

COMMONWEALTH OF PENNSYLVANIA  
HOUSE OF REPRESENTATIVES  
APPROPRIATIONS COMMITTEE HEARING  
BUDGET HEARING

STATE CAPITOL  
MAJORITY CAUCUS ROOM  
HARRISBURG, PENNSYLVANIA

WEDNESDAY, FEBRUARY 27, 2008, 1:00 P.M.

VOLUME III OF IV

PRESENTATION ON  
OFFICE OF CONSUMER ADVOCATE  
AND  
OFFICE OF SMALL BUSINESS ADVOCATE

BEFORE :

HONORABLE DWIGHT EVANS, CHAIRMAN  
HONORABLE MARIO J. CIVERA, JR., CHAIRMAN  
HONORABLE STEPHEN E. BARRAR  
HONORABLE H. SCOTT CONKLIN  
HONORABLE CRAIG A. DALLY  
HONORABLE GORDON R. DENLINGER  
HONORABLE BRIAN ELLIS  
HONORABLE DAN B. FRANKEL  
HONORABLE JOHN T. GALLOWAY  
HONORABLE WILLIAM F. KELLER  
HONORABLE THADDEUS KIRKLAND  
HONORABLE BRYAN R. LENTZ  
HONORABLE TIM MAHONEY  
HONORABLE KATHY M. MANDERINO  
HONORABLE MICHAEL P. MCGEEHAN  
HONORABLE FRED McILHATTAN  
HONORABLE DAVID R. MILLARD  
HONORABLE RON MILLER  
HONORABLE JOHN MYERS

1 BEFORE: (cont'd.)  
2 HONORABLE CHERELLE PARKER  
3 HONORABLE JOSEPH A. PETRARCA  
4 HONORABLE SCOTT A. PETRI  
5 HONORABLE DAVE REED  
6 HONORABLE DOUGLAS G. REICHLEY  
7 HONORABLE DANTE SANTONI, JR.  
8 HONORABLE MARIO M. SCAVELLO  
9 HONORABLE JOHN SIPTROTH  
10 HONORABLE MATTHEW SMITH  
11 HONORABLE KATIE TRUE  
12 HONORABLE GREGORY S. VITALI  
13 HONORABLE DON WALKO  
14 HONORABLE JAKE WHEATLEY, JR.

15 ALSO PRESENT:  
16 MIRIAM FOX  
17 EDWARD NOLAN

18 DEBRA B. MILLER  
19 REPORTER  
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1           CHAIRMAN EVANS: I would like to reconvene  
2 the House Appropriations Committee meeting.

3           We have before us the Consumer Advocate and  
4 the Small Business Advocate. We have those offices  
5 before us today. I wish a good afternoon to both of  
6 you.

7           As both of you know, what we do is really no  
8 testimony, just allow the members to kind of go  
9 directly and ask questions.

10           I would like to ask one question. As you  
11 know, probably the two greatest discussions we have  
12 been having in this General Assembly are around the  
13 energy issue and around health care.

14           I would be interested in your thoughts in  
15 terms of the proposals that have been suggested, and  
16 then tie it to a little connection to the aspect of  
17 its impact upon the budget as you see it economically  
18 for the future of Pennsylvania -- you know, the  
19 energy independence and what that could mean,  
20 because, you know, that is a huge debate nationally  
21 and internationally. But what could it exactly mean  
22 to Pennsylvania taxpayers?

23           I don't know if you want to get into it  
24 specifically, but what you think it could mean in  
25 terms of a savings, long term what your return would

1 be, beneficial to the Commonwealth of Pennsylvania  
2 and this budget.

3 So whoever wants to start, on energy first.

4 MR. LLOYD: My reaction to the legislation  
5 which has been pending is that I get very nervous  
6 when I have -- I'm going to put this in quotes --  
7 "won" at the commission through the regulatory  
8 process and then the Legislature is going to get in  
9 and change the rules, because I get worried about  
10 whether I'm going to go backwards, forwards, or, you  
11 know, if I could just hold what I have, I would be  
12 satisfied.

