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HOUSE OF REPRESENTATIVES
HOUSE CONSUMER AFFAIRS COMMITTEE

IN RE:)
)
VARIABLE RATE ELECTRIC)
GENERATION SUPPLIER CONTRACTS)

Allegheny County Courthouse
The Gold Room
436 Grant Street
Pittsburgh, PA 15219
Thursday, April 10, 2014
10:03 a.m.

CHAIRMAN: REPRESENTATIVE PETER J. DALEY

TRANSCRIPT OF PROCEEDINGS

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1 COMMITTEE MEMBERS PRESENT:

2 Peter J. Daley, Chairman
3 Robert Matzie
4 Brandon Neuman
5 Thomas H. Killion
6 Nick Kotik
7 Erin Molchany
8 Jesse J. White

9 COMMITTEE STAFF PRESENT:

10 Amanda Rumsey, Majority Senior Legal Counsel
11 Elizabeth Rosentel, Minority Executive Director
12 Jerry Livingston, Minority Research Analyst
13 Brett Biggica, Minority Research Analyst

14 -----

15 Reported by:

16 Amanda M. Murphy
17 Court Reporter

18 -----

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1 P R O C E E D I N G S

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3 MR. DALEY: Good morning. Being it
4 ten o'clock, this is the hour that we appointed for
5 this House Consumer Affairs Committee. My name is
6 Pete Daley. I am the Minority Chairman of the House
7 Consumer Affairs Committee. I represent Washington
8 and Fayette County, and I want to thank everyone for
9 joining us for this very important meeting of the
10 Consumer Affairs Committee.

11 We're here today to continue our
12 examination of what led to the dramatic spikes in the
13 electric utility rates in January, February, and
14 March; and we're here to determine what steps, if
15 any, are necessary to be taken to provide
16 Pennsylvania with an adequate level of consumer
17 protection while shopping for electricity.

18 Chairman Bob Godshall and myself are
19 working on legislation to address the lack of
20 transparency in consumer protections that currently
21 exist, and we will be listening closely today to that
22 testimony.

23 The House Members here with me today
24 will all be asking pointed questions, and we all
25 would appreciate honest answers.

1 Undoubtedly, this is a
2 highly-complicated issue. But we will not be doing
3 our job if we do not investigate what took place in
4 the energy market over the last couple of months.

5 I would like to point out that we have
6 added Noble Energy to the agenda. We had a meeting
7 yesterday in our offices in Harrisburg, and we asked
8 them to attend and testify today. They'll be
9 attending and testifying on the panel of the Retail
10 Energy Supply Association. So please note, if you do
11 have an agenda, make that notation if you so desire.

12 Once again, I want to thank everyone
13 for joining us today. I would like the members of
14 the Committee sitting here starting with
15 Representative Kotik, identify themselves for the
16 record.

17 MR. KOTIK: Representative Nick Kotik,
18 representing the Western Suburbs of Allegheny County.

19 MR. KILLION: Representative
20 Tom Killion, Delaware and Chester County.

21 MR. NEUMAN: Representative
22 Brandon Neuman, Washington County.

23 MR. MATZIE: Representative
24 Rob Matzie, Beaver and Allegheny County.

25 MS. ROSENTEL: Beth Rosentel,

P. Witmer

1 Executive Director of the Consumer Affairs Committee
2 for Chairman Daley.

3 MS. RUMSEY: Amanda Rumsey, Executive
4 Director of the Consumer Affairs Committee for
5 Chairman Godshall's office.

6 MS. MOLCHANY: Representative
7 Erin Molchany representing City of Pittsburgh and
8 Allegheny County.

9 MR. LIVINGSTON: Jerry Livingston,
10 research analyst, House Consumer Affairs Committee.

11 MR. BIGGICA: Brett Biggica, Consumer
12 Affairs Committee, House of Representatives.

13 MR. DALEY: Thank you. Our first
14 testifier today will be Pam Witmer. Pam is a
15 Commissioner of the Pennsylvania Public Utility
16 Commission. We ask her to come forward, please, to
17 testify at the desk. And please check your
18 microphone to make sure it works, because we are
19 being recorded today. Good morning, Pam.

20 MS. WITMER: Good morning. Are we on?

21 MR. DALEY: Push the button.

22 MS. WITMER: How about that?

23 MR. DALEY: That's good.

24 MS. WITMER: All right. Good morning,
25 Chairman Godshall -- I apologize. Good morning,

P. Witmer

1 Chairman Daley and Members of the House Consumer
2 Affairs Committee. Thank you for inviting me to come
3 out and talk to you today about what is happening in
4 Pennsylvania's electric retail market.

5 The spring that we have is a very
6 beautiful spring day, and last night the Penguins won
7 a very exciting game; and I know that at least I am
8 excited for hopefully another good season for the
9 Pittsburgh Pirates.

10 And so unlike today's beautiful spring
11 day, we have had a very, very frigid winter. And the
12 impact of the recent price spikes has been
13 significant to many customers. Bills that doubled or
14 more caused significant hardship for many people.

15 The Commission's Bureau of Customer
16 Services has fielded more than 15,000 calls. Over
17 6,000 of those calls are informal complaints, and
18 about 500 of them are now taking the form of formal
19 investigations where the Commission will do an
20 investigation to determine whether or not folks have
21 broken any of the rules and regulations that we have
22 in place.

23 The Commission has acted aggressively
24 to try to protect customers. As soon as we saw an
25 uptick in complaints, we issued a press release

P. Witmer

1 alerting consumers broadly what was happening in the
2 marketplace.

3 We urged them to go take a look at
4 their contracts to determine whether or not they had
5 a fixed rate contract, if there were variable rate
6 contracts that they were operating under, what the
7 terms of those contracts were, and also to determine
8 if there were -- there was an opportunity for them to
9 get out of the contract without penalty.

10 We posted similar types of alerts on
11 our Web site. We produced an educational video that
12 explained to folks the difference between a fixed
13 rate contract and a variable rate contract. We
14 provided them with additional tips on shopping if
15 those opportunities were available to them.

16 And we also today are going to be
17 unveiling another educational video. This
18 educational video will provide some tips and walk
19 people through all of their options that they should
20 be taking into consideration as their supply contract
21 comes to an end.

