



**Testimony of David Fein
Before the
Pennsylvania House Consumer Affairs Committee
On
House Bill 1580
January, 2012**

Good morning Chairman Godshall and Members of the Committee. My name is David Fein, Vice President of Energy Policy-Midwest and Pennsylvania and Director of Retail Energy Policy for Constellation Energy a retail provider of electricity and energy related services in this Commonwealth and other states that have enacted retail choice. I am also the President of the Retail Energy Supply Association, a broad and diverse group of competitive electricity suppliers advocating for the development of retail competition in states like Pennsylvania and elsewhere.¹ As you are aware, RESA members are active participants in the Pennsylvania retail electric market serving all types of customers, including residential consumers, small businesses and large businesses. My testimony today is on behalf of RESA, of which Constellation is a member.

As you are aware, the subject of today's hearing is House Bill 1580, a bill that would increase the solar requirements under Pennsylvania's Alternative Energy Portfolio Standard (AEPS). This bill also redefines the eligibility requirements for Pennsylvania's solar AEPS requirement such that only those facilities that are physically connected to the distribution system of a Pennsylvania utility can qualify to

¹ RESA's members include: Champion Energy Services, LLC; ConEdison *Solutions*; Constellation NewEnergy, Inc.; Direct Energy Services, LLC; Energetix, Inc.; Exelon Energy Company; GDF SUEZ Energy Resources NA, Inc.; Green Mountain Energy Company; Hess Corporation; Integrys Energy Services, Inc.; Just Energy; Liberty Power; MC Squared Energy Services, LLC; Mint Energy, LLC; MXenergy; NextEra Energy Services; Noble Americas Energy Solutions LLC; PPL EnergyPlus, LLC; Reliant and TriEagle Energy, L.P.. The comments expressed in this filing represent the position of RESA as an organization but may not represent the views of any particular member of RESA.

meet the state's solar AEPS obligations. In other words, the bill attempts to limit eligibility to solar facilities located in Pennsylvania.

I am not here today to tell you that Pennsylvania needs more solar energy, nor am I here to tell you that the current solar requirements should be scaled back. Rather, I'd like to highlight RESA's belief that competitive market forces are more effective than economic regulation in driving efficient prices and creating a vibrant and sustainable competitive retail electricity market. Additionally, regulatory and market certainty is vital to facilitate investment by suppliers in the electricity industry. There is a direct nexus between Pennsylvania's alternative energy policy objectives and the state's commitment to fostering competitive energy markets. Changing the solar AEPS requirements mid-stream, as proposed in HB 1580, has a direct and negative impact on retail suppliers who invested in renewable energy based on the existing requirements. I urge you to consider the impact to the developing competitive retail electricity market and the customers of RESA members as you contemplate HB 1580 or any other legislation that would change the current AEPS.

As discussed in more detail later, HB 1580 would increase costs to retail suppliers, disrupt current investment plans in solar alternative energy credits, and would upset retail supplier's existing contractual relationships with customers. The competitive market has and will continue to help Pennsylvania meet its renewable energy goals. The parallel development of the retail energy market and deployment of alternative energy resources is more than coincidental. With more retail energy suppliers satisfying a customer's choice for energy, more alternative energy resources are being called upon. In today's competitive retail energy market dozens of retail energy suppliers are competing for residential, commercial and industrial customers in the Commonwealth. One important way that retail suppliers differentiate themselves is by offering value-added energy products that meet the needs of individual consumers and businesses. Many suppliers offer various forms of renewable or "green" energy options. For example, of the 38 suppliers competing for residential customers in the PECO service territory 11 are offering green energy options ranging up to 100% renewable energy. Commercial and industrial consumers have even more sophisticated options to choose from. For example, many competitive energy suppliers work with end use consumers such as big box retail stores, property developers, and other commercial customers to install roof top solar panels to off-set the customer's total energy consumption and meet sustainability goals. RESA members and their affiliates also invest in and build small and large scale solar projects, including facilities here in Pennsylvania. Accordingly, the competitive energy market will continue to help Pennsylvania meet its renewable energy goals whether or not additional mandates are imposed through legislation such as HB 1580.

