

Prepared Testimony of  
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*before the*

Pennsylvania Senate  
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Good morning Chairman Corman, Chairman Hughes, and members of the Senate Appropriations Committee. Thank you for the opportunity to testify about the Pennsylvania Public Utility Commission's (PUC or Commission) budget request for fiscal year (FY) 2014-15. I am Robert Powelson, Chairman of the PUC. Joining me today are my fellow commissioners: Vice Chairman John Coleman, Commissioner James Cawley, Commissioner Pamela Witmer, and Commissioner Gladys Brown.

The PUC's budget request for FY 2014-2015 is **\$68.356 million**. This amount includes **\$64.571 million** in state funds and **\$3.785 million** in expected federal funds. The PUC's budget request of \$64.571 million in state funds represents a \$1.4 million, or 2.3 percent, increase over the current fiscal year. The PUC is pleased that its budget request is consistent with the budget submitted by the Office of the Governor and Budget Secretary's Office.

The PUC's budget request is driven by the following factors: instructions from the Governor's Office of the Budget to include prescribed salary increases for all employees, a large increase in employee benefit costs, and increases in cost of non-discretionary vendor goods and services. The budget increase also includes the recent creation of a new Electric Safety Division within the PUC.

Despite these increases, the portion of the PUC's budget request associated with operating costs has not gone up for this fiscal year. In addition, the PUC has mitigated the increase in personnel expenses by eliminating 17 positions, thereby reducing the PUC's complement from 520 to 503 employees. The PUC managed to accomplish these reductions all while taking on the additional workload associated with implementing Act 127 and Act 13, and

the creation of the Electric Safety Division. I am confident that the PUC's budget request for this year fully and accurately reflects the resources the agency needs to carry out its statutory responsibilities.

With respect to the state portion of the budget, the PUC is unique in the way it funds the day-to-day operations of the Commission. Unlike most other agencies, the PUC's state funding does not come from the General Fund. Rather, it comes from assessments on the utilities the PUC regulates, which they in turn collect from customers through rates. Currently, Section 510(a) of the Public Utility Code caps the PUC's budget at  $\frac{3}{10}$  of 1 percent of public utilities' total gross intrastate operating revenues. Historically this cap has been sufficient to fund the PUC. However, total gross operating revenues of public utilities declined from \$20.3 billion in 2011 to \$17.8 billion in 2012, resulting in a decrease in the PUC's budget cap from \$61 million for FY 2013-2014 to \$53 million for FY 2014-2015. The PUC is asking for \$64.571 million in state funds for FY 2014-15, which is more than the current budget cap allows. Given this, the PUC is requesting that the General Assembly amend the PUC's statutory budget cap to accommodate our \$64.571 million budget request for this fiscal year and in future years.

Although efforts by the PUC to reduce spending do not directly impact the Commonwealth's General Fund, the PUC never loses sight of the fact that the assessments that fund our agency ultimately come from tax-paying utility customers. The PUC is pleased to support the Governor in achieving the goals set forth in this year's state budget. Over the past three years Governor Corbett has worked to reform the Commonwealth by eliminating the deficit and jump starting our economy. The PUC strives to do its part by minimizing

assessments on utilities and, by extension, customers. In the upcoming fiscal year, the PUC will continue to reduce spending wherever possible.

To give you an idea of how the PUC allocates its budget, the next part of my testimony will provide an overview the primary issues facing the PUC. These include (1) the recent consumer complaints related to variable rates in Pennsylvania's restructured electricity market; (2) outages and reliability issues associated with the Polar Vortex and recent winter weather incidents; (3) ensuring consumer safety while making room for new and innovative services in Pennsylvania's transportation industry, such as those introduced by Uber and Lyft; (4) implementing Act 13, which has been the subject of recent litigation; (5) implementing Act 11 and the Distribution System Improvement Charge; (6) the creation of an Electric Safety Division within the PUC; (7) recent power plant closures in Pennsylvania; and (8) the CSX train derailment in Philadelphia. There are also several legislative items that are garnering the PUC's attention, including: (1) SB 1121 – the Electric Choice Proposal; (2) PA One Call Legislation; and (3) the reauthorization of Chapter 14, the Responsible Utility Customer Protection Act.