22 But beyond the issue of price, which is
23 obviously very important to people, the two biggest
24 complaints that we heard from consumers throughout
25 this period of time were the need for electric retail

P. Witmer

1 suppliers to be more transparent and to disclose in
2 plain English the terms of the contract, put more
3 notice of price changes on the contract, and have a
4 strong desire to be able to very quickly switch
5 suppliers.

6 But as you know, by statute, the
7 Commission is not able to regulate the price the
8 suppliers are changing -- or charging. But the
9 Commission listened to your constituents and the
10 legislature; and because of the severe impact that is
11 occurring to Pennsylvania consumers, we initiated two
12 separate rule changes last week that, in my opinion,
13 are going to be game changers for consumers.

14 The first was our changes to our
15 Chapter 54 regulations, which relate to EGS
16 contracts. Some of those changes include requiring
17 suppliers to have a template to address the following
18 types of questions for variable rate contracts.

19 If it's a variable rate contract, what
20 is the variable rate based on? If it's a variable
21 rate, how often is the rate expected to vary? If
22 it's a variable rate and the product has applicable
23 ranges or ceilings, that has to be identified to
24 consumers.

25 If it's a product, a variable rate

P. Witmer

1 product, it does not have a ceiling or a range, that,
2 too, has to be disclosed in very plain language to
3 consumers.

4 If it's a variable rate product, you
5 have to describe to consumers when they are going to
6 receive notification of price changes. And for the
7 generation supply price, the generation supplier must
8 list the variable product the first billing cycle
9 rate, and then if there is an introductory rate, the
10 length of the term for that introductory rate.

11 We are also mandating through the rule
12 change that EGSSs must state in plain English that the
13 supply price may not always provide a savings to the
14 customer.

15 Some, however, have resurrected a
16 December 2000 Commission opinion that interpreted the
17 competition law in a way that I and others firmly
18 believe would not withstand a legal challenge.

19 In the last 14 years, the PUC has
20 licensed hundreds of electric suppliers, which
21 includes a review of disclosure statements.
22 Interested parties, including the Office of Consumer
23 Advocate, have not challenged any of these disclosure
24 statements in the last 14 years.

25 Again, under the law, the PUC cannot

P. Witmer

1 dictate prices or price limits on competitive
2 suppliers. However, as I've highlighted last week,
3 my colleagues and I unanimously took significant
4 steps to ensure consumers have adequate and accurate
5 information to make informed decisions in an
6 understandable format as required in
7 Section 2807(d)(2) of the Competition Act.

8 The other rule change that we undertook
9 last week that I think will have a material benefit
10 to consumers and something that we heard from them
11 over and over again was the need to be able to switch
12 suppliers quickly.

13 We have, in our rule change, determined
14 that we can now -- we should have utilities be able
15 to effectuate a change for customers within three
16 business days. That was a unanimous action by all of
17 my colleagues and I.

18 The utilities that have smart or
19 advanced meters will be able to get an immediate
20 meter read. If they don't have a smart meter and
21 system in place or an advanced meter or system in
22 place yet, they can do an estimated meter read. They
23 can send someone out into the field to do a meter
24 read, or we can allow for a customer estimated -- or
25 we can allow a customer read, and then do a true-up

P. Witmer

1 at the next actual meter readings.

2 Of course, there will be some costs
3 that may be associated with that, and we will allow
4 the EDCs, the utilities, at their next based rate
5 case proceeding to seek recovery of those charges.

6 We're also offering and asking them to
7 make this change within six months. These were
8 important changes that, again, I believe are going to
9 have a material benefit to consumers and to the
10 retail electric marketplace. But I think that it's
11 also equally important to put some context around
12 what caused this temporary spike in prices.

13 The events of January have been called
14 "unprecedented," and there is no doubt that they
15 were, in fact, unprecedented events. First and
16 obviously was the temperatures themselves. It had an
17 affect on electricity usage.

18 Eight of the top ten peak winter usage
19 days in PJM occurred in January, including a new
20 all-time winter peak. When it's extremely cold for a
21 sustained period of time like that, it's not
22 unreasonable to expect that folks are going to be
23 using more electricity and more gas for heat.

24 However, and I think this is really
25 critical for folks to understand, it's also

P. Witmer

1 unprecedented as to what happened in the background
2 of the weather event.

3 In early January, we had plenty of
4 generation, but electric generation failed to
5 respond. PJM is still evaluating this problem, and
6 you're going to hear from PJM a little bit later.
7 But between fossil fuel issues for some of the
8 electric generation suppliers who didn't have firm
9 contracts, and some mechanical issues, almost
10 40,000 megawatts of generation that should have been
11 available simply didn't show up.

12 These were generators who received
13 capacity payments to be available when needed. In
14 laymen's terms, a capacity payment has the effect of
15 putting the plant on retainer for the grid when it's
16 necessary. So that was the first event.

17 Then we had the later January event,
18 and that was a very different issue. That time, it
19 was the price of natural gas. And during events like
20 that, I'm reminded of the famous saying, "There's
21 water water everywhere and not a drop to drink."

22 We sit on a sea of Marcellus gas, but
23 historically low prices over the last few years for
24 the commodity have some slowed impact from an
25 activity perspective.

P. Witmer

1 Today, we have some wells that are shut
2 in. Some of it is due to that low price. But more
3 often than not, it's because of the lack of pipeline
4 to be able to get enough gas into the market.

5 In late January, our gas transportation
6 system became constrained, and prices skyrocketed.
7 Generators this time did, in fact, respond a lot
8 better; but this time they were forced to pay the
9 spot price for gas, which became the driver then for
10 electricity prices.

11 An additional way that I think that we
12 should mitigate some of this event going into the
13 future is to get more pipe in the ground so that we
14 can get gas to market. We have to stop opposing
15 pipeline projects.

16 The Commission listened to consumers,
17 listened to your constituents, worked with the
18 legislature. We took swift short-term action to try
19 to alert consumers on what we saw happening in the
20 market, and then we made some long-term changes to
21 the rules of the road for suppliers and for the
22 electric utilities.

23 Understand that we will take steps to
24 investigate any entity that may have broken our
25 rules. If an EGS is found to have stepped outside

P. Witmer

1 the boundary lines, the Commission is, in fact, going
2 to act like an umpire at a Pirates' game. We're
3 going to call the balls and strikes, but we're also
4 not going to hesitate to eject the players from the
5 game.

