

**BEFORE  
THE PENNSYLVANIA HOUSE OF REPRESENTATIVES  
DEMOCRATIC POLICY COMMITTEE**

Testimony of

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Regarding SB 1121

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Good Morning Chairman Sturla, Chairman Daley, and Members of the House Democratic Policy Committee. My name is Patrick Cicero. I am the Co-Director of the Pennsylvania Utility Law Project (PULP). PULP is a designated statewide specialized project of the non-profit Pennsylvania Legal Aid Network. For three decades, PULP has provided support, information, consultation, and advocacy in conjunction with local legal aid and community based organizations representing the interests of the Commonwealth's low-income residential utility consumers. Much of our advocacy focuses on energy issues because the ability of low-income Pennsylvanians to connect to and maintain essential services needed for heating and cooling under reasonable terms and conditions and at affordable rates is an ongoing concern. Thank you for the opportunity to comment on SB 1121. I am submitting these comments on behalf of PULP's clients, in particular, its client the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania or (CAUSE-PA).

I want to recognize at the outset that we are not opposed to competition in either the electricity or natural gas market place. We believe that there is a place for a viable and robust competitive electric market that complements a stable, affordable default service. Despite the dramatic yarn spun by the electric generation suppliers ("EGSs"), there has been no evidence suggesting that EGSs have not increasingly gained market share or there are customers in any EDC who cannot obtain competitive electric supply if they choose to do so. Suppliers are not leaving the state; they are coming into the state. The 1996 Competition Act, as amended by Act 129 of 2008, was a product of compromise designed to ensure that a competitive market could exist along side a stable default service. This model works and it should be maintained. We oppose SB 1121 because we believe it is unnecessary and believe that it would pose substantial risks for residential customers, particularly low-income customers, without benefitting them in

any way. SB 1121 would be radical step in the wrong direction, one no other state has adopted for retail electric competition

Our opposition to SB 1121 is grounded in three principal reasons: First, the auction deprives customers of their choice by forcibly switching them to a service they did not select. It would be, in effect, government-sanctioned slamming. Second, customers are likely to pay higher prices. Third, the framework provided by SB 1121 is incompatible with appropriate consumer protections for low-income and other vulnerable customers.

Rather than promote choice, SB 1121 would limit customers' options.

At the heart of SB 1121 is an auction through which any customer remaining on default service as of June 1, 2015 would be auctioned off and assigned to a winning EGS. This proposal represents the antithesis of choice. Customers would be assigned to alternative electric suppliers without any indication of affirmative agreement to this proposal, and could not remain on utility default service even if they expressly requested to do so. Pennsylvania's residential customers know they have the right to choose and many have chosen. Nearly 2 million residential customers are currently being served by a competitive supplier. Thousands more have compared offers by suppliers and have either chosen to remain on default service or have switched to an EGS and then back to default service. These are valid choices which should not be eliminated.

In the recently completed retail market investigation, Chairman Robert Powelson of the Pennsylvania Public Utility Commission recognized this principle when he stated, and I quote: "[T]o the extent customers do not make an affirmative choice for themselves, the government should not make that choice for them." (Statement in Docket No. I-2011-2237952, Public Meeting September 27, 2012). We agree. Many who remain on default service have chosen to remain there after comparing other offers and not finding them acceptable. Many who remain on

default service remain there because they do not want the hassle of choosing an alternate supplier and the obligation of constant vigilance to ensure that they are still getting a good deal. Some of these folks are likely your relatives. The current framework of default service under Act 129 which provides for stable, least cost service over time is a viable option for many Pennsylvanians. We should not push these Pennsylvanians into a market that they do not want to enter.

Post-auction customers are likely to pay more for service, not less.

The current default service model is designed to provide least cost service over time and at cost. That is, the utilities providing default service do so by entering into competitively bid power purchase contracts with wholesale suppliers and then pass that price on to consumers **without a profit**. This price serves as the benchmark or “price to compare” that suppliers look to beat in making their offers. Thus, even customers who chose to be served by a competitive supplier benefit by this least cost over time default service because it serves as a measure of least cost prices against which EGSs must compete. SB 1121 would eliminate this benchmark, the effect of which is that there would no longer be a way to determine whether the customers who are auctioned off to the marketers will be better off or worse off than they would have been in the absence of this state-required auction, and currently shopping customers would have no way of knowing whether what they are paying or being offered is reasonable and fair. Rather than comparing apples to apples, customers would face the unmanageable prospect of comparing apples to pears to grapes to bananas to kiwi, etc. The loss of default service procured subject to the requirements of Act 129 would likely lead to higher costs.

