

# THE PENNSYLVANIA UTILITY LAW PROJECT

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## BY E-FILING ONLY

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105

**Re: Investigation of Pennsylvania's Retail Electricity Market: End  
State of Default Service, Docket No. I-2011-2237952**

**Comments of AARP, PULP, PCADV and CLS to the  
Commission's November 8, 2012 Tentative Order.**

Dear Secretary Chiavetta:

Enclosed please find the Joint Comments filed by AARP, the Pennsylvania Utility Law Project, the Pennsylvania Coalition Against Domestic Violence, and Community Legal Services, Inc. to the Tentative Order dated November 8, 2012.

Please do not hesitate to contact the undersigned or any of the other signatories to these Joint Comments with any questions or concerns about this filing.

Respectfully submitted,



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BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Investigation of Pennsylvania's  
Retail Electricity Market:  
End State of Default Service

I-2011-2237952

**COMMENTS OF AARP, THE PENNSYLVANIA UTILITY LAW PROJECT, THE  
PENNSYLVANIA COALITION AGAINST DOMESTIC VIOLENCE, AND COMMUNITY  
LEGAL SERVICES, INC. TO THE TENTATIVE ORDER ISSUED NOVEMBER 8, 2012**

On November 8, 2012 the Public Utility Commission (PUC or Commission) issued a Tentative Order concerning the "end state of default electric service." In this Tentative Order the Commission proposed a number of wholesale changes to the structure of default service in Pennsylvania and solicited comments from interested stakeholders.

AARP, the Pennsylvania Utility Law Project ("PULP"), the Pennsylvania Coalition Against Domestic Violence ("PCADV"), and Community Legal Services, Inc. ("CLS"), referred to herein as Joint Consumer Groups, offer the following comments in response to this Tentative Order.<sup>1</sup>

AARP is a nonpartisan, nonprofit social welfare organization with a membership that helps people 50+ have independence, choice, and control in ways that are beneficial and affordable to them and society as a whole. AARP is an advocate nationwide for the rights of people 50 and older. A substantial percentage of AARP's members live on fixed or limited income. A major priority for AARP is to protect consumers from utility expenses that may endanger their health and financial security.

PULP is the designated statewide project of the Pennsylvania Legal Aid Network, (PLAN), of civil legal aid programs, and acts in coordination with PLAN programs, their clients, other nonprofit agencies, and community groups that serve low-income people. Specifically, PULP provides statewide representation, advice,

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<sup>1</sup> The Comments of Joint Consumer Groups relate only to those aspects of the Commission's Tentative Order which impact residential customers.

and support in energy and utility matters on behalf of low-income, residential utility customers within Pennsylvania.

PCADV is a private, nonprofit organization that provides services and advocates on behalf of victims of domestic violence and their minor children. In its 30 years of operation, PCADV has grown to a membership of 60 organizations across Pennsylvania that, collectively, provides safety and refuge to nearly two million victims and children from every corner of the Commonwealth. Our member programs provide a range of life-saving services, including emergency shelters, hotlines, counseling programs, safe home networks, legal and medical advocacy projects, and transitional housing. A key component of PCADV's work is to ensure that victims of domestic violence have access to essential services that enable them to live in an environment that is free from violence. This includes access to stable, affordable utility service.

CLS is a not for profit law firm that provides free legal service to the low income residents of Philadelphia. Each year, CLS receives hundreds of requests for legal assistance on utility issues. CLS's Energy Unit represents individuals and client groups in utility matters, advocates for affordable utility service on reasonable terms, and conducts community education on utility consumer rights.

Joint Consumer Groups have participated in good faith at various proceedings at this docket for more than a year. Our interest throughout these proceedings has been to ensure that the interests of low-income persons, seniors, victims of domestic violence, and other vulnerable populations do not get run over in the stampede to alter the default service landscape in Pennsylvania. Our positions have been guided by the fact – as demonstrated through the testimony of our experts in various default service proceedings and the submission of countless pages of comments and exhibits – that older and low-income households are some of the most vulnerable residents who will be affected by a decision to change default service from a reasonable, predictable, and stable option to one that is tied closely to the volatility of the short-term energy market.

Stable utility rates and service are essential for older and low-income people's health and wellbeing. People living on low or fixed incomes are

particularly vulnerable to high utility costs and are often forced to reduce expenditures on other basic needs, including food and medicine, or to reduce their levels of heating and cooling beyond safe levels if they cannot afford their utility bills. Older people are less able to maintain their internal body temperature and disproportionately suffer from certain medical conditions that make them especially sensitive to temperature extremes, such as diabetes, lung disease, and heart disease. High or unpredictable utility costs also threaten the ability of older people to continue to live independently, forcing some into nursing homes prematurely or even into homelessness.

Victims of domestic violence are similarly reliant on stable utility rates and service. Victims attempting to transition to safety after escaping a violent relationship must often choose between safety and economic stability. Victims frequently cite their lack of financial independence as the reason she or he remains with or returns to their batterer. If the victim doesn't return, and cannot meet her or his basic expenses, they often face homelessness. In fact, domestic violence is a leading cause of homelessness for women and children both nationally and in Pennsylvania. Thus, to ease the transition to safety for victims of domestic violence and their children, it is imperative that they have assured access to stable utility rates and service as well as the consumer protections to which they are statutorily entitled.