6 However, in this event that has
7 undoubtedly had a negative economic impact to a lot
8 of consumers and families, it's equally important to
9 understand that some of the most significant issues
10 that drove these prices were wholesale market
11 issues.

12 On that point, be assured that the
13 Commission is actively engaged in monitoring the
14 wholesale issues because that really is where it all
15 starts.

16 With that said, I remain concerned
17 because as many in this room are painfully aware, the
18 Federal Environmental Protection Agency continues to
19 implement rules that are going to force more closure
20 of coal fire generation. Fortunately, in
21 Pennsylvania, we do embrace all of the above and
22 below strategy when it comes to electric generation.

23 Events like this stress a system, and
24 that's when you find out where things work and where
25 they don't work quite as well. And those are

P. Witmer

1 opportunities for improvement.

2 The Commission has heard loud and clear
3 from your constituents. We took action. The
4 Commission has heard from the legislature, which is
5 why I'm here today.

6 However, I don't think the answer is to
7 send customers back to their utility for the utility
8 variable rate. As you can see from this chart,
9 utilities -- folks think that going back to their
10 utility to the default supply is going to provide
11 them a long-term stable rate.

12 The utility price changes on a
13 quarterly basis every 90 days. You can see
14 graphically here how that changes. It's not an
15 answer to send people back to their utility.

16 In spite of the recent circumstances
17 which have led us to this point, since 1996,
18 Pennsylvania has been a leader in the competitive
19 retail marketplace. In this type of dialogue, I am
20 sure, it's only going to continue to benefit
21 consumers and make changes where necessary.

22 So thank you for bringing this hearing
23 together, giving me the opportunity to come out and
24 talk with you; and I would be happy to try to answer
25 any of your questions.

P. Witmer

1 MR. DALEY: Thank you very much for
2 your testimony, Ms. Witmer. I have a couple quick
3 questions, and then I'll throw it open to the floor.

4 As you had testified and I know that
5 Mr. Powelson had met with Mr. Godshall and myself on
6 Monday of this week, the PUC is going to accelerate a
7 regulatory process for these new regulations.

8 We in the legislature know these are
9 certain issues that need to be dealt with by the
10 legislature. There are certain things you can do and
11 certain things that we have to do as legislatures.

12 I'm sure that we can count on your
13 support and input into our process as we develop our
14 legislation that will be moving forward on behalf of
15 the Members of this Committee.

16 Representative White is here. I would
17 like to acknowledge Representative White is here,
18 just for the Members, and also former Member
19 John Taylor sitting in the audience -- John Evans,
20 I'm sorry, John Evans sitting in the audience in a
21 different capacity.

22 So we hope that you can help and
23 participate in that process with us, because we're
24 going to be accelerating our process to have
25 legislation out of Committee by hopefully April 29.

P. Witmer

1 MS. WITMER: I would certainly be happy
2 to take a look at anything you want to put together.

3 MR. DALEY: We have heard from many
4 constituents, all of us, of these accelerated,
5 escalated bills that went from \$200 to \$1,800, and
6 certain players out there, EGSSs, that slam people
7 into these new rates and variable rates; and some
8 people didn't know, according to what have been told
9 to us.

10 In your investigation, if you are able
11 to determine who did things improperly, illegally,
12 unethically, you indicated that they would be out
13 like an umpire; is that correct?

14 MS. WITMER: Absolutely.

15 MR. DALEY: But right now under current
16 regulation, there's nothing you can do other than
17 kick them out; is that correct?

18 MS. WITMER: We can fine folks. In
19 fact, over the last several years, we have imposed
20 over a quarter million dollars worth of penalties and
21 fines on electric suppliers for violations of our
22 rules. We can yank a license, and we won't hesitate
23 to do that.

24 MR. DALEY: The fines are \$1,000; is
25 that correct?

P. Witmer

1 MS. WITMER: No. There's no set
2 penalty.

3 MR. DALEY: Can they also be turned
4 over to the Attorney General to be prosecuted? Is
5 that who's going to be prosecuted on your behalf?

6 MS. WITMER: It depends upon where we
7 are in the process. We have been working with the
8 Attorney General. She's certainly taking a look to
9 determine whether or not there have been any
10 violations of other consumer protection laws.

11 MR. DALEY: I would like to acknowledge
12 Hal English, who's a Member of the legislature, is
13 here. I think he's sitting somewhere. You're
14 welcome to join us if you so desire.

15 The threshold question I know that --
16 we're talking about developing a threshold or a cap,
17 and it's a concern by the energy generation
18 suppliers.

19 We may be proposing that once a certain
20 threshold is reached, that there's a petition to the
21 PUC in order to have a hearing or a process to
22 determine if that threshold -- exceeding that
23 threshold would be necessary and proper.

24 Is the PUC prepared to be able to
25 handle those type of requests if we hit another polar

P. Witmer

1 vortex and this type of issue would be addressed?

2 MS. WITMER: I would certainly like to
3 take a look at what the language is before we could
4 express any sort of determination on what our
5 capabilities would be to implement that.

6 But generally speaking, I think that
7 when the legislature has given us new
8 responsibilities, we've implemented it pretty
9 effectively.

10 MR. DALEY: Lastly, I know our staff is
11 having a difficult time with some of these EGS
12 suppliers, getting point of contact. We receive our
13 complaints, they come to our offices; and we can't
14 touch base with someone in the company without, you
15 know, without really sort of being hung up on, not
16 having the return call.

17 Do you require points of contact? And
18 if so, can we have those points of contact so we can
19 provide it to all our staffs and we can implement our
20 contacts?

21 MS. WITMER: We do require a point of
22 contact whenever the -- when they're seeking their
23 initial license. That information certainly is
24 public. It's part of the docket.

25 MR. DALEY: Representative White.

P. Witmer

1 MR. WHITE: Thank you. Something you
2 said when you were talking about the potential
3 long-term solutions kind of struck me as a little
4 interesting, and I wanted a little clarification.

5 You mentioned that one of the things in
6 relation to the Shale gas production was that there
7 wasn't sufficient pipeline capacity and that you
8 recommended that additional pipeline construction
9 should be something to solve the problem.

10 I'm a little confused by that, because
11 most of the pipelines that are being constructed,
12 especially some of the bigger transmission ones, are
13 clearly being designed for export. You know, the
14 Mariner line that's being taken across the state is
15 designed to take Marcellus Shale gas out of
16 Pennsylvania, not to keep it in Pennsylvania.

