spike and we are losing money. Do we just
7 lose money? Or do rates go up? Or does the State
8 have to cover the difference?

9 You know, I don't know anybody that can
10 predict what the prices of coal, gas, whatever it is
11 going to be, 10 years in advance. Those prices are
12 going to be going up, down, and around during that
13 time.

14 How do you set your 10-year rate? And then
15 what if it doesn't perform the way you thought it
16 was going to and this utility is absolutely just
17 losing money, and they turn to the State and say, I
18 quit?

19 MR. POPOWSKY: Well, I think there are two
20 ways to deal with that.

21 One is, you could write a contract where the
22 generator would take that risk and would include
23 essentially a risk premium in the contract that would
24 cover, you know, a reasonable set of potential risks,
25 including higher production costs.

1 Another way to write the contract would be
2 to have all of the costs fixed, except you could have
3 fuel costs, for example, be based on an index. So
4 the fuel-price portion of the contract could go up or
5 down.

6 In that case, you wouldn't have the benefit
7 of a fully fixed long-term contract, but it would
8 still be cost-based. So that in that case, you would
9 be paying that generator, if that is the way the
10 contract were written, for higher or lower fuel
11 costs, but you would be paying that amount, not
12 necessarily a market clearing price, which is always
13 based on the very highest price of whatever fuel is
14 setting the market price in that hour.

15 REPRESENTATIVE EVERETT: So if I'm a
16 consumer and the price of whatever we are using to
17 generate the electricity with goes up, my electric
18 rates are going to go up.

19 MR. POPOWSKY: They could. They could, or
20 they could go -- I'm saying if that's the way you
21 wrote the contract. I'm saying there are two
22 different ways to do it.

23 REPRESENTATIVE EVERETT: Well, somebody is
24 going to have to pay, or they are going to be making
25 a lot of money if you allowed them too much.

1 I don't understand why we can't just adjust
2 the way the market is run now rather than having an
3 authority take over and start dictating how these
4 things are going to be done.

5 MR. POPOWSKY: Well, there are efforts, and
6 I guess you'll hear from APPA, from Mr. Nipper at the
7 American Public Power Association.

8 There are people, including the American
9 Public Power Association, which is our municipal
10 utilities, people like Ty Christy through the
11 organization of PJM States, which is our
12 Commissioners, who are trying to change the way the
13 wholesale markets operate, and that is another way to
14 go.

15 But given the way the wholesale markets are
16 operating today, then we have this phenomenon where
17 it is very difficult, I think, for new entrants to
18 come in and build the kind of new generation that we
19 are going to need 5 years from now at a reasonable
20 cost.

21 REPRESENTATIVE EVERETT: No; I definitely
22 understand the attractiveness to bring new plants on
23 line. If you can tell somebody, you know, give them
24 a ballpark on what their return on investment is
25 going to be and stabilize things, I could see that.

1 I just don't know -- I don't quite grasp how
2 or why we need an authority and the government
3 involved to the extent we are talking about to make
4 that happen, and thank you.

5 CHAIRMAN GEORGE: Is the gentleman done?

6 REPRESENTATIVE EVERETT: Yes.

7 CHAIRMAN GEORGE: Mr. Gabler.

8 REPRESENTATIVE GABLER: Thank you,
9 Mr. Chairman.

10 One thing, I think, that is apparent is that
11 we all share the same end goal here, which is to
12 achieve the best possible outcome for the consumer.
13 And where I think we start getting into the weaves
14 here is when we figure out, what is the actual
15 mechanism to go about doing that?

16 And one of the things that I view with some
17 skepticism is the idea that the State, with the
18 challenges that we face right now with a budget
19 crisis, we have got transportation concerns with the
20 roads in disrepair and so on and so forth, is this an
21 obligation that the State can take on to then get
22 into the power business as well as far as, is this
23 something, whether it is building power plants or
24 purchasing long-term contracts, is this something
25 that the State can afford to put on our plate?

1 And then furthermore, a question I have just
2 about creating an authority is the idea that any
3 authority or any creation of government can be
4 created with the best of intentions, but what does
5 the end goal of that authority become years down the
6 road?

7 And by that I mean, it could be created on
8 behalf of the consumer, but years down the road we
9 will see what I think is typical of State
10 bureaucracies or government bureaucracies, which is a
11 self-perpetuating entity rather than something that
12 is actually working on behalf of the consumer.

13 MR. POPOWSKY: That is certainly fair
14 enough. You know, I have been here for 30 years
15 myself, so I certainly understand your concern.

16 When you ask, can we afford to do it, what
17 the States, what the surrounding States are saying
18 is, can we afford not to do it?

19 Like I said, that is why I pointed out what
20 the State Legislatures and commissions and Governors
21 are saying, is that they are looking out at this
22 short-term market and they are seeing volatile prices
23 and they are seeing some of their generators were
24 making extraordinarily high profits at the same time
25 that customers were being hit with 30-, 40-,

1 70-percent rate increases, and they are saying, can
2 we afford to do nothing?

3 And several States have concluded that what
4 we really need to do is to take a little bit of
5 control over our energy future, and one way to do
6 that is to develop some sort of a proposal.

7 Like I said, in Connecticut, they had two
8 different ways. One is, they required their
9 commission to issue, you know, requests for
10 proposals, but now they have proposed a State power
11 authority which would have more power.

12 So there are a number of ways to do it, but
13 the question is, can we afford to simply hope that
14 those market forces will work to produce the kind of
15 long-term resources that we need to serve our future
16 needs? So that's the risk we take in either
17 direction.

18 REPRESENTATIVE GABLER: Thank you very much.

19 Mr. Chairman, I have concluded.

20 MR. POPOWSKY: Thank you.

21 CHAIRMAN GEORGE: In conclusion, I'm afraid
22 that there are some here not as old as you and I.
23 They forget the fuel adjustment that the PUC utilized
24 for many years, and that was under Mike Johnson. He
25 was the Chairman of the PUC.

1 And there were many games they played, and
2 that was all for the benefit of the utilities. So we
3 didn't have to take 16 months to go over the
4 paperwork to see what they were entitled to. But
5 thank goodness something happened and they could kick
6 that out, a ruling.

7 But thank you very much for your effort,
8 Mr. Chairman.

9 MR. POPOWSKY: Thank you.

10 CHAIRMAN GEORGE: Thank you very much.

11 The next witness we have will be the
12 gentleman, Joe Nipper, Senior Vice President,
13 American Public Power Association.

14 You may commence, sir.

15 MR. NIPPER: Thank you, Mr. Chairman.

16 Good afternoon, Chairman George, Chairman
17 Hutchinson, members of the committee.

18 My name is Joe Nipper, and I'm the
19 Senior Vice President for Government Relations at
20 the American Public Power Association in Washington,
21 DC.

22 I appreciate the opportunity to be here this
23 afternoon to talk about the benefits of public power
24 authorities in general and to support the
25 establishment of such an authority in Pennsylvania,

1 as proposed in HB 2791.