Joint Consumer Groups comments to the proposed "end state" espoused by the Commission are not anti-competitive. We believe that there is a place for a viable and robust competitive electric market that compliments a stable, affordable default service. Both AARP and PULP advocated in the General Assembly in favor of the provisions of Act 129 that ensure default service providers acquire electric energy through a "prudent mix" of resources that are designed to provide stable, reliable utility rates at the least cost to customers over time. The interpretation of these provisions is at the heart of the issues addressed by the Commission at this docket.

## **I. Introduction and Summary**

The current default service model works. Despite the dramatic narrative contained in the Commission's Tentative Order, there has been no evidence presented by the Commission or others suggesting that EGSs have not increasingly gained market share or that there are customers in any EDC who cannot obtain competitive electric supply if they choose to do so. The Competition Act, as amended by Act 129 of 2008, is not designed for the benefit of the retail supply community. Rather, it was a product of compromise designed to ensure that a competitive market could exist along side a stable default service. Joint Consumer Groups oppose the wholesale changes proposed by the Commission's Tentative Order and support the continuation of Default Service for essential electric service pursuant to the now existing statutory policies set forth in Pennsylvania law. These policies require that the Commission maintain and adhere to the following polestar principles:

- The provision of Default Service at the "least cost to customers over time."<sup>2</sup>
- The continuity of protections, policies and services that assist low-income customers to afford electric service.<sup>3</sup>
- The assurance that the quality of service provided does not deteriorate.
- That an adequate reserve margin of electric supply is maintained.
- That standards and billing practices for residential utility service are maintained.<sup>4</sup>

Joint Consumer Groups offer the following summary of their comments.

First, the Commission's Tentative Order has completely disregarded the input and recommendations submitted at this docket over the course of the last 18 months of all representatives of residential customers. While the Commission's Order correctly identifies all the proceedings that have been held to consider potential reforms to implement the statutory objective to create a retail market for the sale of generation supply service, the actual recommendations proposed by

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<sup>2</sup>66 Pa C.S. § 2807(e) Obligation to serve.

<sup>3</sup> 66 Pa CS §2802 (10)

<sup>4</sup> 66 Pa CS § 2809 (e)

representatives of residential customers have been ignored. In fact, these recommendations have not even been identified or summarized in the Commission's Tentative Order. In light of this absence of consideration by the Commission of serious residential consumer input, and since no representative of residential customers, including Joint Consumer Groups, agrees with or has recommended the approach reflected in this Tentative Order, it would be neither accurate nor reasonable to conclude that the views of stakeholders have been seriously considered in proposing this "end state" policy.

Second, throughout the Tentative Order, the Commission continues to use the term "end state" of default service, as if it were a defined term or required undertaking by the Commission. The Tentative Order is devoid of any citation to or mention of authority suggesting that default service must have an "end state." Indeed, there is no statutory basis for suggesting that default service should have an "end state" in Pennsylvania that is different from that which was adopted by the General Assembly in Act 129. This appears to be solely a Commission driven term, which Joint Consumer Groups submit is in conflict with the current state of Pennsylvania law and the Commission's own regulations. In fact, the Commission's Tentative Order appears to accept that its recommendations do not comply with current Commonwealth law and policy by stating that the Commission intends to seek changes to the current statutory policies governing default service in 2013 in order to pursue its intended design for default service. (Tentative Order at 12). Joint Consumer Groups submit that is not appropriate and is an abuse of the Commission's discretion to undertake formal regulatory proceedings to, in effect, announce that it intends to seek changes to current Commonwealth law, the specifics of which are not identified, in order to implement a wholesale change in default service policy that it cannot implement under current law.<sup>5</sup>

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<sup>5</sup> The Pennsylvania Public Utility law authorizes the Commission to implement current law. *See, e.g.*, 66 Pa. C.S. § 501(a) ("The commission shall have general administrative power and authority to supervise and regulate all public utilities doing business within this Commonwealth. The commission may make such regulations, not inconsistent with law, as may be necessary or proper in the exercise of its powers or for the performance of its duties."); *see also*, 66 Pa. C.S. § 501(b) ("The commission may make such regulations, not

Third, the driving force behind the Commission's activities at this docket appear to be its belief that the current market for electricity is simply not sufficiently robust because the current default service programs do not reflect the "market" price for electricity. This is a fallacy. There has been no showing, by the Commission or anyone else, that the current electric market is not sufficiently robust. Simply pointing to the fact that a significant number of residential customers continue to remain on default service is not evidence that the market is broken. Recently, Administrative Law Judge Katrina Dunderdale recognized this very fact in her Recommended Decision in Duquesne Light Company's Default Service Proceeding:

The presence of default service customers does not automatically mean customers are not shopping. Not all but a large number of default service customers read the literature, look at the Commission's website for the Price to Compare, contact the default service provider or the Commission with questions, and generally consider his/her options before finally electing (i.e., choosing) to remain with the default service provider. Consumers who remain on default service may be shoppers who did not find an offer attractive enough to entice them away from default service. Or they may be consumers who are too timid to dip their toes into the competitive waters. Or they may be consumers who are more concerned about the volatility and lack of stability in the pricing options available, and willing to trade off a slightly higher commodity rate in order to know what their rate will be.<sup>6</sup>

Furthermore, the default service programs currently approved for the Pennsylvania EDCs are a reflection of a competitive acquisition of a variety of default service contract terms and types from wholesale market participants. They reflect the wholesale market price for each contract at the time of the contract's acquisition. The process used to acquire these contracts has been widely viewed by all participants, including this Commission, as a fair and proper reflection of competitive procedures. Indeed, even under the Commission's recommended

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inconsistent with law, as may be necessary or proper in the exercise of its powers or for the performance of its duties." (emphasis added)).