### **Electric Restructuring & Variable Rates**

In recent weeks, some Pennsylvania electric customers received very high electric bills in amounts two and three times, and even higher, than what they would normally be billed during this time of year. Based on the number of informal complaints received at the Commission, hundreds of customers, and maybe substantially more, have received such bills. The affected customers are participating in the competitive retail market and receiving electric supply service from an electric generation supplier (EGS) under a contract with a variable rate that is adjusted

monthly. Other affected customers received electric supply service under expired fixed rate contracts that provided for variable rates on a month-to-month basis until the customer chose another supplier or returned to default service from their electric distribution company (EDC).

These high bills appear to reflect wholesale energy market volatility resulting from the very cold weather that the region has endured over the last two months. The cold weather contributed to increased and, on some days, record breaking use of natural gas and electricity within the region. As consumer usage spiked on these days, so did wholesale market prices for gas and electricity. It appears that these wholesale price increases, in whole or in part, were passed on by EGSs to retail electric customers receiving service at a variable rate. This resulted in a doubling, tripling, or even larger increases of the per-kilowatt hour rate that these customers were charged for their electric usage.

The rate consumers pay in the retail electric market is governed by the terms of their contract with their supplier. The Commission's regulations require EGSs to provide customers with a written disclosure statement explaining the terms and conditions of service, including the price charged. For customers on a variable rate, the disclosure statement must disclose conditions of variability (i.e., it must state on what *basis* prices will vary) and any limits on price variability. It appears that some customer contracts had no ceiling on the variable rate that could be charged by the EGS. While a variable rate may offer substantial savings when wholesale market prices are low, customers may experience very high bills during periods of market volatility such as occurred with the recent cold weather. It is important for consumers on variable rates to carefully review the terms and conditions of their contracts to determine if they

are at risk for large rate increases at any given time. The Commission has made and will continue to make improvements to its website so that consumers have the best information when making a decision to shop for electricity and/or natural gas – specifically, when weighing the benefits of selecting a variable or fixed rate product.

After receiving these high bill complaints, the Commission immediately developed recommendations for action. A press release was issued January 31, 2014, advising consumers receiving electricity from an alternative supplier to carefully review the terms of their EGS contract. Additionally, the Commission directed its staff to initiate the following measures to help ensure that consumers are fully informed about variable rate products:

- Posting “consumer alerts” on both the PUC website ([www.puc.pa.gov](http://www.puc.pa.gov)) and [www.PAPowerSwitch.com](http://www.PAPowerSwitch.com) that customers with variable contracts may see their prices increase, and that such customers should check the terms of their contracts, evaluate competitive offers, contact their supplier and sign up for budget billing, a payment arrangement, or an assistance program.
- Re-issuing of our January 31 press release noting the messages available on the PUC and PowerSwitch websites;
- Development of a separate page on [www.PAPowerSwitch.com](http://www.PAPowerSwitch.com) devoted to information on fixed vs. variable products;
- Addition of a fixed vs. variable Q&A to our existing “Shopping for Electricity” fact sheet and enhancement of the Q&A under “Frequently Asked Questions” on

www.PAPowerSwitch.com to help ensure that consumers are better educated about variable rates.

Additionally, changes may be needed to the EGS disclosure statement requirements. Currently, the Commission's Office of Competitive Market Oversight (OCMO) is considering revisions to the disclosure statements to make them more user-friendly to consumers. OCMO has requested and is already receiving for review copies of these disclosure statements from EGSs offering these variable rates. The Commission will also continue its ongoing efforts to empower customers to more quickly change generation suppliers when they are charged unacceptably high rates. Presently, a variety of regulatory requirements, technical issues, and business practices can result in a switching process that lasts as long as forty days. Reducing the length of this process will serve to mitigate adverse financial impacts from variable rate volatility.

The Commission will continue to evaluate the additional actions that should be taken to ensure that consumers are receiving adequate and accurate information to make informed decisions when purchasing electric supply. In furtherance of this, the Commission opened a new proceeding and directed OCMO, as a first step, to issue information requests related to variable-priced products. OCMO will provide recommendations for Commission review based on the comments received and any other information obtained during this proceeding. I am confident that the combination of these measures will ensure that consumers participating in Pennsylvania's competitive retail electricity market will be protected.