2 Such an entity, if properly designed, would
3 have the potential to remedy some of the negative
4 reliability and price impacts facing consumers in
5 States served by restructured wholesale markets
6 operated by regional transmission organizations.

7 Pennsylvania, located in the RTO market
8 operated by the PJM Interconnection, will feel the
9 full impacts of these wholesale market problems when
10 the retail rate caps end in 2010 and 2011.

11 Our members, though, are well aware of these
12 problems. Public power utilities never set rate
13 caps. They have been purchasing power from
14 PJM-operated markets since its inception, and their
15 customers have been fully exposed to the significant
16 market price increases, price volatility, and other
17 problems in PJM for a number of years.

18 APPA is the national service organization
19 representing the interests of more than 2,000
20 not-for-profit publicly owned electric utilities
21 throughout the United States that collectively serve
22 over 45 million customers.

23 Public power systems provide over 15 percent
24 of all kilowatt-hour sales to ultimate customers and
25 provide service in every State except Hawaii.

1 Thirty-five municipally owned systems in Pennsylvania
2 serve a total of 83,000 customers.

3 APPA's member utilities are owned by the
4 communities they serve, operate on a not-for-profit
5 basis, and have retained the legal obligation to
6 serve all of their customers.

7 Since they have no outside shareholders, all
8 costs are passed through directly to those customers.
9 And public power utilities are directly accountable
10 to the customers they serve and to the public through
11 duly elected State and local officials.

12 Public power systems collectively and
13 nationwide own 10 percent of the electric generating
14 capacity, but purchase nearly 70 percent of their
15 power from the wholesale markets.

16 Public power systems, therefore, have an
17 abiding interest in well-functioning wholesale power
18 supply markets. Their goal is to provide their
19 customers with reliable electric power at the lowest
20 reasonable cost consistent with good environmental
21 stewardship.

22 However, artificially rising prices without
23 improvements in reliability and other problems in the
24 markets administered by PJM and the other RTOs have
25 made meeting these goals extremely difficult.

1 The Federal Energy Regulatory Commission, or
2 FERC, is the Federal agency responsible for
3 overseeing these wholesale markets and protecting
4 consumers. In our view, they have failed to
5 sufficiently acknowledge and address these issues.

6 Exacerbating the ongoing problems with RTO
7 markets is the recent financial crisis and economic
8 recession, which has made financing new and clean
9 generation in particular very difficult, and at the
10 same time, made customers more vulnerable to
11 increases in electricity rates.

12 Such events make it even more critical that
13 FERC's policies on restructured wholesale markets be
14 revamped to ensure that long-term reliability and
15 environmental benefits are achieved without excess
16 cost to consumers.

17 In February, APPA released its proposed
18 reforms to the RTO markets in what we call our
19 Competitive Market Plan. I brought a couple of
20 copies for you, if you like.

21 Central to this plan are measures designed
22 to move the wholesale power markets away from the
23 excessive influence by the problematic short-term
24 energy and capacity markets -- and you've heard a lot
25 about short term versus long term here this afternoon

1 -- into a new and vibrant bilateral supply and
2 demand-side resource market.

3 Key features of this plan include a
4 requirement that bids in the short-term spot markets
5 be limited to verifiable marginal costs. Right now,
6 that's the theory. Generators bid their marginal
7 costs. There is no actual requirement for them to
8 bid their marginal costs. They can in fact pretty
9 much bid anything they want subject to market
10 mitigation rules, and that therein lies a part of the
11 problem.

12 So again, under our plan, one of the primary
13 requirements would be bids in short-term markets
14 limited to verifiable marginal costs and those costs
15 be verified by the market monitor; the implementation
16 of region-wide resource adequacy requirements
17 developed by PJM and in conjunction with the States
18 to ensure future reliability; and RTO-wide planning
19 for new transmission facilities to support local
20 utility-owned and contracted-for resources.

21 A key component of our competitive market
22 plan is a set of recommendations for actions to be
23 taken by retail access States, such as Pennsylvania.
24 APPA sees these actions as complimentary and critical
25 to the success of Federal reforms to regional

1 wholesale markets.

2 For example, power supplies purchased by
3 investor-owned utilities used to provide "standard
4 offer service" typically purchase through auctions
5 for relatively short-term contracts, 2 to 4 years.
6 But the prices offered under these contracts are
7 frequently based on forward projections of the prices
8 likely to be recovered in the PJM spot market, which
9 are extremely lucrative for the generators.

10 Thus, the relatively short-term nature of
11 the SOS procurement auctions have reinforced the
12 connection between the RTO spot market prices and
13 bilateral contract prices, rather than allowing
14 bilateral contract prices to act as a check against
15 spot market prices.

16 With so few customers shopping in retail
17 choice States, as Commissioner Christy indicated,
18 individual homeowners and businesses are feeling the
19 direct effect of the dysfunctional wholesale market
20 through increased electricity costs with no
21 corresponding improvements in reliability or
22 investments in clean energy.

23 APPA therefore recommends in the plan that
24 State public service commissions establish
25 competitive power supply procurement processes to

1 develop diversified resource portfolios for incumbent
2 investor-owned utilities, with a significant portion
3 of their power supplies being obtained under
4 long-term contracts or owned-generation arrangements.

5 Retail access States should allow their
6 incumbent IOUs to consider "self-builds" as
7 generation resource options on an equal footing with
8 long-term contracts from unregulated generators.

9 Let me just interject that the idea here
10 under the long-term contracts is that it is a
11 portfolio, a blended portfolio of supply contracts,
12 different resources, different term lengths, and so
13 forth that helps to mitigate the risk and provides
14 increased benefits.

15 A State power authority, such as the
16 Pennsylvania Power Authority as proposed under
17 House Bill 2791, would be a valuable tool in
18 providing Pennsylvania with more supply resources.

19 For example, as noted economist
20 Robert McCullough pointed out in his testimony in
21 Connecticut last month -- Mr. Popowsky mentioned the
22 Connecticut House of Representatives just passed
23 power authority legislation -- Robert McCullough
24 noted that a power authority would have the ability
25 to finance projects with high capital-cost

1 requirements, such as renewable energy facilities.

2 Under the deregulated markets, the lack of a
3 stable revenue source has made the financing of
4 electricity infrastructure more difficult, which has
5 been compounded by the financial crisis and the
6 tightening of the credit markets.

7 Public power tends to have a higher credit
8 rating than investor-owned utilities, and power
9 authority bonds are likely to receive higher ratings.

10 For example, in January Fitch ratings,
11 wholesale public power systems had a median credit
12 rating of A with a stable credit outlook, while
13 competitive generation companies had a median issuer
14 default rating of BB- with a negative credit outlook.

15 A power authority can therefore play a
16 valuable role as an additional source of funding for
17 new resources and in the procurement of power in
18 these uncertain markets and financial environment.

19 Such an entity should not be seen, however,
20 as the only solution. The Pennsylvania Power
21 Authority would still need to procure power supplies
22 from these wholesale markets. Without reforms to
23 such markets, the authority could not, by itself,
24 achieve the full scope of potential benefits for
25 consumers.

