

**BEFORE THE PENNSYLVANIA
HOUSE CONSUMER AFFAIRS COMMITTEE**

Testimony Of

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**Regarding
General Overview Of The
Office Of Consumer Advocate**

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**Chairman Godshall, Chairman Daley
And Members of the House Consumer Affairs Committee**

My name is Tanya McCloskey and I am serving as the Acting Consumer Advocate for the Office of Consumer Advocate. I have worked at the Office of Consumer Advocate since 1987 and have worked on a wide variety of cases before the Pennsylvania Public Utility Commission, the Federal Energy Regulatory Commission and before the state and federal courts. I have also participated actively over the years in the stakeholder process at PJM, the Regional Transmission Operator that operates our transmission system and wholesale energy and capacity markets. Thank you for inviting me to provide testimony here today.

Let me first introduce the new Members of the Committee to the Pennsylvania Office of Consumer Advocate (OCA). The OCA was established by the General Assembly in 1976 to fill a gap that had long existed in the representation of consumers – particularly residential consumers – before the Pennsylvania Public Utility Commission (PUC) and other state and federal agencies and courts that regulate the activities of Pennsylvania’s public utilities. Traditionally, utilities have always been well-represented at the PUC by lawyers and expert witnesses who could advocate for utility stockholders in matters such as rate increase requests for utility services. Our Office was created so that the consumers who have to pay those utility bills would also be represented by professional attorneys and experts. The job of representing consumers cannot be performed by the PUC itself because the members of the Commission serve in a judicial role and must balance the interests of the utility stockholders and consumers in achieving a result that is just and reasonable for all parties. The OCA also has the right to appeal PUC decisions that we believe are adverse to the interests of consumers, and we have taken such appeals all the way to the Pennsylvania Supreme Court and, in one landmark decision, to the

United States Supreme Court. Offices like mine have been established across the country, and the National Association of State Utility Consumer Advocates now includes members from more than 40 states and the District of Columbia.

In addition to our litigation activities, the OCA helps to educate consumers on matters involving their utility services. The Consumer Liaison and other members of the OCA staff help to plan and participate in consumer presentations, roundtables, and forums across the Commonwealth to help educate consumers about changes in the utility industry and to advise them about cases that affect them. During the last fiscal year, the OCA participated in 84 consumer outreach events, many of which were sponsored by members of the General Assembly. As part of our service to Pennsylvania consumers, my Office also publishes a shopping guide for electric and natural gas service that provides apples-to-apples price comparisons of residential prices offered by the utility itself and the marketers in the utility's service territory.

The OCA also serves as a resource to members of the General Assembly by responding to constituent concerns and by providing our views on how proposed legislation would affect the interests of Pennsylvania consumers. In particular we have worked closely with the Chairmen and the Members and Staff of this Committee, and we look forward to continuing that work as you deal with the complex and difficult utility issues that are certain to come before you.

Before turning to the specific subject of today's hearing, I would like to provide a brief overview of the regulated utility industry in Pennsylvania. Our Office participates actively in cases that come before the Pennsylvania Public Utility Commission involving electric utilities, natural gas utilities, telecommunications companies, water and wastewater companies. For two

of these industries – electric and natural gas – Pennsylvania has engaged in a transition from a fully regulated monopoly service industry to a partially regulated/partially competitive industry over the past 15 to 20 years. Through the legislative initiatives of the General Assembly, Pennsylvania has carried out a successful transition process and is now well-positioned for the future. Pennsylvania consumers arguably enjoy the best of both worlds when considering their utility energy service in that they have the protection of a competitively procured basic “default” service provided by their utility in accordance with the requirements established by the General Assembly and the choice of an alternative provider that may offer them lower prices or additional services to meet their needs. That is not to say that there is no work to be done. As I will discuss in a few minutes, the variable price plan crisis that befell the Commonwealth’s electric consumers last winter brought into sharp focus the need for additional consumer protections in this area.

