

**BEFORE
THE PENNSYLVANIA HOUSE OF REPRESENTATIVES
HOUSE CONSUMER AFFAIRS COMMITTEE**

Testimony of

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Regarding Variable Rate Electric Contracts

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Good Morning Chairman Godshall, Chairman Daley, and Members of the House Consumer Affairs Committee. My name is Patrick M. Cicero. I am the Co-Director of the Pennsylvania Utility Law Project (PULP). PULP is a designated statewide specialized project of the non-profit Pennsylvania Legal Aid Network. For three decades, PULP has provided support, information, consultation, and advocacy in conjunction with local legal aid and community based organizations representing the interests of the Commonwealth's low-income residential utility consumers. Thank you for the opportunity to comment on the recent spike in electricity prices and the problem facing consumers who are served by electric generation suppliers under terms of variable rate contracts. I have been asked to submit this testimony on behalf of PULP's clients, in particular, its client the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania or (CAUSE-PA).

I previously submitted testimony to this Committee on these issues on March 20, 2014. While I will touch on many of the same issues today, there are a few new developments since then that I would like to discuss. Before discussing these issues, it is essential that the Committee have a fuller picture of the economic vulnerabilities of PULP's clients. All of PULP's clients are poor, and many live on fixed incomes and are vulnerable because of advanced age, medical needs, or lack of literacy in English. The lack of affordable energy services for these households is a significant contributor to adverse impacts on household health and safety.

To understand just how serious this problem is, the benchmark most often used by low-income advocates is the Pennsylvania Self-Sufficiency Standard published periodically by the nonprofit Pathways PA.¹ The Self-Sufficiency Standard is a tool developed to measure how

¹ <http://www.pathwayspa.org>

much income a family of a certain composition in a given place needs to adequately meet their basic needs (housing/utilities, health care, transportation, child care, food, and taxes) without private or public assistance.² In other words, it measures the income needed to truly be self-sufficient. The Self-Sufficiency standard varies dramatically within Pennsylvania depending on geographic location and family size. Generally, however, the cost of meeting basic needs in Pennsylvania for a family with one parent and one preschool child ranges from \$27,412 to \$51,853 annually.³ Compare this to the average household income of \$14,350 for households enrolled in Electric Customer Assistance Programs (“CAPs”) in 2012⁴ and it is not difficult to understand the economic vulnerability of these households.

This economic vulnerability can also be seen when comparing the termination rates for residential customers as a whole with those for confirmed low-income customers. In 2012, the last year for which information is publically available, the termination rate for residential electric customers as a whole was 3.7% whereas the termination rate for electric utilities’ confirmed low-income households was 12.5%, nearly 3.5 times as high.⁵ Low-income customers simply have much greater difficulty maintaining service. The same picture is shown when one understands that while statewide confirmed low-income customers constitute only 11.9% of residential customers as a whole they account for 48.5% of residential customers on payment agreements.⁶ Households at or below 150% of the federal poverty guideline simply lack sufficient income to

² The current version is The Self Sufficiency Standard for Pennsylvania (2012-2013) was incorporated into Pathways PA’s Overlooked and Undercounted study and is available on Pathway PA’s website at: <http://pathwayspa.org.mytempweb.com/wp-content/uploads/2014/01/Overlooked-and-Undercounted-2012.pdf>

³ Id. at 8.

⁴ See 2012 Universal Service Programs & Collection Performance Report at 29. Available at: http://www.puc.state.pa.us/General/publications_reports/pdf/EDC_NGDC_UniServ_Rpt2012.pdf

⁵ Id. at 9.

⁶ Id. at 7, 17.

pay for all of their essential needs including utilities. Given these realities, it is apparent that these households are the most vulnerable to price fluctuation posed by the retail electric market.

This concern is not merely academic. Even before the variable rate fiasco through which we are now living, low-income customers were faring poorly in the restructured electric market. Data recently obtained in the course of an on-going time-of-use proceeding demonstrates that CAP customers within the PPL service territory are generally paying more to competitive suppliers than CAP customers who received default service from PPL. Over the course of 2013, 58% to 82% of PPL's CAP customers who switched to competitive suppliers were paying more for electricity service than the PPL default service price to compare. The average for the year was 67%. That is, over the course of 2013, **two-thirds** of all bills rendered to PPL CAP customers who were receiving EGS-provided service were **higher** than utility provided default service. This comes on the heels of a 2012 finding by PPL that of May 2012, 73.4% of its CAP customers who were being served by an EGS were paying more than the default service price for electricity.⁷ That is, of its 16,339 CAP customers served by an electric generation supplier 11,991 were paying more than the PTC.

