

**BEFORE THE  
HOUSE CONSUMER AFFAIRS COMMITTEE**

**Testimony of**

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**Public Hearing on  
House Bills 2186 and 2188  
(PUC) Smart Meter Legislation**

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Good morning Chairman Godshall, Chairman Preston, and members of the Committee. I am Terry Fitzpatrick, President & CEO of the Energy Association of Pennsylvania, a trade association whose members include electric and natural gas utilities operating in Pennsylvania. Thank you for this opportunity to testify on behalf of our electric utility members regarding House Bills 2186 and 2188.<sup>1</sup>

Both of these bills would amend existing statutory provisions of the Public Utility Code regarding "smart meter technology," which is defined in the statute as metering and network communications technology capable of bidirectional communication and that does the following: provides customers with information on hourly consumption, enables time-of-use<sup>2</sup> and real-time price programs<sup>3</sup>, and supports automatic control of the customer's electricity consumption to the extent the customer chooses to exercise or authorize such control.<sup>4</sup>

The statutory provisions that these two bills would amend were added to the Public Utility Code by Act 129 of 2008. At that time, caps on the prices that utilities charged customers for supplies of electricity were about to expire in most of the Commonwealth after having been in place for over a decade. It appeared that when the caps expired customers might experience substantial increases in their electricity bills – seventy to one-hundred percent in some cases – due to the level of wholesale electricity prices that prevailed at that time.<sup>5</sup> It was hoped that deployment of smart meters could help to mitigate higher prices by allowing customers to choose time-of-use and real-time pricing plans that might reduce their individual bills, and that

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<sup>1</sup> EAP Electric Distribution company members include: Citizens' Electric Company; Duquesne Light Company; Metropolitan Edison Company; PECO Energy Company; Pennsylvania Electric Company; Pennsylvania Power Company; PPL Electric Utilities Corporation; UGI Utilities, Inc. – Electric Division; Wellsboro Electric Company; and, West Penn Power Company.

<sup>2</sup> "A rate that reflects the costs of serving customers during different time periods, including off-peak and on-peak periods, but not as frequently as each hour." 66 Pa. C.S. § 2806.1(m).

<sup>3</sup> "A rate that directly reflects the different cost of energy during each hour." 66 Pa. C.S. § 2806.1(m).

<sup>4</sup> 66 Pa.C.S. § 2807 (g).

<sup>5</sup> Wholesale electricity prices began to recede in the latter half of 2008 with the beginning of the recession and development of the Marcellus Shale.

might also help to temper wholesale electricity prices by reducing demand for electricity during peak usage periods.

With this background in mind, I will address the two bills that are the subject of this hearing.

#### **House Bill 2186**

Currently, the Public Utility Code requires that electric utilities "shall, with customer consent," make meter data available to third parties, including electric generation suppliers and providers of conservation and load management services.<sup>6</sup> House Bill 2186 would add "government agencies" to the list of third parties, which would mean that utilities may not provide meter data to the government unless the customer gives consent. The purpose of adding this language appears to be to protect the privacy of meter data.

As part of their general duty to provide "reasonable" and "adequate" service,<sup>7</sup> electric utilities do not divulge individual customer information except with customer consent or in special circumstances where it is clearly required in the public's interest. Utilities respect and adhere to the privacy protections accorded individuals under the United States and Pennsylvania constitutions, including the right to maintain confidentiality of information. With regard to releasing information to the government, an example of circumstances where individual customer information may be released is where the information is subpoenaed.

EAP believes that the confidentiality of individual customer information is currently protected unless there are compelling reasons to disclose it. However, if the legislation does move forward, it should be amended to authorize electric utilities to release meter data in aggregated form or to a government agency for a legitimate government purpose, including health, safety, emergency response, national security, or in response to a legal or regulatory action.

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<sup>6</sup> 66 Pa.C.S. § 2807 (f) (3).

<sup>7</sup> 66 Pa.C.S. § 1501.

## House Bill 2188

The Act 129 amendments to the Public Utility Code required electric utilities to file a "smart meter procurement and installation plan" within ninety days of the effective date of that Act. The Act also provided that electric utilities "shall" furnish smart meters 1) upon request from a customer that agrees to pay the cost of the meter, 2) in new building construction, and 3) in accordance with a depreciation schedule not to exceed fifteen years.<sup>8</sup> Finally, electric utilities were required (in their roles as "default service providers" of electricity supplies to non-shopping customers) to seek approval by the Commission of time-of-use and real-time pricing plans.<sup>9</sup>

House Bill 2188 would add additional language to this section of the statute providing that customers may request to "opt out" of receiving smart meter technology, and that in cases where customers do so, their meters will be replaced according to a useful life schedule. This legislation would be poor public policy for the reasons explained below.

Allowing individual customers to choose not to receive smart meters would be detrimental to the efficient, reliable, and economical operation of electric distribution systems. A modern electric distribution system is designed to operate in an integrated fashion supported by a single communications infrastructure and information network. If customers can opt out of receiving smart meters, two data collections systems will be needed – one for the majority of customers with smart meters, and another for the minority of customers who opt out. These costs will be substantial, including both upfront system costs and ongoing operational expenses that could approach \$100 per month for each customer who opts out of automated metering. Experience in other states also demonstrates that very few customers choose opt-out where it is offered, even in situations where significant costs of the opt-out are shifted to the majority of customers. This makes the incremental cost of accommodating each individual opt-out

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<sup>8</sup> 66 Pa.C.S. § 2807 (f) (2).

<sup>9</sup> 66 Pa.C.S. § 2807 (f) (5).

customer very high. EAP members strongly oppose subsidizing the cost of choosing opt-out, as this would create a subsidy which the majority of remaining customers would bear.

Allowing individual customers to opt out of receiving smart meters would create "blind spots" as utilities attempt to restore service following outages. The bidirectional capability of smart meters allows electric utilities to transmit a signal and receive a "ping" in return if the customer's service is on. Creating these blind spots could lead to longer and more costly outages for all customers.

For these reasons, we submit that House Bill 2188 would not be sound public policy.

Finally, we have been asked to comment on a potential amendment by the prime sponsor of House Bill 2188 that would delete the language authorizing individual customers to opt out of receiving smart meters. Instead, the amendment would eliminate the requirement that utilities furnish smart meters, file smart meter plans, and file time-of-use rates and real-time price plans. It would accomplish this result by deleting language and changing "shall" to "may" at certain places in the statute.

The electric utilities operating in Pennsylvania are at different stages in their development of smart meters in their distribution systems. Because of these differences, EAP does not take a position on whether the above requirements should be eliminated at this time. However, if the smart meter mandate is relaxed, it is essential to preserve the right of electric utilities to fully recover the substantial investments on programs they have initiated in good faith in this technology. To do otherwise would raise serious questions about the predictability of the regulatory environment in Pennsylvania.

Thank you for the opportunity to testify, and I would be happy to respond to questions.