

Prepared Testimony of  
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*before the*  
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Good morning Chairman Godshall, Chairman Caltagirone, and members of the House Consumer Affairs Committee. I am Gladys Brown, Chairman of the Public Utility Commission (Commission or PUC). I am here today, on behalf of the Commission, to offer testimony concerning Pennsylvania's retail energy marketplace and the PUC's oversight of competitive retail electric and natural gas supplier marketing practices.

Pennsylvania hosts a robust competitive retail electric generation market, with just under 2 million customers receiving service from competitive electric generation suppliers, or EGSs. EGSs serve approximately 65% of the total electric load in the Commonwealth. Presently, there are over 400 entities licensed as EGSs, 133 of which sell electric generation services and 289 of which are engaged in brokering activities only. Approximately 105 of these suppliers are licensed to serve residential consumers.

Our competitive natural gas market is admittedly less active, with just over 400,000 customers receiving service from competitive suppliers, representing 44% of the statewide natural gas load. There are over 290 natural gas suppliers, or NGSs, licensed by the Commission with 130 supplying gas commodity services and 160 engaged in brokering activity only. Approximately 155 of these suppliers are licensed to serve residential consumers.

The retail energy markets provide Pennsylvania consumers the opportunity to shop for and purchase an increasingly diverse array of energy products; including fixed price, variable price, renewable, and time-of-use products. However, the Commission has long-acknowledged that interest in shopping among consumers can vary widely. Not all consumers want to shop, while others may be interested in obtaining the benefits of shopping but reluctant to do the research necessary to make an informed decision. Still, others want full access to the entire array of electric and gas products available and welcome a competitive retail market. To that end, the General Assembly and the Commission have worked effectively to structure Pennsylvania's

markets in a manner which accommodates these varying levels of interest and engagement.

For those that do not want to shop for a supplier – and I note that no one has to shop or select a supplier – we have electric default service and natural gas supplier of last resort service. These customers remain with their utility for commodity service. Electric utilities obtain default service for these customers by purchasing power via an auction process overseen by the Commission that establishes reasonable market-based rates; what the marketplace terms the “price-to-compare” or “PTC.” Natural gas utilities obtain supplier of last resort service for these customers through a Commission-approved portfolio of contracts which create the “Purchased Gas Cost,” or “PGC.”

For those that may want to “dip their toe” in the competitive electric market but may have some hesitation, we have the “Standard Offer Program.” Each major electric utility offers this program whereby customers may voluntarily enroll with an EGS through communications with the utility. The product is a standardized offering which can offer peace-of-mind to the customer. Presently, the program offer is a fixed price for 12 months, lower than the utility’s current price-to-compare, with no exit or cancellation penalties. To date, nearly 900,000 electric consumers have participated in these programs across the state. The Commission has considered applying a similar model program to the natural gas industry, but to date has not done so.

Customers shopping in the fully competitive marketplace need objective information to make informed decisions. Consequently, both the electric and natural gas Competition Acts require suppliers to provide adequate and accurate information to customers.<sup>1</sup> Further, the Acts require that supplier

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<sup>1</sup> For electric: 66 Pa. C.S. § 2807(d)(2). For natural gas: 66 Pa. C.S. § 2206(c).

information be provided to consumers in an understandable format that enables consumers to compare prices and services on a uniform basis. Lastly, the Acts require the Commission to promulgate necessary regulations to effectuate these consumer safeguards. Consequently, the Commission has designed numerous regulations, and is presently considering further refinements to stay up-to-date with marketplace developments.

For example, as electric generation rate-caps neared expiration in the pre-2010 timeframe, the Commission recognized the impending rush of EGS marketing activities and began a collaborative stakeholder process to gauge the necessity for new guidelines or regulations. These efforts culminated in promulgation of the Chapter 111 residential marketing regulations.<sup>2</sup> Among the most extensive in the nation, these specify requirements on supplier marketing but place a particular focus on door-to-door and telemarketing activities and related customer protections.

Regarding door-to-door marketing, the personal safety of individuals and the security of the home are of paramount importance. Accordingly, our regulations require suppliers, before putting an agent on the street, to first obtain and review a criminal history record from the Pennsylvania State Police and from every other state in which the potential agent resided for the last 12 months. The criminal background investigation also includes checking the sex offender registry commonly referred to as the “Megan’s Law” registry. A supplier may not hire a person as an employee or an agent for door-to-door marketing or sales who was convicted of a felony or misdemeanor when the conviction reflects adversely on the person’s suitability for this type of employment. Further, suppliers contracting with independent contractors for door-to-door activities must confirm that the contractor has performed criminal background investigations on an agent in accordance with the regulations.<sup>3</sup>

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<sup>2</sup> *Corrected Final Rulemaking Order Re: Marketing and Sales Practices for the Retail Residential Energy Market*, Docket No. L-2010-2208332. (Public Meeting of October 24, 2012).