13 CHAIRMAN EVANS: Right.

14 MR. LLOYD: The biggest victory for small  
15 commercial and industrial customers in the  
16 regulations was the requirement that energy be  
17 procured by rate class, which stops interclass  
18 subsidies.

19 It prevents the historical pattern of small  
20 business customers being forced to overpay for energy  
21 in order to subsidize residential, large commercial  
22 and industrial, or both.

23 And the legislation, at least Keith McCall's  
24 legislation, and I believe also Senate Bill 1134 have  
25 language in them that would require acquisition by

1 rate class and would prohibit interclass  
2 subsidization. With that language, those proposals,  
3 among other things I don't like about them, those  
4 proposals in general are things that I can live with.

5 If that language were to come out, then I  
6 would have to be against any energy legislation,  
7 because that would roll back the biggest gain that we  
8 have made.

9 The second thing which I think is important  
10 is that we acquire energy competitively, and the  
11 commission essentially says that you have to have  
12 either an RFP or you have to have an auction where  
13 you have to buy on the spot market, which essentially  
14 is the competitive marketplace, and that, I think, in  
15 terms of trying to control the cost long term is very  
16 important, because if you remember back in the days  
17 when you and I came to the Legislature, in our first  
18 term we voted on all kinds of bills for certificate  
19 of need and other kinds of things -- against KWIP --  
20 other kinds of things to try to reign in the cost of  
21 building power plants.

22 I think the last thing we want to do, if we  
23 are going to go toward long-term contracts -- and  
24 some people, including Sonny, believe that that's  
25 part of what we ought to do -- we need to make sure

1 that the rates that we are paying because of those  
2 long-term contracts are not exorbitant.

3 Now, you can do that in several ways. One,  
4 you can attempt to project ahead the price of energy  
5 and make a comparison and say, well, gee, as long as  
6 this doesn't exceed the projected market price of  
7 energy, then the contract is okay.

8 The problem with that is that once you get  
9 beyond about 3 to 5 years, those projections are  
10 meaningless. So if you are talking about a 20-year  
11 contract, to try to project what the price of energy  
12 is going to be 10 or 20 years from now is a virtual  
13 impossibility.

14 So the other alternative that occurs to me  
15 is competitive procurement. Now, I can't guarantee  
16 you that you are going to get two or three or four  
17 people bidding to build a power plant, but if you are  
18 going to go to long-term contracts, then it seems to  
19 me that you have to have competitive procurement, and  
20 that, once again, you know what happens in no-bid  
21 contracts.

22 But we don't want to go back -- in the old  
23 days, if the utility company built the power plant,  
24 we regulated it after the fact. We said, did you  
25 incur this cost imprudently? Is this cost economic?

1 And if it is not, then you don't get to recover it.  
2 We don't want to be in a situation in which you sign  
3 a long-term contract, and whatever the price is, the  
4 ratepayers have to pay it.

5 A further concern that we have -- and this  
6 is a different issue than confronted by residential  
7 customers -- small commercial and industrial  
8 customers, if you have a long-term contract and it  
9 turns out that the long-term contract is above the  
10 market price so that customers can shop, can go out  
11 and buy from the competitive suppliers at less than  
12 what the utility company is charging, some of them,  
13 the larger ones will do that, and that leaves a few,  
14 a smaller number of customers, stuck with paying off  
15 that contract, which means that each of the customers  
16 left is going to have to pay more because some of the  
17 people who were being counted on to pay for the  
18 contract are now buying their energy in the  
19 competitive marketplace.

20 So that's a risk. That's a greater risk, as  
21 I said, for commercial and industrial customers,  
22 because they are much more likely to shop than  
23 residential customers and are much more likely to be  
24 shopped to by the competitive generation suppliers.

25 With regard to conservation, I listened to a



1 utility company that came to see me maybe 5, 6 months  
2 ago and talked about how they are talking about a  
3 2-percent growth rate, and I said, that can't be  
4 allowed to happen. If we are serious about global  
5 warming, if we are serious about energy conservation  
6 just in general and trying to hold down costs, we  
7 just simply have to curtail our usage. And I can't  
8 tell you, I mean, I would defer to folks who are a  
9 lot more expert in conservation than I am, but that  
10 has to be a focus of attention.