<sup>6</sup> *Petition of Duquesne Light Company for Approval of its Default Service Program*, Docket No. P-2012-2301664, Recommended Decision of ALJ Dunderdale, entered November 15, 2012 at 28 (emphasis in original).

approach, default service contracts would be acquired in the same manner and with the same competitive safeguards as all the current default service contracts. The only aspects of that process that the Commission appears intent on changing are (1) the requirement that contracts are laddered in time to prevent the potential volatility in prices that will occur with purchasing 100% of default service at any one time; and (2) the requirement that contracts reflect a “mix” of contract terms in order to achieve the same result of price stability and avoid dramatic and volatile changes in prices that occur frequently and conflict with the statutory obligation to design a default service portfolio that assures “least cost over time.” Therefore, the Commission’s repeated suggestion that the current default service contracts do not reflect the market is incorrect.

Fourth, the Tentative Order ignores the consumer protection policies and implications associated with imposing a volatile default service policy on Pennsylvania’s residential customers, particularly those who are low-income and relying on fixed income and social assistance support to manage their essential needs for housing, energy, and food. In addition to the lack of attention to the adverse impacts associated with a volatile default service policy, the proposal does not recognize the potential difficulties, if not impossibilities, associated with the obligation of EDCs to offer level or budget payment plans and deferred payment plans for customers who are need level payments and extended payments to retain essential electricity service.

Fifth, Joint Consumer Groups also oppose any requirement that EDCs offer Supplier Consolidated Billing. Our position is a reflection of the statutory intent to retain billing and collection with the EDC, with the option of allowing suppliers to issue a bill for their own services. Most importantly, the Tentative Order does not recognize or discuss the significant adverse impacts on existing consumer protection policies associated with billing and collection that would require resolution prior to any determination that such a billing option would be reasonable or appropriate from the customer’s perspective.

Finally, Joint Consumer Groups oppose the Commission’s conclusion, determination and direction that low-income and CAP customers are to participate

in the competitive market. It has not been demonstrated that the competitive market can adequately address the unique needs of CAP customers. Despite Commission decisions to the contrary, we continue to believe that there are good reasons why CAP customers are better served on default service than through the competitive market. The reality is that an EDC CAP is a regulated product that is designed to ensure that a low-income payment troubled customer has an affordable bill. As presently formulated, the Commission's "End State" plan contains no such assurance.

## **II. The "End State" Default Service policy proposed by the Commission Conflicts with current Pennsylvania Law and Should Not Be Adopted.**

According to the Commission's Tentative Order, "the proposed default service model will improve competition in the current retail electric market." (Tentative Order at 1). The Commission offers no evidence or factual support to conclude that its specific default service model would "improve competition." There is no evidence available or even cited to suggest that a more volatile default service model or the one proposed by the Commission here would in fact result in "competition." Furthermore, the Commission appears to assume that the purpose of the Competition Act is to ensure that EGSs can gain sufficient market share and make a sufficient profit to enable these entities to remain in business.

The purpose of the Competition Act is to enable a structure and policies to **allow** customers to choose an alternative supplier for generation supply service. There is no mandate in the Competition Act to create policies that would adversely impact customers for the purpose of supporting EGSs' ability to make competitive offers to customers. Indeed, the Competition Act clearly recognizes the importance of considering how restructuring policies affect the health and welfare of retail customers. For example, Section 2802 states, in relevant part:

(7) This Commonwealth must begin the transition from regulation to greater competition in the electricity generation market to benefit all classes of customers and to protect this Commonwealth's ability to compete in the national and international marketplace for industry and jobs.

...

(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.<sup>7</sup>

Section 2804 states:

(2) Consistent with the time line set forth in section 2806 (relating to implementation, pilot programs and performance-based rates), the commission shall allow customers to choose among electric generation suppliers in a competitive generation market through direct access. Customers should be able to choose among alternatives such as firm and interruptible service, flexible pricing and alternate generation sources, including reasonable and fair opportunities to self-generate and interconnect. These alternatives may be provided by different electric generation suppliers.

The notion that there is any statutory basis or support to create or move to an “end state” for default service is untrue. In fact, it is instructive that the Pennsylvania restructuring law was amended a mere four years ago in Act 129 in 2008 to expressly eliminate that to which the Commission wants to return. Prior to 2008, the statutory requirement was that default service must reflect “prevailing market prices.” The current statutory policy requires the EDC to create and manage a portfolio of contracts obtained in the wholesale market that reflects a mix of contract terms that is designed to provide default service at “least cost over time.” In declaring the purpose of Act 129, the General Assembly found that price stability was a key concern that needed to be addressed. The General Assembly stated in pertinent part:

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<sup>77</sup> 66 Pa. C.S. § 2802

## Preamble

The General Assembly recognizes the following public policy findings and declares that the following objectives of the Commonwealth are served by this act:

(1) The health, safety and prosperity of all citizens of this Commonwealth are inherently dependent upon the availability of adequate, reliable, affordable, efficient and environmentally sustainable electric service at the least cost, *taking into account any benefits of price stability over time* and the impact on the environment.

