BEFORE THE PENNSYLVANIA
HOUSE CONSUMER AFFAIRS COMMITTEE

Testimony of

SONNY POPOWSKY
CONSUMER ADVOCATE

Regarding

Act 129 of 2008 -- Implementation

Harrisburg, PA
June 4, 2009

Office of Consumer Advocate
555 Walnut Street
Forum Place, 5th Floor
Harrisburg, PA 17101-1923
(717) 783-5048 - Office
(717) 783-7152 - Fax
Email: spopowsky@paoca.org
112344.doc
Chairman Preston, Chairman Godshall
and Members of the House Consumer Affairs 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. I am pleased to appear before this Committee regarding the implementation of Act 129 of 2008.

The General Assembly took important steps in Act 129 that I believe will assist Pennsylvania electric consumers in meeting their future electricity needs. Act 129 addresses two important components of Pennsylvania’s electric industry structure. First, the new law establishes energy efficiency and demand response requirements for each of our major electric utilities. Second, Act 129 requires our utilities to secure generation for their non-shopping customers “at the least cost to customers over time.”

As the members of this Committee are well aware, in 1996, Pennsylvania became one of the first states in the Nation to open the generation portion of its electric utilities to competition. This landmark legislative change reflected a policy that competition, rather than regulation, would provide lower prices and improve service for that portion of the electric industry -- electric generation -- that was not believed to be a natural monopoly and where competition could therefore take root. At the time of restructuring in 1996, it was hoped that wholesale competition among generation owners would reduce the cost and price of generation, and that retail competition among suppliers would provide lower prices and a broader array of products to consumers. Just in case competition did not develop quickly and just in case prices did not go down, however, the restructuring law passed in 1996 contained a series of generation rate caps that originally were set to expire in 2005 but were later extended through settlements with most of our major utilities until the end of 2009 or 2010.
In fact, today, the vast majority of Pennsylvania residential electricity consumers continue to receive all of their retail electric service, both distribution and generation, from their local electric utility. Even after rate caps expire for all Pennsylvania utilities over the next two years, it is my belief that most residential customers will continue to obtain their generation service from their regulated local distribution company. I say this based in part on the experience in our neighboring states where rate caps expired several years ago, yet retail competition for residential customers remains extremely limited. In Maryland, for example, where residential customers suffered rate increases of as high as 72% after rate caps expired in 2006, only 2.8% of residential customers were being served by alternative generation suppliers as of the end of February 2009. In New Jersey, where capped prices ended in 2003, a total of 12 residential customers were being served by alternative suppliers as of February 2009.

The lack of residential retail competition is one reason that I believe that the proper implementation of Act 129 is so important to the protection of Pennsylvania’s residential electric consumers. Act 129 is designed to ensure that the utilities that continue to provide generation service to residential customers must do so on a least cost basis over time; Act 129 also requires those utilities to assist their customers in using energy more efficiently so that their overall monthly bills might be reduced, even if the rate per kilowatt hour of generation that they use increases. It is clear from the Declaration of Policy, and the provisions of Act 129, that the General Assembly intended for Pennsylvania’s electric distribution companies to provide least cost service to their customers through both supply-side and demand-side resources. In my view, it is no longer permissible for Pennsylvania electric utilities to accept their load demands as a given, and then serve those loads by acquiring generation at “prevailing market prices.” Rather, the electric utilities must now take affirmative steps to reduce and shape their loads for the
benefit of all customers, and to provide needed generation to their non-shopping customers at the least cost over time through a prudent mix of long-term, short-term and spot market purchases.

The actual implementation of Act 129 obviously remains a work in progress. The provisions of Act 129 dealing with energy efficiency and peak demand reduction programs contained particularly ambitious deadlines for Public Utility Commission action, but I believe that our Commissioners and PUC Staff have worked diligently and effectively through a series of hearings, workshops and orders to meet those deadlines and to set the stage for the utility filings that will begin to be submitted in the next month. I would also commend our electric distribution companies who have each taken a collaborative approach toward meeting the energy efficiency and peak demand reduction programs required in Act 129. At a PUC hearing on Act 129 implementation in November 2008, I expressed the hope that many of these issues could be addressed through a cooperative effort among the utilities and affected stakeholders before the utility plans were filed, rather than through litigation after the plans were filed. In a subsequent Order, the PUC encouraged the utilities to take such an approach, and each of the utilities has done so. My Office has participated along with other consumer representatives, conservation service providers, municipal government representatives, community groups, and others to offer input into utility plans that will meet the immediate and near term goals of Act 129 on the most cost-effective basis. It certainly remains my hope that the individual company energy efficiency and demand response plans that are to be filed next month by the utilities will meet or exceed the requirements of the Act and will not require major litigation.

It is also my hope that, while Act 129 contains stiff penalties ranging up to $20 million for utilities that fail to meet any of the energy efficiency and demand response goals of the Act, that none of those penalty provisions ever come into play. In my mind, if we need to resort to
penalties to implement these provisions of the Act, then we will have failed in our primary goal of providing Pennsylvania consumers with the tools and programs they need to control their electric bills in a reasonable manner.