11 Now, can I tell you that \$850 million as  
12 opposed to \$500 million as opposed to \$2 billion is  
13 the right number? The answer to that is no, I can't,  
14 but what I do know is that as the existing base-load  
15 power plants retire and they are replaced, they are  
16 going to cost a lot more money than the ones that are  
17 in place now, and one way to try to mitigate that is  
18 not to need as many of them or not to need as much  
19 capacity, and you avoid that simply by not using as  
20 much electricity.

21 CHAIRMAN EVANS: Okay.

22 I take what you have said. Now, you know,  
23 the slant of this committee is the budget, the growth  
24 of the budget. What exact impact could that have?

25 MR. LLOYD: Well, I guess--

1           CHAIRMAN EVANS:  Whatever particular  
2 direction in terms of---

3           MR. LLOYD:  Well, I guess if you looked at  
4 it in a draconian way, this committee ought to be in  
5 favor of as high electric rates as possible, because  
6 the gross receipts tax is roughly 5 percent of the  
7 cost of electricity.

8           So the State makes money if the electric  
9 rates go up, but it creates a whole bunch of other  
10 problems---

11          CHAIRMAN EVANS:  Right.

12          MR. LLOYD:  ---not the least of which,  
13 businesses can't expand their payroll or expand their  
14 operations; they can't provide pay raises.  
15 Residential customers don't have money to spend in  
16 the marketplace.

17          But, you know, just from the standpoint of  
18 the State as tax collector, that means more money.

19          CHAIRMAN EVANS:  Right.

20          MR. LLOYD:  And if you are going to have a  
21 bond issue, I guess in terms of the question of how  
22 it impacts the State is, who is responsible for  
23 paying for the debt service, whether that is utility  
24 ratepayers or whether that is taxpayers?  My  
25 preference is that it be taxpayers, because I think

1 those kinds of things are -- if you are getting into  
2 the utility realm, then Sonny and I are going to  
3 argue about, well, how much should residential pay  
4 and how much should small C and I pay, and the  
5 industrials are going to say how much they should  
6 pay, and we are going to have, you know, a big fight  
7 about that.

8 Those are policy decisions that I think you  
9 do through taxes, and, you know, you folks make those  
10 decisions.

11 MR. POPOWSKY: Can I take a quick crack at  
12 that?

13 CHAIRMAN EVANS: Yeah; give us your sense,  
14 you know.

15 MR. POPOWSKY: Sure.

16 Where I differ from Bill, I think, is on  
17 behalf of residential customers, and I'm only  
18 speaking for residential customers. I think that  
19 most residential customers, as all of you know, are  
20 still getting their service, most of your  
21 constituents are still getting their service from the  
22 utility that traditionally has served them, and I  
23 think that is going to continue even after the rate  
24 caps expire. That's what we have seen in other  
25 States, after the rate caps expire, because retail

1 competition -- retail competition -- door to door, a  
2 guy selling you electricity, is very difficult for  
3 residential customers.

4           So I think the key for residential customers  
5 is to make sure that the product that they receive  
6 from their utility, their traditional utility  
7 service, is the lowest cost possible.

8           Now, if you remember, that is what we do in  
9 the natural-gas area. Under the natural-gas law that  
10 was passed back in 1984, the gas companies who  
11 distribute gas buy gas in the wholesale market.

12           We have had a competitive wholesale market  
13 in gas for decades, but what the gas utilities are  
14 required to do is the statute says that they must use  
15 least-cost procurement, and we know when the price of  
16 gas goes up in the wholesale market, the retail price  
17 goes up. When the price goes down, the retail price  
18 tends to go down.

19           But at least that is their goal, and I would  
20 like to see that be the goal of the electricity  
21 utilities, at least for their residential customers.  
22 That is, they go into the wholesale market. As Bill  
23 said, they acquire electricity through various  
24 competitive processes, but that should be on a  
25 least-cost basis over time, and I think that that has

1 to include some longer-term contracts as well.