1 So APPA urges Pennsylvania and other States
2 to continue to put pressure on the Federal Energy
3 Regulatory Commission, both directly and through
4 their congressional delegations, to implement reforms
5 in the wholesale markets to ensure that markets
6 provide benefits to consumers and produce clean,
7 reliable electricity service at rates that are just
8 and reasonable.

9 The provisions of HB 2791 to create a
10 Commonwealth Energy Advocate is also an important
11 step in this direction.

12 State public power authorities have a proven
13 record of success in efficiently providing reliable
14 and affordable electricity with direct accountability
15 to the citizens they serve.

16 And in our written statement for the hearing
17 record, we have attached information regarding State
18 public power authorities around the nation. They are
19 diverse, and they are successful.

20 We believe the establishment of a public
21 power authority in Pennsylvania would serve the
22 State, its economy, and its citizens well.

23 Thank you again for the opportunity to be
24 here, and I would be glad to try to answer any
25 questions you may have.

1 CHAIRMAN GEORGE: I thank the gentleman,
2 Mr. Nipper.

3 Are there any questions?

4 The gentleman, Mr. Boyle.

5 REPRESENTATIVE BOYLE: I think it was
6 Mr. Christy in his testimony who went through how
7 many States have, since States that had a decade ago
8 moved toward deregulation, have since recently
9 attempted in some way to adjust that.

10 I'm curious, how many States have moved
11 forward specifically with the concept of a power
12 authority, a State power authority?

13 MR. NIPPER: About six or eight. The
14 complete list and a detailed description is an
15 attachment to my testimony. But it is somewhere in
16 that range.

17 REPRESENTATIVE BOYLE: Perfect.

18 Any kind of -- I mean, is it too early in
19 the game to comment on their experience? Or is there
20 any kind of, you know, conclusions that can be drawn
21 from their experience?

22 MR. NIPPER: A lot of them are fairly
23 recent, recently established, as you mentioned.

24 I think, you know, certainly from our point
25 of view and I think from the States that have

1 established some of the early results are
2 encouraging.

3 There is a ways to go, but they are modeled
4 in many ways on existing State powers that have been
5 in operation in other States, in some cases for many
6 decades.

7 And as I mentioned, those have been very
8 successful over the decades and continue to provide
9 value and benefit to both the State economy and to
10 the consumers of the State.

11 REPRESENTATIVE BOYLE: I'm just curious,
12 too, had a number of these six to eight first gone
13 with kind of a deregulation scheme?

14 MR. NIPPER: Oh, yeah. No; they are all
15 exactly like Pennsylvania. These are States---

16 REPRESENTATIVE BOYLE: They are sort of
17 analogous.

18 MR. NIPPER: These are States that, you
19 know, thought they were going to be able to reduce
20 their electricity costs by going to deregulation. It
21 didn't work out that way. Prices have gone up
22 instead.

23 And so they, just like you all, are
24 considering various policy options or things that
25 they could do to try to alleviate that situation,

1 make prices stable.

2 We know prices are going to go up because
3 the cost of things are going up. It's not a matter
4 in all cases of simply lowering price. Stability is
5 a key, and so getting stable prices out over the long
6 term is as important, including the investments in
7 new generation and other infrastructure that are
8 important.

9 So I think that, again, a power authority
10 has been helpful in that regard, and these States,
11 recent States that have looked at them and have
12 adopted them, have done so in an effort to try to
13 regain some control over their own destiny and at
14 least stabilize prices.

15 REPRESENTATIVE BOYLE: Thank you.

16 Thank you, Mr. Chairman.

17 CHAIRMAN GEORGE: The gentleman, Mr. Barbin.

18 REPRESENTATIVE BARBIN: I just have a
19 question.

20 I looked at your materials for the different
21 States that are trying to create adjustments, and I
22 was looking at Illinois where the power was given
23 under that power authority to procure power for the
24 utilities themselves under the authority of the power
25 authority.

1 Do you believe that that model is a model
2 that we should be looking at for purposes of
3 attempting to deal with our current problems as they
4 relate to rate caps expiring---

5 MR. NIPPER: Yes, sir.

6 REPRESENTATIVE BARBIN: ---and the
7 industrial problems that we have with our customers,
8 our industrial business customers?

9 MR. NIPPER: Yes, sir, I do think it is one
10 of the models that you consider. Indications, at
11 least from my members in Illinois, again, early
12 indications are positive about that type of
13 structure.

14 I think one of the benefits that that
15 provides, and Commissioner Christy talked about it as
16 well, is through that process, you actually get some
17 head-to-head competition from these generation
18 companies. You don't have head-to-head competition
19 in the market that is set up now. These are
20 centralized, you know, highly administered, highly
21 administrative markets.

22 But in that kind of a power procurement
23 process with those kinds of features, you would stand
24 a good chance of seeing some actual competition.
25 Yes, sir.

1 REPRESENTATIVE BARBIN: Thank you.

2 And thank you, Mr. Chairman. I have
3 concluded.

4 CHAIRMAN GEORGE: I thank the gentleman.
5 Mr. Hutchinson.

6 REPRESENTATIVE HUTCHINSON: Thank you.
7 Just maybe for the record, and you can
8 comment after I state.

9 One of your other examples I will point out
10 in your testimony is California, and I think most
11 people are aware of the electricity energy debacle
12 that occurred there in the early 2000s.

13 And your testimony even states that their
14 power authority, it says, in your testimony it says,
15 "It was determined that the Authority was providing
16 only minimal value in meeting the state's energy
17 objectives, and therefore the administrative
18 operations of the Authority were terminated in
19 October 2004."

20 Obviously, all the examples aren't great
21 examples of, you know, the wonderful things that a
22 power authority can do. I think it is incumbent upon
23 us in Pennsylvania to look at Pennsylvania-specific
24 problems and a specific solution to where we want to
25 go as we move forward.

1 But I did want to comment upon the
2 California example before we ended the testimony.
3 Thank you.

4 MR. NIPPER: Well, if I could comment on
5 that, Mr. Chairman.

6 I take your point, and I make a couple of
7 points in response to that.

8 One is, I think, frankly, you could see that
9 as one of the benefits of the State having some
10 control over its own destiny and some control over
11 its own institutions. You can phase it out if you
12 think it has not been producing any additional
13 benefits.

14 I would note, more to the point, I think,
15 that the California experience is one like no other.
16 I was out there. That was a product, first of all,
17 let's be clear, of criminal behavior -- well
18 documented -- and an extremely faulty market design
19 which they don't have anymore.

20 So I think, you know, those are mitigating
21 factors that one would need to take into
22 consideration.

23 CHAIRMAN GEORGE: Have you concluded?

24 REPRESENTATIVE HUTCHINSON: Yes.

25 CHAIRMAN GEORGE: I thank the gentleman for

1 his testimony.

2 Do you have a question that you want to ask?
3 Just a minute, please.

4 MR. NIPPER: Sure.

5 CHAIRMAN GEORGE: Mr. Gabler, one question.

6 REPRESENTATIVE GABLER: Thank you,
7 Mr. Chairman.

8 I wanted to just focus on the last page of
9 your remarks. You mentioned about the fact that
10 public power authorities tend to have a higher credit
11 rating than those with private funds as a source.