Additionally, in a 2012 filing with the PUC in response to the PUC's then-proposed end-state of default service, the First Energy Companies indicated that "28% of Met-Ed residential shopping customers are paying more than 30% above the [price to compare], which appears to have been caused, at least in part, by short-term teaser rates."⁸ It is in no one's interest for low-

⁷ Direct Testimony of Stephen Krone, on behalf of Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania, before the Pennsylvania Public Utility Commission, Petition of PPL Electric Utilities Corporation for Approval of a Default Service Program and Procurement Plan for the period of June 1, 2013 through May 31, 2015, Docket No. P-2012-2302074 (July 20, 2012).

⁸ Comments of Met-Ed/Penelec/Penn Power/West Penn Power at 2, Part 3, submitted to the Retail Markets Investigation working group on January 24, 2012. Available at: http://www.puc.state.pa.us/electric/PDF/RetailMI/DD-End_State_DSM-FE_012412.pdf, (Last visited: March 18, 2014).

income, payment troubled customers to be paying more than the price to compare for any period of time. Yet that is precisely what has occurred.

Given the vulnerabilities just described, the recent spike in electricity rates for those on variable rate contracts has been particularly devastating for our clients. Not only do CAP customers bear increased monthly costs associated with these increased rates so too do other ratepayers. Since other residential customers pay for CAP program costs and the CAP shortfall (which is the difference between what the CAP customer is asked to pay and the amount the CAP customer would pay if she paid the full, consumption based tariff), increased generation costs for CAP customers impact the bills of all residential customers.

Rather than reiterate all of the causes of the variable rate electric increases, we would like to take this opportunity to propose some steps that could be taken to mitigate the ongoing harm caused by these increases as well as prevent them from occurring in the future.

Assisting Customers Caught in Variable Rate Contracts

Many customers caught in variable rate contracts are in them unknowingly. We have received many inquiries by customers who have told us that they did not know their rate could vary monthly, but rather they were told that the rate charged would be lower than the utilities' price and "would always be competitive." Many more were placed on variable rate contracts at the expiration of their fixed rate contracts without knowing that this was occurring. Allowing customers to select alternative energy providers should not come at the expense of exposing customers to higher energy prices when that is not what the customer has bargained for or had been led to believe will occur. Thus, customers who are currently caught in a variable rate contract need tools to assist them in paying their bills and in cancelling their contracts. Barriers exist on both fronts.

In terms of bill payment assistance, there are precious few resources available for low-income customers to assist in paying their bills. While there is the possibility of LIHEAP funds and hardship funds to assist with bills, by this point in the winter heating season low-income customers eligible for these forms of assistance have either already exhausted their eligibility or the funds themselves have been depleted.

Ironically, those customers enrolled in CAP now or at any time in the past, have the fewest available options in addressing arrears as a result of rate increases because they cannot get a PUC authorized payment agreement. Currently, Section 1405(c) of the Public Utility Code prohibits the PUC from entering into payment agreements for CAP arrearages.⁹ Fortunately, since Chapter 14 of the Public Utility Code is currently up for reauthorization and before the Senate in the form of an amended HB 939, there is an opportunity to rectify this glaring injustice.

The House should work with the Senate to restore the PUC's power to provide one payment agreement to the poorest consumers who have outstanding balances that include CAP bills. CAP customers caught in the snare of a variable rate contract that they cannot afford, should be permitted to amortize their CAP arrears and remain in CAP with reduced rates.

In addition to assistance with payment terms and payment agreements, customers caught in variable rate contracts, or any contracts which impose onerous terms, have faced difficulty in getting out of those contracts. Currently, the only way that customers can exit these contracts is by contacting their supplier and asking to be placed back on default service or by contacting another EGS for service.¹⁰

Many of the customers affected by variable rate electric contracts who have contacted our office have informed us of long wait times and/or the simple inability to get in touch with EGS

⁹ 66 Pa. C.S. § 1405(c).