(2) It is in the public interest to adopt energy efficiency and conservation measures and to implement energy procurement requirements designed to *ensure that electricity obtained reduces the possibility of electric price instability*, promotes economic growth and ensures affordable and available electric service to all residents.

(3) It is in the public interest to expand the use of alternative energy and to explore the feasibility of new sources of alternative energy to provide electric generation in this Commonwealth.<sup>8</sup>

Additionally, the Commission's Tentative Order directly conflicts with its own regulations. In adopting the regulations to implement Act 129, the Commission noted:

We disagree with [the assertion by some] . . . as to the proper interpretation of the "least cost" standard as mandating that default service rates approximate, on a prospective basis, the market price of energy. Such an interpretation would signal retention of the "prevailing market price" standard that has been expressly replaced under Act 129. Moreover, **this interpretation conflicts with the Act 129 objective of achieving price stability which dictates consideration of a range of energy products**, not just those that necessarily reflect the market price of electricity at a given point in time. **Price stability benefits are very important to some customer groups in that exposing them to significant price volatility through general reliance on short term pricing would be inconsistent with Act 129 objectives.**<sup>9</sup>

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<sup>8</sup> See Preamble to Act 129, 2008 Pa. Laws 129

<sup>9</sup> Implementation of Act 129 of October 15, 2008, Default Service And Retail Electric Markets, Docket No. L-2009-2095604 (Final Rulemaking Order entered Oct. 4, 2011) at 39-40 (emphasis added) ("Act 129 Final Rulemaking Order").

The Commission's Tentative Order rejects this policy and this objective. By stating that it intends to impose a default service program that would purchase 100% of the necessary load every quarter and pass through that price change every quarter to residential customers, this Commission appears to reject any notion of "least cost", "prudent mix," and the intent to provide "adequate and reliable" service that is required by law. The Commission's Tentative Order does not identify any other purpose to its "end state" model than supporting the ability of EGSs to remain in business in Pennsylvania, suggesting that if the wholesale market price of a properly designed default service portfolio falls too low, some EGSs may go out of business or no longer continue to do business in the Commonwealth. (Tentative Order at 10-12). No evidence is cited demonstrating that this premise is in fact a market reality.

More troubling to Joint Consumer Groups is the fact that at no point in this Tentative Order does the Commission discuss the potential impacts of its proposed default service policy on residential customers or acknowledge the adverse impacts its proposed policy will have on health and safety. This shortcoming threatens the affordability of essential electricity service and adversely impacts the consumer protection policies associated with obtaining and maintaining that essential service.

Rather, the Commission summarily announces that it intends to seek changes in these policies with unidentified proposed language in the 2013-2014 session of the General Assembly. (Tentative Order at 12). Joint Consumer Groups endorsed the statutory language adopted in 2008, and firmly reject and oppose the Commission's stated intent not to enforce and assure compliance with this law.

**III. The Commission's Tentative Order fails to explore, recognize, or reflect any understanding of the potential harms to many residential customers if exposed to volatile and potential higher priced electricity service that is likely to result from the proposed default service policy.**

The Commission's Tentative Order adopts a proposed purchasing program for default service that is not accompanied by any presentation or analysis of how default service prices would likely change or the impacts that these price swings

would have on residential customer bills. In fact, it is well known that short term wholesale market prices are volatile and routinely move dramatically higher due to summer weather<sup>10</sup> or national and even international events. Under the Commission's proposed default service plan, residential customers would see price spikes in the summer that are likely to result in unaffordable bills, late payment fees, and stressful and dangerous collection actions. Such a result is inevitable under the Commission's proposal, but the Commission has failed to even discuss or recognize this implication in its Tentative Order.

It is well recognized within the electric industry that "low income customers will have more trouble coping with the volatile prices of a short-term procurement strategy and will likely benefit from the longer term hedging that [default service] can provide."<sup>11</sup> To maintain protections that low-income consumers would benefit from in a regulated electricity market, industry research advised:

[T]he competitive market can be used to provide a level of price stability for the [default service] offer to low-income customers. It requires that policy makers develop reasonable guidelines and workable approval processes for acquiring longer-term resources at competitive rates in forward markets. While spot markets are volatile, forward markets, particularly long-term forwards, are less so. Therefore, a portfolio of resources acquired in "layers" over time can provide average prices that evolve in a gradual, stepwise fashion. They are low in the sense and to the degree that long-run, average competitive forward market prices are low.<sup>12</sup>

Utility price stability is particularly important to low-income households, older people living on fixed incomes, and victims of domestic violence seeking to

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<sup>10</sup> Joint Consumer Groups understand that the Office of Consumer Advocate will include a multi year presentation of PJM locational market prices showing these significant short term swings in prices, particularly the significant rise in prices during the summer period. *See e.g.* State of the Market Report for PJM, September to January (Q3), Monitoring Analytics, LLC, November 15, 2012 at 48. Available at: [http://www.monitoringanalytics.net/reports/PJM State of the Market/2012/2012q3-som-pjm.pdf](http://www.monitoringanalytics.net/reports/PJM%20State%20of%20the%20Market/2012/2012q3-som-pjm.pdf)

<sup>11</sup> Frank C. Graves & Joseph B. Wharton, The Brattle Group, Edison Electric Institute White Paper, New Directions for Safety Net Service - Pricing and Service Options, 9 (2003) (acknowledging low-income people are "least likely to be served in the competitive retail market (less so than the average retail customer)").