12 MR. NIPPER: Yes.

13 REPRESENTATIVE GABLER: Could you comment on
14 what the reasoning for that might be?

15 MR. NIPPER: Yes. The rating agencies, and
16 I cited Fitch's January report, but I would say that
17 if you look at the reports from Standard & Poor's and
18 Moody's every year -- and they come out at the
19 beginning of the year, and they are certainly
20 consistent -- they consistently cite two factors.

21 One is the local control, local and State
22 control aspect of that -- in other words, they are
23 directly accountable to the consumers and
24 policymakers -- and the ability, therefore, to make
25 adjustments when necessary to react to changing

1 market conditions, changing cost structures, changes
2 in the credit markets and other sorts of things. So
3 it's that accountability to customers and to,
4 frankly, local officials and their agility to be able
5 to make adjustments.

6 Those are the two factors consistently cited
7 by all three rating agencies why public power systems
8 continue to enjoy high credit ratings, and therefore,
9 good access to capital at reasonable rates as well as
10 a very stable and strong credit outlook.

11 REPRESENTATIVE GABLER: Because my concern
12 is being that it's a reflection of risk, to me, the
13 main difference that I see is that a public power
14 authority is able to come back to the taxpayers as a
15 backup if needed, whereas a source of private funds
16 would rather be just that; it's not necessarily an
17 endless pit that can be gone after.

18 So my concern in this is that we at least
19 address the fact that should a public power authority
20 be created, it is an assumption of risk on behalf of
21 the taxpayers.

22 Is that not an accurate statement?

23 MR. NIPPER: You know, there is going to be
24 some risk involved in the establishment of any new
25 entity.

1 I would point out, again, the credit ratings
2 have been strong and the financial outlook for those
3 systems has been high. And I think that it's a
4 proven success story.

5 REPRESENTATIVE GABLER: I thank you very
6 much for your testimony and for the ability to look
7 into these issues today.

8 And I thank you, Mr. Chairman, for your
9 indulgence, and I conclude my remarks.

10 MR. NIPPER: May I just add---

11 CHAIRMAN GEORGE: I thank---

12 MR. NIPPER: I'm sorry. Mr. Chairman, may I
13 just add something?

14 I realize I neglected to mention or respond
15 to the comment about taxpayers being on the hook in
16 case something happens. I think that is really sort
17 of the gist of your question.

18 I'm not aware of any instance where a public
19 utility, a municipal utility, public utility
20 district, State power authority, is backed up by or
21 is in any way funded by taxpayer funds.

22 All of the funding comes through the
23 activities and the revenues generated and the fees
24 generated, you know, from those activities.

25 In fact, public power systems throughout the

1 nation return payments in-lieu-of taxes and actually
2 contribute to the tax base and to the revenues of the
3 State and local government in which they operate.

4 So at least based on history, I don't think
5 you have much to fear in that regard.

6 REPRESENTATIVE GABLER: Thank you.

7 I think that while it's helpful to look
8 across history, I think also, though, just the idea
9 that a credit rating does have to inherently, I mean,
10 take into account an element of risk, I would say
11 that just being a difference there would be something
12 going forward that would need to be considered.

13 But I thank you once again for your
14 testimony.

15 MR. NIPPER: Yes, sir.

16 REPRESENTATIVE GABLER: I appreciate it.
17 Thank you.

18 MR. NIPPER: Thank you.

19 CHAIRMAN GEORGE: I thank the gentleman for
20 his testimony.

21 MR. NIPPER: Thank you, sir.

22 CHAIRMAN GEORGE: The final testimony on
23 this afternoon will be provided, presented by
24 Mr. Vic Sawicki -- did I pronounce that accurately?
25 -- Air Products and Chemicals.

1 And he is accompanied by the gentleman,
2 David Kleppinger, Chairman of McNees, Wallace &
3 Nurick.

4 Welcome, gentlemen.

5 MR. SAWICKI: Thank you.

6 Good afternoon, Chairman George,
7 Representative Hutchinson, members of the
8 Environmental Resources and Energy Committee, and
9 staff. We appreciate the opportunity to speak before
10 you today.

11 As Chairman George has mentioned, with me
12 today is David Kleppinger of McNees, Wallace &
13 Nurick, who is counsel to the Industrial Energy
14 Consumers of Pennsylvania. The acronym is IECPA.

15 I would like to, rather than read my
16 testimony today, to avoid some degree of redundancy
17 and to leave some time for questions, I would like to
18 try to summarize my testimony, which will probably go
19 a little bit faster.

20 I'm Vic Sawicki. I work for Air Products
21 and Chemicals. I'm a Senior Energy Manager.

22 In that capacity, I'm responsible for on the
23 order of about \$50 to \$100 million worth of
24 electricity purchases per year.

25 Much of that or a significant portion of

1 that is for our facilities in Pennsylvania, including
2 our headquarters in Allentown, but also a number of
3 manufacturing facilities.

4 Speaking today on behalf of the Industrial
5 Consumers of Pennsylvania, I was the Past President
6 of IECPA, a Past Vice President. I'm currently
7 Chairman of the Rate Cap Expiration Committee.

8 IECPA supports the creation of a
9 Pennsylvania Power Authority with certain authorities
10 and obligations that I'll describe in a moment.

11 IECPA, for those of you who are not fully
12 familiar with us, is a group of 24 large industrial
13 customers who employ over 43,000 people collectively.

14 Energy is very important to the members of
15 IECPA, both natural gas and electricity.

16 For electricity, just a couple of examples.

17 Air Products has, as some of its principal
18 lines of business, the separation of air. For that,
19 some 70 to 80 percent of the costs of manufacturing
20 can be from electricity.

21 Another example of the importance of
22 electricity is for a large steel mill where there's a
23 1 cent per kilowatt-hour difference. And that, just
24 to put it in a framework that we've talked about
25 today -- I think Commissioner Christy talked about

1 paying rates on the order of 8 or 10 cents for
2 electricity -- a 1-cent change in electricity costs
3 for a large steel mill can be a \$5 to \$10 million
4 annual difference in their cost structure.

5 So electricity costs are of critical
6 importance to us and critical importance to our
7 ability to stay competitive.

8 To recap a little bit about how we got to
9 where we are today. In 1996, I think we recognized
10 that electricity costs were a critical element of the
11 vitality of Pennsylvania businesses and industries
12 and the national and international markets in which
13 they operate.

14 There was a virtual universal belief that
15 the wholesale and retail markets would produce lower
16 costs if they were competitive markets.

17 Interestingly, the utility parties that were
18 engaged in discussion at that time had lower price
19 estimates than customer estimates, which were also
20 much lower than prices today. Customers, therefore,
21 generally supported restructuring.

22 What we see now is vastly different from
23 what our, I think, common vision was at that time.
24 We now anticipate much higher prices than those that
25 were predicted back in the late nineties when we

1 engaged in that debate.

