

**BEFORE THE
HOUSE CONSUMER AFFAIRS COMMITTEE**

Testimony of

Patrick M. Cicero
Consumer Advocate
Pennsylvania Office of Consumer Advocate

Regarding
HB1789

Harrisburg, Pennsylvania
June 15, 2022

555 Walnut Street
Forum Place, 5th Floor
Harrisburg, PA 17101-1923
(717) 783-5048 - Office
(717) 783-7152 - Fax
Email: pcicero@paoca.org
330090

Good morning Chairman Marshall, Chairman Matzie, and Members of the House Consumer Affairs Committee. My name is Patrick Cicero. I have the privilege of serving as Pennsylvania's Consumer Advocate. Thank you for the opportunity to testify this morning about House Bill 1789.

My office, the Pennsylvania Office of Consumer Advocate (OCA), was created in 1976 to serve as an advocate for Pennsylvania consumers before the Public Utility Commission (PUC) on all matters that are properly before the PUC. This includes issues related to the operation of the competitive gas and electric markets.

More than 25 years ago, in 1996, Pennsylvania became one of the first states to open the generation portion of its electric utilities to competition. The same thing occurred in 1999 when we restructured our natural gas utilities. My office has long supported the restructuring of our electric and gas markets to separate the generation of electricity and the production of natural gas from the regulated distribution function that utilities continue to perform in a traditional rate regulated manner. For the most part, at the wholesale level, this restructuring has been a success for consumers as it has resulted in lower wholesale electricity and gas costs that are produced because of competition.

It is worth noting, however, that in neither case did we "deregulate" our electric or natural gas utilities. First, as noted above, the distribution portion of the industry – the wires that carry electricity to our homes and businesses as well as the pipes and mains that carry our natural gas – remain a monopoly service under the traditional ratemaking process. The ratemaking process for these services provides a balancing of stakeholder interests such that investors and shareholders are provided the opportunity to recover prudent and reasonable costs as well as the opportunity to earn a fair rate of return on investment dedicated to the public service. At the same time, this

process is designed to provide ratepayers with just and reasonable rates that are easy to understand and provides adequate price signals to utilize resources in an efficient manner.

Second, and equally important from my view, even with respect to electric generation and natural gas service, our electric and natural gas companies continued to serve as the “default service providers” so that all Pennsylvania consumers can continue to receive essential electric and natural gas service even if they choose not to switch to a retail supplier. Finally, the PUC also continues to play an important role in ensuring that competitive retail markets are fair, transparent, and understandable. This is manifest in the PUC’s operation of important consumer shopping websites such as papowerswitch.com and pagasswitch.com, as well as their retail supplier licensure regulations, and their marketing regulations.

However, since Pennsylvania restructured its electric and natural gas industries, the PUC does not set the rates for electric generation service or natural gas commodity service – both are subject to competition. This competition comes either because of competitively procured default service from the electric and gas utility for customers who do not shop and switch or from the agreement between consumers and their electric generation supplier (EGS) or natural gas supplier (NGS). In either case, the generation/commodity service is competitively procured and provided. In the case of default service, the utility provides this service to customers without markup and at least cost over time subject to a default service procurement plan or purchased gas cost plan. In the case of generation service provided by an EGS and gas commodity service provided by an NGS, the consumer pays the price that is determined by their agreement, which price may be higher, lower, or the same as default service.

Before I address the particulars of HB 1789, I want to briefly discuss the importance of default service. In my view, the most significant protection the General Assembly enacted when it

restructured the electricity and gas markets is to ensure that consumers who do not choose an electric generation supplier or natural gas supplier, or whose supplier drops them, retain access to competitively priced, reasonable, and stable default service. This has been at the heart of Pennsylvania's successful transition from a vertically integrated electric and natural gas utility system to a restructured, competitive market with retail access. Default service allows retail competition to meet the needs of customers, while at the same time ensuring safe, adequate, reliable, stable, and affordable service for all Pennsylvania customers. As I noted above, our utilities are required to purchase their electric generation and natural gas supplies from competitive wholesale markets and then pass the costs of those supplies on to their default service customers with no added markup or profit margin. That means Pennsylvania consumers receive the full benefit of the competitive wholesale market without taking the personal risks of participating in the retail market.