<sup>12</sup> *Ibid.*

transition to financial independence. Because these individuals must survive on a shoestring budget, they do not have the resources or flexibility to absorb price spikes. Indeed, a two adult, two child household in Pennsylvania needs income levels that are 2 to 2½ times the federal poverty level to pay all their essential expenses, including their utility bills.<sup>13</sup> Households earning below this level must rely on public or private assistance (such as CAP and other Universal Service programs) to meet their basic needs. Thus, while 13 percent of the households in Pennsylvania in 2008-2010 lived below the federal poverty level of \$15,130 annually for a family of two and \$23,050 annually for a family of four,<sup>14</sup> a significantly greater percentage of households cannot afford their utility bills. The median household income in Pennsylvania is only \$50,289, well below the \$57,625 that would bring a family of four up to the self-sufficiency standard.<sup>15</sup>

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<sup>13</sup> See Diana Pearce, Pathways PA, *The Self Sufficiency Standard for Pennsylvania 2010-2011*, 7 (May 2010). Available at: [http://www.pathwayspa.org/10-11\\_SS\\_Standard.pdf](http://www.pathwayspa.org/10-11_SS_Standard.pdf). The Self-Sufficiency Standard is a tool that measures how much income a family of a certain composition in a given place must earn to meet their **basic needs** without public or private assistance. The Self Sufficiency Standard for Pennsylvania includes the following expenses:

- Housing costs (Rent/utilities)
- Child care (full-time family care for infants, full-time center care for preschoolers, before and after school care for school age children)
- Food (food for home preparation only, does not include take-out or restaurant meals)
- Transportation (the cost of owning a car (per adult) – insurance, gas, oil, registration, etc. – or public transportation when adequate. The car or public transit costs are figured only for commuting to and from work and day care plus a weekly shopping trip.)
- Health Care (employer sponsored health insurance & out-of-pocket costs)
- Taxes (Federal and state income tax and tax credits, payroll taxes, state and local sales taxes)
- Miscellaneous (clothing, shoes, paper products, diapers, nonprescription medicines, cleaning products, household items, personal hygiene items, and telephone service.

The Self-Sufficiency Standard does not include recreation

<sup>14</sup> 2012 Poverty Guidelines, Department of Health and Human Services, available at <http://aspe.hhs.gov/poverty/12poverty.shtml>.

<sup>15</sup> See Population and Housing Narrative Profile: 2008-2010, 2008-2010 American Community Survey 3-Year Estimates Available at <http://factfinder2.census.gov/faces/nav/jsf/pages/searchresults.xhtml?ref=top&refresh=t>. Select Topics, dataset, 2008-2010 ACS 3-year estimates. Next select geographies, state, Pennsylvania. Select file NP01, *Population and Housing Narrative Profile: 2008-2010*.

Many low-income, older households, and victims of domestic violence who are in transition find it difficult to pay for utility service because the cost of other essential needs including rent, food, water and medicine compete for their limited resources.<sup>16</sup> On a daily basis, these individuals are forced to choose which bills to pay and which to postpone paying. This is not irresponsibility; it is a matter of survival and a necessary weighing of the relative consequences of non-payment of particular expenses. Low-income residents of the mid-Atlantic region, including Pennsylvania, pay a much higher portion of their income toward utility costs—19 percent in 2006, up from 17 percent in 2001— than the national average of 3 to 4 percent.<sup>17</sup>

Price stability is also particularly important for older households, which tend to have lower, fixed income and generally use more residential energy than younger households.<sup>18</sup> Pennsylvania, with the sixth largest population, has the second largest proportion of elderly residents in the country.<sup>19</sup> “Note also that, as the age of the head of household increases, so does the energy burden, suggesting that the elderly would be more likely to have higher energy burdens.”<sup>20</sup>

One reason energy burden increases with age is that their income goes down when they stop working. A greater percentage of older people have disabilities and health concerns, which increase costs, and becomes a greater drain on their resources. In Pennsylvania, for example, 36 percent of people over age 65 have a disability, compared to 5 percent of those age 18 to 65 and 11 percent of those under age 18.<sup>21</sup> Older people rely upon Social Security for a large percentage of

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<sup>16</sup> See John Shingler, Consumer Services Information System Project, Penn State Univ., Long Term Study of Pennsylvania’s Low Income Usage Reduction Program: Results of Analyses and Discussion, 4-5 (2009). Available at [http://www.puc.pa.gov/general/publications\\_reports/pdf/PSU-LIURP\\_Report2008.pdf](http://www.puc.pa.gov/general/publications_reports/pdf/PSU-LIURP_Report2008.pdf).

<sup>17</sup> *Id.* at 4.

<sup>18</sup> Bruce Tonn & Joel Eisenberg, The Aging US Population and Residential Energy Demand, 35 Energy Policy 743 (2007).