2 Some of our members will see price increases
3 that are quite a bit larger than some of the ones
4 that people refer to today for residential customers.
5 Rather than 10 or 20 or 30 percent, some of our
6 members will see 30 or 40 or even 100 percent price
7 increases.

8 Why? The wholesale market is not the one
9 that we expected. I think the design is different
10 than the one that we advocated. My own perspective
11 is that it also has some fundamental endemic
12 qualities to it that make it disadvantageous to
13 consumer interests in areas such as governance and
14 some of the day-to-day operations in the way
15 decisions are made. It is more damaging than I could
16 have imagined at the outset.

17 With this model that is in place for the
18 wholesale market, the level and the effect of higher
19 fuel prices, which we have experienced relative to
20 those projections, are far greater than we had
21 thought.

22 We are not here to make accusations or
23 recriminations or to cast blame on why that is so but
24 to talk about the practical effect of what happens if
25 nothing changes.

1 I think what happens is that rates will stay
2 relatively high. When we come out of the recession,
3 they will spike up quite a bit and they'll stay
4 pretty volatile, as others have addressed.

5 That will place our businesses at a distinct
6 competitive disadvantage relative to those States in
7 which there's a different market model, and that's a
8 cost-of-service model with historical, lower-cost
9 resources -- that's elsewhere in the United States --
10 and also international markets where reforms were not
11 adopted.

12 There were some questions earlier today
13 about what people can do in a bilateral contract
14 environment.

15 In the face of this market and the options
16 and the rate cap expirations in the various utility
17 territories, IECPA members went shopping for power.
18 We want reasonably priced electricity without a lot
19 of volatility.

20 That's what we sought. What we had to offer
21 was a commitment to cover the cost from facilities.
22 There was a line of questioning that referred to the
23 fuel costs and what would happen if fuel costs
24 changed. We are willing to absorb some reasonable
25 degree of risk with respect to fuel costs and to

1 environmental regulation cost changes, which is not
2 unlike the risks that we absorbed back in the old
3 regulated utility environment.

4 What we were offered or what we found was
5 that for short-term deals -- by that I mean a couple
6 of years, say up to about 5 years or so -- what
7 suppliers were offering was pegged to the short-run
8 market prices or the vision of the future's price.
9 That was the market that we were seeking to avoid.

10 For longer-term contracts, and by that I
11 mean 10-, 20-, 30-year contracts, suppliers wanted
12 commitments from individual companies to assume a
13 take-or-pay obligation. And by that I mean that they
14 would want us to be responsible for the capital costs
15 of the facilities from which we were purchasing under
16 all circumstances, whether, for example, one of our
17 facilities that was planning to take the power was in
18 existence or not.

19 The first option doesn't get us away from
20 the volatile and high-priced short-term market that
21 we were trying to avoid. It wasn't a solution for
22 us.

23 The second option presents for us strategic
24 and accounting issues, which I think are likely
25 insurmountable for most of our companies.

1 We, therefore, are in favor of a power
2 authority that can be used as a facilitator to get
3 around some of these issues that we saw as
4 insurmountable.

5 So how do we see a power authority working?

6 We support it because we think that it could
7 be a valuable source of power supply without having
8 to engage in the relatively ambitious undertaking of
9 revamping, restructuring law in the State at retail
10 levels or to redesign the wholesale markets.

11 I mean, we do work in both of those
12 environments, and we will continue to try to improve
13 them. But this does not call for a revamping; it's
14 something that can be co-existent with those
15 markets.

16 The source of value. If the authority has
17 the ability to borrow, to purchase base load
18 generation, then it could have reduced costs,
19 cost-of-service model, with a debt financing which is
20 less than that from a typical plant.

21 A typical privately-owned plant is financed
22 by a mix of commercially-issued debt and equity. A
23 power authority could replace those sources with
24 100-percent debt and I think a lower-cost debt than
25 the debt that would be used on the commercial side

1 for a private plant.

2 We estimate that for base load facilities,
3 the savings that could be passed along to customers
4 could be up to about 1 cent per kilowatt-hour or so.
5 Again, that is 10, 15 percent, maybe 20 percent. It
6 depends on what somebody's rate is today.

7 The model, I think, doesn't work very well
8 unless there are customers who are willing to make a
9 commitment to be, in a sense, captive; that is, to
10 the extent that they have electricity needs, that
11 they commit that they will take it for the long term
12 from the authority. That would be the source of
13 support for the financing and for the fuel costs and
14 the operating costs of the authority.

15 It does have the ability to get around the
16 problematic take-or-pay obligation that I mentioned.
17 Since individuals would not -- individual companies
18 would not be committed to those take-or-pay
19 financial obligations, there would be a collective
20 commitment.

21 So hopefully if one party stepped out,
22 another party would be available to do that. It is
23 much like the old utility model, except in that case
24 it was residential, commercial, and industrial
25 customers collectively.

1 The power authority, as I think some others
2 have alluded to today, could create some other
3 benefits as well.

4 It could be used to put new base load
5 generation into service more readily than the
6 existing short-term market structure with its
7 volatile prices would do. That would have the effect
8 of shifting out the supply curve in the wholesale
9 market and reducing the cost. And that would be a
10 reduction in the cost, although somewhat incremental,
11 a reduction in costs for everyone. Whether they were
12 a participant who received power directly from the
13 power authority or not, that reduced market clearing
14 price would occur.

15 It could also be used to put in new peaking
16 generation in critical places; for example, where
17 there are transmission constraints and people haven't
18 yet put in new peaking capacity.

19 Some have observed that there is some
20 disincentive for the owners of large fleets of
21 generation to take actions to put in new generation
22 because it can drop market prices and create less
23 revenue for their other resources that they put in.
24 The power authority would not be ambiguous about that
25 and would not have such disincentivizes.

1 Each of those actions could decrease the
2 costs of power for customers who are members of the
3 authority, customers of the authority, and for those
4 who are not.

5 It could also be used for some other
6 purposes. For example, it could be used as a tool
7 for economic development. You may create criteria
8 for those who, if it were oversubscribed, should we
9 say, criteria for acceptance to be a customer of the
10 power authority. And attached to my testimony is
11 some samples of things you might think about for use
12 as criteria.

13 It could be used as an option for the supply
14 of power to small customers if the electric
15 distribution companies were not meeting their
16 obligation with respect to default supply.

17 In that regard, I think there would have to
18 be some matching of the term of the commitment of the
19 small customers. Presumably it would be less than
20 the large customers who are making a long-term
21 commitment.

22 In addition, it could be used to advocate on
23 behalf of customers in the wholesale markets for
24 improvements to those markets.

25 I believe that we are underrepresented in

1 those markets and that as a result we don't see the
2 kinds of changes that we like that are good for
3 customers.

4 The power authority could act as an advocate
5 to take actions in the interests of customers in
6 those fora, those wholesale market fora that is
7 particularly in the PJM governance structure at the
8 FERC and, if necessary, in Congress.