The other major provisions of Act 129 deal with the manner in which our utilities secure power for their customers who do not switch to alternative competitive generation suppliers. As I noted above, this currently includes the vast majority of Pennsylvania residential consumers and – if experience in most of our neighboring states is any guide – this will likely continue to include the great majority of residential consumers in the foreseeable future, even after rate caps expire. When electric restructuring was adopted in 1996, as I said, it was hoped that wholesale prices would go down and that there would be a wide array of competitive retail providers to serve the generation needs of Pennsylvania electric consumers. Retail rate caps were put in place as a transitional protection in case those cost reductions and competition did not occur as quickly as anticipated. At the end of the rate cap period, the 1996 Act stated that the electric utilities would secure power for their remaining generation customers “at prevailing market prices.” At the time the 1996 Act was passed, it was expected that this so-called “default” or “provider of last resort” service would serve the anticipated small minority of customers who did not choose or were unable to obtain generation service from competitive retail marketers, or whose alternative supplier failed. It was argued by some parties in earlier cases that the “prevailing market prices” standard for default service required reliance on short-term purchases with prices that changed frequently in response to market changes.

Given the fact that utility generation service is not simply the service of “last resort” for residential customers, but has in fact become, and likely will remain, the predominant service for Pennsylvania residential customers, Act 129 places stricter standards on Pennsylvania utilities to
ensure that this service will benefit consumers. Specifically, the Act repeals the “prevailing market prices” standard of the 1996 Act and instead makes it clear that the goal of the utility is to provide default service “at the least cost to customers over time.” Default service providers must obtain a “prudent mix of contracts” to provide least cost service “on a long-term, short-term and spot market basis.”

Although the first cases under these provisions of Act 129 have been complex and contentious, the parties have been able to come to unanimous or nearly unanimous settlement agreements on how the default service requirements will be met in the first two or three years after the end of the current rate caps. On behalf of residential customers, my Office has advocated a much more active role on the part of the utilities to acquire a true portfolio of products including long-term, short term and spot market purchases. Several utilities, on the other hand, have been reluctant to take a major role in planning and implementing a portfolio of products and have instead sought to rely on a wider array of “full requirements” contracts, where the actual planning and implementation of the generation portfolio is performed by third party wholesale marketers.

In two recent proceedings involving PECO and PPL, my Office reached a settlement with the utility with respect to residential procurement in which a portion of the residential service will be provided through purchases of a variety of energy and capacity products, rather than the full requirements contracts initially proposed by each of those companies. Both of those settlements would extend through May 2013 at which time a new plan would have to be put in place.

It is my hope that as utilities develop more experience and expertise in purchasing generation for residential customers in the wholesale markets, that a more active portfolio
approach will be pursued. I also hope that utilities will begin to take a more comprehensive approach to their default service for residential customers, in which they will utilize both supply and demand resources to best serve the needs of their customers on the most economical basis at any given point in time.

In addition to the settlements I referenced, I would also note a positive development in this regard involving Allegheny (West Penn) Power Company. Allegheny is one of the utilities whose rate cap is coming to an end at the end of 2010. Allegheny’s post-2010 default service procurement plan was approved by the PUC in July 2008, prior to the passage of Act 129. The Allegheny plan, which was approved for residential customers over the objection of the OCA, consisted entirely of a series of pre-scheduled full requirements contracts. In February, 2009, however, Allegheny filed a Petition with the PUC to accelerate the purchase of a portion of its generation for its residential customers to take advantage of the recent sharp decline in wholesale energy prices. The OCA enthusiastically supported the Allegheny Petition and it was granted by the PUC. Allegheny then filed a second Petition for acceleration of its residential purchases in April of this year and it was again supported by the OCA and approved by the PUC. The results of the procurement by Allegheny after its first Petition were very favorable and should help to substantially reduce the dramatic post-rate cap rate increases that Allegheny customers would have expected to receive just a year ago. I cite this action by Allegheny because I believe it is the type of action that utilities should take in order to ameliorate the impact of high and volatile wholesale market prices on their residential default service customers. As I said earlier, I believe it is no longer acceptable for utilities to sit back and ask their residential customers to simply be subjected to prevailing market generation prices without any effort by the utility to at least try to secure the lowest cost mix of resources to serve those customers over time.
As we move forward, my biggest concern remains whether the wholesale markets from which our utilities are purchasing their resources are truly competitive and whether those markets will provide adequate resources for the long term needs of Pennsylvania consumers at reasonable prices. Even the best default service procurement plan will be of limited benefit to Pennsylvania retail consumers if the wholesale markets from which generation is purchased do not produce reliable and adequate service at just and reasonable prices. I am particularly concerned about our excessive reliance on short term wholesale markets that, in my opinion, overcompensate the owners of existing generation that already has been paid for by Pennsylvania electric consumers, but may fail to provide adequate incentives to potential new entrants to build new generation that might be able to compete with existing generation and apply downward pressure to wholesale market prices on a long-term basis. To the extent that this General Assembly can take additional actions to support the development of new long-term resources for the benefit of Pennsylvania consumers and the Pennsylvania economy, I would encourage you to do so, and I would look forward to working with the members of this Committee as well as the members of the House Environmental Resources and Energy Committee on this matter.

I want to thank you again for inviting me to testify on these important issues and I would be happy to answer any questions you may have at this time.