

**BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION**

INVESTIGATION OF  
PENNSYLVANIA'S RETAIL  
ELECTRICITY MARKET

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Docket No. I-2011-2237952

**COMMENTS OF THE PENNSYLVANIA UTILITY LAW PROJECT**

Harry S. Geller, Executive Director  
To Testify at *En Banc* Hearing on Wednesday, June 8, 2011

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Good Afternoon Chairman Powelson, Vice Chairman Coleman, and members of the Commission. I am Harry Geller, Executive Director of the Pennsylvania Utility Law Project (“PULP”). PULP is a specialized statewide project of the Pennsylvania Legal Aid Network designated to assist low income utility and energy residential consumers. For over 30 years PULP has represented the interests of low income Pennsylvanians in energy and utility matters through direct representation, statewide advocacy, and support and assistance to the staff and clients of local legal aid programs, non-profits and community-based agencies. I am pleased to participate as a member of the Commission’s Consumer Advisory Council, the Department of Community and Economic Development (“DCED”) Weatherization Advisory Council, the Department of Public Welfare (“DPW”) LIHEAP Advisory Committee, and the PECO Energy Universal Service Advisory Committee.

I thank the Commission for the opportunity to testify today at this *en banc* proceeding on behalf of the low income households that we represent. Reliable and affordable electric service is vital to the health and well-being of all Pennsylvanians. Assuring that low income consumers are able to connect to and maintain essential, life supporting electric service at affordable rates with appropriate consumer protections and safeguards must continue to be a central concern addressed by the Commission within the context of this investigation. We have limited our comments to matters within our perspective of low income advocacy, and have not undertaken a response to the specific questions presented by the Commission in its April 29, 2011 Order establishing this investigation. However, PULP supports and incorporates by reference the Comments as well as

the response to the questions which have been provided by the Pennsylvania Office of Consumer Advocate, AARP, and the Pennsylvania Coalition Against Domestic Violence.

The passage of the Electricity Generation Customer Choice and Competition Act ("Choice Act" or "Act") in 1996, and the amendments to the Electric Choice Act as a result of the passage of Act 129 of 2008 (Act 129), have enabled all Pennsylvania consumers to receive the benefits of reasonable, safe and affordable electric service. As a result of this legislation, Pennsylvania retains a reasonably balanced approach for consumers. Customers have the benefits of wholesale generation competition either as a result of their direct entry into the competitive market or through wholesale competitive generation purchases at least cost by the default service provider. Competitive options are now available to consumers in each of the distribution company service territories. In addition, many consumers have been able to participate in or receive the services of universal service programs directed to low income, payment-troubled consumers.

Consumers who choose to shop have the opportunity to avail themselves of a variety of competitive generation suppliers offering a menu of options. Other consumers may choose either not to shop or to affirmatively remain with their default service provider. They may rationally choose to remain with their electric distribution company ("EDC") as a result of participation in a customer assistance program, or simply a preference to continue to receive service which they consider to be stable, reliable and affordable. Many residential customers have either been advised, or have learned through experience, to stay away from contracts which require long-term commitments or penalties for early withdrawal or present the potential of future rate volatility. Low income households, who have no reserve financial resources to see them through

a possibly more expensive choice, can ill afford to take a risk which may result in greater debt or the possible loss of essential electric service. Fortunately, through the existing Pennsylvania model, these customers have available a default service provider that is subject to regulatory billing and collection requirements as well as universal service obligations.

The retention of the incumbent EDC, as the default service provider, has been a benefit to Pennsylvania consumers and should continue. These incumbents possess the necessary history of providing safe and reliable service to Pennsylvania residents. They are the entity most familiar with regulatory safeguards and protections, the requirements of Chapters 56, 14, and with universal service programs. They have developed successful energy conservation skills through the implementation and delivery of low income usage reduction programs (“LIURP”) and Act 129 required energy efficiency and conservation programs. EDCs have established strong and successful ties to their service territories and to local community-based organizations. Although an alternative default service provider other than the incumbent electric distribution company may be selected, PULP believes such an action would not benefit consumers and should be undertaken only when it is clearly demonstrated that an EDC is unable to meet the requirements of providing default service at a cost and manner beneficial to default customers. Since universal service program requirements fall to the default provider, PULP believes there is significant benefit to low income consumers to have these programs continue under the administration of EDCs.

It is important to remember that as the environment enabling customers to have the option to enter into the competitive marketplace has developed, so too has the development of universal

service and energy conservation programs. The Choice Act's statutory directive for the development of programs, policies and protections intended to assist low income households maintain essential electric service, at the same time that that the Commonwealth was enabling Pennsylvania consumers to transition to an era of competitive generation supply, was not by accident. It was the result of consensus that the most economically disadvantaged of our residents required additional protections, policies and services in an era of competition. Universal service programs have been developed in order to provide affordable electric rates to assist in maintaining essential electric service. At the same time, these programs have acted to shield low income consumers from potential price volatility, overreaching of marketers, and the possible diminution of consumer protections. These goals and directives as articulated within the Act are as essential today as when the Act was initially enacted.

