BEFORE THE
HOUSE CONSUMER PROTECTION, TECHNOLOGY AND UTILITIES COMMITTEE

Testimony of

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Regarding
House Bill 1842 (Community Solar)

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House Consumer Protection, Technology, and Utilities Committee
Public Hearing on HB 1842 (Community Solar)

Good morning, Chairman Matzie, Chairman Marshall and Members of the House Consumer Protection, Technology, and Utilities Committee. My name is Patrick Cicero and I have the privilege of serving as Pennsylvania's Consumer Advocate at the Pennsylvania Office of Consumer Advocate (OCA). The OCA was created in 1976 to serve as an advocate for Pennsylvania consumers before the Public Utility Commission (PUC). This includes issues related to solar energy and the impact on Pennsylvania's ratepayers. Thank you for the opportunity to testify this morning about HB 1842.

Overview

The OCA supports access to distributed energy resources in general including rooftop, community, and local solar if consumer protections[1] are in place for subscribers and for other consumer ratepayers who do not subscribe. Community solar provides the option for a broader group of consumers, particularly consumers who may not be able to afford individual rooftop solar, who rent their home, or whose property is not appropriate for a solar installation, to obtain the benefits of this renewable resource. In addition, community solar facilities *could* provide benefits to the electric grid such as increasing the reliability and resiliency of the grid, while also reducing carbon emissions. While Pennsylvania has seen the development of individual rooftop solar facilities over the past few years, the deployment of community solar has the potential to significantly, if not exponentially, increase the amount of solar on our utility systems. As we move forward, the OCA believes that there should be a measured approach to ensure that the

[1] It is important to ensure that the existing protections under the Public Utility Commission and the Office of Attorney General are not undermined or eliminated by the proposed legislation. The sale of subscriptions must remain subject to general consumer protection laws overseen by the Office of Attorney General.

development of community solar projects benefit all ratepayers in a fair and balanced way, do not undermine cost-effective default service, and provide appropriate consumer protections for subscribers.

The proposed legislation includes several protections that the OCA supports, including the following:

- Limitations on the size of any bill credit to account for only the monetary value of electric generation provided by the system (Section 3 "Bill Credit");
- Limitation on the size of the system that can be sited and placed in service (Section 3 "Community solar facility");[2]
- Standardization of customer disclosure forms (Section 6(b));
- Limitation on subscription costs to no more than the value of the bill credit, including limitation on the ability to charge up front fees (Section 6(c));
- Ensuring the community solar organizations compensate the electric distribution company for "the reasonable costs of interconnection of a community solar facility" (Section 8 (a)); and,
- Ensuring the electric distribution company costs are recovered from subscribers rather than non-subscribers (Section 8(b)).

However, there are several aspects of the bill that raise consumer protection issues and concerns that I outline more fully below. Before addressing those specific concerns, it is important to contextualize that community solar will be a new model to Pennsylvania and may not be well

[2] Note that there appears to be an extraneous "not" contained in the definition of a community solar facility when referencing a brownfield of rooftop community solar facility. *See* Section 3, "Community solar facility: subsection (3)(ii). I believe this subsection should read "20,000 kW of AC for a facility **that is** a brownfield or rooftop community solar facility."

understood by consumers. In addition, it may not be easy to comparison shop for community solar projects if more than one is in a service territory. The promises and expectations of savings or benefits may depend on a variety of factors that will need to be clearly explained and disclosed to the consumer. This is why the standardized disclosure form is a critical consumer protection. Consumers will not be familiar with this new resource and may not have a clear, readily available means to compare the offer to other service offerings. A standard disclosure form that clearly informs consumers of the key elements of the transaction will promote understanding and informed choice.

A disclosure form, however, is only one part of the necessary consumer protections. Any legislation should also specify that the Commission must adopt regulations that, at a minimum, address the full requirements for disclosure; the acceptable contract terms and conditions, including standard contract term language; the standards for sales and marketing conduct; the procedures for enforcement of the regulations, and penalties for non-compliance. This is not unlike the PUC regulations for the sale of energy by third party energy generation suppliers. *See* 52 Pa. Code Ch. 54.

Comments about HB 1842

In general, as noted above, HB 1842 has some positive elements as compared to many of the community solar bills that have been and are currently circulating within the General Assembly, that said, I have some concerns that require clarification or course correction before our office would support the bill.

Concerns about the interaction of community solar and default service.

My first concern is that the legislation should unequivocally state that the community solar facility (CSF) must make available and provide energy and capacity equal to the amount of energy and capacity contracted for by each subscriber and the unsubscribed energy. While the definition of a CSF talks about the "delivery" of energy the language should be tightened to ensure that the energy cannot only physically be delivered but is actually delivered and provided to the electric distribution company (EDC) in an amount equal to that which is contracted for by subscribers or bought as unsubscribed energy. This appears to be the intent, but to avoid ambiguity it should be made clear.

I am also concerned about the interaction of the energy purchases made by the EDC pursuant to this legislation and the requirement to provide default service to customers who do not receive service from a retail electric generation supplier. *See* 66 Pa C.S. § 2807(e). As a practical matter, pursuant to HB 1842, EDCs will backstop the sale of all energy from the community solar facility – either because of bill credits to subscribers or as a result of unsubscribed energy. The cost associated with these purchases is unknown but will be at an administratively determined rate set by the PUC, per the terms of Section 3, at the "monetary value of each kilowatt hour of electricity generated by [the CSF]." In addition, Section 5(b) sets a floor for the bill credit at the price to compare paid by default service customers. Lastly, Section 10 requires the EDC to purchase the bill credits for unsubscribed energy "at the electric distribution company's wholesale energy cost as approved by the commission."

