



COMMONWEALTH OF PENNSYLVANIA

**PENNSYLVANIA HOUSE OF REPRESENTATIVES  
HOUSE CONSUMER AFFAIRS COMMITTEE HEARING – HB 1436  
TUESDAY, SEPTEMBER 29, 2015 (9:15 AM)**

**TESTIMONY OF ELIZABETH ROSE TRISCARI, ESQUIRE, DEPUTY SMALL BUSINESS ADVOCATE  
PENNSYLVANIA OFFICE OF SMALL BUSINESS ADVOCATE**

Good morning, Chairman Godshall, Chairman Daley, and distinguished members of the House Consumer Affairs Committee. And, good morning as well, to my esteemed colleagues from the Office of Consumer Advocate (“OCA”), the Public Utility Commission (“PUC”), the participating utility companies, and other interested stakeholders. Thank you for this invitation to testify before your committee today.

My name is Elizabeth Rose Triscari, and I serve as Pennsylvania’s Deputy Small Business Advocate. Small Business Advocate, John Evans, regrets that he was unable to join us today, but has asked me to provide the Committee, and other interested stakeholders, with the position of the Office of Small Business Advocate (“OSBA”) on House Bill 1436.

As many of you know, the OSBA is charged with representing the interests of Pennsylvania’s small business utility customers. In order to protect those interests, the OSBA must oppose House Bill 1436 because it seeks to overturn the Commonwealth’s longstanding “actual taxes paid” doctrine and would result in an inequitable increase in the utility rates of small businesses.

The “actual taxes paid” doctrine has been the law of the land in the Commonwealth for many decades, created by a long line of cases going back to the 1950’s. It is not the result of judicial activism, but rather is simply the Court’s recognition and affirmation of the basic ratemaking principle that only expenses actually paid or payable by a utility may be included for the purposes of ratemaking. Under the “actual taxes paid” doctrine, a utility is only permitted to charge rates which reflect its “actual” tax expense for any given year. In other words, the utility is not permitted to charge to ratepayers hypothetical tax expenses that are not actually payable.

As the Supreme Court explained in *Barasch v. Pa. Public Utility Commission*, 507 Pa. 561, 493 A.2d 653 (1985), "Our Courts have consistently held it to be improper to include, for rate-making purposes, tax expenses which, because of the filing of a consolidated return, are not actually payable. All tax savings arising out of participation in a consolidated return must be recognized in rate-making, otherwise we would be condoning the inclusion of fictitious expenses in the rates charged to ratepayers."

In contrast, the proposed House Bill 1436 would permit a utility to calculate what taxes it would have paid if it had filed on a standalone basis instead of what taxes it actually paid by participating in a consolidated return with unregulated affiliates. If House Bill 1436 becomes law, the result would be that taxes the utility is not actually liable for, that it does not actually pay, will be charged to ratepayers. This is not sound ratemaking. It is a generally accepted ratemaking principle that utilities are permitted to recover through rates their actual cost of providing service to customers, while earning a fair rate of return on the investment in plant used and useful in providing adequate utility service. A reasonable allowance for federal income taxes is included in this cost of service. However, House Bill 1436 goes well beyond this general principle and would permit utilities to recover from ratepayers taxes that are not payable. It would allow utilities to charge ratepayers for theoretical expenses for which the utility is not liable and will never pay.

House Bill 1436 would also be a double hit to small business owners who would see an increase in both their residential rates at home as well as an increase in their business utility rates. Our small business job creators operate on thin margins as it is, and pay enough in federal taxes. Is it fair for a utility company to now charge small businesses for federal taxes that the company itself doesn't even have to pay?

Again, thank you for your time and attention. I welcome any questions or comments you may have.

Elizabeth Rose Triscari, Esquire  
Deputy Small Business Advocate  
300 N. Second Street, Suite 202  
Harrisburg, PA 17101  
(717) 783-2525  
[etriscari@pa.gov](mailto:etriscari@pa.gov)  
[www.osba.pa.gov](http://www.osba.pa.gov)