¹⁰ See 52 Pa. Code § 57.172

call centers. This is unacceptable. The Commission has recently promulgated regulations that will alleviate this concern and allow customers desiring to return to default service to contact their default service provider to make this switch. This is long overdue and we support this proposed regulatory change by the Commission.

However, CAP customers who have switched to competitive generation, face two additional impediments in their efforts to return to default service. They are financially unable to afford or pay the additional switching or cancellation fee; and they often find that making contact with the utility CAP subcontractors is difficult and that the response times of these subcontractors is slow. Any legislation addressing these issues should ensure that CAP customers are exempt from switching or cancellation fees, and that each utility ensures that CAP customers are able to receive adequate and timely customer service its CAP administrator.

Preventing Future Harm

In addition to the forgoing, we have a number of recommendations to ensure that the type of harm that occurred here is not repeated in the future. While the following is not an exhaustive list, we believe it contains many of the essentials to ensure that customers, particularly low-income customers, are not subject to the same harm in the future caused by variable rate contracts with no price limits and inadequate disclosures. Some of these recommendations may be able to be done without further legislative action. After all, the Electric Choice Act was not an act of complete deregulation of the electric industry; rather, it was a restructuring of that industry which enabled direct retail access to electricity generation by entities other than incumbent utilities.

The Choice Act deregulated the generation of electricity as a public utility, but it did not deregulate electric generation suppliers. This is an important distinction which is too often

glossed over or ignored. We believe the PUC can impose reasonable requirements on EGSs consistent with the Public Utility Code. This is evident from the declaration of policy of the Act itself, where the General Assembly declared in Section 2802(14) that the Commission has the authority to ensure that EGSs “comply with such other requirements concerning service as the commission deems necessary for the protection of the public.”¹¹ Moreover, the Act, in discussing the requirements for electric generation suppliers, specifically provides that there will be some form of regulation of electric generation suppliers.¹² However, for the sake of clarity and in order to promptly avoid further harm, we believe the current crisis affords the General Assembly with the opportunity to make some needed improvements to the structure of the retail electric market. Specifically, we suggest the following changes to help ensure that we do not face this situation in the future.

(1) CAP Customers should not pay more to be served by an EGS than they would pay under default service.

First, and most significantly from our perspective, the General Assembly should enact protections to ensure that CAP customers who select service from an electric generation supplier do not pay more than they would have paid had they remained on default service. From the information presented at the beginning of my testimony, it is apparent that low-income customers generally need the lowest price commodity service and even then need assistance through CAP and LIHEAP to assist with affordability.

It is unreasonable to approve discounts and reduced rates for low income customer classes, shift responsibility for the foregone revenue to all other residential customers, but then allow EGSs to charge higher rates that result in unaffordable or higher bills, thus contributing to

¹¹ 66 Pa. C.S. § 2802(14).

¹² 66 Pa. C.S. § 2809(e).

the higher collection costs to all customers and adverse health and safety impacts on the low income households.

The Commission has recently concluded that does not have the authority to regulate the rates that EGSs charge to CAP customers.¹³ Accordingly, the General Assembly should act to clarify that the PUC has the authority to regulate EGS rates charged to CAP customers, and prohibit EGSs from charging customers enrolled in CAP prices higher than those charged by utility provided default service.

(2) Door-to door sales should be prohibited.

Second, the General Assembly should prohibit door-to-door sales of electric generation supply. These marketing channels result in a one-on-one interaction with the customer at a private home and carry a long history of abuses. There are several reasons why door-to-door sales give rise to the potential for abusive and deceptive marketing. For example, the customer is marketed with oral statements and information that may and, based on experience, often is contradicted by the print of the actual agreement.

These oral representations are not recorded, but customers rely on those statements and often view the verification statements as a formality. While the written agreement may not promise savings, the oral representations and statements by the salesperson may be designed to imply or promise such a result. Finally, the customer is typically not as knowledgeable about competitive energy markets, the role of the utility and its price to compare, and is often misled, either deliberately or not, that the person at the door has some type of official status or at the very least has far more knowledge than they do about what will occur with the customer's energy bill. In our view, there is simply no justification to permit essential electricity generation service,

¹³ See Petition of PECO Energy Company for Approval of its Default Service Plan at Docket No. P-2012-2283641, Opinion and Order dated March 12, 2014 at 11-12.

necessary for the health and welfare of a household, to be sold through by door-to-door marketing transaction and the General Assembly should prohibit door-to-door sales of electric generation supply.

