BEFORE THE
House Consumer Affairs Committee

Hearing on Variable Rate Supply Contracts
April 10, 2014

Testimony of

Terrance J. Fitzpatrick
President and CEO
Energy Association of Pennsylvania

Energy Association of Pennsylvania
800 North 3rd Street, Suite 205
Harrisburg, PA 17102
Tel: (717) 901-0600
Fax: (717) 901-0611
Email: tfitzpatrick@energypa.org

Good morning Chairman Godshall, Chairman Daley and members of the House Consumer Affairs Committee. I am Terry Fitzpatrick, President and CEO of the Energy Association of Pennsylvania ("EAP" or "Association"), a trade association comprised of electric and natural gas utilities operating in Pennsylvania. I am here today on behalf of the Association's electric utility members, which are also known as electric distribution companies (EDCs).[1] Thank you for this opportunity to appear before you today.

The purpose of this hearing is to examine issues surrounding the large price increases experienced by some customers who purchased electricity from electric generation suppliers (EGSs) under variable pricing plans. It appears that, under many or most of these plans, the price could change from month-to-month based upon wholesale market conditions, and customers did not find out what price they were paying for their usage until they received their bills. In contrast, customers who were purchasing from EGSs at fixed prices or who were purchasing an EDC's default supply service knew what price they were paying per kwh and that price did not increase, although their bills might have been higher due to increased usage resulting from extremely cold temperatures.

The wholesale price of electricity in the markets administered by PJM Interconnection spiked in January 2014 due to a combination of factors. Extreme cold led to increased demand for electricity at the same time that demand for natural gas increased to meet the heating needs of customers, and to supply gas-fired electric generating units. While it appears that gas supplies were adequate, pipeline

---

[1] Citizens' Electric Company; Duquesne Light Company; Metropolitan Edison Company; PECO Energy Company; Pennsylvania Electric Company; Pennsylvania Power Company; Pike County Light & Power Company; PPL Electric Utilities; UGI Utilities, Inc.-Electric Division; Wellsboro Electric Company; and West Penn Power Company.

bottlenecks in the northeast caused the regional price of gas to spike. In addition, certain electric generating units in the PJM area experienced outages, which required PJM to secure supplies from outside the PJM region. All of these factors contributed to spot market prices in PJM that on many days in January 2014 were four or five times higher than they had been a year earlier.

As a result of these high wholesale electricity prices, many retail customers on variable price plans received bills for January 2014 that were three to four times higher than their previous month's bill. (In most cases, this bill came from the EDC, since most EGSs have entered agreements for the EDCs to purchase receivables and then include the charges on the EDC's bill.) This has led to a high number of calls and complaints to EGSs, to EDCs, to the PUC, to the Office of Consumer Advocate, and to the Attorney General's Office of Consumer Protection. The PUC has initiated a formal review of issues surrounding variable rate products.[2] Legislation has also been introduced that is intended to better educate consumers, to ban or more closely regulate variable rate offerings, and to shorten the period it takes to switch customers to new suppliers.[3]

EDCs have received a high number of calls from customers regarding bills which reflected EGS variable price products. If the customer is a low income customer, the EDC's customer service representative will direct the customer to a variety of programs, including the federal Low Income Home Energy Assistance Program (LIHEAP) and the utility's customer assistance program (CAP). EDC representatives will also discuss payment plans and budget billing options with eligible customers.

---

[2] *Review of Rules, Policies and Consumer Education Measures Regarding Variable Rate Retail Electric Products*, M-2014-2406134, Order entered March 4, 2014.
[3] See e.g., House Bill 2104, Senate Bill 1297

One policy change that has been put forward to address the variable rate problem is to shorten the period that it takes to switch customers to new suppliers. Currently, it can take from eleven to forty days to effect a switch. When an EDC receives notification from an EGS that the customer wants to switch, the EDC is required under current law to send a confirmation letter asking the customer to contact the EDC if the customer does not want the EDC to complete the switch. Assuming the customer does not cancel the switch, the EDC is required to submit information to PJM Interconnection to schedule capacity and transmission charges that will apply to the new supplier. If a customer's meter read date falls just <u>after</u> completion of the steps I just described, the switch can be made in eleven days. If the meter read date falls just <u>before</u> completion of these tasks, the switch could take up to forty days because it will not take effect until after the next meter reading. This is so because the metering and billing systems of EDCs in Pennsylvania are currently capable of including the charges of only one supplier per bill. Because this approach to switching is driven by the EDC's billing cycle, I will refer to it as "on cycle" switching.