## **February Ice Storm**

I will begin with a recent event that impacted me personally, as well as countless other Pennsylvanians in the southern part of the state, and that is last week's ice storm that caused widespread power outages. In the early morning on February 5, 2014, Pennsylvania began to experience significant outages in the greater Philadelphia suburbs, as well as in Lancaster and York Counties, due to icing on top of already snow-laden trees. By 7:00 a.m., there were over 400,000 customers without power in those areas. Outages peaked midday on February 5th at around 800,000 customers without power. PECO was the main utility affected in Pennsylvania. For PECO, this storm is on par with the outages experienced during Hurricane Sandy. PECO brought in thousands of additional line workers from states as far away as Alabama and Illinois to help with the restoration efforts. In fact, PECO had approximately one third more full time employees working on this restoration effort than they had in the Hurricane Sandy restoration effort.

During emergencies such as these, a PUC team mobilizes at the State Emergency Operations Center (SEOC) in Harrisburg. PUC staff provides assistance to utilities responding to that emergency, and coordinates with other state agencies to ensure that all available resources are being used. Its primary goal is to quickly and effectively meet the needs of those responding to an emergency. The team also makes sure a clear line of communication is available from the utilities to the county emergency management agencies, PUC, the Pennsylvania Emergency Management Agency (PEMA), the Governor and Lieutenant Governor and their staff, as well as other Commonwealth agencies and commissions. The PUC also hosted nightly operation calls with all of the impacted utilities across the Commonwealth.

Efforts such as these that focus on improving communication during severe weather incidents are quickly becoming national best practices.

In addition, after every major storm event, the PUC reviews the performance of affected utilities. Through these evaluations, the PUC and the Commonwealth's utilities have learned many valuable lessons that will improve our response to future widespread outages. For example from our experiences with Hurricane Sandy, Hurricane Irene, and Tropical Storm Lee, the PUC has encouraged utilities to improve communications during storm outages by using social media, ensuring call centers are appropriately staffed to handle high-call volumes, and providing more accurate restoration times. In addition during last week's storm, the affected electric utilities held daily conference calls with local, county, and state elected officials and electric utilities provided liaisons to the affected county 911 or EMA facilities. These were some of the best practices identified in our storm performance reviews from Hurricane Sandy, Hurricane Irene, and Tropical Storm Lee.

In recent years, the PUC has been continually monitoring utilities' efforts to improve their storm response. Each major storm that hits Pennsylvania provides an opportunity for the PUC and utilities to learn from past mistakes and further improve our storm response. The PUC will use last week's ice storm as yet another opportunity to learn and improve the service and response for the next large-scale outage. The process of building on what worked, and changing what did not work, is well underway at both the PUC and the utilities. I am confident that any changes coming out of this event will only improve the response to major storms in Pennsylvania in the future.

## **Polar Vortex**

In addition to the February ice storm, Pennsylvania experienced record cold temperatures and wind chills due to a Polar Vortex on January 6-7, 2014. The extreme cold caused record high demand on the regional electric grid and area natural gas distribution systems. PJM Interconnection, L.L.C. (PJM), the regional grid operator, reported that the winter peak load record was broken twice on January 7, 2014, with the morning and evening peaks both reaching over 137,000 megawatts (1 megawatt can power approximately 1,000 homes).

As with all major events impacting the Commonwealth's energy supply, the PUC was in constant communication with the electric and natural gas utilities, as well as the Pennsylvania Emergency Management Agency (PEMA). The Commission also issued a press release and used social media to urge consumers to do their part to conserve energy and ease the demand on the grid. Overall, the electric grid and natural gas heating supplies performed well through the high demand days. As a preventative measure, PUC staff has met with PJM to discuss these events and ensure that energy supply in Pennsylvania will remain reliable should record cold temperatures occur again.

## **Safety & Innovation in the Transportation Industry**

Recently several new companies have entered the for-hire car industry in Pennsylvania, such as Lyft, Uber, and its subsidiaries, UberX and Gegen. While the PUC supports the innovation and healthy competition that these businesses bring to the market, we are also very mindful that consumer safety is of primary importance and cannot be compromised. The PUC is

confident that it can work with these companies to find a way that they can safely operate in the Commonwealth.

