

**BEFORE THE  
PENNSYLVANIA HOUSE OF REPRESENTATIVES  
INSURANCE COMMITTEE**

**Testimony of  
SONNY POPOWSKY  
CONSUMER ADVOCATE OF PENNSYLVANIA**

**Regarding  
H.B. 1121  
Insurance Consumer Advocate**

**Harrisburg, PA  
August 30, 2007**

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## **Members of the House Insurance Committee**

My name is Sonny Popowsky. I have served as the Consumer Advocate of Pennsylvania since 1990, and I have worked at the Office of Consumer Advocate since 1979.

While I have testified on numerous occasions before Committees of the General Assembly, this is the first time that I have had the honor of testifying before the Insurance Committee. There is, of course, a reason for that. The statutory authority of my Office reaches only to the activities of Pennsylvania's public utilities – that is, the electric, natural gas, telecommunications, water, and wastewater companies that provide Pennsylvania consumers with those essential utility services. My job, and the job of my Office, is to represent Pennsylvania consumers before the Pennsylvania Public Utility Commission and other state and federal regulatory agencies and courts that regulate or affect the activities of Pennsylvania utilities.

So let me state at the outset that I intend to take no position, either formally or informally, on the merits of House Bill 1121, which would create an Office of Consumer Advocate for Insurance. I simply lack the expertise and knowledge of the insurance industry that would allow me to contribute to this substantive debate in a meaningful way.

Nevertheless, I am pleased to accept the invitation of this Committee to discuss the operations and activities of my Office with respect to public utility matters. I hope that this discussion will assist you in your deliberations on the Bill that is before you.

While I was not an original member of the Office of Consumer Advocate when it was created in 1976, I have worked at the Office for nearly 28 years, and I have also long served in a leadership role, including two years as President, of the National Association of State Utility Consumer Advocates (NASUCA). The Pennsylvania Office of Consumer Advocate (OCA) and

other offices like mine were established in more than forty states and the District of Columbia in response to the perceived need of utility consumers for formal representation in cases involving the complex and often arcane rules that govern the rates and service provided by public utilities.

Prior to the creation of our state consumer advocate offices, there were no independent state-funded organizations to represent consumers in matters before state public utility commissions. Obviously, there was well-funded independent representation for the utilities and their shareholders. The utilities could hire top-flight experts and lawyers to make their case before the state commissions as to why they required substantial rate increases or some other regulatory approval. The state public utility commissions served as the “judges” in those cases, but there was no independent state-funded representative for consumers who could bring the full range of technical and legal arguments to bear on behalf of those individuals who ultimately had to pay the bills.

Utility ratemaking requires a balancing of the interest of utilities in earning fair returns for their stockholders and the interest of consumers in paying reasonable rates and receiving safe and adequate service. The state public utility commissions must balance those interests based on evidence of record and the litigation of complex and lengthy rate cases. As utility rate issues became more prominent in the 1970’s and 1980’s, states across the Nation recognized that there was a lack of representation for consumers in these important matters, and offices like mine were created. Some of these offices are part of the states’ Offices of Attorney General; others are part of the Governors’ offices; while others are wholly independent state offices.

In addition to litigating cases before our state public utility commissions, state consumer advocate offices have the right to appeal PUC decisions. This is important because the utilities are free not only to advocate before the state commissions, but they have a right to appeal PUC

decisions that they believe are incorrect and are adverse to the interests of their stockholders. Through the creation of independent state consumer advocates, utility consumers now have that same ability. My Office has taken dozens of appeals of PUC decisions on behalf of Pennsylvania consumers, including one case that I had the honor of arguing before the United States Supreme Court. In that landmark 1989 decision, the Supreme Court adopted the position of my Office that Pennsylvania electric utilities had no constitutional right to charge their customers for the costs of cancelled nuclear power plants.

From a more practical perspective, utility consumer advocate offices like mine were established because, while utility bills take up a major part of many households' monthly income, those individual residential consumers cannot possibly invest the time and resources necessary to oppose utility rate increases in an effective manner. By establishing state-level, expert offices to defend those many individual customers against rate increases – and by allowing our offices to represent utility consumers in other matters related to their rates and service, the interests of utility consumers can be defended and advanced in a cost-effective and professional manner.

Like the Pennsylvania PUC, my Office is funded from an assessment that is paid by all the utilities that fall within the PUC's jurisdiction. We are not funded from the General Fund and our OCA budget is fully independent from all other state agencies, including the Office of Attorney General. Our budget is limited by statute to no more than five one hundredths of one percent of statewide utility revenues and we have never come close to reaching that statutory limit.

Our Office is administratively located within the Office of Attorney General, and the Consumer Advocate is nominated by the Attorney General. The Consumer Advocate's

nomination must be approved by the Senate, however, and the Office of Consumer Advocate is independent of the Attorney General for purposes of taking positions on behalf of utility consumers. In other words, when it comes to determining what cases to enter and what positions to take on behalf of utility consumers, the buck stops with me.

The role of our Office has certainly evolved since I began to work at the OCA in 1979. At that time, nearly all of our resources were devoted to defending against an onslaught of utility base rate increases at a time of high inflation, high interest rates, and rising energy costs. Also at that time, nearly all of our utilities were a part of vertically integrated monopolies. Today, some portions of our utility industry have been fully deregulated (in the case of some telecommunications services) or at least opened up to competitive alternatives (in the case of natural gas commodity and electric generation service). The role of our Office in this partially regulated and partially unregulated world is more complex, but I believe it is just as important as it ever was.

First of all, the “distribution” functions of our electric, natural gas, and water utilities – the wires and pipes that run into our homes and businesses -- are still monopoly services which continue to be fully regulated by the PUC on a cost basis. In addition, while the natural gas commodity and electric generation portions of our energy utility services are now theoretically open to competition, the fact is that the vast majority of residential customers continue to receive even this “competitive” service from their incumbent natural gas and electric distribution utilities. The manner in which the rates for those services are established continue to be subject to varying levels of PUC review.

Another change that has occurred in the role of my Office is that a much larger portion of our resources are devoted to representing Pennsylvania utility consumers at the regional and

national level. We participate in numerous electric and natural gas proceedings involving Pennsylvania utilities before the Federal Energy Regulatory Commission and, as part of our national association, we participate in telecommunications filings before the Federal Communications Commission. We are also actively involved in representing Pennsylvania consumers at the PJM Interconnection, the organization that operates our regional electric grid and wholesale electricity markets. I have also testified before the United State Congress on numerous occasions with respect to federal utility issues that were of importance to Pennsylvania and all U.S. utility consumers.

Finally, we work with the bureaus and staff of the Pennsylvania PUC in helping to resolve consumer complaints and in educating consumers about their utility service. We have a toll-free consumer service number (800-684-6560) that is staffed from 8 a.m. to 6 p.m. every weekday, and a Website ([www.oca.state.pa.us](http://www.oca.state.pa.us)) in which we provide information about our office and about matters of interest and concern to utility consumers. Members of the OCA staff participate in legislative and consumer forums across the state. In this last respect, I have had the pleasure of participating in several joint presentations on utility and insurance consumer issues with Cindy Fillman, who serves as the Insurance Consumer Liaison.

I hope this brief introduction to the activities of the Pennsylvania Office of Consumer Advocate has been helpful. I would be happy to answer any questions you may have at this time.

95174