It is, or will be, possible for EDCs to accelerate the switching process by making "off cycle" switches -- switches that are not driven by the EDC's billing cycle. This can best be accomplished with deployment of advanced meters throughout the EDC's system, and will also require changes to the EDC's billing system so that bills can reflect charges for more than one supplier on a single bill. Act 129 of 2008 required EDCs subject to that law to obtain approval from the PUC of plans to deploy advanced meters throughout their systems.[4] These EDCs have obtained such approval, and the length of time it will take to deploy advanced meters throughout their systems varies based on

---

[4] 66 Pa.C.S. §2807(f).

the circumstances facing each EDC. When advanced meters have been deployed throughout an EDC's service territory it will then take additional time, and the EDC will incur additional expense, to make the billing system changes necessary to provide "off cycle" switching.

The overwhelming majority of states that allow customers to choose their electricity supplier – including Ohio, New York, New Jersey, Maryland, Massachusetts, and Illinois, among others – use "on cycle" switching. Currently, the only state that provides for "off cycle" switching is Texas. Advanced meters are deployed throughout the areas of Texas that allow customer choice. However, I note that Texas does not require a customer notification letter, which gives the customer an opportunity to cancel a switch to prevent "slamming," prior to making a switch. In addition, the supplier is responsible for billing in Texas, not the EDC.

The PUC considered the issue of switching timeframes in its Electric Retail Market Investigation (RMI).[5] As an interim measure, the Commission adopted guidelines that shortened the switching process by replacing the previous ten day confirmation letter with a five day confirmation letter. In addition, the Commission indicated that it intended to initiate a rulemaking by the end of 2013 to require EDCs to implement off cycle switches. The Commission stated in the RMI Order that a rulemaking would allow it to make "fully informed decisions on the complex issues involved." The Commission also stated that cost recovery would be "handled the same way costs a utility incurs as a result of a Commission mandate," which left open the possibility that full and current cost recovery would be authorized.

---

[5] *Investigation of Pennsylvania's Retail Electricity Market*, I-2011-2237952, Final Order entered Feb. 15, 2013 (pp. 69-75).

The Commission initiated a rulemaking recently after the variable rate problem came to light. On April 3, 2014, following an informal seven day comment period, the Commission adopted a Final-Omitted Rulemaking Order[6] that mandates that EDCs must complete a switch within three business days, regardless of whether they have advanced metering in place. This mandate must be implemented within six months. Recovery of implementation costs on a full and current basis was not granted, and to recover their costs EDCs must seek approval to establish a regulatory asset for recovery in a future base rate proceeding.

In addition to the PUC's adoption of accelerated switching regulations, legislation has been introduced that would govern how quickly a switch must be completed. House Bill 2104 would require that EDCs complete a switch within 14 business days and that EDCs may recover reasonable costs for doing so. Senate Bill 1297 would require completion of a switch within 5 business days and is silent on EDC cost recovery.

EDCs do not object to being required to accelerate the current switching process; however, they believe that such a requirement should be consistent with each EDC's PUC-approved advanced meter deployment plan, should provide adequate time to make changes to the EDC's billing system, and should provide EDCs with timely recovery of implementation costs.

With regard to the PUC's accelerated switching regulations, EDCs are concerned regarding the requirement to accelerate the switching process before advanced metering is deployed. This adds to the cost and complexity of complying with the switching deadline. EDCs are also concerned regarding the period allowed to

---

[6] The regulations adopted by this Order omitted the steps otherwise required by law to issue a notice of proposed rulemaking and review public comments. See, 71 P.S. §745.3, 45 P.S. §1204 (3).

implement accelerated switching. Many or most EDCs have indicated that they will have to implement temporary fixes to comply with the 3 business day switching deadline, and that they will also have to seek a waiver of the requirement to implement the new regulations within six months. In addition, EDCs submit that fairness dictates that they should be allowed timely recovery of the cost to implement the accelerated switching requirement.

Again, EDCs do not object to accelerating the switching process, subject to the conditions previously stated. Accelerating the switching process by adopting off cycle switching will allow customers to more quickly obtain the benefits of a favorable pricing plan. It will also allow customers to more quickly escape a pricing plan that the customer finds is not in the customer's best interest, provided that the customer is not subject to a termination fee which could prevent or dissuade such a switch. With regard to the latter scenario, which is the one that many customers on variable pricing plans faced this winter, accelerating the switching process is clearly a "second best" solution because customers have already been impacted. The best solution is to adopt policies that facilitate the customer's choice of a pricing plan from which the customer does not need to make a hasty exit and requires the customer to be fully informed of the circumstances upon which such fluctuations may occur. To that end, the General Assembly and the PUC are making policy changes that directly address the problems associated with variable pricing plans, and that is the best solution to this problem.

Thank you again for the opportunity to testify, and I would be happy to answer questions.