

**Before the
House Consumer Affairs Committee**

**Hearing on The Electric Industry in Pennsylvania
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**Testimony of
Terrance J. Fitzpatrick, President and CEO
Energy Association of Pennsylvania**

Good morning Chairman Marshall, Chairman Matzie 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—also known as electric and natural gas distribution companies—operating in Pennsylvania.¹ EAP advocates for its members before the General Assembly and state agencies, assists its members by facilitating sharing of information and best practices, and provides educational opportunities for employees of its members and others through its operations and consumer services conferences. Thank you for this opportunity to provide testimony on behalf of our electric utility members regarding the electric industry in Pennsylvania.

EAP was formed in 2000 when the Pennsylvania Electric Association and Pennsylvania Gas Association came together to form a new organization. The Pennsylvania Electric Association had been formed in 1908. At that time the electric industry was in its formative stage and was focused on expanding availability of service to more customers and areas of the Commonwealth. In these early years PEA had dozens of electric utility members. There were some familiar names among them such as Duquesne Light and Metropolitan Edison Company,

¹ Citizens’ Electric Company; Columbia Gas of Pennsylvania, Inc.; Duquesne Light Company; Leatherstocking Gas Company, LLC; Metropolitan Edison Company; National Fuel Gas Distribution Corp.; PECO Energy Company; Pennsylvania Electric Company; Pennsylvania Power Company; Peoples Natural Gas Company LLC; Peoples Gas Company LLC; Philadelphia Gas Works; Pike County Light & Power Company; PPL Electric Utilities; UGI Utilities Inc.; Valley Energy Inc.; Wellsboro Electric Company; and West Penn Power Company.

but others such as Hershey Electric, Windber Electric, and Mauch Chunk Heat, Power, and Electric Co. no longer exist due to industry consolidation. The industry was “vertically integrated” at this stage, that is, electric utilities owned and operated all the infrastructure necessary to provide service, including generating plants as well as the poles, wires, and substations that make up the grid. Because utilities were monopolies, government regulation of their rates and service was entrusted to the Public Service Commission, later reconstituted as the Public Utility Commission.

Today, investor-owned electric utilities, along with electric cooperatives serving the most rural areas and a few dozen boroughs that own electric distribution systems, provide electric service throughout Pennsylvania.

In 1996, Pennsylvania made a big change to the electric industry structure with the passage of the Electricity Generation Customer Choice and Competition Act (Competition Act). This law was motivated largely by a desire to lower electricity rates in the Commonwealth, which at that time were fifteen percent above the national average. The Act ended the vertical integration of the industry by deregulating the generation of electricity and allowing customers for the first time to choose their supplier of electricity. Today the industry structure is composed of 1) generating plant owners, who sell their product in the wholesale markets administered in this region by PJM, Inc. and regulated by the Federal Energy Regulatory Commission, 2) electric utilities / EDCs who are regulated by the PUC, and 3) competitive retail suppliers, named “electric generation suppliers” (EGSs) in the Act, who offer competitive supply options to customers subject to limited oversight by the PUC.

In the restructured industry, electric utilities / EDCs are responsible for the “poles and wires” components of the system. They provide bills to customers, administer “universal service” programs designed to assist low-income customers, and also provide “default” supply service to customers who choose not to purchase from EGSs. In providing default supply service, electric utilities purchase supplies in the wholesale market in a manner that provides a market-based

but reasonably stable price to customers. This service is subject to rigorous oversight by the PUC. Electric utilities are assured of recovery of their costs of providing default service, but they do not earn a profit on this service.

This year marks the twenty-fifth anniversary of the Competition Act, so it seems appropriate to comment on how it has worked. For the most part, I believe it has worked to the benefit of Pennsylvania. The clearest evidence of this is that electricity prices in Pennsylvania were fifteen percent above the national average before the Act was passed, but seven percent below the national average in 2019. These results are likely due to competition among generators in the wholesale market, which encourages efficiency and lower prices. However, there are questions about the retail market arising from evidence that customers who purchase from competitive suppliers generally pay more, sometimes much more, than customers who purchase supplies from utilities. I will address this issue below.

In 2004, the General Assembly passed the Alternative Energy Portfolio Standards (AEPS) Act which required utilities and competitive suppliers to procure eighteen percent of their supply portfolios from alternative energy sources by 2021. This Act could be viewed as an intervention in the competitive market to jump start alternative energy in order to further environmental goals. In addition to mandating some alternative energy, the Act sought to encourage customer-owned (or leased) forms of renewable “distributed generation,” such as rooftop solar systems. The policy tool for encouraging this type of generation was a method for crediting a customer-generator’s electric bill known as “net metering.” I will also address this issue below.

With this background in mind, I will address a few current policy issues.