9 There were some questions about what this
10 would cost the Commonwealth. I think that the
11 customers or the authority would support, in our
12 vision, the cost of generation, not the Commonwealth.
13 So the Commonwealth would not be purchasing directly,
14 except in nominal nature, the assets.

15 There may be some need for start-up money.
16 And there would be a need for the Commonwealth to
17 take a back-stop of the bonds that were issued. But
18 no tax money would be envisioned for this other than
19 seed money.

20 On the other hand, to the extent that it
21 helps to drive down energy costs, that is a benefit
22 to the Commonwealth, because the Commonwealth itself
23 is a large purchaser of electricity.

24 In this light, I think the power authority
25 can be seen as an enabler, a facilitator of purchases

1 and construction on behalf of consumers, and an
2 economic development tool and as an entity that can,
3 again, co-exist with existing retail competition for
4 those parties, customers, who choose to take
5 short-term supply and in fact with municipal
6 customers, co-ops, or any other kinds of supply
7 entities.

8 I think this measure, if it were to be
9 enacted, would be an important step to help us to
10 reduce costs in the long term, but I think we also
11 should have a debate about what measures we can take
12 in the short run.

13 We have a crisis that is coming up real soon
14 for the PPL territory when their rate caps expire on
15 January 1, 1 year later for several other utilities.

16 So I think we need to consider other options
17 as well. And I know that that is not the subject of
18 this hearing, but I will just mention that I think we
19 should consider that dialogue.

20 And we would stand ready to engage in any
21 stakeholder process under which we had that
22 discussion and talk about additional measures as well
23 as to further this measure.

24 Thank you once again for the opportunity to
25 speak with you today, and I would be happy to take

1 questions.

2 CHAIRMAN GEORGE: Why, does the gentleman,
3 your colleague, wish to make a presentation also?

4 MR. KLEPPINGER: No. I am here just in case
5 any legal questions come up that he can't handle.

6 CHAIRMAN GEORGE: All right.

7 Very quickly, it's getting a little late,
8 but the deregulation bill has been with us for 10 or
9 11 years.

10 Has the cost of your industrial folks, has
11 the cost of power gone up in those 11 years even
12 though deregulation insisted that it wouldn't?

13 MR. SAWICKI: The majority of the loads of
14 the customers that are a part of IECPA are still
15 under rate caps.

16 So it is when those rate caps come off that
17 they are fully exposed to the tender mercies of the
18 market.

19 CHAIRMAN GEORGE: And as far as the bill,
20 have you tried to go with another entity that would
21 be cheaper? That was the purpose of the deregulation
22 act, to allow you to shop around and go with somebody
23 that wouldn't cost you as much. Have you tried that?

24 MR. SAWICKI: Yes. In the very early days,
25 there were a few deals to be had that were cheaper

1 than the capped rates. Those were very few, and they
2 were very short-lived.

3 Now that we anticipate the expiration of the
4 rate caps, as I mentioned, we did approach private
5 parties who own generation or were in the business of
6 building generation and found that the alternatives
7 that were available to us were not acceptable.

8 CHAIRMAN GEORGE: If we do nothing, do you
9 think that the large industrial businesses will leave
10 Pennsylvania for States that offer a more stable
11 market?

12 MR. SAWICKI: I have seen testimony from
13 others, other industrial customers who have said that
14 their costs of electricity in other jurisdictions is
15 much lower than it is in Pennsylvania.

16 I don't see how some of those, at least,
17 will fail to shift their production to those
18 lower-cost sources. I don't see how they would do
19 otherwise, so.

20 CHAIRMAN GEORGE: You know, it is evident
21 that with the couple of utilities being purchased in
22 other States, whether that power is coming into
23 Pennsylvania or there is a tradeoff, the fact is that
24 when we go back to the deregulation bill where these
25 companies had deregulated, it was established time

1 and time again what they had invested and what would
2 happen should they lose money, and every utility that
3 I know of recouped sometimes double the amount. And
4 that went into their pockets; it didn't go back to
5 the ratepayers.

6 And as I think you said and all those
7 preceding you, short-term contracts will continue to
8 impede and cost us more money, and who wants to build
9 if they don't know what the price of their energy is
10 going to be in 4 years rather than just 2? Is that
11 accurate?

12 MR. SAWICKI: Yes, I believe that it is
13 accurate to say that short term -- references to the
14 short-term market for revenue is problematic for
15 those who choose to build generation, and having
16 long-term contracts is a much more desirable and less
17 costly model for those developers.

18 With respect to the amount of money that is
19 being made by generators, I won't address the legal
20 aspects of the deregulation, but I will observe that
21 if you were a generation, if you bought generation or
22 you owned generation that was, say, part of the old
23 utility fleet and saw the kinds of market prices that
24 are anticipated now when most of that generation is
25 largely depreciated, you would probably be a happy

1 person, and that is at the expense of consumers. So
2 I think that's an issue that should be looked at.

3 CHAIRMAN GEORGE: Are there any questions
4 for the gentleman?

5 Mr. Barbin, one question, please.

6 REPRESENTATIVE BARBIN: Do you have any
7 doubt that if we followed the model of New Jersey,
8 Maryland, or New York and had a power authority, that
9 we would at least have some benefit on the electric
10 rates going down in the current situation that we are
11 in?

12 If we immediately passed the law
13 establishing an authority, do you have any doubt that
14 it would have, you know, the effect of at least
15 helping your industry out and your 43,000
16 employees?

17 MR. SAWICKI: Yeah. I think it's going to
18 take some time, first, for the potential law to be
19 detailed and discussed. It will take some time to be
20 implemented to get a power authority up and running.
21 And then to purchase base load capacity will all take
22 some time. So I think at a minimum, that's a couple
23 of years.

24 I think, and I'm not familiar with the
25 models in the States that you are referencing, but

1 I'll suggest that if the power authority had the
2 ability to finance using 100 percent low-cost debt
3 instead of going to the private developers, that is
4 inherently a more cost-advantageous structure than
5 the one that we have been facing so far.

6 REPRESENTATIVE BARBIN: Thank you,
7 Mr. Chairman. I am concluded.

8 MR. KLEPPINGER: I would just add to that---

9 CHAIRMAN GEORGE: Do you have a question?

10 MR. KLEPPINGER: If I could just add to
11 that, I think one important point to make along those
12 lines is that if the power authority were to be
13 passed, as Vic indicated, it is going to take some
14 time to get up and running. The rate caps will
15 expire before then, but the presence of the power
16 authority should have a mitigating effect on the
17 market as soon as it's created.

18 And secondly, it could facilitate additional
19 bridge mechanisms between the point that the rate
20 caps expire and the point that the power authority
21 can be fully effective.

22 REPRESENTATIVE BARBIN: Thank you.

23 CHAIRMAN GEORGE: Mr. Gabler.

24 REPRESENTATIVE GABLER: Thank you,
25 Mr. Chairman.

1 Thank you for your patience and willingness
2 to discuss these at the length needed.

3 Just a quick question that I have.

4 I want to refer back to Mr. Popowsky's
5 remark when he was asked what his concept was of a
6 long-term contract. He said he viewed it as 10 years
7 or so.