The General Assembly has recognized that electric and natural gas service is essential to the health, safety, and economic wellbeing of every resident in the Commonwealth. The General Assembly ensured that all Pennsylvania electric and natural gas customers had access to default service that was procured from the competitive wholesale market and that customers also had retail choice. Pennsylvania electricity and natural gas consumers arguably enjoy the best of both worlds in that they have the protection of a basic service provided by their utility in accordance with the least cost procurement requirements established by the General Assembly and the choice of an alternative provider that may offer them additional services to meet their needs.

This brings me to a discussion of the particulars of House Bill 1789. The bill, if enacted, would amend the natural gas and electric restructuring statutes and do three things:

First, the bill would amend the statutes to require that natural gas and electric utilities “unbundle” their indirect costs from their default service rates with the intent to ensure that “actual costs of providing distribution service are accurately reflected in the rates charged for those services.” Proposed §§ 2203 (3.1) and 2804 (3.1).

Second, the bill would require the PUC to promulgate regulations to allow EGSs and NGSs the opportunity to process a change of supplier without requiring the customer to provide an account number or other identification number so long as the individual presents valid government-issued identification. Proposed §§ 2206(b)(ii) and 2807(f.1).

Third, the bill would require the PUC to develop a training and educational program for EGSs and NGSs, as well as examination/testing requirements, and enforcement regulations. Proposed §§ 2208(i) and 2809(h).

I do not support the changes proposed in HB 1789. I want to emphasize that I firmly believe changes to the current paradigm may well be needed to correct some of the more egregious abuses in the retail supply market. Specifically, I have significant concerns about the sales and marketing practices of many suppliers, including door to door sales and telephone marketing as well as the complicated offers that exist.

A quick look at papowerswitch.com demonstrates that it is getting increasingly difficult to make an apples-to-apples comparison between default service and retail supply offers as well as between different retail supply offers, even when one is relatively well-informed. The current marketplace contains “unlimited offers”, offers that have a lower per/kWh cost but a monthly or daily fee, offers that have an enrollment fee, offers that have an early cancellation fee, as well as offers that are variable in their rates. The average consumer is left wondering why this must be so

complicated. These problems are compounded when customers are marketed to by suppliers who are presenting their own products and offers but without the relative comparison to the rest of the market. House Bill 1789 would fix none of this but has the very real potential to make default service needlessly more expensive and less attractive.

The changes proposed in sections 2203 (3.1) and 2804 (3.1) improperly seek to push more of a utility's indirect costs from the rate-regulated distribution rates – rates that are non-bypassable, and therefore must be paid by all customers regardless of whether they are served by default service or through a retail supply contract – to the default service rates which would be paid only by customers who remain on default service. This change would artificially increase default service costs and fundamentally misinterprets the purpose of default service, it is unnecessary, and would be harmful to consumers.

Under the Pennsylvania model, default service exists for all customers, both shopping and non-shopping. Customers often move in and out of these statuses. A customer may be on default service for months or years at a time and then may choose to switch to an alternative supplier for a period. A customer may be served by an alternative supplier who goes out of business or who cancels the customer's supply contract due to changing market conditions or because the customer does not meet the load profile that the supplier desires. In this case the customer is returned to default service where they can either remain or they can choose a different supplier. This happened quite frequently during the 2014 Polar Vortex and even now our office gets calls by confused and frustrated consumers whose supplier has dropped them. The point being that as a default service supplier, the electric and natural gas utilities must stand ready to serve all customers through default service, and thus, the indirect costs associated with doing so cannot be avoided by the utility nor realistically or practically separated. Thus, while default service entails the provision of

generation/commodity service, which is also provided by EGSs and NGSs, default service also entails the obligation to stand ready to serve *all* distribution service customers at any given time with little to no notice.