Thus, the total output of the system will be bought by the EDC – either through bill credits paid to subscribers or payments to the CSF for unsubscribed energy – and will presumably replace some portion of the EDCs' default service purchases. In this way, it can be looked at a little like a

long-term power purchase agreement (PPA) that some EDCs have as a part of their default service procurement plans albeit more fragmented and at an administratively determined rate. I have several concerns about the interaction of these provisions.

First, there is no ceiling in HB 1842 about the amount of community solar that can be sited or installed in an EDC service territory each year or period. While Section 12 would allow the PUC to establish limitations on the location of facilities in proximity to each other, it should also permit the PUC to establish targets or ceilings on the amount of community solar that can be sited in an EDC's service territory during a given period and require the EDC to coordinate with developers planning to site CSFs when the EDC is doing its default service procurement planning. Default service procurement plans typically last for four years and it would likely make load forecasting more difficult for default service procurement if an EDC does not know how much CSF load will be available during the plan period. Since the EDCs' purchase of CSF load would offset load purchases by the EDCs in their default service plans, the EDCs would need some insight into the planned development and interconnection of CSF load to reasonably accommodate braiding in these CSF offsets.

Second, the price for unsubscribed energy that the EDC is required to buy in Section 10 is at the "electric distribution company's wholesale energy cost as approved by the commission." It is not clear what is meant by this reference. The PUC approves a default service plan with a portfolio of products that are designed to produce default service rates that are at least cost over time. *See* 66 Pa C.S. § 2807(e). The EDCs have various portfolio approaches. Some EDCs include PPAs, some block and spot purchases, some full requirements contracts and some a mix of these contracts all purchased on the wholesale market or through bi-lateral agreements. They make these purchases in tranches at various times throughout their approved default service plan and so there

is no one price for energy. The price charged by the EDCs as default service providers – known as the price to compare (PTC) – changes quarterly (PECO) or semi-annually (all other EDCs), and blends all these purchases, as well as over/under collection reconciliation, when setting prices. Thus, it is not clear whether the reference in Section 10 is meant to refer to the PTC at the time of the purchase, whether it would be some annualized version of the PTC, or something else. We recommend that this be clarified prior to finalization of the bill. Whatever the price, it will be an administratively determined price rather than a competitively procured price. The better approach may be to tie it to prices in the wholesale market for energy even if there is the inclusion of an additional cost for the value of solar at a rate determined by the PUC.

Concerns about retail choice customer participation.

In addition to the concerns that I outlined above for default service, the bill would allow customers who are served by a retail electric generation supplier to also participate as a subscriber and receive a bill credit because the bill defines "electric distribution customer" as a customer of the EDC "regardless of whether the [EDC] is the customer's supplier of electric generation or not." An EGS is required to deliver the energy needed by its customers to the EDC service territory. It is not at all clear why an EDC should have to pay bill credits to a customer when that EDC has not procured energy for an EGS' customer. In other words, unlike a default service customer that subscribes to community solar under this bill, the EGS' customer will not "offset" generation delivered into the utility's service territory because of power produced by the CSF.

In order to avoid the potential for unintended cross-subsidization of suppliers – and charging default service customers for energy that is not delivered for default service – it may be necessary to amend the bill to make it clear that it applies only to customers who are on default service from

the EDC. This would simplify things considerably and would still allow customers who want a different mix of energy to contract for that mix through a retail supply contract.

Concerns about consumer protection provisions.

Section 3 of HB 1842 makes it clear that neither a community solar organization nor a subscriber administrator is to be considered a public utility for purposes of the Public Utility Code. In addition, Section 3 of the bill makes clear that the subscription will be paid by a consumer subscriber pursuant to a contract with the subscriber administrator. Finally, pursuant to Sections 5 and 7, the bill credit will be paid by the EDC to the customer on the customer's electric bill each month with the ability to carry forward credits.

This bifurcation of the payment of subscription costs from the application of bill credits in and of itself is not troubling, but the legislation should make it clear that since neither the community solar organization nor the subscriber administrator is a public utility under the Public Utility Code, neither of these entities should bill for utility service provided by the EDC. In other words, I am concerned that HB 1842 may create a path for consolidated billing that is not performed by the EDC. This would be inappropriate in my judgment and would create significant legal and technical implementation concerns. These concerns are elevated by the fact that Section 6(b) provides reference to Ch. 14, Ch. 15, and Ch 56 (regulations) and indicates that both a community solar organization and a subscriber administrator are subject to their provisions. I appreciate the inclusion of consumer protections, but these references make little sense if the product in question (subscription costs) is not a utility service, and the entity billing (the subscriber administrator) is not a utility. Thus, the bill should be amended to make it clear that the EDC isn't billing for subscription costs and the community solar organization or subscriber administrator cannot bill for EDC costs and that all utility service will remain billed by the EDC. If this is done,

then the bill should eliminate reference to Ch 14, Ch. 15, and Ch. 56 (regulations) because those provisions already apply to EDC-billed costs and there would be no need for them to apply to subscription costs, especially since pursuant to Section 6(c), subscription costs are considered non-basic services which means that their non-payment cannot result in a loss of utility service.

Thank you for the opportunity to provide feedback and suggestions about HB 1842. My office stands ready to be a resource to this Committee throughout the process of determining what changes may be needed prior to consideration of HB 1842. I look forward to working together collaboratively on these issues for the benefit of all Pennsylvania consumers. I would be happy to answer any questions you may have about my testimony, the changes that we have proposed, or those proposed by others.