Our telecommunications service in Pennsylvania has undergone significant changes in its regulatory framework since the initial passage of Chapter 30 of the Public Utility Code in 1993 and its reenactment in 2004. The competition in the telecommunications industry facilitated by Chapter 30 has benefitted many Pennsylvania consumers, particularly those who can now buy bundled packages of services. Even with the advances in telecommunications service in recent decades, though, there are still some parts of Pennsylvania where consumers rely on the basic telephone service provided by their local telephone company. The General Assembly has maintained a carefully drawn category of “protected” services, including basic residential service, which continues to be subject to a higher level of Commission scrutiny and regulatory protection. This combination of competition and limited regulation contained in Chapter 30 has worked well and, in my opinion, should continue for the foreseeable future.

Water and wastewater companies in Pennsylvania are different from the three industries I have just discussed. The majority of our water and wastewater systems are not subject to the jurisdiction of the Public Utility Commission but are operated by municipalities or municipal water authorities. I would also note that the number of water utilities regulated by the Public Utility Commission has declined in the last 20 years as many smaller utilities have been acquired by or merged into larger water utilities. The cost incurred by these companies to provide safe, clean water service has continued to increase as the utilities must meet state and federal environmental and health requirements. Water rates have increased at the fastest pace of all utility rates over the past several years. It is critical now and into the future that all utilities use our precious water resources wisely so that they are able to provide safe and adequate service at prices that are affordable to all consumers across Pennsylvania. It is also critical that our wastewater utilities operate in the most economical and environmentally sound manner.

Legislative Priorities

I have been asked to identify legislative priorities for my Office. As I mentioned earlier, my Office has worked with the Members of this Committee and the General Assembly to provide our views on how proposed legislation would affect the interests of Pennsylvania consumers. We look forward to continuing to serve in that role for any legislation that may come before you related to public utility matters. As to specific legislative priorities, a few areas of concern have arisen that I would put forward for your consideration.

As I mentioned earlier, Pennsylvania has been on the forefront of opening some of our utility services to competition. Landmark legislation in 1996 involving the electric industry, and in 1999 for the natural gas industry, reflected a policy that competition for some aspects of those services, rather than full regulation, could provide lower prices and improved

service. I would hasten to add, though, that we did not “deregulate” our electric and natural gas utilities. The wires that carry electricity to our homes and businesses, and the pipes that deliver our natural gas, remained monopoly services under the traditional regulated model. Equally important from my view, our regulated electric and natural gas utilities continued to serve as the “default service provider” so that all Pennsylvania consumers can continue to receive essential utility service even if they cannot or choose not to participate in the competitive retail markets. A key legislative priority in my view is to preserve default service and the obligation that the default service provider, also called the supplier of last resort in the natural gas industry, continue to provide safe, adequate and reliable service at the least cost over time. We must also continue our efforts to ensure that energy is provided to consumers at stable, affordable prices and on reasonable terms and conditions. Any attempts to weaken or eliminate the protections of default service for Pennsylvania consumers should, in my opinion, be rejected.

The importance of a stable and affordable default service was highlighted last winter during what has become known as the “polar vortex” when electricity prices in the wholesale energy markets soared to some of their highest levels. The polar vortex also revealed some significant concerns with the retail choice market in Pennsylvania, particularly as it concerned the use of variable price plans by some competitive marketers. Under these plans, consumers who were trying to save a few dollars a month by shopping for electricity instead found themselves without any prior notice overwhelmed by shockingly high bills that they could not possibly have anticipated and that many of those customers could not possibly afford. These were not consumers who voluntarily and knowingly selected a product, took a gamble on the market, and just made the wrong bet. There was simply no way for consumers to know from the disclosure statements provided by suppliers, from the education about retail choice, or from any

independent research that they were fully exposing themselves to rate increases of several hundred percent and monthly bills of nearly a thousand dollars or more.