8 If in your answer you could address whether
9 you view that in a similar definition, because in
10 your remarks you mention that, quote, "We have been
11 looking for arrangements to obtain long term price
12 stability through contracts with generation owners or
13 developers at reasonable rates that will still allow
14 the suppliers to make a fair profit."

15 Another part of our testimony, and I forget
16 which testifier it was, earlier mentioned that there
17 really are only two ways to build in long-term
18 contract prices. One is to have the customer pay a
19 premium for the utility to assume the risk of
20 fluctuation in cost, or the other way would be to
21 leave an open-ended fuel-cost factor.

22 And so my question is, which one of those
23 would you find to be preferable, and do you think
24 that a power authority would be necessary in order to
25 provide for that?

1 MR. SAWICKI: With respect to your first
2 question about what constitutes short or long term,
3 there is no standard definition, I would say.

4 My sense of it is that if you are talking
5 about 1 or 2 or 3 or 4 or maybe 5 years, that is
6 short term.

7 It's hard for me to imagine that a base load
8 facility developer would be satisfied with anything
9 less than a 10-year contract for that financing.

10 And on the furthest end, it is hard for me
11 to imagine that somebody is going to want to commit
12 to -- a customer now -- to a 30-year contract. So we
13 are talking about somewhere long term, by my
14 standards, somewhere in the 10 to 30 year kind of
15 range, I suppose.

16 With respect to the fuel prices, I think
17 that there are reasonable risks that the customers
18 are willing to absorb. The risk of fluctuating fuel
19 prices, if well defined, is probably one of those
20 risks. And again, that is like the old utility
21 models where customers absorbed the risk of fuel
22 prices changing.

23 With respect to the degree of
24 disadvantageousness of that arrangement relative to
25 market prices, I would just observe that fuel prices

1 tend to rise in unison, although not to the same
2 degree, and fall. So there is some sense to us being
3 willing to take risk with fuel prices.

4 We would also probably be willing to take
5 reasonable measures of environmental change risk from
6 regulation.

7 REPRESENTATIVE GABLER: Thank you very much.
8 And I am concluded, Mr. Chairman. Thank
9 you.

10 CHAIRMAN GEORGE: Thank you very much.

11 I thank you for your time and your
12 presentation.

13 I thank all of those who presented their
14 testimony, and we appreciate it very much.

15 I'm grateful to all of those in the audience
16 because of their willingness and their concerns that
17 I believe is statewide.

18 I thank the members of this committee,
19 regardless of what their personal views are, in that
20 legitimately they want to do what is right for all of
21 Pennsylvania.

22 We have yet testimony that we will provide
23 to the stenographer from Robert Powelson, a
24 Commissioner of the PUC. Unfortunately, we couldn't
25 get him on.

1 Already there have been three requests for
2 other meetings, and we will make a decision on that
3 as soon as we see what our scheduling will be with
4 the budget month.

5 So until then, I thank you all for your
6 honest effort and your ability to discuss matters --
7 oh, I beg your pardon.

8 Mr. Douglas Biden, President, and
9 Terrance Fitzpatrick, General Counsel, of the
10 Electric Power Generation Association -- I apologize
11 -- that will be presented to the stenographer. So
12 their testimony will be presented as well.

13 So with no other business before this
14 committee, this committee stands adjourned.

15

16 (The hearing concluded at 2:57 p.m.)

17

18 **SUBMITTED WRITTEN TESTIMONY**

19 * * *

20 ROBERT F. POWELSON, Commissioner,
21 Pennsylvania Public Utility Commission, submitted the
22 following written testimony:

23

24 Thank you, Chairman George, Chairman Hutchinson, and
25 Members of the Committee, for allowing me to present

1 written comments on this important topic. As you
2 consider the merits of creating a Pennsylvania Power
3 Authority (PPA), I respectfully ask that you take the
4 time to understand the delicate balance between
5 consumer protections and the costs of adopting this
6 proposal.

7
8 House Bill 2791, or the Pennsylvania Power Authority
9 Act, seeks to create a governmental power authority
10 tasked with developing electricity procurement plans,
11 conducting competitive procurement processes,
12 developing electric generation and cogeneration
13 facilities, diversifying electricity supply
14 portfolios, and supplying electricity at cost to
15 municipal electric systems, governmental aggregators,
16 and rural electric cooperatives. The genesis of this
17 bill stems from concerns about rising energy prices
18 and the transition to statewide retail competition
19 and seeks to ensure adequate, reliable, and
20 affordable electric service for Pennsylvania
21 consumers. I do not disagree with these fundamental
22 concerns and objectives; however, I do not believe
23 the best way to accomplish them is through the
24 creation of a Pennsylvania Power Authority. Instead,
25 I believe we must fully commit to the strategies

1 already in place in Pennsylvania and allow for the
2 full realization of their intentions and benefits.

3

4 One might ask: What is the real driver behind the
5 creation of a Pennsylvania Power Authority? Some may
6 argue that the current market design in PJM is
7 inadequate. Others might argue that they support
8 competitive markets but simply do not like the
9 current price of electricity. Still some others may
10 not believe in the effectiveness of competitive
11 markets at all. Yet in my view, asking residential
12 customers to shoulder the burden of this monumental
13 policy request and expecting the authority to have
14 the ability to immunize them from the ups and downs
15 of the wholesale power markets is not feasible.

16

17 I am far from convinced that consumers would not be
18 negatively impacted by the creation of a governmental
19 power authority, and I fear intervention in energy
20 markets is not a prudent course of action for the
21 Commonwealth to take at this time, particularly
22 considering Pennsylvania's historic budget deficit
23 and staggering unemployment rates. Furthermore, I
24 believe the creation of a governmental power
25 authority to manage Pennsylvania's energy sector is

1 not practical due to the need for technical and
2 financial expertise of its managers, the lack of
3 proper cost-control incentives, and the overall
4 intricate nature of such a structure.

5
6 Since 1996, Pennsylvania has garnered over 8,400 mw
7 of new generation from non-incumbent generators.
8 These private investors -- not ratepayers -- have
9 helped advance over \$12 billion in capital investment
10 into generation fleets across the Commonwealth, the
11 risks of which were borne by these investors rather
12 than by Pennsylvania consumers. However, under a
13 power authority the risk of failing to perform falls
14 upon taxpayers rather than shareholders, who are
15 often better able to take on and manage investment
16 risks.

