

**BEFORE THE PENNSYLVANIA  
SENATE CONSUMER PROTECTION AND  
PROFESSIONAL LICENSURE COMMITTEE**

**Testimony of  
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**Regarding  
Senate Bill 1134**

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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. Thank you for the opportunity to testify before this Committee on Senate Bill 1134.

Senate Bill 1134 contains a number of important provisions, but I would like to focus my comments on Section 2 of this Bill, which addresses an issue that has been my primary concern for several years. That issue is: how should our electric utilities procure generation for the vast majority of electric consumers –particularly residential consumers -- who will continue to be served by those utilities when generation rate caps expire at the end of this decade. Specifically, I would respectfully urge the Committee to amend this Section to require our electric distribution companies to acquire a portfolio of generation resources that is designed to produce reliable service for customers at the lowest reasonable cost over time. The portfolio of resources acquired by the utility should include an appropriate mix of long-term, short-term, and spot market purchases, but the clearly identified goal of the utility must be to provide reliable generation service to customers at the lowest reasonable price over time, not simply to purchase generation at “prevailing market prices” through short-term auctions or requests for proposals.

The concept of a “least cost procurement” policy is not foreign to the Pennsylvania Public Utility Code. This standard has been applied to the purchasing practices of our natural gas utilities both before and after the retail natural gas market was opened to competition by the General Assembly in 1999. In addition, as I testified previously to this Committee, as rate caps have come off in surrounding states, often with disastrous results, one state after another has recognized that it is no longer appropriate to rely solely on short-term auctions to meet the long-term needs of their consumers and their state economies. In

Pennsylvania, we have an opportunity to act before the rate caps expire for most of our utility customers, to begin to implement policies that could help protect our consumers.

In Delaware, for example, only after its electricity customers were hit with a 59% rate increase, did the Delaware legislature pass the “Electric Utility Retail Customer Supply Act of 2006,” which requires the state’s major electric utility to submit a long-term plan “for the purpose of evaluating and diversifying their electric supply options, efficiently and at the lowest cost to their customers.” In order to meet this “lowest cost” standard, Delaware utilities are now authorized to “enter into short-and long-term contracts for the procurement of power... own and operate facilities for the generation of electric power... build generation and transmission facilities ... and make investments in Demand-Side Resources.”

In Maryland, after customers of Baltimore Gas & Electric Company were informed of a 72% rate increase, the Maryland legislature passed emergency legislation in June 2006 that changed the standard for its utilities’ obligation to provide standard offer service from a “market price” standard to a “best price” standard “to protect these customers from excessive price increases.” Maryland utilities may now be required by the Commission to supply service through “a portfolio of blended wholesale supply contracts of short, medium, or long terms and other appropriate electricity products and strategies, as needed to meet demand in a cost-effective manner.”

Also in June 2006, the Rhode Island legislature enacted “The Comprehensive Energy Conservation, Efficiency and Affordability Act of 2006,” which declared that “it is a necessary move beyond basic utility restructuring in order to secure for Rhode Island, to the maximum extent reasonably feasible, the benefits of reasonable and stable rates, least-cost procurement, and system reliability that includes energy resource diversification, distributed

generation, and load management.” In order to meet those goals, the Rhode Island legislation required each utility to submit an annual supply plan that “shall be consistent with the purposes of least-cost procurement.”

In Maine, the state restructuring law was amended in 2006 to authorize the establishment of “various contract lengths and terms” for the purpose of “providing over a reasonable time period the lowest price for standard-offer service.” The 2006 law specifically authorized the Maine Commission to direct investor-owned utilities to “enter into long-term contracts” for capacity resources, and further required the Commission to adopt “a long-term plan for electric resource adequacy for this State to ensure grid reliability and the provision or availability of electricity to consumers at the lowest cost.”

Finally, just a few months ago, the State of Illinois approved legislation that abolished the wholesale market price auctions that had resulted in massive rate increases when rate caps expired in that state. Instead, the legislation creates an Illinois Power Agency whose job will be to “develop electricity procurement plans to ensure adequate, reliable, efficient, and environmentally sustainable electric service at the lowest total cost over time, taking into account any benefits of price stability.” In addition, utilities in Illinois agreed to provide refunds and credits to customers amounting to \$1 billion to offset a portion of the rate increases that occurred when the utilities implemented the auction-based generation price increases. The utilities’ generation affiliates also entered into financial agreements with the utility distribution companies to guarantee reasonable prices for up to 3,000 megawatts of baseload generation for the next five years.