2           The reason for that is, we are not seeing  
3 much competition in the wholesale market. We are  
4 seeing tighter and tighter supplies. So as the  
5 wholesale supplies get tighter, the price is going up  
6 and up and up. I think we need more entrance into  
7 that market, and one way to do that is to have  
8 long-term contracts between the utilities and their  
9 generation suppliers.

10           So if you look at House Bill 2201,  
11 Representative McCall's bill, I think that's a very  
12 good start. It includes language that would require  
13 that our electric utilities secure resources on a  
14 class-by-class basis.

15           Again, I agree with Bill. It should be for  
16 each class separately. Classes are different, but  
17 particularly for residential customers, the utilities  
18 should be required to purchase the lowest-cost  
19 resources over time, be able to recover those costs,  
20 and if a competitor then, a retail competitor, can  
21 come in and beat that price, that is all the better.  
22 But let's make sure that everyone has a basic level  
23 of secure electricity service that they can afford.

24           In terms of the budget, again, I'm sure you  
25 know that utility taxes are about the most regressive

1 form of taxation. It hurts poor people. You know,  
2 lower-income people tend to spend more of their  
3 income on utilities than higher income, and in  
4 natural gas, in 1999, we did away with the gross  
5 receipts tax when we went to natural-gas competition.

6 So it is true, if electric prices go up by  
7 30 percent, gross receipts taxes will go up by 30  
8 percent, but that is a tough pill to swallow for a  
9 lot of people who are struggling to pay their bills.

10 CHAIRMAN EVANS: Representative Denlinger.

11 REPRESENTATIVE DENLINGER: Thank you, Mr.  
12 Chairman, and good afternoon, gentlemen.

13 I want to kind of stick with the same line  
14 of thought here on the energy issue.

15 Obviously, we are coming toward the end of  
16 the whole rate-cap scenario, and I guess I would  
17 appreciate your perspective, both of you, on what we  
18 should take away from this educationally as a body  
19 and then your perspectives as we do move toward the  
20 end.

21 There are, obviously, calls within the  
22 legislative branch to mitigate the impact. I would  
23 just appreciate, you know, what have we learned  
24 through this exercise and what are your thoughts on  
25 it as we come to the end of the caps? What thoughts

1 would you advocate?

2 MR. LLOYD: Well, I guess--

3 MR. POPOWSKY: Let me take this one first,  
4 if you don't mind.

5 I think we made -- there were two things  
6 that we sort of got wrong back in 1996, with perfect  
7 hindsight.

8 With perfect hindsight, we thought that the  
9 price of generation would actually be driven down by  
10 competition, the price of wholesale generation would  
11 be driven down, and that is why we allowed our  
12 utilities to recover what were called stranded  
13 costs.

14 Utilities in Pennsylvania recovered  
15 \$12 billion in stranded costs, which is the  
16 difference between what those plants cost them to  
17 build versus what we thought they would be worth in  
18 the competitive market.

19 In fact, the wholesale prices have gone up  
20 because of fuel price increases and other factors and  
21 the way we set prices in the wholesale market. So we  
22 got that wrong.

23 The other thing I think we got wrong was, at  
24 least for residential customers, we didn't recognize  
25 how hard it would be to get retail competition for

1 residential customers. We thought that by this time,  
2 most customers would be shopping.

3           So those are the two lessons we have  
4 learned. Fortunately in Pennsylvania, I still think  
5 we have a couple of years before, you know, the great  
6 majority of our customers lose the protection of  
7 their rate caps, and that is why I think we should be  
8 making every effort we can to, like I said, first of  
9 all, let's try to use the wholesale market as best we  
10 can. Let's use it in a way that gets the lowest  
11 possible prices from the wholesale market, again, at  
12 least for the residential customers who really aren't  
13 doing much shopping.

14           And the second thing that we all have to do,  
15 that I have to do, is work more at the Federal level  
16 to try to make sure that the wholesale market is  
17 working properly, and that is one of the reasons that  
18 I have talked a lot about long-term contracts,  
19 because we are just not seeing the competition at the  
20 wholesale level that everyone agrees we absolutely  
21 need in order to keep retail prices down.