<sup>3</sup> 52 Pa. Code § 111.4.

Additional safeguards are included in the Commission's door-to-door marketing regulations to protect against misleading behavior and to ensure that the customer understands who they are buying from and what it is they are buying, including clear information regarding the competitive offer's pricing and contract terms. These rules include agent training standards.<sup>4</sup> Agents are required to be trained in the following criteria: ethical sales practices, the supplier's products and services, the customer's right to cancel contracts, and customer confidentiality.

The Commission also has rules intended to prevent misrepresentation and customer confusion regarding the difference between a representative of the supplier and of the utility.<sup>5</sup> These rules mandate that sales agents prominently display identification. Further, the Commission's regulations mandate that all door-to-door sales are confirmed by a third-party that is separate from the sales agent. If the customer fails to confirm the sales transaction, the sale is to be cancelled. Suppliers are required to keep record of this verification process in case there is a subsequent dispute.

Many of the rules that apply to door-to-door sales also apply to telemarketing.<sup>6</sup> Telemarketing sales agents are required to identify themselves, the supplier they work for, and state that they are not working for a utility. Further, the agent may not say or suggest to a customer that they are required to choose a competitive energy supplier. All telemarketing sales transactions are to be verified by someone other than the agent and suppliers are required to adhere to the state and federal "Do Not Call" lists.<sup>7</sup>

In addition to the Chapter 111 supplier marketing rules, there are additional safeguards and protections in place to help ensure that consumers

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<sup>4</sup> 52 Pa. Code § 111.5.

<sup>5</sup> 52 Pa. Code §§ 111.8 and 111.9.

<sup>6</sup> 52 Pa. Code § 111.10.

<sup>7</sup> 52 Pa. Code § 111.10(a)(4).

understand and consent to a switch in supply service. When a customer enrolls with a supplier, they receive a written disclosure statement that outlines the terms and conditions, including the price, the type of product, the length of the contract, and any fees such as cancellation fees.<sup>8</sup> Importantly, the disclosure statement provides for a 3-business-day rescission period during which the customer can cancel the agreement without penalty.<sup>9</sup>

The Commission also requires a contract summary be provided in recognition that consumers may not always read a detailed disclosure statement but may be more likely to thoroughly review a one-page, easy-to-read summary that includes the most pertinent parts of the contract, such as the price and the contract length.<sup>10</sup> This requirement is one reform the Commission established in the wake of the Polar Vortex.

The Commission recognizes that these rules must be continually examined as the market evolves and new products and services become available. To that end, in December 2017, the Commission launched a rulemaking to again consider the electric supplier disclosure rules.<sup>11</sup> We asked parties to comment on the need to do more to explain variable pricing, explain introductory pricing, place restrictions on early termination fees, and to explain new product types arising in the market such as time-of-use products. Comments were received on these proposals in late May, and we soon expect to have comments from the Independent Regulatory Review Commission.

In addition to the protections provided by our marketing and disclosure regulations, we have incorporated further protections in our EGS switching regulations. One of our key Polar Vortex reforms in 2014 was accelerating the

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<sup>8</sup> For electric: 52 Pa. Code § 54.5. For natural gas: 52 Pa. Code § 62.75.

<sup>9</sup> For electric 52 Pa. Code § 54.5(d). For natural gas: 52 Pa. Code § 62.75(d).

<sup>10</sup> For electric 52 Pa. Code § 54.5(i). For natural gas: 52 Pa. Code § 62.75(i).

<sup>11</sup> *Notice of Proposed Rulemaking Order - Rulemaking regarding Electricity Generation Customer Choice*, 52 Pa. Code Chapter 54. Docket No. L-2017-2628991 (Public Meeting of December 7, 2017).

electric switching process so that it now takes as little as three days.<sup>12</sup> This has created a more dynamic, fluid market – where consumers can quickly enroll with or depart from a supplier within 72 hours.<sup>13</sup>

With regard to the natural gas marketplace, the Commission is currently reviewing its regulations regarding the switching process and considering the feasibility of a similar three-day-switching timeframe as currently exists in the electric marketplace.<sup>14</sup> The intent of this proceeding is to ensure an easy switching process and to help prevent customer confusion by gaining consistency between the electric and natural gas markets.

While we have robust rules and procedures in place to oversee marketing and sales, we also understand that compliance monitoring and enforcement are essential elements to ensure the rules are effective. Any consumers that encounter inappropriate marketing or enrollment practices are urged to contact our Bureau of Consumer Services to communicate their concerns and potentially file a formal or informal complaint.<sup>15</sup> Consumers can also contact the Office of Attorney General’s Bureau of Consumer Protection, especially for concerns regarding telemarketing. Further, the Office of Consumer Advocate has a hotline consumers can call to convey concerns. The PUC collaborates with both the Office of Consumer Advocate and Attorney General, including a long-standing Memorandum of Understanding with the Attorney General on electric competition matters that may fall under the jurisdiction of both agencies.