Nor am I alone in Pennsylvania in calling for a more balanced portfolio approach to acquiring generation to serve those customers who do not or cannot shop for alternative

suppliers. As I reviewed the proposed “mark-ups” of Senate Bill 1134 that were supplied to your Staff and then to the witnesses at this hearing, I believe that my remarks are consistent with the recommendations submitted by a diverse group of commenters including the Industrial Energy Consumers of Pennsylvania (IECPA), Public Utility Commissioner Tyrone Christy, and the Rendell Administration. The Administration’s proposed amendment, for example, calls for “a commission-approved competitive procurement plan that is designed to produce the lowest reasonable rates on a long-term basis and includes a mix of long-term, short-term and spot-market purchases.” Similarly, the IECPA proposal calls for a “portfolio of competitively procured resources” that is “designed to ensure reliable service at the lowest reasonable prices to customers on a long-term basis.” Commissioner Christy states that Electric Distribution Companies should be “obligated to develop their procurement plans, and select from among competing sources of supply, based on the requirement that plans and selection of supply must produce, over the long-term, the lowest reasonable costs to customers consistent with system reliability and sound system planning.”

Finally on this point, I would note that language calling for a lowest cost portfolio approach to default service procurement was included in both Senate Bill 716 that was sponsored earlier this year by Senator Musto, and in House Bill 897 that was introduced earlier this year by Representative Ross.

Indeed, I think it is just common sense to require our utilities to follow a least cost approach to procurement of generation supplies for the great majority of customers – especially residential customers – who will likely remain customers of those utilities even after the rate caps expire. I also think it is common sense to require the use of a diverse portfolio of resources, including long-term, short-term and spot resources, rather than rely solely on short-term

auctions, which have led to such extreme rate increases in Maryland, Delaware, Illinois, and Pike County.

It is important to include long-term contracts in this mix, I believe, in order to encourage the development of new resources in Pennsylvania and in our region. If we want new competitive entrants in the PJM generation market, then we cannot expect them to develop long-lived generation assets based solely on the availability of short-term contracts. To the extent that new generators can receive the benefit of a long-term contract for the sale of their product, they may be able to offer more reasonable long run prices than if they have to rely solely on short-term market results.

At the same time, it is also important to include spot market purchases in the portfolio of resources that are used by our utilities to serve customers. Many of the auctions and requests for proposals that have been used in Pennsylvania and surrounding states are so-called “full requirements” or “load following” contracts. These types of contracts place the risk of market price changes and retail customer switching on the wholesale suppliers. The problem with this approach is that the suppliers, in turn, include a “risk premium” in their prices to reflect that additional risk. In my view, it would be preferable if the wholesale buyer in these contracts, that is the electric utility, were to absorb this risk by buying and selling a small amount of energy in the spot market and then recovering those costs from retail customers. While customers end up paying the costs in either case, I believe the risks and costs are less if they are managed by the utility as part of their resource portfolio, rather than placing all of that risk on the wholesale suppliers.

The time has come, in my opinion, for the General Assembly to re-examine certain provisions of the 1996 Act in light of current realities. The General Assembly can wait

until the rate caps for all our major utilities come off – as occurred in states like Maryland and Delaware and Illinois, where the respective state legislatures have had to react in crisis situations to public demands for legislative solutions after the fact. Or alternatively, the General Assembly can take another look at the 1996 Act as part of a comprehensive examination of the Commonwealth’s energy policies at this time. Obviously, I believe it is better to act **before** the rate caps expire, rather than **after**. It is also better to consider this issue as part of a comprehensive examination of the Commonwealth’s energy policy.

I would like to turn briefly to the other portions of SB 1134, which address rate phase-ins and energy efficiency and demand response programs.

I have no objection to the use of phase-ins, as long as they are done on a voluntary “opt-in” basis, where the customer affirmatively chooses to pay an amount that is either higher or lower than the regular bill and then pays back or is repaid the difference with appropriate interest. Customers should not be “defaulted” into a phase-in plan, however, without their affirmative consent, particularly where the utility is seeking pre-payment of a rate increase in advance of the date on which the rate increase would otherwise be due. That is, customers should not give up the benefit of their current rate caps sooner than necessary, unless they affirmatively choose to pay the increase gradually rather than face a potential major rate spike in a single year. It must be recognized, however, that a phase-in does not change the actual total amount that the customers ultimately must pay. A phase-in therefore must not be viewed as a substitute for a requirement that our utilities secure the lowest cost generation for their customers over time through the use of a portfolio approach such as the one I described above.

Last, but certainly not least, I would like to talk about energy efficiency and demand response, which is addressed in Section 1 of SB 1134. I fully support the proposal in the

Bill to establish specific goals for cost effective reductions in both energy use and peak demand. There is no question that we in Pennsylvania have not adequately explored many demand side resources that can reduce not only generation costs, but also transmission and distribution costs, in a cost-effective manner. There are a number of technical issues that remain, including the base from which savings are measured and the appropriate penalties or incentives needed to ensure that all cost-effective demand side programs are actually implemented. There is also a more fundamental question as to whether these programs are best implemented by the utility itself or by a third party that is hired by either the utility or the Public Utility Commission. In any case, I look forward to working with this Committee and the members of the General Assembly in addressing this critical component of Pennsylvania's energy future.

Thank you again for permitting me to testify at today's hearing. I would be happy to answer any questions you may have at this time.

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