17 MS. WITMER: That's a different kind of
18 a pipeline. That one would have gas liquids and not
19 dry gas used for electricity generation.

20 MR. WHITE: So you're saying our
21 pipeline infrastructure for dry gas isn't
22 sufficient?

23 MS. WITMER: Correct. We need more
24 pipeline to get gas from the wellhead out to
25 generators to make for electricity.

P. Witmer

1 MR. WHITE: But it seems to me from
2 what I've seen in my own district where a lot of
3 these pipelines are being built is that the focus
4 from the marketplace is for liquefied exports because
5 that's where the money is. The price of dry gas is
6 so low that they're not -- you know, that's why
7 they're keeping a lot of those wells shut, which is
8 what you, I think, alluded to.

9 MS. WITMER: Actually, if you look at
10 what the generation -- the electric generation mix
11 is, it's moving much more toward natural gas. We're
12 using natural gas for electric generation, and that's
13 going to continue.

14 I think it's important to make sure
15 that we don't mix apples and oranges when we talk
16 about this. Certainly, in the southwest, out here, a
17 lot of the gas has liquid components to it; and
18 that's being brought -- that's being, you know, taken
19 out and moved because it does have a different, you
20 know, price to it.

21 MR. WHITE: Right. And I would just
22 comment, I think that's something we need to be
23 careful about, is if we're talking about making sure
24 that we have -- we're talking about natural gas as an
25 electric source, you know, to develop power

P. Witmer

1 generation, you know, we can't just make the blanket
2 statement, "We need more pipelines," because a lot of
3 these pipelines that our constituents are having
4 literally put through their backyards are not going
5 to do anything to make sure their house is being
6 heated any cheaper during the winter.

7 It's designed to ship gas for export to
8 foreign countries, which will actually drive up the
9 wholesale price, which will actually make it more
10 expensive for them to heat their houses. So I think
11 we need to be careful on how we, you know, make that
12 a -- more pipelines as a potential solution for the
13 problem we dealt with. I don't think they're very
14 valuated at all. Thank you.

15 MS. WITMER: Well, I would disagree.

16 MR. DALEY: Thank you. Representative
17 Molchany.

18 MS. MOLCHANY: Thank you,
19 Mr. Chairman. My question mainly deals with the
20 education component. You mentioned that the PUC
21 takes steps to educate consumers and our constituents
22 about the variable rates. I guess I'm a little bit
23 concerned.

24 I'm wondering, does the PUC have the
25 adequate resources to really educate consumers about

P. Witmer

1 their rights and responsibilities as it applies to a
2 variable rate contract?

3 MS. WITMER: Right. We are working
4 with the -- I think the short answer is yes. We have
5 a lot of dedicated folks within the Commission that
6 are going out to do consumer education events with,
7 you know, any of you who have senior affairs, who go
8 out into malls and set up booths. We're doing a lot
9 from the social media perspective.

10 Can we do some things more?

11 Absolutely. And we're looking to see what we can do
12 in those areas.

13 MS. MOLCHANY: Great. Thank you.

14 MR. DALEY: Representative Neuman.

15 MR. NEUMAN: Thank you, Mr. Chairman.
16 Thank you for your testimony today. My question is,
17 you stated that you were looking for a consumer to be
18 able to transfer more quickly, three-day period.

19 That doesn't really address the issue
20 that may be within their contract with termination
21 fees and also a longer period before they can
22 terminate that contract.

23 Even though you're saying 72 hours, if
24 their contract has a termination fee in it that
25 they're required to pay or it states you can't switch

P. Witmer

1 for 30 days, how are you going to address those
2 contractual issues between the consumer and the
3 utility?

4 MS. WITMER: Well, that's one of the
5 things, and to Representative Molchany's point, from
6 an education perspective, we need to be able to
7 educate consumers so that they know what kind of
8 contract they're getting into, that if they have a
9 cancelation fee, that that's something that they have
10 to have a tolerance for and understand what that is.

11 Sometimes, though, if you get into a
12 situation where the price has spiked to a point like
13 we had in this past winter, it may be worthwhile, you
14 know, paying that one-time cancellation fee to be
15 able to move into a different contract.

16 MR. NEUMAN: Just because you have a
17 requirement of 72 hours is not going to do anything
18 to the contractual requirement of a longer
19 termination period or a reimbursement of termination
20 fee.

21 My concern is, say, next year during
22 the wintertime or even the hot summertime and they
23 want to switch their provider, I mean, there could be
24 a 30-day period or termination fee within their
25 current contract that they're in; and they may not

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1 know that. And just because you have a 72-hour
2 requirement doesn't mean it's going to benefit the
3 consumer at all at the end of the day.

4 MS. WITMER: I think the changes that
5 we made to the other set of regulations, the
6 Chapter 54 regulations, that are going to require a
7 much more standard and, in plain English, set of
8 questions and disclosure will make it easier for
9 consumers to know what they have and whether or not
10 they have any sort of -- what the length of their
11 contract is, if they have a cancelation fee, if the
12 rate that they're going to be charged is -- you know,
13 how often that will change.

14 Those things are going to be much
15 clearer for consumers so they'll be able to know
16 whether or not it makes sense for them to, you know,
17 seek a new supplier immediately or wait until the end
18 of their contract.

19 MR. NEUMAN: My other question goes to
20 the availability of power during the first part of
21 January you were talking about. How much power did
22 PJM retain for that period?

23 MS. WITMER: You'll hear from PJM in a
24 little bit, and they'll be able to give you the
25 specifics. You're talking about what were the peak

P. Witmer

1 usages?

2 MR. NEUMAN: No. What did they pay for
3 to have retained versus what was actually available?

4 MS. WITMER: Right. They sought a
5 waiver at FERC in order to be able to increase the
6 price that folks had to pay. It went over \$1,000.

7 MR. NEUMAN: My question is more, for
8 example, if there's supposed to be 100 megawatts
9 available that they pay for for a retainer but in
10 reality there was only 60 megawatts available, that
11 doesn't seem like the consumer's fault.

12 MS. WITMER: Are you talking about the
13 capacity payment that I mentioned?

14 MR. NEUMAN: Yes. So you said that
15 they showed up 40,000 kilowatts short of what they
16 paid for?

17 MS. WITMER: Right.

18 MR. NEUMAN: So if they were required
19 or retained, for example, 100 kilowatts, and only
20 60 kilowatts were available, I don't understand why a
21 consumer should have to pay for PJM's mistake of not
22 actually having the power available.