Last year, I presented testimony to this Committee on the numerous problems that my Office identified with the variable rate plans offered by some competitive suppliers, and I will not repeat that testimony here today. The experience with the variable rate plans, and with our efforts to try to address these issues for consumers, underscores the need for additional consumer protections to govern the provision of variable price products. It has also raised a concern that the Public Utility Code might not be as clear as needed to confer authority on the Commission for the oversight of the pricing plans in the retail market and for the full adjudication of any complaints about the provision of this essential service. The Commission should have clear authority to establish the rules for the operation of retail choice markets and to ensure, at the end of the day, that essential service to consumers is reasonable and meets all statutory standards.

In my view, HB 2104 of Session of 2014 introduced last year by Chairman Godshall and Chairman Daley, among others, was an important step in addressing these problems. Even though this winter (to date) has not been as cold as last, and we have not experienced the same volatility in the wholesale markets, the need for this legislation remains as important as last winter. The gaps in consumer protection and in the Commission's authority to address all aspects of the provision of electric service remain. Until the appropriate consumer protections are in place, and the Commission is provided clear authority to protect consumers, a robust and fair retail choice market cannot continue to develop in Pennsylvania.

Another area that I would submit for your consideration is the issue of the extension of natural gas service to unserved and underserved areas in Pennsylvania.

Pennsylvania sits atop the Marcellus Shale region and its abundant reserves of natural gas. Even so, many Pennsylvania households and businesses do not have natural gas service available to them, even in the Marcellus Shale region. The primary reason that many areas, particularly rural areas, do not have natural gas service is that even though the current price of natural gas is favorable, the cost of extending pipelines to sparsely populated areas can be very costly. Natural gas service presents a particular challenge because unlike other forms of utility service, consumers have alternatives to natural gas for meeting their end use needs. If a utility extends natural gas service to an area, there is no assurance that homes or businesses along the way will sign up for such service if they are already using another form of fuel to meet their needs because the initial cost to convert heating systems and appliances to natural gas can be high.

There has been some recent activity at the Public Utility Commission by natural gas distribution companies to implement pilot programs to try to address some of the issues surrounding the extension of natural gas pipelines to unserved areas. These are encouraging developments that should be closely watched. I would, however, urge this Committee to consider ways to bring the benefits of lower priced natural gas to unserved and underserved areas. Several other states have enacted numerous initiatives that seek to share the burden between the customers and communities receiving service or to provide for additional support.

On a related topic, Pennsylvania has recently been faced with the potential abandonment of natural gas service in some areas for economic reasons and the potential inability of some very small natural gas companies to safely maintain service to their customers. Addressing these issues can prove challenging for many of the same reasons that extending natural gas mains is a challenge. For the smaller natural gas companies, expensive main replacements and repairs must be charged to only a few customers. Consideration should be

given to the problems of small natural gas companies in maintaining safe and adequate service as well as to the issue of abandoning natural gas service.

Finally, I would like to say a few words about telecommunications service in Pennsylvania. As I mentioned, Chapter 30 of the Public Utility Code provides a combination of regulation and competition that has worked well in assuring affordable and reliable telecommunications service for all Pennsylvania residents. We should continue to preserve the integrity of the Public Switched Telephone Network and strengthen the Pennsylvania Universal Service Fund that provides support to our high cost, rural areas. I also believe that it is essential to preserve basic local service that is affordable and available on reasonable terms and conditions so as to ensure universal telecommunications service as contemplated by Chapter 30. The year 2015 also marks the long-awaited deadline for the completion of our local telephone companies' commitment to make broadband service available to all customers across Pennsylvania. We must ensure that this commitment has been met in a way that provides reliable and affordable broadband service to all Pennsylvanians.

Conclusion

As this Committee embarks on this legislative session, I look forward to working with the Members to preserve and strengthen the protections for consumers in the Public Utility Code. Thank you again for inviting me today and I welcome any questions that you might have for me.