22           So I think we need more work at the  
23 wholesale level to try to get more competition there  
24 and try to bring those prices down.

25           MR. LLOYD: If I could go at this starting



1 where Sonny stopped and going backwards.

2           Precisely because you don't have competition  
3 at the wholesale level, I think you should not make  
4 the mistake of having no-bid long-term contracts at  
5 the retail level. I don't see how that fixes the  
6 problem.

7           The argument is that we don't have enough  
8 competition in the wholesale market, and therefore,  
9 the price is artificially high. I don't see how you  
10 fix that problem by allowing a long-term contract  
11 which cannot be benchmarked to the market and which  
12 is not set through competition. It seems to me it is  
13 just a repeat of the same problem.

14           I think that if you are also trying to  
15 provide incentives for new construction, to the  
16 extent that you extend the rate caps, which are  
17 already -- with the possible exception of PECO -- are  
18 already significantly below the market price of  
19 energy, that does not create an incentive to build  
20 any new power plants.

21           And I think you have to separate the two  
22 issues. One is the pain that is going to be felt  
23 when the caps come off and how you mitigate that,  
24 whether you have a phase-in plan, whether you have  
25 some kind of a State subsidy that helps certain

1 people, you know, pay their bills, and then what you  
2 do in terms of procurement for the period after that.

3           Once the floor is the market price, how do  
4 you make sure that market price is a competitively  
5 set market price, whether it is at the wholesale  
6 level or at the retail level?

7           What we found, or if you look at PECO's  
8 numbers, it is actually possible there that some of  
9 the small business customers today are paying above  
10 market price, and we found that in Duquesne. Now, I  
11 wouldn't expect that to be the case in any other  
12 utilities in the State. So there, in a large utility  
13 in Pennsylvania, there may be minimal impact.

14           Now, that depends on -- but if we get to  
15 2011 and market prices, instead of being 9 or 10  
16 cents are 12 or 13 cents, then, you know, that's a  
17 different matter. But if that happens, you and I and  
18 the whole country have got much more serious problems  
19 than the rate caps.

20           REPRESENTATIVE DENLINGER: Just one follow  
21 up, if I may, and I guess Mr. Popowsky, it is  
22 following up on your comment.

23           The absence of shopping by consumers out  
24 there, is that, in your perspective, a matter of  
25 education? Consumer furor over the complexity of the

1 whole issue? Lack of adequate choices in the market?

2 MR. POPOWSKY: I think even in places, you  
3 know, even in Maryland where, you may have read,  
4 rates went up 72 percent in Baltimore, there just  
5 have not been a lot of competitive marketers who have  
6 been able to come in and beat that price  
7 substantially enough to get customers to shop.

8 Remember that a marketer has to come in,  
9 beat the utility's price -- they have to buy power in  
10 the same wholesale market that the utility does.

11 REPRESENTATIVE DENLINGER: Okay.

12 MR. POPOWSKY: They have to beat that price  
13 and make a profit and do the sales activities, and  
14 still give the customer enough savings to make it  
15 worth their while. So for a residential customer who  
16 does not use that much electricity -- and the same  
17 for natural gas, by the way -- I think it is very  
18 difficult.

19 And like I said, if a marketer can come in  
20 and beat that price, that is great, but if they  
21 can't, then I think the utility has to provide a  
22 reasonable price to all customers.

23 REPRESENTATIVE DENLINGER: Very good.

24 Thank you, Mr. Chairman.

25 CHAIRMAN STABACK: Representative Parker.

1           REPRESENTATIVE PARKER: Thank you, Mr.  
2 Chair.

3           My question is for Mr. Popowsky.

4           During our hearing with the Public Utility  
5 Commission, I asked Chairman Holland about the  
6 commission's support for automatic enrollment into  
7 the Lifeline telephone service program, and he noted,  
8 you know, enthusiastically, that the commission was  
9 100 percent behind it, and you have been a strong  
10 advocate for automatic enrollment.