23 MS. WITMER: I understand that the
24 consumers weren't directly paying for that, because
25 the generation is deregulated, so stockholders,

P. Witmer

1 shareholders.

2 Now, it did show up from a price
3 perspective, so you can say ultimately, you know,
4 they did; but there wasn't -- they weren't paying
5 from a direct base rate perspective because of the
6 separation that we have, the deregulation that we
7 have in Pennsylvania with generation supply being
8 regulated and the, you know, shareholders are bearing
9 the risk there.

10 MR. NEUMAN: Thank you. And just one
11 further comment. I agree with you. I think we need
12 to be careful on just transferring everything over to
13 natural gas power generation when we don't have firm
14 contracts.

15 I think this could lead to a lot of
16 problems taking coal fire plants off line, putting on
17 natural gas power plants without firm contracts,
18 because we're going to run into the same situation
19 where they say there's this much power available; but
20 they don't have a firm contract, so they really can't
21 tell you how much power is available.

22 So I hope that the PUC is being
23 hesitant to transfer over a lot of power generation
24 before we can have the infrastructure for firm
25 contracts.

P. Witmer

1 MS. WITMER: That's why we're working
2 very closely with PJM and FERC for that issue, and
3 that will ultimately be addressed.

4 MR. NEUMAN: Thank you.

5 MR. DALEY: Representative Matzie.

6 MR. MATZIE: Thank you, Mr. Chairman.
7 Thank you, Madam Commissioner. Go through the
8 process for me on how a supplier becomes licensed in
9 the Commonwealth of Pennsylvania.

10 MS. WITMER: There's an application
11 process. They have to provide us background
12 information, provide us financial information.
13 There's a bonding requirement. We review their
14 fitness, and we review their disclosure statements.

15 The application is then made public.
16 Anyone can challenge the application, including the
17 consumer advocate, including the small business
18 advocate.

19 They get to review all of the -- it's
20 open for the public's review. We then make a
21 determination as to whether or not we believe that
22 they meet the conditions within the rules and
23 regulations, and that they're also then spelled out
24 in the Competition Act before they're granted a
25 license.

P. Witmer

1 There are times when we have had some
2 concerns about some particular suppliers, and we've
3 put some restrictions on what they can do. They also
4 indicate where they want to serve customers, what
5 utility territories. So that's spelled out. So we
6 make sure that they are not going beyond those areas
7 to try and solicit customers.

8 MR. MATZIE: On the Web site when
9 they're looking to choose their supplier, how often
10 is that updated from the company's standpoint and
11 what you're looking at from your standpoint at the
12 PUC? Is it daily like a stock market? Is it a
13 couple of days? Is it a week?

14 MS. WITMER: Some of the electric
15 generation suppliers have the ability to go in and,
16 you know, change their own price. So it could
17 change, you know, pretty regularly. I can't answer
18 specifically if it changes on a daily basis. But it
19 is -- it's not a static page.

20 MR. MATZIE: The issue this week with
21 the letters that you submitted, two separate
22 secretarial letters that will now go before the
23 Standing Committees and both the House and the Senate
24 as well as FERC, how often is that something done by
25 the PUC? When is the last time that has been done?

P. Witmer

1 MS. WITMER: That we went a final
2 admitted ruling and process?

3 MR. MATZIE: Right, correct.

4 MS. WITMER: It's not something that we
5 do with any regularity. There are only specific
6 circumstances where, you know, you would want to go
7 down that path.

8 And when there's a situation that is
9 significant enough that is causing enough harm to,
10 you know, constituents, that's when we felt, you
11 know, that we really needed to step up the process so
12 that we could, you know, lower the temperature and
13 make some significant changes that will help some of
14 these folks sooner rather than later.

15 MR. MATZIE: I think for the public, I
16 think the action of the PUC and the manner and the
17 speed speaks to the serious nature of this. It's not
18 something you take for granted, and it's not
19 something the PUC does on a frequent basis.

20 My final question is, I know a couple
21 of years ago when the caps came off for certain parts
22 of the state, it didn't really affect Southwestern
23 Pennsylvania. Are caps the answer? Is that an
24 answer that could work? Is that something we should
25 be looking at again as the legislature?

S. Bresler

1 MS. WITMER: I would emphatically say
2 no.

3 MR. MATZIE: Thank you. Thank you,
4 Mr. Chairman. Thank you, ma'am.

5 MR. DALEY: Thank you, Ms. Witmer.
6 Thank you very much. No other questions. Our next
7 testifier today will be Stu Bresler, Vice President
8 Market Operations, PJM. Mr. Bresler, you can begin
9 when you're ready.

10 MR. BRESLER: Morning, Chairman Daley,
11 Members of the Committee, Committee staff. My name
12 is Stu Bresler. I am Vice President Market
13 Operations at the PJM interconnection, and it is a
14 pleasure to have the opportunity to come before you
15 today to discuss the events of the cold weather that
16 we had this winter and their impacts on PJM's system
17 operations and market results.

18 I have prepared written testimony that
19 we have submitted for the Committee's use and
20 consideration in this proceeding this morning. What
21 I thought would be more beneficial, though, is to
22 walk through the set of presentation slides that we
23 also provided to the Committee.

24 So if you would like to follow along as
25 I go through them, they should be in your materials

S. Bresler

1 for this morning's session.

2 If you go ahead and move to the second
3 slide, just a quick reminder on who PJM is and what
4 we do. PJM is a federally-regulated regional
5 transmission organization of RTO. We operate in
6 Pennsylvania, as well as all of our parts of 12 other
7 states and the District of Columbia. You can see our
8 footprint there.

9 PJM's primary responsibility is
10 reliable operation of bulk power transmission grid,
11 both in real-time operations and in long-term
12 planning. We also operate transparent and
13 nondiscriminatory full-sale electricity markets in
14 the region.

15 The purpose of the operation of those
16 electricity markets is singular in its purpose. It
17 is to reinforce the reliable operation of the
18 electric transmission grid.

19 PJM's responsibilities do not encompass
20 retail transactions or the retail marketplace. That
21 falls under the jurisdiction of the Pennsylvania
22 Public Utility Commission as you just heard from our
23 Commissioner Witmer a few minutes ago.