<sup>19</sup> Shingler, *supra* n.16 at 4.

<sup>20</sup> Tonn & Eisenberg, *supra* n.18 at 25.

<sup>21</sup> See Population and Housing Narrative Profile: 2008-2010, *supra* n.15.

their income. In Pennsylvania, 32 percent of households received Social Security, which provided only \$16,140 per household.<sup>22</sup>

Price shocks, such as those attributable to seasonal volatility or spot market fluctuations, can result in a customer's inability to pay the higher than anticipated bill, resulting in arrears for utility companies and terminations of service for those who cannot pay.<sup>23</sup> In addition to harming low-income people, utility arrearages increase costs for all.<sup>24</sup> Utility terminations can result in dangerous health conditions, including fires and carbon monoxide poisoning from the use of unsafe heating sources.<sup>25</sup> The PUC should not set default rates in a manner that increases the risk of these harmful outcomes.

According to the PUC, avoiding price volatility serves to benefit utilities by reducing their exposure to uncollectible expenses.<sup>26</sup> Moreover, through the enactment of Chapter 14 in 2004, the General Assembly previously declared its policy to avoid rate increases that may be attributable to non-payment.<sup>27</sup> Unfortunately for many low-income households, Chapter 14 eliminated essential consumer protections and "made it easier for utility companies to terminate service to low-income households."<sup>28</sup> Indeed, the result of Chapter 14 is that "the number of electric, natural gas and major water utility terminations in Pennsylvania increased from 181,695 in 2004 to 283,598 in 2005."<sup>29</sup> In 2011, the number of electric and natural gas terminations alone was 272,961.<sup>30</sup>

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<sup>22</sup> *Ibid.*

<sup>23</sup> Shingler, *supra* n.16 at 7.

<sup>24</sup> *See* Graves & Wharton *supra* n.11 at 3.

<sup>25</sup> *See* U.S. Consumer Product Safety Commission, *CPSC Warns of Deadly Fire and Carbon Monoxide Hazards with Winter Home Heating*, Release #09-109, Jan. 28, 2009. Available at <http://www.cpsc.gov/cpsc/pub/prerel/prhtml09/09109.html>.

<sup>26</sup> In re: Insuring Consistent Application of 52 Pa Code 56.12(7), Docket No. M-00051925, Order of Nov. 10, 2005, at 1-2.

<sup>27</sup> *See* 66 Pa. C.S. § 1402(2); *see also* Shingler *supra* n.13 at 8 (noting "[t]he intent of the Act was to protect responsible bill paying [utility] customers from rate increases attributable to the uncollectible accounts of customers").

<sup>28</sup> *Ibid.*

<sup>29</sup> Shingler *supra* n.16 at 7.

<sup>30</sup> 2011 Collections Data for Major Gas and Electric Companies Available at [http://www.puc.state.pa.us/general/publications\\_reports/pdf/Chapter14-Biennial011411.pdf](http://www.puc.state.pa.us/general/publications_reports/pdf/Chapter14-Biennial011411.pdf)

The Commission's Tentative Order, which ignores the importance of price stability in default service procurement, combined with the harsh reality of Chapter 14, puts low income customers at greater risk of utility service termination. Access to stable electricity prices that are procured at least cost over time is essential for maintaining electric service, an important source of heat.<sup>31</sup> According to the Pennsylvania Public Utility Commission's Cold Weather Survey, 14,642 households entered the winter of 2011 without heat-related utility service.<sup>32</sup>

In addition to the potential health and safety implications of exposing some customers to volatile and potentially unaffordable bills for electricity service, the Tentative Order fails to identify the potential adverse impacts of its proposed default service policy on existing and important consumer protection policies and programs. The Tentative Order lists the Commission's orders and regulations to implement consumer protections. (Tentative Order at 19-20). The Commission states that its proposed default service model "requires no revisions to any of the consumer protections noted above," but also states that the Commission would not be precluded from "considering or revising any of the above-noted regulations." (Tentative Order at 20).

Conspicuously missing from the Commission's Tentative Order is any discussion of the implications of its proposed default service model on the ability of the EDC to implement existing consumer protection policies. For example, the ability of an EDC to properly calculate and offer a levelized or budget billing plan is questionable when the price for default service changes dramatically every three months.

Furthermore, non-CAP residential customers have the right to an extended payment plan when faced with the inability to pay the current bill on time. It is not clear or even discussed how an EDC could properly calculate and offer extended

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<sup>31</sup> See Population and Housing Narrative Profile: 2008-2010, supra n.15 (reporting 19.6 percent of Pennsylvania household use electricity to heat their homes).

<sup>32</sup> See 2011 Cold Weather Survey Results Available at [http://www.puc.state.pa.us/general/publications\\_reports/pdf/Cold\\_Weather\\_Results\\_2011.pdf](http://www.puc.state.pa.us/general/publications_reports/pdf/Cold_Weather_Results_2011.pdf)

payment plans of any kind when the default service portion of the bill has the potential to vary dramatically every three months.

**IV. Supplier Consolidated Billing is not necessary and fails to assure compliance with current Chapter 56 consumer protections and universal service programs.**

In its Tentative Order, the Commission recognizes “several technical and legal questions” associated with the implementation of Supplier Consolidated Billing (SCB). Under SCB, the customer will receive one bill from the EGS that will include the regulated EDC charges as well as the supplier’s charges. The Tentative Order correctly identifies many unresolved issues associated with this billing method. (Tentative Order at 26-27). In addition, the EDC would have to incur additional costs to make SCB available, the nature and extent of which has not identified at this time.