## Low-income and other vulnerable customers would be significantly harmed by SB 1121

It is well recognized within the electric industry that “low income customers will have more trouble coping with the volatile prices of a short-term procurement strategy and will likely benefit from the longer term hedging that [default service] can provide.”<sup>1</sup> Many low-income, senior citizens on limited income, and victims of domestic violence who are in transition find it difficult to pay for utility service because the cost of other essential needs including rent, food, water and medicine compete for their limited resources.<sup>2</sup> This is demonstrated by the fact that low-income customers have significantly higher disconnection rates than residential customers as a whole, owe significantly more debt to utilities, and have a significantly greater difficulty in establishing service than other customers. On a daily basis, low-income households are forced to choose which bills to pay and which to postpone paying. This is not irresponsibility; it is a matter of survival and a necessary weighing of the relative consequences of non-payment of particular expenses.

While there are assistance programs available for low-income households, they are designed to work with utility provided default service, utility provided billing, and utility disconnection and reconnection. Although SB 1121 appears to support the maintenance of consumer protections, it falls short and ignores the incongruity of its proposed default service model with the assistance programs available to some of Pennsylvania’s most vulnerable citizens. For example, SB 1121 fails to account for the risks to customers associated with potentially allowing hundreds of EGSs to become responsible for the implementation of Chapter

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<sup>1</sup> Frank C. Graves & Joseph B. Wharton, The Brattle Group, Edison Electric Institute White Paper, New Directions for Safety Net Service - Pricing and Service Options, 9 (2003) (acknowledging low-income people are “least likely to be served in the competitive retail market (less so than the average retail customer)”).

<sup>2</sup> See John Shingler, Consumer Services Information System Project, Penn State Univ., Long Term Study of Pennsylvania’s Low Income Usage Reduction Program: Results of Analyses and Discussion, 4-5 (2009). Available at [http://www.puc.pa.gov/general/publications\\_reports/pdf/PSU-LIURP\\_Report2008.pdf](http://www.puc.pa.gov/general/publications_reports/pdf/PSU-LIURP_Report2008.pdf).

56 and other important consumer protection policies that are embedded in EDC practices and programs.

By way of example, the Pennsylvania Coalition Against Domestic Violence and its member programs have had difficulty in getting the incumbent EDCs to become familiar with the fact that Chapter 56 has a different set of rules for victims of domestic violence with a protection order.<sup>3</sup> This educational gap has caused many local domestic violence programs to expend a tremendous amount of staff time and resources to advocate on behalf of victims of domestic violence to obtain the protections to which they are statutorily entitled. If it is difficult to get seven EDCs who are closely regulated by the PUC to recognize these realities, getting the hundred plus licensed suppliers to comply with the provisions in Chapter 56, including those provisions that are applicable to survivors of domestic violence will be nearly impossible.

Additionally, rather than offer specifics, SB 1121 fails to directly address the relevant concerns involving low-income customers enrolled in Customer Assistance Plans (CAPs). CAP programs provide discounted bills for payment troubled, low-income ratepayers whose household incomes are at or below 150% of the federal poverty income guidelines, and also provides the benefit of allowing these households to have their pre-CAP program arrearages frozen and forgiven over time through payment of on-time, in-full CAP payments over a period of years. The difference between a CAP customer's monthly payment amount and what their bill would have been had they been billed at residential tariff rate based on consumption is called a CAP credit. CAP credits are paid for by all other residential ratepayers through a universal service surcharge. Thus, any increase in the rate paid by CAP customers not only affects their bill it also affects the amount paid by other ratepayers.

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<sup>3</sup> See 52 Pa. Code § 56.251 *et seq.*

The reality is that many low-income CAP customers have not fared well in the competitive market. Data recently obtained in the course of an on-going time-of-use proceeding demonstrates that CAP customers within the PPL service territory are generally paying more to competitive suppliers than CAP customers who received default service from PPL. Over the course of 2013, 58% to 82% of PPL's CAP customers who switched to competitive suppliers were paying more for electricity service than the PPL default service price to compare. The average for the year was 67%. That is, over the course of 2013, **two-thirds** of all bills rendered to PPL CAP customers who were receiving EGS-provided service were **higher** than utility provided default service. This is not acceptable. It is in no one's interest for low-income, payment troubled customers to be paying more than the price to compare for any period of time. Yet that is precisely what occurred, and we fear will be all the worse, if this bill were to pass. Customers would no longer have the stability of default service procured pursuant to Act 129's prudent-mix principles, and would be required to remain constantly vigilant.

Low-income persons, seniors, victims of domestic violence and other vulnerable populations must not get run over in the stampede to alter the default service landscape. Our opposition to SB 1121 on behalf of our clients, is guided by the fact – as demonstrated through the testimony of experts in various utility default service proceedings and the submission of countless pages of comments and exhibits to the PUC – that low-income households are some of the most vulnerable of our residents, and they will be adversely affected by a decision to change default service from a reasonable, predictable, and stable option to one that is more expensive and closely tied to the volatility of the short-term energy market. Stable utility rates and service are essential for low-income households' health and wellbeing and must not be jeopardized. For all of the foregoing reasons, we oppose SB 1121 and urge you to do the same. Thank you.