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DATE: May 27, 2009
TO: Members, House Environmental Resources and Energy Committee
FROM: Douglas L. Biden, President
Terrance J. Fitzpatrick, General Counsel
RE: Hearing on House Bill 2791, Session of 2008

On May 27, 2009, the House Environmental Resources and Energy Committee will hold a hearing on House Bill 2791, Session of 2008. This legislation would amend the Administrative Code to create a "Commonwealth Energy Advocate" and would add an article entitled the "Pennsylvania Power Authority Act."

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

The companies that are members of the Electric Power Generation Association ("EPGA") own most of the electric generating capacity in Pennsylvania. These companies are critical to the Commonwealth's economy, and provide family-sustaining jobs to tens of thousands of Pennsylvanians. EPGA has the following concerns with HB 2791:

- Creating a new government agency and providing it with vast powers over the electric generation industry is not a solution to higher electricity prices. Wholesale electricity prices have risen over the past decade due to higher fuel and construction costs, and increasingly stringent environmental requirements, not due to any failure of electricity competition. From 1999 to the summer of 2008, the cost of coal rose by 200%, and the cost of natural gas rose by 300%. The cost of building a new power plant rose by 130% over the same timeframe.
- Since the summer of 2008, wholesale electricity prices in the PJM area have dropped roughly 50%. This will make it easier for customers to adjust to the ending of retail

price caps which will have been in place for well over a decade. The recent drop in wholesale prices also illustrates that these prices are competitive and are subject to the normal laws of supply and demand.

- Electricity competition has benefited customers by improving the operating efficiency of power plants, and by placing the risk of investment decisions on private investors rather than electricity customers. The creation of a power authority as envisioned in this legislation threatens the continued improvement in generation efficiency and shifts risks back to customers, thus nullifying the benefits of competition. In fact, under this legislation, government would have far more responsibility for the generation industry than before electricity competition, when investor-owned public utilities made investment decisions subject to the oversight and rate-setting authority of the Public Utility Commission.
- Consumers will be far better off if investment decisions regarding new plants are made by private investors rather than by government policymakers. If investors make bad decisions, they bear the consequences. If government policymakers make bad decisions, electricity customers or taxpayers will bear the consequences.
- Passage of this legislation will discourage investment in privately-owned power plants, because investors will hesitate to put their money at risk competing with a state-run power authority that has a guaranteed market, and that has the authority to impose taxes on privately-owned plants.
- Wholesale electricity markets are working well and producing competitive prices that are fair to consumers. When adjusted to remove the influence of higher fuel costs, wholesale electricity prices have dropped by more than 23% over the past decade, which reflects improvements in the operating efficiency of plants due to competition. Pennsylvania should maintain its commitment to competitive electricity markets.
- The independent market monitor of PJM has reviewed the costs and revenues of generators and has concluded consistently over the years that wholesale electricity prices are competitive. In fact, the revenue available to generators has not generally been sufficient to allow generators to recover all of the costs of building and operating new plants.
- The discriminatory tax this legislation would apply to owners of plants that were formerly subject to state regulation is likely unlawful, and is certainly unwise. It would discourage building new plants, and would also discourage investments in existing plants that are necessary to maintain reliable supplies of electricity and to meet ever more stringent environmental requirements.