(3) A customer's affirmative consent should be required before converting a fixed rate contract to a variable rate contract.

Third, the General Assembly should require an EGS to obtain affirmative consent from a customer to renew a contract with any change in price or other material term. The key consumer protection issue is how or whether a supplier can interpret a customer's silence as agreement to changed terms or a renewal of an expiring contract. It is unreasonable to allow suppliers to change the terms of an existing contract when that term affects the customer's price or fees and charges without affirmative customer consent. Renewal of an existing contract should be allowed to occur without affirmative customer consent only if the underlying terms and price do not change or if the renewal is limited to a month-to-month contract with the original price terms and no termination fee.

Simply put, a supplier should not be able to change a fixed price contract into a variable price contract nor alter the fixed rate without obtaining affirmative customer consent. In many ways, things are as bad as they are now because this was permitted to occur. Customers who leave default service and agree to be served by a supplier have agreed to a certain "bargain" and have affirmatively provided evidence of such agreement in the verification process. The supplier should not be able to interpret this initial agreement to allow the supplier to change the basis of this bargain without also assuring affirmative customer consent. An agreement to become a customer is not an agreement to allow the supplier to make unilateral price changes based on customer silence.

(4) Changes are needed to the Purchase of Receivables Program

Fourth, under the Purchase of Receivables (POR) programs, the EDCs do the billing for the EGSs and then “purchase” the receivables of the EGSs. The EGSs receives payment for their charges whether or not the EDCs receive payment from the customers, and there is almost no incentive for EGSs to control rates. EGSs get paid and move on. The utility and its customers, on the other hand, must deal with increased uncollectible expenses, credit and collection costs, and the costs of potential termination of service. The General Assembly should require the PUC, either through legislation or other oversight, to modify the existing POR programs to ensure that there is a discount factor for what EGSs will be paid based on the average uncollectible ratio experienced by the EDC for all accounts in the specified rate class.

(5) Changes are needed to bills to add clarity and consistency of charges

Fifth, the General Assembly should require changes to EDC consolidated bills to make these bills more understandable. At a minimum, information on bills should be presented in manner that is similar and easy to compare. Our office has seen countless bills where the Price to Compare has been presented as “8.75 cents” and the EGS price has been presented as “\$0.0875.” While these are exactly the same, the difference in presentation is needlessly confusing. Both prices should be presented the same way so that customers can make an apples to apples comparison.

Not only should bills provide a clear and understandable statement of the rates customers are being charged, they should not be permitted to become littered and complicated with all forms of EGS miscellaneous sales products. The placement of added charges for non-basic electric service and the ability to disconnect service for failure to pay for these non-basic services should be clearly prohibited.

(6) EGSs should be required to provide historic pricing history

Finally, the General Assembly should require the PUC to directly, or through a third party, collect and publish EGS pricing data for every pricing plan offered to Pennsylvania residential customers. This historical data should extend back 12-18 months and should be readily available to customers either by calling the PUC or through the PUC's PA Powerswitch website. Such a public presentation of EGS prices, and how those prices have compared over time to default service rates, would be a valuable public resource. Access to information upon which a customer can make an informed choice is the hallmark of a fair and competitive marketplace. No such information exists today. That which is currently displayed on PA PowerSwitch is not a list of current or past prices paid by customers, it is a list of current offers to prospective customers. This is a subtle yet meaningful difference.

Conclusion

While the information and safeguards provided here is not exhaustive, they are intended to promote a minimal level of essential protections for residential customers, particularly low-income customers who are the most vulnerable to price fluctuation. Additionally, I would like to add our support to those recommendations that have been made by the Office of Consumer Advocate.

Thank you for the opportunity testify about these critical issues. I look forward to working with members of this Committee and the General Assembly to help ensure that essential protections are put in place so that low-income customers are able to continue to afford electric service under reasonable terms and conditions.