11           I just wanted to know if you could just talk  
12 about that, a little bit about the Kansas Corporation  
13 Commission and the ruling, and tell us where we are  
14 nationally with it and any impact you would think it  
15 would have on our efforts here in the House since the  
16 legislation has been reintroduced.

17           MR. POPOWSKY: Okay.

18           Well, first of all, I want to thank you,  
19 Representative Parker, for your interest in Lifeline.  
20 I think it is extremely important.

21           The unique thing about the Lifeline program  
22 is that the funding for the program comes from what  
23 is called the Federal Universal Service Fund.

24           So to the extent that Pennsylvania consumers  
25 are not getting the full benefit of Lifeline, that we

1 are not getting as many customers as we could, we are  
2 basically not tapping into that Federal fund, whereas  
3 other States are getting more money out of the  
4 Federal fund than we are.

5           So right now, I think we have about 150,000  
6 customers in Pennsylvania who are getting that  
7 Lifeline benefit, which is about \$8 a month off of  
8 their phone bill.

9           We have calculated that in the past there  
10 are as many as perhaps a million families in  
11 Pennsylvania, a million households, that would  
12 qualify for Lifeline. And the way you can qualify  
13 and the reason that automatic enrollment could work  
14 is because if you are on any public assistance  
15 program, whether it is Temporary Assistance For Needy  
16 Families, Supplemental Security Income, you  
17 automatically qualify for Lifeline.

18           REPRESENTATIVE PARKER: Okay.

19           MR. POPOWSKY: So it is just a question of  
20 getting those people together.

21           So if we could just somehow through  
22 automatic enrollment -- and we tried to do this back  
23 in 2004; we were unsuccessful -- but if we could just  
24 get those two lists together, that is the customers  
25 who are on any of these programs and the list of

1 telephone customers and get those lists together, I  
2 think we could greatly expand the number of  
3 Pennsylvania customers who would get additional  
4 assistance at no additional cost to Pennsylvania  
5 consumers and no additional cost to Pennsylvania  
6 taxpayers.

7           So I would be happy to work with you on  
8 trying to get that concept back before the General  
9 Assembly.

10           REPRESENTATIVE PARKER: Thank you, and just  
11 one comment.

12           I wanted to just publicly thank you and your  
13 office for your support. Over about 4,000 residents  
14 of my district over the past 3 years have benefited  
15 from your office in that they participate in town  
16 meetings hosted throughout the northwest section of  
17 Philadelphia.

18           You would be surprised some of the questions  
19 and challenges that members of your staff received,  
20 but they are always very responsive and very helpful,  
21 so thank you.

22           MR. POPOWSKY: Thank you, and I have been at  
23 several of your meetings in Philadelphia. It's  
24 always a pleasure to go, and I would make that offer  
25 to any of the members of this committee, that I or

1 members of my staff can attend the types of programs  
2 that Representative Parker has been having in  
3 Philadelphia to answer questions about utility  
4 services.

5 CHAIRMAN EVANS: Representative Dally.

6 REPRESENTATIVE DALLY: Thank you, Mr.  
7 Chairman.

8 Good afternoon, Mr. Popowsky and  
9 Representative Lloyd.

10 Earlier this week we had the Public Utility  
11 Commission before the committee, and in their budget  
12 request was a new program requesting \$5 million for a  
13 statewide education campaign to prepare customers for  
14 potential increases in electricity due to the rate  
15 caps coming off.

16 The Governor, for some reason, chose not to  
17 include that additional \$5 million in the budget, and  
18 I'm wondering what type of outreach is planned to  
19 prepare consumers for that event, and is that going  
20 to be possible without this additional money in the  
21 budget?

22 MR. LLOYD: Each of the electric  
23 distribution companies has been required by the  
24 commission to submit its plan for a company-specific  
25 outreach program, and the commission has indicated

1 that it is going to make a tentative decision on each  
2 of those plans and then open it up for our office and  
3 anybody else who wants to comment as to whether they  
4 think the plan is going in the right direction or  
5 not. So you would be able, for example, to comment  
6 on the companies that serve your area.