Companies like Uber and Lyft are offering new and creative options for travelers in Pennsylvania. As an alternative to traditional taxicab service, consumers can now quickly and conveniently arrange for transportation using a smartphone app. Many of these companies even allow riders to track the location of their dispatched drivers using GPS, pay directly on their phones, and rate the drivers.

While Gegen has been certificated by the PUC as both a limousine operator and a broker, none of the other companies mentioned above have received certificates to operate in Pennsylvania. Obtaining such a certification from the PUC is important because it ensures that drivers have the appropriate insurance coverage and the necessary background checks, which are critical consumer protections. Whether these transportation companies are operating appropriately is an undoubtedly an issue of concern for the PUC and must be addressed.

As such, the PUC has been extremely engaged in monitoring this issue. On February 24, 2014, I met with the Mayor of Pittsburgh, William Peduto, to discuss UberX and Lyft operations in the city. On the same day, PUC staff met with Lyft and we are in the process of scheduling a meeting with UberX.

In meeting with these companies, the PUC's main goal is to ensure these companies are certificated so that PUC can ensure the safety of the traveling public. Conceptually, the PUC is supportive of innovative business plans to address public transportation needs. However, any

transportation business model operating in Pennsylvania absolutely needs to include using PUC-certified drivers, maintaining adequate insurance, and ensuring that the vehicles have passed safety inspections. This is a public safety issue, and PUC feels strongly that we cannot compromise on that aspect. With these goals in mind, the PUC is working with the companies to attempt to reach a mutually-beneficial resolution to this issue.

### **Act 13 - Impact Fee**

Another key issue facing the PUC is the continued implementation of Act 13, which has been the subject of recent litigation. In 2012, the legislature enacted Act 13, which permitted local governments to pass ordinances imposing an Impact Fee on unconventional natural gas wells drilled within their borders. Pursuant to Act 13, the PUC is responsible for collecting and distributing the Impact Fee revenue.

In 2013, the PUC collected more than \$202 million from the drillers of the unconventional wells that were subject to the Impact Fee. The PUC distributed the revenue as directed by Act 13 to state agencies, county governments, local municipalities and the Marcellus Legacy Fund well in advance of the July 1, 2013, deadline. Of the \$202 million collected, approximately \$103 million went directly to the county and local governments that have unconventional wells within their borders, while another \$28 million went to state agencies impacted by drilling. The PUC distributed the remaining \$72 million to the Marcellus Legacy Fund to address impacts throughout the state at the local government level, including infrastructure improvements, greenway and recreation preservation, and water and sewer projects.

The next Impact Fee payment is due to the PUC on April 1, 2014. The PUC will distribute the revenue to local governments by July 1, 2014. The PUC takes very seriously its duty to implement Act 13 and is confident that the upcoming collections and disbursements of Impact Fee revenue will go as smoothly as the last.

In addition to the financial responsibilities Act 13 confers upon the PUC, the law also authorizes the PUC to evaluate local ordinances that impose conditions, requirements, or limitations on oil and gas operations. This portion of Act 13 was challenged in the Pennsylvania State Supreme Court. On December 19, 2013, the Supreme Court issued a decision finding that section 3303 (which addresses the preemption of local ordinances related to oil and gas operations) and section 3304 (which addresses the uniformity of local ordinances) are unconstitutional. On January 2, 2014, the Commonwealth filed an Application for Reconsideration asking the Supreme Court to reconsider its judgment and remand the entire matter to the Commonwealth Court for further proceedings and the development of factual findings.

Aside from the Application for Reconsideration, the Supreme Court has also directed the Commonwealth Court to determine whether the remaining provisions of Act 13 are severable from the unconstitutional portions of the Act. The PUC continues to carry out its responsibilities under the unchallenged portions of Act 13 while these other issues are resolved.