However, without any resolution or discussion of facts, the Commission summarily asserts that “none of these concerns present an insurmountable obstacle to making SCB available” and concludes, “SCB should be made available as a billing option as part of a vibrant, competitive market.” (Tentative Order at 27.) Moreover, without presenting a shred of evidence about the potential impact of SCB, the Commission proposes to order that the Office of Competitive Market Oversight (OCMO) provide a recommendation as to how to proceed to make SCB available as a billing option “for EGSs and third parties” by July 1, 2013.

The Commission states that it does not envision that any customer would be required to use SCB, (Tentative Order at 28), yet the Commission seeks expend its limited resources to upend the current billing paradigm for one that it believes is preferable. Section 2807 (c) of the Choice Act states:

Subject to the right of an end-use customer to choose to receive separate bills from its electric generation supplier, the electric distribution company may be responsible for billing customers for all electric services, consistent with the regulations of the commission, regardless of the identity of the provider of those services.<sup>33</sup>

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<sup>33</sup> 66 Pa. C.S. § 2807(c).

The balance of this subsection describes the obligations of the EDC in billing for an entity other than an EDC. This section contemplates only two options: EDC consolidated billing or separate billing from an EGS and an EDC. There is **no** reference in the Act that would allow the Commission to order the EDC to implement SCB.

Furthermore, the Commission's statement that it would not envision that a customer would be required to accept SCB is not a reflection of the realities of the retail marketplace. Given that most EGS contracts are take it or leave it propositions, an EGS who seeks to implement SCB would include the customer's obligation to accept SCB as a non-negotiable term of the contract. Thus, a customer who is shopping among EGS offers would not typically be able to negotiate individual terms, including billing options. As such, if the Commission was to require EDCs to offer SCB, and an EGS selects that billing option, it is not realistic to assume that a customer could choose from either SCB or EDC consolidated billing. The choice would be made for them by the EGS. The Commission's focus on what an EGS might desire conflicts with the intent of the Competition Act with respect to an EDC's obligations to offer billing options and the customer's right to select a billing option.

Furthermore, it is unclear how such a concept could be employed in any efficient context since Section 2807 (d) states:

**The electric distribution company shall continue to provide** customer service functions consistent with the regulations of the commission, including meter reading, complaint resolution and **collections**. Customer services shall, at a minimum, be maintained at the same level of quality under retail competition.<sup>34</sup>

Given the law, even if the Commission were to determine that SCB could be established, the collection function would need to remain with the EDC, creating a billing and collection process bifurcated between two separated entities. It is difficult to imagine how this bifurcation of responsibilities could benefit consumers.

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<sup>34</sup> 66 Pa. C.S. § 2807(d) (Emphasis added.)

The Tentative Order also fails to discuss or identify the risks to customers associated with potentially allowing hundreds of EGSs to become responsible for the implementation of Chapter 56 and other important consumer protection policies that are embedded in EDC practices and programs, as well as the EDC contacts and interactions with low-income and other vulnerable customers in current universal service programs.

For example, PCADV and its member programs have had difficulty in getting the incumbent EDCs to become familiar with the fact that Chapter 56 has a different set of rules for victims of domestic violence with a protection order.<sup>35</sup> This educational gap has caused for many local domestic violence programs to expend a tremendous amount of staff time and resources to advocate on behalf of victims of domestic violence to obtain the protections to which they are statutorily entitled. PCADV also wrote separately to illustrate, in further detail, these difficulties, and their potential impact on victims of domestic violence.<sup>36</sup> If it is hard to get seven EDCs who are closely regulated by the Commission to recognize these realities, getting the hundred plus licensed suppliers to comply with the provisions in Chapter 56, including those provisions that are applicable to survivors of domestic violence, will be nearly impossible.

Finally, the use of SCB would eradicate the connection between customers and their public utilities and result in a significant risk of loss of these protections if compliance were transferred to a licensed EGS. There is no evidentiary basis for concluding that the large volume of licensed EGSs would be properly supervised by the Commission without a significant increase in staffing and resources that is unlikely to be implemented, particularly given the paltry sum of \$1,000 that the Commission's Tentative Order proposes to require EGSs to pay in additional fees.

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<sup>35</sup> See 52 Pa. Code § 56.251 *et seq.*

<sup>36</sup> Joint Consumer Groups fully support and incorporate by reference the separate comments filed by PCADV and its member organizations.

**V. CAP is not compatible with the Commission’s “end state”.**

There are nearly 1.3 million low-income households (incomes at or below 150% of poverty) within the EDC service territories in the Commonwealth of Pennsylvania. In assessing any change to the current default service model, the Commission must maintain the protections, policies and services that assist low-income customers to be able to afford their bills. It cannot adopt models that do not assure that those protections are maintained. Despite this statutory responsibility, the Commission continues to offer no specifics as to how it would ensure that consumer protections are maintained and enforced. To be sure, the Commission indicates that it is cognizant of the concerns expressed by some of the parties in PECO’s default service proceeding about CAP customer participation in the competitive market. Nonetheless, rather than offer specifics, the Commission fails to directly address the substance of the concerns expressed in that proceeding, as well as in *each* of the other EDC default service proceedings. These concerns include: (1) the high degree of economic vulnerability for low-income households, (2) the need for rate stability and affordability for these households; (3) the potential economic harm to CAP customers and to the non-CAP customers who subsidize CAP rates as a result of unsuccessful shopping decisions or failure to maintain constant rate vigilance upon entering the competitive market; and, (4) the lack of a dedicated process or guidance by the Commission regarding how these issues will be addressed.