7           And whether \$5 million is the right amount  
8 of money or not I think depends to some extent on  
9 whether, if you are talking about television, you  
10 know from political campaigning how expensive that  
11 is, and \$5 million might make no impact at all.

12           The question is also, how soon do you start?  
13 If you are going to do bill inserts and you are going  
14 to do television advertising, do you wait until 2010  
15 or do you start today?

16           If you are trying to get people to conserve,  
17 if you are trying to get a small business or even a  
18 big business buying a piece of equipment, putting in  
19 a new air conditioning system, to think about, gee,  
20 you know, in 2011 it is going to cost you more money;  
21 you ought to try to do something more efficient  
22 today, then you could say the outreach needs to  
23 happen now in order to, you know, to help mitigate  
24 that expected increase.

25           I think from the standpoint of the business



1 community, one-on-one contact is going to be much  
2 more effective than bill inserts, much more effective  
3 than dog-and-pony shows, much more effective than TV  
4 advertising.

5           And frankly, if you have got the guy who has  
6 got the more efficient piece of equipment, who comes  
7 around to your place of business and says, is there  
8 anything I can do for you, that is more likely, I  
9 think, to work. And I think that really there is  
10 almost a completely different outreach needed for  
11 residential customers than there is for small C and I  
12 yet different from large C and I---

13           REPRESENTATIVE DALLY: Okay.

14           MR. LLOYD: ---where I think they are going  
15 to, probably they are not going to like what is going  
16 to happen to them, because in a lot of areas in this  
17 State, they have been getting subsidized rates, and  
18 they are going to get hammered. But they know that,  
19 and they have the expertise to hire their own people  
20 and they are preparing for this.

21           Small C and I customers are much less likely  
22 to realize that, and without telling any tales out of  
23 school, I was invited a couple years ago to speak to  
24 a Chamber of Commerce group from the southeastern  
25 part of the State that was in the Capitol at the

1 request of a legislator and spent the day. And maybe  
2 it was the time of day, maybe I was too esoteric, but  
3 I started warning them about what was going to happen  
4 in 2011, and I could just see the eyes glaze over.  
5 It is real hard to get people to focus on that, and  
6 it is even harder if, you know, a lot of small  
7 businesses won't be here in 2011.

8 REPRESENTATIVE DALLY: Yeah.

9 MR. LLOYD: So to tell them you need to do  
10 this because in 2011 you are going to be hit by a  
11 rate increase, they're saying, geez, I may not even  
12 own this restaurant in 2011, so, you know, I'm not  
13 going to worry about it. If it comes, it comes.  
14 People have told me the sky was falling before, and  
15 sometimes it did and sometimes it didn't.

16 REPRESENTATIVE DALLY: Right.

17 Mr. Popowsky?

18 MR. POPOWSKY: Yeah.

19 Again, I agree with Bill. While the  
20 commission sort of wanted to have funding for its own  
21 program and then they would assess the utilities as  
22 they ordinarily do, I think instead, with that not  
23 going forward, the commission will still go forward  
24 with the individual utility education programs, and  
25 the cost of those programs could end up being

1 substantial and I think they will be reflected in  
2 rates. So I definitely think that consumers need to  
3 be educated, probably about two things.

4 One advantage, well, the main thing is, if  
5 you recognize that your rates are going to be going  
6 up, the rate per kilowatt hour is going to be going  
7 up 2 or 3 years from now, then when you go out and if  
8 you have to buy a refrigerator, if you have to buy a  
9 new washing machine, even if you have to go out and  
10 buy a dozen light bulbs, you can take that into  
11 account and maybe be willing to spend a little bit  
12 more for a high energy-efficient appliance, that if  
13 we let people know now, I think there's a real  
14 benefit.

15 So I think there is a benefit to getting  
16 consumer education out there sooner rather than  
17 later.

18 REPRESENTATIVE DALLY: And I apologize for  
19 coming in late, but I think I heard the tail end of  
20 one of your comments, and I think it may have been  
21 Representative Lloyd.

22 On the issue of rate caps and, you know, the  
23 political, I guess the politics of continuing those  
24 rate caps as opposed to allowing the free market  
25 system to work, I heard part of what you said, I

1 believe that in order for this electric market to  
2 work, you really need a free market at the retail  
3 level, too.