## **Act 11- Aging Infrastructure and DSIC**

Under Act 11 of 2012, jurisdictional water and wastewater, natural gas, and electric utilities are able to petition the PUC for approval to implement a Distribution System Improvement Charge (DSIC) to fund infrastructure upgrades. This is a critical piece of legislation because much of the utility infrastructure in Pennsylvania is over 70 years old and in need of replacement. By giving utilities the flexibility to perform much needed infrastructure upgrades without the lengthy process of first filing a rate case, the DSIC mechanism encourages utilities to replace their aging infrastructure at an accelerated rate. The DSIC also ensures the least possible rate impact on customers by spreading out over time the cost of replacing and enhancing Pennsylvania's utility infrastructure.

Starting on January 1, 2013, public utilities were able to petition the PUC for approval to establish a DSIC. To date, nineteen utilities have filed petitions to implement a DSIC. Many of these petitions have been approved and gone into effect, while certain others are still under review. After having implemented Act 11 for almost a year now, PUC remains confident that providing utilities with the option to use a DSIC will help solve the aging utility infrastructure problem in the Commonwealth.

### **Electric Safety**

The PUC is in the process of creating a new Electric Safety Division within the agency. Each year in Pennsylvania, there is an average of 26 serious injuries or fatalities related to electric utility operations. Yet, prior to August 2013, the PUC did not have a staff dedicated enforcing the National Electric Safety Code, performing field audits, or field investigations

when reportable incidents occur. The PUC thus determined it was necessary to form an Electric Safety Division to address these issues.

In August 2013, the PUC established an Electric Safety Division within the Bureau of Investigation & Enforcement, which is in the process of becoming operational in the first quarter of 2014. With respect to staffing this new division, the PUC is not seeking any complement additions, but will reallocate the current complement to handle these new duties. The PUC is confident that the creation of the Electric Safety Division will provide substantial benefits to the state and help ensure that the Commonwealth's electric utilities are operating not only reliably, but safely as well.

### **FirstEnergy Plant Closures**

On July 9, 2013, FirstEnergy announced it would be deactivating two coal-fired electric generation plants in western Pennsylvania – the Hatfield's Ferry and Mitchell plants. On October 9, 2013, FirstEnergy proceeded with the deactivations. The PUC took a proactive role in examining the effects of the plant retirements on Pennsylvania and the potential effect on the overall reliability of the grid.

The PUC's interest in this matter was by no means an attempt to exercise any regulatory authority over FirstEnergy with respect to these plant closures. The PUC strongly supports the restructured electricity market in Pennsylvania and understands it is not the Commission's place to make managerial decisions for wholesale electric generation suppliers in our state. However, in a situation like this, where FirstEnergy's plant closures will potentially affect overall grid

reliability, PUC saw it as its responsibility to ask some hard questions such as converting the operations to natural gas or selling the facilities to other interested parties who would be willing to make the necessary environmental upgrades. The grid operator, PJM, has assured the PUC that there will be no reliability impacts as a result of these closures.

During this time, the PUC sent a letter to Gina McCarthy, the Administrator of the U.S. Environmental Protection Agency (EPA), requesting a meeting to discuss the FirstEnergy plants shutting down and the role that recent EPA regulations had in these closures. To date, the Administrator has not responded to the PUC's requests to meet. My colleagues and I are very disturbed by the lack of outreach from the EPA to address a major set of plant closures in the Commonwealth. However, the PUC continues to be extremely engaged with the issue of any future and past power plant closures in the Commonwealth.

### **CSX Train Derailment**

On January 20, 2014, train cars carrying crude oil and sand derailed on a Philadelphia bridge, leaving the cars intact but leaning over the Schuylkill River. The 101-car train was traveling from Chicago to Philadelphia when seven of the cars derailed. Six of those cars were carrying crude oil and one was carrying sand.

The PUC is concerned about this incident because it is the latest in a series of crashes or derailments of trains carrying crude oil in the United States and Canada that has raised safety concerns. In our regulatory role, the PUC works together with the Federal Railroad Administration (FRA) to ensure safe train movements throughout the state. With respect to the

derailment in Philadelphia, the FRA has opted to retain jurisdiction over this incident. While the FRA took the lead on the investigation, the PUC has been in communication with the FRA and has offered to provide assistance as needed. The FRA has not taken us up on our offer of assistance at this time.