17
18 Please allow me to conclude with a few "food for
19 thought" items on this measure:

- 20
- 21 • In today's world, do you feel that the
22 Commonwealth of Pennsylvania has the
23 sophistication to run a power trading floor
24 operation, along with the personnel to support
25 it, that will compete with merchant power

- 1 supplies? Most experts will tell you that
2 power authorities are ill-equipped to handle
3 the risks and costs inherent in the
4 competitive marketplace.
- 5
- 6 • Since deregulation in 1996, Pennsylvania
7 ratepayers have not had to pay for poor
8 economic decisions made by generators in the
9 marketplace; instead, these risks have been
10 borne by stakeholders. So why are we putting
11 forth a legislative proposal that puts capital
12 risks back into rate base? In my view,
13 ratepayers could be adversely impacted, as
14 they will be forced to bear the risk of plant
15 development and construction, operating cost
16 overruns, performance shortfalls, and
17 technology gaps.
- 18
- 19 • Finally, it is unclear how HB 2791 will
20 encourage long-term investment in existing
21 generation assets as the General Assembly
22 seeks to leverage the Commonwealth's general
23 fund (which is already constrained) and bring
24 added risks to consumers. To cite an example
25 of a state that faced a similar situation, I

1 think California got it right when it
2 terminated its power authority after
3 determining that it provided minimal value in
4 meeting the state's energy objectives.

5
6 In closing, power authorities and private companies
7 face similar challenges, including portfolio
8 management approaches, regulatory policies, risk
9 management strategies, and environmental challenges.
10 Yet it is clear that the power authority approach has
11 the potential to increase energy prices, stifle
12 investments, and compromise system reliability.
13 Pennsylvania has taken steps in recent years to
14 protect consumers from rising energy prices,
15 diversify its energy resources, and encourage a
16 competitive marketplace through the passage of
17 significant pieces of legislation such as the
18 Alternative Energy Portfolio Standards (AEPS) Act of
19 2004 and Act 129 of 2008 and also by working closely
20 with PJM to ensure that reliability and energy
21 efficiency are part of the equation toward lower
22 energy bills following the expiration of the
23 remaining rate caps. We must allow for the
24 transition to a fully competitive marketplace to take
25 place and for the benchmarks set forth in AEPS and

1 Act 129 to be reached before making the conclusive
2 determination that current strategies are not working
3 and therefore must be significantly altered.

4

5 Thank you again for hearing my views on this
6 important topic, and I welcome the opportunity to
7 meet with you to further discuss this issue.

8

9

* * *

10

11 DOUGLAS L. BIDEN, President, and TERRANCE J.
12 FITZPATRICK, General Counsel, Electric Power
13 Generation Association, submitted the following
14 written testimony:

15

16 DATE: May 27, 2009

17 TO: Members, House Environmental Resources and
18 Energy Committee

19 FROM: Douglas L. Biden, President

20 Terrance J. Fitzpatrick, General Counsel

21 RE: Hearing on House Bill 2791, Session of 2008

22

23 On May 27, 2009, the House Environmental Resources

24 and Energy Committee will hold a hearing on

25 House Bill 2791, Session of 2008. This legislation

1 would amend the Administrative Code to create a
2 "Commonwealth Energy Advocate" and would add an
3 article entitled the "Pennsylvania Power Authority
4 Act."

5
6 The Power Authority Act would create a new
7 governmental entity -- controlled by a three member
8 board consisting solely of consumer interests -- with
9 vast powers to: build new power plants and
10 transmission lines (including the power of eminent
11 domain), buy existing power plants, buy power on the
12 wholesale market, and collect a tax that could run in
13 the billions of dollars from owners of generating
14 plants that were formerly subject to public utility
15 regulation. This tax would be used to fund the new
16 bureaucracy, and to provide rebates to customers. In
17 addition, the Authority would be empowered to raise
18 the level of the tax, or to excuse generators from
19 the tax if they signed what the Authority deemed to
20 be cost-based long-term contracts to sell power to
21 the Authority.

22
23 The companies that are members of the Electric Power
24 Generation Association ("EPGA") own most of the
25 electric generating capacity in Pennsylvania. These

1 companies are critical to the Commonwealth's economy,
2 and provide family-sustaining jobs to tens of
3 thousands of Pennsylvanians. EPGA has the following
4 concerns with HB 2791:

- 5
6 • Creating a new government agency and providing
7 it with vast powers over the electric
8 generation industry is not a solution to
9 higher electricity prices. Wholesale
10 electricity prices have risen over the past
11 decade due to higher fuel and construction
12 costs, and increasingly stringent
13 environmental requirements, not due to any
14 failure of electricity competition. From 1999
15 to the summer of 2008, the cost of coal rose
16 by 200%, and the cost of natural gas rose by
17 300%. The cost of building a new power plant
18 rose by 130% over the same timeframe.
19
- 20 • Since the summer of 2008, wholesale
21 electricity prices in the PJM area have
22 dropped roughly 50%. This will make it easier
23 for customers to adjust to the ending of
24 retail price caps which will have been in
25 place for well over a decade. The recent drop

1 in wholesale prices also illustrates that
2 these prices are competitive and are subject
3 to the normal laws of supply and demand.

4
5 • Electricity competition has benefited
6 customers by improving the operating
7 efficiency of power plants, and by placing the
8 risk of investment decisions on private
9 investors rather than electricity customers.
10 The creation of a power authority as
11 envisioned in this legislation threatens the
12 continued improvement in generation efficiency
13 and shifts risks back to customers, thus
14 nullifying the benefits of competition. In
15 fact, under this legislation, government would
16 have far more responsibility for the
17 generation industry than before electricity
18 competition, when investor-owned public
19 utilities made investment decisions subject to
20 the oversight and rate-setting authority of
21 the Public Utility Commission.

22
23 • Consumers will be far better off if investment
24 decisions regarding new plants are made by
25 private investors rather than by government

1 policymakers. If investors make bad
2 decisions, they bear the consequences. If
3 government policymakers make bad decisions,
4 electricity customers or taxpayers will bear
5 the consequences.

6

7 • Passage of this legislation will discourage
8 investment in privately-owned power plants,
9 because investors will hesitate to put their
10 money at risk competing with a state-run power
11 authority that has a guaranteed market, and
12 that has the authority to impose taxes on
13 privately-owned plants.

14

15 • Wholesale electricity markets are working well
16 and producing competitive prices that are fair
17 to consumers. When adjusted to remove the
18 influence of higher fuel costs, wholesale
19 electricity prices have dropped by more than
20 23% over the past decade, which reflects
21 improvements in the operating efficiency of
22 plants due to competition. Pennsylvania
23 should maintain its commitment to competitive
24 electricity markets.

25

- 1 • The independent market monitor of PJM has
2 reviewed the costs and revenues of generators
3 and has concluded consistently over the years
4 that wholesale electricity prices are
5 competitive. In fact, the revenue available
6 to generators has not generally been
7 sufficient to allow generators to recover all
8 of the costs of building and operating new
9 plants.
- 10
- 11 • The discriminatory tax this legislation would
12 apply to owners of plants that were formerly
13 subject to state regulation is likely
14 unlawful, and is certainly unwise. It would
15 discourage building new plants, and would also
16 discourage investments in existing plants that
17 are necessary to maintain reliable supplies of
18 electricity and to meet ever more stringent
19 environmental requirements.
- 20
- 21
- 22
- 23
- 24
- 25

1 I hereby certify that the proceedings and
2 evidence are contained fully and accurately in the
3 notes taken by me on the within proceedings and that
4 this is a correct transcript of the same.

5

6

7

Debra B. Miller, Reporter

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25