4 MR. LLOYD: If you are going to extend the  
5 rate caps in those service territories in which the  
6 capped rate is significantly below the market price,  
7 then there is no incentive for somebody to build  
8 generation to serve that particular area.

9 Now, if you are building it to serve the  
10 wholesale market in general, maybe Pennsylvania  
11 extending rate caps will not make that much  
12 difference in terms of whether power plants get built  
13 or not.

14 But in that case, you are just postponing  
15 the inevitable, because either we are going to build  
16 power plants specifically to serve our customers and  
17 that is going to be built at today's prices, and I  
18 don't know why anybody who is signing a long-term  
19 contract is going to give you a break. They are  
20 going to say, well, what do I think I could get over  
21 20 years? And they may guess wrong. It might turn  
22 out that they don't get as good a deal as they should  
23 have, but I don't think that by extending the rate  
24 caps you are going to avoid some fly-up in the  
25 market. The only way you are going to avoid that is

1 if for some reason, either through technology or  
2 through a change in world politics or we discover a  
3 lot more oil or somebody comes up with a way to burn  
4 coal cleanly or dispose of nuclear waste more  
5 readily, unless the price of electricity falls, we  
6 are going to face a problem, and whether you do it in  
7 2011 or you postpone it until 2013, there is still  
8 going to be a problem. And I don't think that people  
9 ought to be lulled into the sense that, gee, if we  
10 just had 2 more years, we could find the solution.

11 REPRESENTATIVE DALLY: Right.

12 MR. LLOYD: All right?

13 And I also think, I mean, I looked at the  
14 bill that was before the Environmental Resources  
15 Committee, and that legislation essentially would  
16 allow, while it says you can extend the rate caps, it  
17 has language which would allow the utility, if it is  
18 not earning a fair rate of return because it has to  
19 buy power at market and sell it at something less  
20 than market, to come in and ask for rate relief.

21 So we would litigate it, and I suppose it is  
22 possible that they wouldn't be able to pass on  
23 everything, but that legislation, in order to meet  
24 the constitutional test -- because otherwise, it is a  
25 taking -- in order to meet the constitutional test it

1 provides an escape hatch, which could lead to rates  
2 which don't vary a whole lot than what the rates  
3 would have been if we had let the caps expire.

4 REPRESENTATIVE DALLY: So you end up at the  
5 same place.

6 MR. LLOYD: That is right.

7 REPRESENTATIVE DALLY: When the PUC was  
8 before the committee, the general consensus was  
9 pretty much exactly what you are saying as far as, if  
10 you extend the rate caps, you extend the inevitable.  
11 Plus the gap between your wholesale price and the  
12 rate cap gets larger if energy prices continue to  
13 increase, and then it is even a bigger hit.

14 MR. LLOYD: That is correct.

15 REPRESENTATIVE DALLY: All right. Thank  
16 you.

17 CHAIRMAN EVANS: I would like to thank both  
18 of you, one, for appearing before this committee, and  
19 two, for what you do for the people of the  
20 Commonwealth of Pennsylvania. I know I really  
21 appreciate it, and it is always a pleasure to talk to  
22 both of you, particularly since both of you have your  
23 crystal balls and you are going to help us out toward  
24 the future. You know, you got to understand why I'm  
25 a little concerned about the budget all the time.

1           So again, I thank both of you for coming  
2 before this committee.

3           MR. LLOYD: Thank you.

4           MR. POPOWSKY: Thank you.

5           CHAIRMAN EVANS: We have the retirement  
6 systems, the State employees and the teachers, coming  
7 before us.

8           So I just need about 2 minutes, 3 minutes,  
9 and they will be coming right before us, and then  
10 that's the last group for today.

11          Thank you.

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13          (The hearing concluded at 1:32 p.m.)

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1           I hereby certify that the proceedings and  
2 evidence are contained fully and accurately in the  
3 notes taken by me on the within proceedings and that  
4 this is a correct transcript of the same.

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Debra B. Miller, Reporter

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