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<sup>12</sup> *Final-Omitted Rulemaking Order Regarding Standards for Changing a Customer's EGS*, Docket No. L-2014-2409383. (Public Meeting of April 3, 2014).

<sup>13</sup> 52 Pa. Code § 57.174.

<sup>14</sup> *Rulemaking to Amend the Provisions of 52 Pa. Code, Chapter 59 Regulations Regarding Standards for Changing a Customer's Natural Gas Supplier*, Docket No. L-2016-2577413.

<sup>15</sup> Informal complaints can be filed by calling the Commission’s hotline at 800-692-7380. Complaints can also be filed electronically via the Commission’s website:

[http://www.puc.pa.gov/filing\\_resources/filing\\_complaints.aspx](http://www.puc.pa.gov/filing_resources/filing_complaints.aspx)

The Commission fosters other channels for the monitoring of supplier marketing activities as well. The Commission's Office of Competitive Market Oversight (OCMO) is in regular contact with electric and natural gas utilities to gather informal reporting on any supplier marketing concerns. That same Office also receives informal reports from local officials, legislators, consumers, natural gas and electric utilities, and other agencies. OCMO staff will then contact the suppliers in question to address any concerns and potentially refer matters to Commission enforcement staff if there is a serious compliance problem.

More formally, from time-to-time, the Commission alerts or reminds suppliers of the marketing rules and our expectations through the use of orders, secretarial letters, and other formal notices. A recent example is our December 2017 Secretarial Letter served on all suppliers providing guidance on a number of door-to-door, telemarketing, and direct mail matters.<sup>16</sup> This detailed letter was followed by a summons to all residential suppliers to a full-day meeting at the Commission in January 2018 where representatives of the PUC, Office of Consumer Advocate, and the Office of Attorney General discussed marketing rules and regulations.<sup>17</sup> The Commission believes these processes have been effective and plans to continue these monitoring and education efforts in the future to ensure that suppliers are aware of the rules and our expectations.

The Commission also maintains its efforts to educate the retail energy marketplace through our PaPowerSwitch.com (PAPowerSwitch) website. In 2010 the Commission started this website with the goal of educating consumers on the electric shopping process and providing them with the tools needed to shop in the convenience of their homes or businesses. PAPowerSwitch has been a successful venture, maintaining its status as a national model for electric shopping which other states and countries often look

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<sup>16</sup> See *Secretarial Letter Regarding Guidance on Chapter 111 Residential Supplier Marketing Regulations*. Docket No. L-2010-2208332 (Served December 8, 2017).

<sup>17</sup> See *Secretarial Letter Regarding the Residential Supplier Workshop on January 31, 2018*. (Served December 14, 2018).

to replicate. In 2015, a North American report on competitive markets cited PAPowerSwitch as a best practice.<sup>18</sup> Building on this success, in 2016 the Commission launched its new standalone website for the natural gas retail market, PaGasSwitch.com (PAGasSwitch). PAGasSwitch closely mirrors the design and construct of PAPowerSwitch, further enhancing the ability of online natural gas shopping customers to access and evaluate offers online. In 2017 the Governor's Office of Transformation, Innovation, Management and Efficiency recognized PAPowerSwitch and PAGasSwitch for using technology to promote increased citizen engagement.

Whether on PAPowerSwitch or PAGasSwitch, competitive offers and pricing information are posted and maintained by the suppliers. A supplier interested in posting offers contacts the Commission's Office of Communications, who verifies that the entity is licensed with the PUC, and then creates an account for the supplier. After signing into its account, a supplier can update its pricing and information on all its offers at any time. Therefore, consumers can see changes to supplier offers in real time. Additionally, this allows suppliers to maintain and update offer information, contact information, and links to sign up without requiring significant Commission resources.

The Commission incurs regular and ongoing costs of \$75,000 per year to administer both websites. These costs include website maintenance, weekly email rate alerts to over 36,000 subscribers, website hosting, website analytic reports, consumer education, and other resources expended by the Commission to support our administration of the website. These expenditures are funded via fees recovered from EGSs and NGSs.

In conclusion, the Commission submits that the retail marketplaces for both electricity and natural gas are working effectively. While both have differing levels of participation, each has a foundation that prudently balances

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<sup>18</sup> The 2015 *Annual Baseline Assessment of Choice in Canada and the United States*.

the needs for protecting consumers with the opportunities for suppliers to attract customer interest. As both energy markets evolve, the Commission is committed to re-evaluating our regulations and policies to assure that consumers are properly protected and to assure that there are no undue burdens placed on suppliers that may block innovation. Further, we will maintain a targeted interest in considering modifications to market rules and policies that can help benefit and protect the energy consumers of this Commonwealth.

The Commission thanks this Committee for the opportunity to present testimony and is at your disposal should you have any questions.