The electric and gas utilities must maintain the capability to perform that function and that function must be recognized in determining cost causation; that is, default service costs are not only those associated with the delivery of default service, but also with the ability to deliver default service should a customer require (or desire) it. Only the direct costs of default service including the acquired power or gas commodity cost, the cost of compliance with the law, transmission service, gas delivery and storage costs, and the administration of operating the solicitation and procurement processes are properly included in default service rates. These direct costs are the only costs that the utility avoids when a customer switches to an alternative supplier, and thus, they are the only costs that should properly be allocated only to default service. The indirect costs referenced in the legislation are not avoided by the utility when a customer switches to an alternative supplier. Proposed sections 2203 (3.1) and 2804 (3.1), would inappropriately shift costs that benefit all customers to only customers who remain on default service. This would have the effect of arbitrarily and unfairly increasing the cost of default service.

The second change proposed by the bill would allow suppliers to switch customers without requiring the customer to provide their account number, but merely by providing valid government issued photo identification. I am opposed to this change because I believe it is both unnecessary and could lead to additional instances of unauthorized switching. Providing both an account number and presenting valid government issued identification as is currently required serve important and independent functions. The purpose of providing one's account number before a switch can be accomplished is to match a customer requesting to switch with the proper account

at the utility. Many people share names and some who share names also share addresses. Providing an account number provides an appropriate and additional unique data point that ties the individual requesting the switch to the specific account authorized to be switched. The requirement to provide valid government issued identification is also needed to ensure that the person representing themselves as the utility account holder is in fact who they say they are and, when coupled with the utility bill and utility account number, ties the identity of that person to the account in question. Both work in tandem to prevent unauthorized switching.

I understand the intent of this provision is likely one of consumer and supplier convenience because consumers may not have ready access to their utility bills if they are responding to a solicitation in a public place such as a sporting event, a commercial store, or a community fair where suppliers may be marketing their products and wish to generate an on-the-spot switch. This is understandable but is both unnecessary and an insufficient reason to short cut consumer protections. First, at least in the electricity space, many suppliers currently have access to utility account number look up tools that facilitate switching. Second, increasingly, consumers have access to their utility bills (and thus their account numbers) on their mobile phones through online account access. Many of us no longer receive paper utility bills and only receive e-bills that can be retrieved from any internet connected device. This means that wherever I am, I can log in to my utility account and retrieve my account number to facilitate a switch. I recognize that this is not universally the case, but it is increasingly becoming the norm.

Finally, even accepting the fact that a customer may not have access to their account number while they are shopping for groceries or at the ballpark, the delay in being able to accept a solicitation to change suppliers is helpful to consumers. When presented with marketing materials in a public place, consumers may not have the ability to compare offers and make the

best choice for themselves or their situation. It is often useful for them to take the offered materials with them and then enroll later, if they so choose, when they have access to their account information, so that they can make a reasoned rather than a hasty decision to switch. This is particularly important given the complexity of the choices that consumers now face in the retail energy markets.

Finally, regarding the training, education, and testing provisions of HB 1789, I am not opposed to increased training, education, and testing requirements for suppliers and their employees and contractors. The PUC's dockets are full of examples of supplier misconduct that is attributable to their employees or contractors not adhering to existing requirements. The changes proposed in HB 1789 would make incremental improvements. However, the bill as currently drafted would only require one designated representative of the EGS and NGS to receive this training, education, and testing. It is not at all clear how providing training to a single individual will reign in abuses that are occurring within the market.

For all the reasons noted above, the Office of Consumer Advocate does not support HB 1789. Except for the training and education requirements, the proposed changes in HB 1789 will harm consumers. They will make default service unnecessarily more expensive and weaken switching rules. Neither of these is in the public interest.

Thank you for the opportunity to submit testimony on these critical issues. I am available to respond to any questions you have about my testimony.