24 If you move to the next slide, as
25 Commissioner Witmer described, we did see

S. Bresler

1 historically cold weather in the PJM region and the
2 surrounding regions in the winter of 2014.

3 The Slide No. 3 shows some
4 representative temperatures, particularly on the
5 weeks of January 6, January 20, and January 27, with
6 representative low temperatures as well as wind chill
7 values within the PJM region.

8 This fairly extraordinarily cold
9 weather was widespread across the PJM region and
10 extending into other regions around PJM as well. So
11 typically during peak weather events, we will see
12 some diversity in the weather across the footprint;
13 and that was not the case, particularly early in the
14 month of January where the cold weather was
15 widespread across the blueprint.

16 If you move to Slide 4, as
17 Commissioner Witmer described in her testimony, the
18 extraordinarily cold weather led to record and
19 unprecedented high demand for a winter period in
20 PJM.

21 MR. DALEY: We do have the testimony.
22 I don't know if the public has it, but we can provide
23 it to you. We can give it to you now if anyone
24 wishes to have it, because it would help you to see
25 exactly what is being explained. One of you grab

S. Bresler

1 that; and if anyone needs it, please just indicate.

2 I'm sorry for interrupting.

3 MR. BRESLER: No problem,
4 Mr. Chairman. Thank you very much. As
5 Commissioner Witmer described, PJM did set an
6 all-time record winter peak in January, on January 7,
7 of well over 141,000 megawatts.

8 And also as Commissioner Witmer
9 mentioned during her testimony, PJM set eight of its
10 ten all-time winter peak demands this past January.
11 And you have to go back to 2007 to find the sixth
12 highest winter peak demand on the PJM system.

13 Just to put this a little bit more into
14 perspective, if you move to Slide 5, there are a
15 couple of representative load curves that are
16 represented on that slide.

17 The green track towards the bottom of
18 the slide shows a typical winter load curve that
19 would occur in the month of January. And you can see
20 there's a morning peak at just over 100,000 megawatts
21 and an evening peak slightly higher, just over
22 106,000 megawatts.

23 The load curve that's pictured in blue
24 higher up on the slide is the actual load curve that
25 we saw on the day of January 7, 2014. And you can

S. Bresler

1 see the valley load, which is what we refer to for
2 the lowest load that we saw, on that day of January 7
3 was actually about 14,000 megawatts higher than what
4 a typical peak load would be on a January winter
5 day.

6 And, in fact, the peak demand on
7 January 7 was a full 35,000 megawatts higher than
8 what we typically see on a winter peak day. Many
9 days in January were 15,000 to 20,000 megawatts
10 higher as far as peak loads were concerned than we
11 would typically see in January, which equates to an
12 energy production standpoint of 12 to 15 nuclear
13 power plants operating at full load.

14 In fact, if you look at just the month
15 of January, only 18 states in the union consumed more
16 electricity in all of 2012 than was consumed just in
17 the PJM region and just in the month of January.

18 During several periods during the month
19 of January, PJM did call on several of its emergency
20 procedures. But just to dispel any rumors that have
21 been out there, we were at no point anywhere close to
22 what has been termed a "system collapse" or anything
23 of the sort.

24 As has already been mentioned during
25 Commissioner Witmer's testimony, if you go to the

S. Bresler

1 next slide, Slide 6, what made operations even more
2 challenging during the month of January was a
3 significant number of forced outages of the
4 generation that occurred during the month.

5 The green dotted line across the chart
6 is what we would typically see over the winter period
7 as far as an average forced outage rate of
8 generation.

9 Some were typically between six and
10 eight percent. It's a little bit higher usually in
11 the winter than we see during other periods of the
12 year. And you can see that on January 7, we peaked
13 at 22 percent of the generation being forced out of
14 service in the PJM footprint.

15 The next slide breaks down really sort
16 of the categories of those generators that were
17 forced out of service on the seventh. A little less
18 than half of those units were natural gas fired
19 units; and a little less than half of the natural
20 gas, about half of the natural gas fire generation
21 that was out of service, was out due to fuel delivery
22 issues. So in other words, an inability to get
23 natural gas to the unit.

24 So if you take out the fuel delivery
25 issues, which was about a quarter of the total forced

S. Bresler

1 outages, we were still at more than double what a
2 typical forced outage rate would be in the PJM
3 footprint.

4 If you go to the next slide,
5 Commissioner Witmer also mentioned the high natural
6 gas prices that we saw during the month of January.
7 And the red line on Slide No. 8 represents the
8 natural gas prices at locations in the eastern part
9 of the PJM footprint.

10 And you can see that the gas prices in
11 that eastern part of the PJM footprint were
12 significantly higher than natural gas prices in the
13 western part of the footprint, which is the green
14 line, and the unconstraining part which is typically
15 referred to as the Henry Hub price down in
16 Louisiana.

17 So there were significant natural gas
18 transportation constraints that led to higher natural
19 gas prices in the eastern part of the PJM system that
20 went into setting the marginal prices for
21 electricity.

22 Just to put these numbers into
23 perspective, for a \$100 per million BTU natural gas
24 price and a relatively efficient combustion turban
25 unit that has a 10,000 BTU per kilowatt heat rate,

S. Bresler

1 that equates to about \$1,000 per megawatt hour or
2 about a \$1 per kilowatt hour cost to produce energy.
3 So the natural gas prices were directly responsible
4 for the higher electricity prices that we saw in the
5 footprint in the month of January.

6 If you move to Slide 9, just to put
7 those prices into perspective, Slide 9 shows the
8 monthly average energy price, there's a locational
9 marginal price, in the PJM footprint back in January
10 of 2014.

11 And on a monthly average basis, you can
12 see we're hovering right around \$40 per megawatt hour
13 with a bump up there in the summertime up to about
14 \$50 per megawatt hour.

15 And in January, the load-weighted
16 average LMP for the entire PJM footprint for the
17 entire month was in excess of \$120 per megawatt hour,
18 again, stemming directly from the underlying fuel
19 cost for natural gas. And you can see in February,
20 then we drop back down to somewhere around the \$70
21 range.

22 So if you look down to Slide 10 then,
23 some of the issues that we are working to continue to
24 resolve, it's really, I think, three categories of
25 issues with respect to the natural gas and electric

S. Bresler

1 industry interface.

2 First of all is a need for the system
3 operators to efficiently share information regarding
4 gas availability and electric generation planning on
5 a real-time basis and on a data planning basis.