The Recent Power Blackouts in Texas

Last month, millions of customers in Texas were without electricity, heat, and water for days. This was caused by unusual and extreme cold weather combined with inadequate winterization of power plants and other facilities. There are some peculiar features of the

electric grid in Texas that contributed to this situation. Texas relies almost exclusively on market signals to assure power plants perform when needed. In contrast, PJM Interconnection—which oversees the power grid in this region—utilizes a mix of market signals and regulatory requirements. Second, Texas has designed its grid to minimize transmission ties to other states so that it is not subject to oversight by the Federal Energy Regulatory Commission, whereas there are stronger transmission ties between the PJM area and other regions. Third, Texas relies exclusively on energy prices to provide an incentive for building new power plants, which may be one of the reasons it does not have a robust generation reserve margin to meet its forecasted demand. In contrast, PJM backs up its energy market with a “capacity market” which is an extra measure to assure that power plants are already built by the time they are needed. The capacity market contributes to higher electricity prices but it may also encourage greater reliability.

Another unfortunate aspect of the problems in Texas was that some small customers on variable rate plans with competitive electricity suppliers faced monthly bills in the thousands of dollars. As total electric demand increased and power plants went down due to the cold weather, wholesale electricity prices soared. These high prices were flowed through to small customers on variable rate plans. Many customers in Pennsylvania faced this same problem during the polar vortex of 2014 and the PUC enacted additional customer protections intended to increase awareness of how these plans work.

While Pennsylvania has many protections in place that Texas did not, there are lessons to be learned. First, it’s a reminder of the need to balance reasonable rates with reliable service. Second, weather is becoming more volatile and prone to extremes, and electric utilities are planning and making additional investments to prepare for that. Third, variable rate plans may save customers money under most conditions but they will struggle to cope with the unpredictability of occasional bills in the thousands of dollars, and 4) what happened in Texas is

a reminder that utility services are necessities in modern life, and we need to guard against a complacent assumption that these things could not happen here.

The Impact of COVID-19 on Customers and Utilities

In general, electric and other utilities have succeeded in maintaining somewhat normal operations over the past year despite the pandemic. In the early stages, utilities were classified as “life sustaining” and were exempted from business closures. There were some initial questions regarding continuing utility infrastructure projects, but those issues were resolved and utilities have continued these necessary investments to assure reliable and safe service.

The impact on utility customers has been uneven. Many customers have been able to work remotely and maintain their incomes, but customers employed in the service and hospitality industries have faced hardship. The federal government has responded with two stimulus / assistance programs and an additional \$1.9 trillion program is now on the way. The PUC responded to the pandemic by imposing an absolute moratorium on all service terminations in March 2020. In October 2020, the PUC modified the moratorium and allowed some terminations to resume but only with numerous “enhanced customer protections” in place, including additional notice requirements and a ban on termination of customers with income below 300% of the federal poverty level. The “enhanced protections” are set to expire at the end of March 2021.

Last week, on March 11, 2021, the PUC acted to allow the full regulated collections process (including service termination) to resume on April 1, 2021, with some extensions of the otherwise-applicable payback periods for residential customers in arrears, and continuing the requirement to allow payment arrangements of eighteen months for small business customers. We believe that the Commission’s action to restore the full collections process and end the moratorium on terminations was appropriate. Under existing law, the collections process is heavily regulated, requiring multiple notices to customers and levels of review before any termination of service takes place. In addition, electric and gas utilities have robust universal

service programs designed to help low-income customers. These programs provided a statewide total of \$374 million in assistance in 2019. Ironically, these assistance programs and government-funded programs such as the Low Income Home Energy Assistance Program (LIHEAP) have been underutilized during the pandemic as the moratorium and additional restrictions have removed the incentive for many customers to reach out for assistance. Meanwhile, total residential customer arrearages have increased by roughly 45% compared to this time last year. The PUC has authorized utilities to track this debt and other incremental pandemic-related expenses and request recovery at some point in the future, but recovery is not guaranteed.

For these reasons, we agree with the decision of the PUC to allow the regulated collections process to resume in order to restore the incentive for customers to enroll in assistance programs.

Retail Electricity Competition

Pennsylvania is one of thirteen states that allow customers to choose their supplier of electricity.² With the exception of Texas, these states also provide customers with the option of buying supplies from their electric utility. Pennsylvania's electric utilities provide this "default" service pursuant to plans approved by the PUC. Under the Competition Act as amended by Act 129 of 2008, utilities purchase supplies in the wholesale market pursuant to contracts of varying lengths and designed to produce the "least cost over time," and also to produce prices that are reasonably stable. Utilities are assured of recovery of their default service costs but they do not earn a profit on this service. Pennsylvania's electric utilities have cooperated fully in the effort to develop competitive retail energy markets. Utilities do not have any financial interest in

² A number of states including Pennsylvania also allow customers to choose their natural gas supplier, so many of the comments made here about the retail electric market also apply to the retail natural gas market.

discouraging this competition as utilities do not profit from their provision of default supply service.