It is also important to note that RESA members are also impacted by the state's renewable energy mandates. As electric generation suppliers, we are obligated to comply with the state's AEPS, including the solar carve-out that HB 1580 would modify. By increasing the solar mandate for the period between June 1, 2012 and May 31, 2015, the cost of complying with the AEPS requirements will increase. Limiting eligibility to only facilities located in Pennsylvania would reduce the supply for qualifying SAECs driving up consumer compliance costs.

HB 1580, absent significant modification, would adversely impact retail suppliers and their customers by increasing the cost to comply with Pennsylvania's AEPS requirements. One of the many benefits that retail suppliers offer customers in a competitive market is the ability to lock in electricity prices through a fixed price contract. Retail suppliers must make assumptions about future input costs when offering a customer a fixed price per kWh for a specified term. Because HB 1580 affects both the number and price of SAECs that a retail supplier needs to meet its obligation in the near term (i.e. beginning in June 1, 2012) the bill would upset the existing contractual relationship that retail suppliers have with customers. This problem is exacerbated because current rules in Pennsylvania allow retail suppliers to bank SAECs for use in 2 future years. This means that a supplier can buy an SAEC generated in the 2011/2012 compliance year and use that SAEC to meet its obligations in the 2011/2012, 2012/2013, or 2013/2014 compliance periods.² This banking provision encourages retail suppliers to buy their needed SAECs in advance and encourages early investment in solar energy. By changing the definition of an eligible solar facility to an in-state requirement beginning on January 1, 2012, HB 1580 would, in effect, penalize those suppliers who conservatively sought to pre-buy SAECs because many of the SAECs they hold would become ineligible to meet the Pennsylvania solar requirements.

As a result of these changes to the solar requirements, retail suppliers serving customers under existing contracts would face two suboptimal scenarios. Suppliers would be forced to absorb the increased solar compliance costs or exercise "change in law" provisions in their retail contracts to pass these increased costs onto their customers. Suppliers choosing to absorb these cost increases would likely be forced to raise their prices offered to prospective customers to compensate for the loss. It is also not a simple matter to just pass these increased costs onto existing customers. Customers under existing contracts entered into those agreements with an expectation of price certainty and would be very upset with any supplier choosing to exercise a "change in law" provision to pass along higher solar costs. Accordingly, HB 1580 would have significant negative consequences for RESA members and our

² The compliance year runs from June 1 to May 31 each year.

customers, and would create regulatory uncertainty that could disrupt both the retail electricity market and the market for renewable energy investment

Should this Committee decide, however, that it is in the best interest of Pennsylvania to move forward with the proposals in HB 1580, RESA suggests this Committee consider important changes to protect retail suppliers and our customers. These changes could include:

- Delaying the increase to the solar requirement so that any increase is implemented no sooner than three years after the date the law is enacted. For example, the solar mandate would remain unchanged for compliance years 2011/2012, 2012/2013, and 2013/2014. Any increase would only affect compliance years after June 1, 2014. Similarly, any change in eligibility requirements for qualifying solar facilities would only take effect after June 1, 2014. This would permit retail suppliers to adjust their pricing assumptions on a going-forward basis while permitting existing contracts priced under the current AEPS to expire. While some retail contracts in existence today may cover periods beyond June 1, 2014, the majority of existing retail contracts would be unaffected.
- A similar, but more burdensome approach would be to include an exemption provision in the bill for existing retail contracts. Under this approach, any retail supplier serving customers under retail contracts executed prior to the date the solar requirements were amended would continue to comply with the pre-existing obligations in effect at the time that the retail contract was executed. While this “grandfathering” approach has been adopted in other states, including Illinois, New Jersey and the District of Columbia for certain RPS law changes, it is burdensome for retail suppliers to manage differing AEPS compliance regimes for different customer load under contract.

Thank you for the opportunity to testify.

David I. Fein
Vice President, Energy Policy - Midwest / Pennsylvania
Director of Retail Energy Policy
david.fein@constellation.com
(office) 312-704-8499
(cell) 312-446-2882