6 The FERC has actually issued an order,
7 Order 787, that requires this coordination. PJM
8 actually did the waiver of our operating agreement
9 confidentiality provisions during this winter in
10 order to allow that efficient coordination to occur
11 and to share that information between the two
12 industries.

13 FERC approved that waiver immediately,
14 and PJM has since filed changes to our operating
15 agreement to allow that coordination in the future as
16 well. We had much more coordination this winter than
17 we have had in the past as a result of those
18 changes.

19 The gas pricing issues really are sort
20 of the second category of issues that need to be
21 addressed. As I mentioned at the beginning of my
22 presentation, the sole reason for operating wholesale
23 electricity markets is to reinforce reliable grid
24 operations.

25 That does not work as efficiently as it

S. Bresler

1 needs to if the underlying costs of operating
2 resources on the system is not made transparent to
3 electricity prices.

4 And when generator costs exceeded the
5 \$1,000 per megawatt hour level, there was a cap in
6 the PJM governing agreement that did not allow them
7 to submit offers that exceeded that level.

8 And that was the waiver, I think, that
9 Commissioner Witmer referred to that PJM filed in
10 order to allow submission and compensation to
11 generators for their actual costs when they exceeded
12 that \$100 per megawatt hour level.

13 PJM has introduced a discussion to our
14 stakeholder process for how we may want to change our
15 governing agreement going forward to allow submission
16 of offers when those costs exceed that level.

17 Again, it's critical to allow
18 submission of those costs so that they can be
19 transparently shown in electricity prices that
20 result.

21 Last, but not least, we did have
22 scheduling and commercial issues in the interface
23 between electricity and natural gas because of the
24 tightness of the supplies on some parts of the
25 system.

S. Bresler

1 And PJM was required to operate
2 generation for longer periods of time and at higher
3 levels than would otherwise have been necessary in
4 order to make sure that generation was available
5 during the peak hours when it was needed, and that
6 resulted in significant uplift costs that show up as
7 ancillary service costs to wholesale market
8 participants. So we need to address those scheduling
9 commercial issues as well as we go forward.

10 Just to hit a couple of bright spots
11 before I conclude my presentation and take your
12 questions, if you look at Slide 11, PJM did implement
13 demand response during these cold weather events.

14 Slide 11 shows the actual demand
15 response that was realized on January 7. And you can
16 see that over the morning peak, we had in excess of
17 2,000 megawatts in demand response actually respond
18 to our calls; and over the evening peak, closer to
19 2,500 megawatts.

20 So it was an actual demonstration of
21 the value that the main response can provide to
22 assist in meeting these peaks even during the winter
23 period. And in the future, we'll be required to do
24 so as an annual product. So it's a very good
25 demonstration of that capability.

S. Bresler

1 If you look at the next slide, it's
2 highlighting this continuing transition from coal to
3 natural gas fire generation. PJM's historic
4 overriding transmission system constraints have been
5 west to east on our system from the inexpensive
6 resources in the west to where really the
7 concentrated load centers are in the east.

8 As a result, we have historically seen
9 higher energy prices in the eastern part of the
10 system and lower prices on the western part of the
11 system because of those transmission constraints.

12 The good news is that as we undergo
13 this transition, we are seeing the generation
14 additions in the eastern part of the system where
15 they will most benefit those transmission constraints
16 and result in lower prices in the eastern part of the
17 system; and those are the green dots that you see on
18 the chart compared to the red dots, which are the
19 retirements that we're seeing, which are, again, on
20 the more constrained side of the PJM system.

21 And last, but not least, if you go to
22 the last slide, Slide 13, you can see what impact the
23 addition of natural gas fire generation has had on
24 wholesale electricity prices.

25 Between 2008 and 2012, average

S. Bresler

1 wholesale electricity prices were literally cut in
2 half, and that is directly as a result of the
3 reduction in the underlying fuel costs because of the
4 injection of additional natural gas supply.

5 In order to continue to take advantage
6 of those abundant natural gas supplies, we need to
7 continue to ensure that we address these gas electric
8 coordination issues that I described during this
9 presentation.

10 We need to continue our process
11 improvements to ensure that generation that is
12 committed to meet reliability needs of a region is as
13 available as possible during the time when it's
14 needed, and we need gas infrastructure improvements
15 to continue in order to continue to keep up with the
16 transition as it proceeds.

17 So with that, I'll conclude my
18 presentation at this point. I thank you again for
19 the opportunity to come before you today, and I would
20 be happy to address any questions you might have.

21 MR. DALEY: Thank you very much.
22 Representative Killion.

23 MR. KILLION: Thank you, Mr. Chairman.
24 You mentioned transmission constraints, fuel delivery
25 issues, and as we move from coal, of course what is

S. Bresler

1 happening at the federal level, and closing the coal
2 plants, moving to gas plants.

3 Would you agree with Commissioner
4 Witmer in saying that there is a need for additional
5 pipelines to move that fuel from the generators so
6 that we don't have those transmission and fuel
7 delivery issues?

8 MR. BRESLER: I certainly would. If
9 you look at the conditions that we saw during the
10 month of January and the extremely high natural gas
11 prices we saw in the eastern part of the PJM system,
12 simultaneously, the spot natural gas prices in
13 Central Pennsylvania were extremely low.

14 That's because of the transmission
15 limitations of getting the gas to where it was needed
16 to be, and there are actual upgrades in place -- not
17 in place -- that are under construction in order to
18 relieve some of those natural gas transmission
19 constraints.

20 MR. KILLION: Thank you.

21 MR. DALEY: Representative Neuman.

22 MR. NEUMAN: Thank you, Mr. Chairman.

23 Thank you for your testimony today. I guess I have a
24 lot of concerns. One of my main concerns is I assume
25 that you not only pay for the power that you use but

S. Bresler

1 you pay for power to be available. Is that correct?

2 MR. BRESLER: That is correct.

3 MR. NEUMAN: How much power was
4 supposed to be available in the beginning parts of
5 January? How many megawatts?

6 MR. BRESLER: I don't have the exact
7 number right in front of me, Representative, but it
8 is on the order of 175,000 megawatts, towards
9 180,000 megawatts.