The PUC is keenly aware of the importance of ensuring the trains and tracks carrying crude oil shipments throughout the state are safe and in good condition. The PUC has FRA-certified inspectors that work tirelessly to enable the safe, reliable, and efficient movement of people and goods throughout the state. PUC Inspectors have made every effort to ensure that any and all rail shipments through the Commonwealth are safe, and in particular, to focus on the safety of the crude oil unit trains traveling through the state.

### **Electric Competition and SB 1121**

Since the passage of the Electricity Generation Customer Choice and Competition Act in 1996 (Competition Act), the legislative policy in the Commonwealth has called for a competitive electric generation market to replace the regulated electric generation market. Today, three years after the last of the rate caps expired, electric competition is well underway in Pennsylvania. As of this month, over 2.2 million Pennsylvania business and residential customers have switched to a competitive electric generation supplier, which represents over 70 percent of the Commonwealth's total customer load.

Despite this progress, the PUC continues to strive for a more robust competitive electricity market. This was the motivation behind the Retail Market Investigation (RMI),

which the PUC initiated on April 29, 2011. In launching this investigation, the PUC recognized the need to assess the current status of the retail market and explore changes necessary to allow customers to more fully realize the benefits of competition.

On February 14, 2013, the Commission issued a final order outlining steps to improve our competitive retail electricity market in the Commonwealth. The changes proposed in the order were designed to provide default service prices that more closely track market conditions, which will help to create a sustainable market where customers have access to competitive prices and innovative product offerings.

In addition to the PUC's efforts to improve the competitive electricity market, Senator Mensch has introduced SB 1121, which provides for additional reforms to the market. Specifically, SB 1121, as currently drafted, allows for the competitive assignment (by auction) of non-shopping customers to selected Electric Generation Suppliers (EGS) beginning on June 1, 2015. Under this bill, the Next Generation Default Service (NGDS) would be available for customers whose supplier has defaulted. In this instance, customers would only be on default service for a 60 day period before being moved to an EGS.

Under SB 1121, the PUC would have implementation authority of the law and responsibility for consumer education. The PUC has no position with respect to SB 1121, though PUC staff has, and will continue to, work closely with the legislature to provide input and suggestions to ensure the PUC can effectively implement the law should it be enacted.

## **Chapter 14 Reauthorization**

Chapter 14 of the Public Utility Code (66 Pa. C.S. § 1401 *et seq.*), the Responsible Utility Customer Protection Act, went into effect on December 14, 2004. Chapter 14 was designed to reduce utility uncollectible expenses by eliminating opportunities for customers capable of paying their utility bills to avoid the timely payment of those bills, while also ensuring that utility service remains available to all consumers on reasonable terms and conditions.

Chapter 14 is scheduled to sunset on December 31, 2014. The PUC supports reauthorizing Chapter 14 and has created an internal working group that provided recommendations to the legislature for revisions or clarifications to Chapter 14 during the reauthorization process. On June 27, 2013, the Pennsylvania House of Representatives passed HB 1047, which repeals the sunset provision of Chapter 14. Many of the recommendations from the PUC's internal working group are contained in HB 939, which passed the House on June 28, 2013. The Senate is considering these bills and the PUC continues to participate in those discussions.

### **PA One Call**

The Pennsylvania One Call System (“Dial 8-1-1 Before you Dig”) was created to protect underground utility lines from anyone who is planning to disturb the earth. Currently, enforcement authority over the One Call System resides with the Department of Labor & Industry (L&I). Both the PUC and L&I support the transfer of authority over the One Call System to the PUC. This change is appropriate because the functions of the One Call System are more closely aligned with the statutory duties of the PUC and the PUC has greater experience with utility safety matters than L&I.

Representative Matt Baker introduced HB 1607, which amends certain portions of the Underground Utility Line Protection Law, and Senator Robert Tomlinson introduced SB 1084, which transfers authority over One Call to the PUC. The PUC supports these efforts and created a task group to work with the legislature and provide input and recommendations on the proposed legislation.

## **Conclusion**

In each of the five industries we regulate, the PUC has a wide variety of responsibilities to carry out during the next fiscal year. While the issues we face are significant, I am confident that the PUC is well-positioned to take on these challenges. Thank you for your consideration of our budget request. My colleagues and I are happy to answer any questions you have.