As stated, throughout the transition to the competitive retail electric market, there has been recognition of the unique position of vulnerability held by low income utility consumers and the need to provide a structure intended to support their ability to maintain essential utility service within the competitive environment. The Choice Act contains explicit policy declarations affecting low income consumers:

(9) Electric service is essential to the health and well-being of residents, to public safety and to orderly economic development, and electric service should be available to all customers on reasonable terms and conditions.

(10) The Commonwealth must, at a minimum, continue the protections, policies and services that now assist customers who are low-income to afford electric service.

...

(16) It is in the public interest for the transmission and distribution of electricity to continue to be regulated as a natural monopoly subject to the jurisdiction and active supervision of the commission. Electric distribution companies should continue to be the provider of last resort in order to ensure the availability of

universal electric service in this Commonwealth unless another provider of last resort is approved by the commission.

(17) There are certain public purpose costs, including programs for low-income assistance, energy conservation and others, which have been implemented and supported by public utilities' bundled rates. The public purpose is to be promoted by continuing universal service and energy conservation policies, protections and services, and full recovery of such costs is to be permitted through a nonbypassable rate mechanism.

66 Pa. Cons. Stat. § 2802 (emphasis added).

The universal service and energy conservation policies discussed above have been broadly defined:

**"Universal service and energy conservation."** Policies, protections and services that help low-income customers to maintain electric service. The term includes customer assistance programs, termination of service protection and policies and services that help low-income customers to reduce or manage energy consumption in a cost-effective manner, such as the low-income usage reduction programs, application of renewable resources and consumer education.

66 Pa. Cons. Stat. § 2803.

Furthermore, the Commission has been specifically delegated by the General Assembly with the responsibility to actively ensure that there are policies, protections and programs in place to assist low income residents to maintain electric service:

The commission shall ensure that universal service and energy conservation policies, activities and services are appropriately funded and available in each electric distribution territory. Policies, activities and services under this paragraph shall be funded in each electric distribution territory by nonbypassable, competitively neutral cost-recovery mechanisms that fully recover the costs of universal service and energy conservation services. The commission shall encourage the use of community-based organizations that have the necessary technical and administrative experience to be the direct providers of services or programs which reduce energy consumption or otherwise assist low-income customers to afford electric service. Programs under this paragraph shall be subject to the administrative oversight of the commission which will ensure that the programs are operated in a cost-effective manner.

66 Pa. Cons. Stat. § 2804 (9).

The development and coordination of universal service programs and related policies, protections and programs pursuant to the Choice Act has not been an easy task. Significant advances in Customer Assistance Program enrollment and Low Income Usage Reduction Program expansion has occurred. Distribution companies have assembled staffs that have worked diligently to achieve this growth. They are experienced, knowledgeable and supportive of universal service program goals. In addition, the utilities have developed significant relationships with community-based organizations which have enhanced the development and delivery of CAPs, LIURP, Hardship Fund and LIHEAP resources to economically vulnerable consumers. PULP acknowledges the benefits of the universal service structure created and developed by electric distribution companies pursuant to the Act. That is not to say that all progress in the implementation of Choice Act policy and directives concerning low income consumers has been as swift or as complete as we may have hoped. As we assess the current retail market and the challenges put forward by the Act in implementing the sections specifically relating to low income populations we note that there is still much work that needs to be addressed and fulfilled.

It is also essential for the Commission to bear in mind that there can be just one provider of last resort, one entity to be designated as the default service designee for those who choose not to or are unable to shop. That entity must provide far more than fungible electrons. Under the Choice Act, the EDCs are the default; they are the providers of last resort. The EDCs continue to be recognized as natural monopolies subject to the jurisdiction and active supervision of the Commission. Among the designated responsibilities of the EDCs are billing, collection and reporting functions. They are subject to the requirements and application of Chapter 14 and 56,

and, as mentioned, the provision of universal service program enrollment, administration and funding requirements subject to Commission oversight. It is the local distribution companies that have a significant history of direct interaction with the Pennsylvania Department of Welfare (“DPW”) and have obtained LIHEAP vendor status and the electronic exchange systems with DPW for expedited notice and receipts of LIHEAP. This history is not irrelevant and should not be lightly disregarded. As we go forward, it is also essential that we continue to note the significant benefits that have been and continue to be provided through the EDC company activities as default service provider.

PULP supports the existing distribution company default status and would caution the Commission not to undertake changes to a system upon which consumers and especially low income consumers heavily rely.

Respectfully submitted,

A handwritten signature in blue ink that reads "Harry S. Geller". The signature is fluid and cursive, with a long horizontal stroke at the end.

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