Indeed, all these concerns were acknowledged, to one degree or another, by each of the four ALJs assigned to the DSP proceedings. In these cases, the ALJs either recommended against participation by CAP customers in the retail market enhancements (PECO, Duquesne, and First Energy) or found that a high number of CAP customers participating in shopping were being harmed economically (73% of CAP customers in the PPL service territory were paying more than the PPL Price to Compare.) The determination by the Commission to remain silent as to the mechanics of how CAP programs should be structured to allow their customers to shop, but to instead let each EDC develop a plan suitable for its service territory,

(Tentative Order at 23), is an acknowledgement that the Commission is determined to impose low-income and CAP customer shopping without first seriously confronting the many significant issues which the Joint Consumer Groups and ALJ's have detailed. This delegation of the responsibility to each EDC to develop a plan suitable for its service territory, without further direction beyond the broadly-stated requirements to follow existing law, is inadequate and an abuse of discretion.

Whatever the outcome of this proceeding, CAP customer participation in the competitive marketplace must contain all of the following uniform protections on a state-wide basis:

1. CAP customers must be assured that the competitive price charged to them is always at or below the PTC;
2. CAP customers should be able to switch to an alternate supplier or back to the Default Service Provider at any time without any fee or penalty;
3. CAP customers should be exempt from security or other deposit requirements that an EGS might otherwise impose;
4. CAP customers should not be subject to dual billing;
5. CAP customers must be able to maintain their full universal service program protections:
  - a. CAP participation and all related benefits continue;
  - b. No loss of CAP benefits or reduction of benefits occurs as a result of shopping;
  - c. LIURP is available for high use CAP customers; those approaching their CAP Maximum Credit limits, and those who may be subject to removal from CAP on the basis of increased usage; and,
  - d. The application of LIHEAP grants conforms to the policies and requirements of the Pennsylvania Department of Public Welfare including the requirement that Cash grants be applied to the "asked to pay amount".
6. All Consumer Protections, policies and services continue to be maintained at the level with which they existed at implementation of the Electric Choice Act.
7. Written information regarding the rights and responsibilities of CAP customers who shop must be provided to all confirmed low-income customers in a manner which is in plain language, clear, and complete at the following times:

- a. Upon entry, reentry into and recertification for CAP;
  - b. Upon any solicitation by a competitive supplier;
  - c. Upon the EDC or DSP receiving notice of the confirmed low-income customer's request to switch to a competitive provider; and
8. Any request to shop by a confirmed low-income customer may not be processed until 10 days after that customer has been apprised of all rights and responsibilities in accord with paragraph 7, above

Additionally, the Commission's stated commitment to "working with DPW to explore what can be done to make suppliers eligible for LIHEAP payments, making these benefits more portable" (Tentative Order at 25) is further example of the Commission proposing a course of action that would result in changes that are contrary to the interests of low-income consumers and are in direct conflict with LIHEAP law and policy.

LIHEAP grants are dedicated to promote the provision of home energy services to low-income households, supplement the cost of home heating, and enable these households to maintain heat throughout the cold weather months. To promote this policy, DPW does not designate LIHEAP vendor status to entities who do not have a direct ability to provide or terminate heating service. Included in the category of those without LIHEAP vendor status are landlords, marketers, resellers or competitive suppliers. These limitations act to protect the LIHEAP recipient by directing limited resources to the entity most able to directly affect the receipt of heat. In Pennsylvania, only the public utility, not the supplier, may terminate service.<sup>37</sup> Joint Consumer Group are particularly concerned that limited LIHEAP resources would be diverted from the EDCs capable of affecting service maintenance to suppliers, simply to promote the Commission's vision of the "end state" and CAP customer competitive shopping.

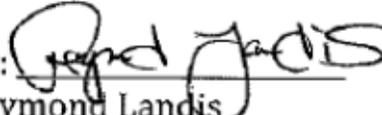
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<sup>37</sup> See 52 Pa Code §56.72 (Discontinuation of Service) and 52 Pa Code § 56.81 (Termination of Service).

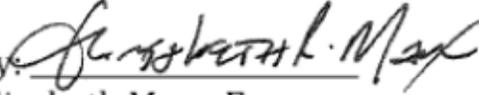
## VI. Conclusion

Policies that expose residential customers to risky and volatile prices for essential electricity service are not consistent with Pennsylvania law and policy. Joint Consumer Groups support the current statutory policies and do not believe that there has been a factual case made to change those policies. The changes to default service that have been proposed by the Commission to date are likely to increase costs and risks to residential consumers with no apparent benefits to anyone other than EGSs. Joint Consumer Groups urge the Commission to abandon its pursuit of an "end state" to Default Service and to instead ensure that the default service model that is reflected in Act 129 is carried out.

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