The number of customers purchasing supplies from competitive suppliers has decreased since 2013. The most likely cause of this was the polar vortex of 2014, during which many customers on variable rate plans with competitive suppliers saw their electricity bills skyrocket as high wholesale electricity prices were flowed through to them. The PUC put additional consumer protections in place following this incident, but some consumer wariness may linger.

Currently, competitive suppliers are advocating legislation such as House Bill 548 to allow them to provide customers with a “consolidated bill” that would include not just their charges, but also the electric utilities’ charges. They have also expressed support for legislation to increase the utilities’ default service charges by allocating additional overhead costs to default service, and to allow customers to switch suppliers without providing their account numbers.

We do not believe these proposals are in the best interest of customers. Allowing competitive suppliers to provide billing for all electric (and gas) services, including those provided by utilities, will make them responsible for important customer service functions, including collections, service terminations, making payment arrangements, and administration of low-income assistance programs. These services and customer protections are heavily-regulated and are more appropriately provided by public utilities. Moreover, competitive suppliers already have the ability to provide separate bills to customers for their services if they choose to do so. Requiring allocation of additional costs to default service is contrary to the interest of the majority of customers who choose to purchase this service. In addition, this supplier argument regarding cost allocation has been unanimously rejected by the PUC and the appellate courts of Pennsylvania. Finally, requiring account numbers before switching customers helps protect against “slamming” customers—switching them without their consent.

Before the legislature considers any proposals intended to further stimulate the retail energy markets, consideration should be given to whether this market is truly serving the

interest of most customers. There is ample evidence, including from a recent *Wall Street Journal* article³, that customers who purchase supplies from competitive suppliers on average pay much more than customers who purchase supplies from utilities. Specifically, this article asserted that from 2010-2019 these “shopping” customers⁴ in Pennsylvania paid the hefty sum of \$1.9 billion more than those purchasing supplies from utilities. There may be some legitimate reasons contributing to this, for example, some customers may choose to pay more for renewable energy. But if it is assumed that most customers choose competitive suppliers to save money, this information raises serious questions whether the retail market as currently constructed is working in the best interest of customers.

Community / Local Solar and Net Metering

There is some interest in the House and Senate in legislation that would authorize community or local solar facilities—solar generation facilities connected to the utility's distribution system to which customers could purchase subscriptions. This would provide customers with an additional option—they can already purchase renewable energy in the retail market—to support solar energy if they rent their home and thus are not in a position to become customer-generators themselves. Examples of these bills are House Bills 531 and 1970 from last session.

The two bills from last session just cited differ in a very important respect: how the electric bills of subscribing customers are credited for energy produced by the solar facility. Under the community solar bill (HB 531) these credits are at the full retail price for electric service. This price includes not just a charge for energy itself, but also charges for the electric

³ Patterson, Scott and McGinty, Tom. "Deregulation Aimed to Lower Home-Power Bills. For Many, It Didn't." *Wall Street Journal*. March 8, 2021. <https://www.wsj.com/articles/electricity-deregulation-utility-retail-energy-bills-11615213623>

⁴ “Shopping customers” is a term commonly used to describe customers who have chosen to purchase supplies from competitive suppliers. It is a misnomer in that customers may consider competitive options but affirmatively choose utility default service.

grid that delivers the energy (i.e., transmission and distribution) and to pay for items such as state taxes and government-mandated programs for low-income assistance and energy efficiency. In contrast, under the local solar legislation (HB 1970) subscribers would pay a cost-based charge for energy from the facility; other charges on the bill, including transmission and distribution charges, would not be impacted.

The method for crediting customers' bills under the community solar legislation is identical to the method required under the AEPS Act for crediting the bills of customer-generators who own or lease distributed generation systems, including rooftop solar. It is commonly referred to as "net metering" because the customer's electric meter runs backwards when its generation system is producing energy. When the meter runs backwards it eliminates charges not just for energy itself, but also charges to pay for the transmission and distribution grid and to pay for state taxes and government-mandated low-income assistance programs. The costs the customer-generator thereby avoids are shifted to non-solar customers. It may be argued that this policy was appropriate as a blunt instrument to jump start distributed, renewable generation, but it is not appropriate or sustainable in the long term. Customer generators rely on the transmission and distribution grid to access power when their on-site generation is not producing power and to export power when it is. There is also no reason they should be permitted to avoid paying their share of taxes and costs of programs such as low-income assistance. In addition, there are now over 31,000 customer-generators in Pennsylvania and it is no longer necessary to jump start this industry.

Any legislation to allow community solar facilities should not add to the burden of subsidies already paid by non-solar customers. Moreover, the net metering policy in existing law is not sustainable and should be modified. We believe it makes sense to base the credits for customer generators and subscribers to solar facilities on the wholesale price of electricity, referred to as the locational marginal price (LMP).

We realize that these solar issues are complex and can be controversial, and we will work with the General Assembly and other interested parties to find a fair and appropriate solution.

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