10 MR. NEUMAN: And we only used
11 141,000 megawatts; is that correct?

12 MR. BRESLER: Give or take. Don't
13 forget there's also electric interchange that comes
14 in and out of the footprint. So over the morning
15 peak on the 7th, I think we had about 1,000 megawatts
16 of energy coming in. Over the evening peak, it was
17 actually more than that.

18 So the load was 141,800 megawatts, as
19 far as the generation that was actually operating in
20 the region to support that was more or less depending
21 on where the energy came from.

22 MR. NEUMAN: So the 40,000 megawatts
23 that you pointed to on Slide 7 is the 40,000 that was
24 missing from the 175 that was supposed to be
25 available?

S. Bresler

1 MR. BRESLER: That's correct, sir.

2 MR. NEUMAN: So if I'm an educated
3 consumer and I understand that there's supposed to be
4 175,000 megawatts available power and I say, you know
5 what, the variable rate makes sense because the
6 highest we're ever going to use is 141,000 megawatts,
7 so it shouldn't cross the threshold where we need to
8 increase the rate to the point that it increased --
9 so even if I'm an educated consumer, they would never
10 have known that this spike would have occurred; is
11 that correct?

12 MR. BRESLER: Certainly, sir, there's
13 no expectation that every single megawatt that's
14 committed is going to be available 24/7, 365. Forced
15 outages occur on the system.

16 As I said, the average forced outage
17 that we see is significantly lower than the forced
18 outages that we actually saw on the 7th. I think
19 there were a lot of reasons behind it.

20 Some of it was natural gas availability
21 issues. The cold weather had a lot to do with it
22 because mechanical things don't work nearly as well
23 in extreme cold weather as they do in warm weather.
24 So I don't think there's a reasonable expectation
25 that every megawatt would be available.

S. Bresler

1 But certainly, yes, the combination of
2 factors that we saw in early January led to higher
3 energy prices because of the supply and demand
4 balance. That certainly is true.

5 MR. NEUMAN: So if I'm a consumer, I'm
6 paying as a consumer for 175,000 megawatts to be
7 available, I don't understand how on the back of the
8 consumer that paid for those 175,000 megawatts to be
9 available -- how is it on the back of the consumer
10 when those megawatts are not available and it's
11 increasing the rate significantly when a consumer is
12 counting on your predictions of 175,000 megawatts,
13 give or take whatever it's going to be, but no
14 consumer can anticipate -- and I know you can't
15 either -- 22 percent of the power being off grid.
16 But the consumer at the end of the day is the one
17 paying for it.

18 So I'm very troubled by this. And
19 we're talking about 141,000 megawatts, give or take
20 some. But the availability was supposed to be
21 175,000. And it bothers me to the point where the
22 variable rates should not have spiked.

23 Even an educated consumer would have
24 said, this power is available, I do not need to
25 switch. And then the power comes off grid, and we're

S. Bresler

1 buying power from New York. New York is buying power
2 from Canada, and everything goes through the roof.

3 The other concern I have is your
4 comments about direct demand response. It's my
5 understanding that, you know, the peak usage of
6 demand response was 2,500 megawatts. It was my
7 understanding that it was supposed to be -- the
8 availability was supposed to be 7,000 megawatts. Is
9 that correct?

10 MR. BRESLER: Actually, no, sir, not
11 this year. This year, demand response actually was a
12 summer-only product. So it was actually -- no demand
13 response was actually required to respond during the
14 winter. So what we saw during January was actually
15 voluntarily on the part of the responder.

16 MR. NEUMAN: And so out of the
17 175,000 megawatts, was any of that 175,000 demand
18 response?

19 MR. BRESLER: Yes, it was.

20 MR. NEUMAN: How much did you predict
21 would be available for the 175,000 for peak?

22 MR. BRESLER: Again, for the winter
23 period, none.

24 MR. NEUMAN: None. So for the winter
25 period, you didn't rely on demand response at all?

S. Bresler

1 This ended up being extra power?

2 MR. BRESLER: Yes, that's correct.

3 MR. NEUMAN: Okay. Well, thank you for
4 your testimony. I hope you appreciate my concerns.
5 You know, the variable rates is a huge concern, but
6 it seems to me almost like a red herring in all of
7 this, in the availability of power and what the
8 consumer expects out of PJM and the utilities,
9 because stated, you're supposed to have
10 175,000 megawatts available.

11 And even an educated consumer could not
12 have predicted that there was going to be
13 40,000 megawatts off the grid, and they're the ones
14 that end up paying for it. So I hope that you take
15 my concerns seriously. I do appreciate your
16 testimony.

17 MR. DALEY: Representative Molchany.

18 MS. MOLCHANY: Thank you,
19 Mr. Chairman. Thank you for your testimony. It's
20 much appreciated. My question deals mainly with
21 expectations for the future.

22 So we've been talking a lot about
23 demand response and the polar vortex and what
24 happened in the past. But my question to you is, how
25 is PJM handling the potential for an extreme summer?

S. Bresler

1 You know, are we ready? Is the same thing going to
2 happen?

3 Can we expect to be having this very
4 same conversation about variable rates because we had
5 the same situation happen in the summer? And now
6 we're going to have a whole lot of constituents that
7 are coming to us in the fall saying, I got this
8 \$1,000, \$2,000 bill, my variable rate given having to
9 run my air conditioning all throughout the extremely
10 hot summer.

11 MR. BRESLER: Yes, ma'am. It's
12 certainly a valid question. We rigorously conduct
13 our future planning on the basis of procuring a
14 reserve margin primarily for the summer period,
15 because that's where we see actually the highest peak
16 loads on the system. We have done so year over year,
17 so we have done so for this summer just like we do
18 for any summer.

19 Now, can I sit here and rule out a
20 1-in-20-year weather event that would not be
21 reasonably expected as far as that planning process?
22 Of course I can't.

23 For what we are projected to be, the
24 conditions for this summer, yes, we believe we will
25 operate a reliable system; and we believe we have the

R. Hudson

1 resources available in order to maintain that
2 reliability.

3 In other words, we don't necessarily
4 plan the system with the expectation that we'll be
5 entering emergency procedures. But when unusual
6 weather events occur, when unexpected system
7 conditions occur, that is a possibility.

8 MS. MOLCHANY: Thank you.

9 MR. DALEY: Thank you, Mr. Bresler.
10 Thank you for your testimony.

11 Our next testifier will be
12 Ritchie Hudson, Pennsylvania State Chairman of the
13 Retail Energy Supply Association along with
14 Becky Merola with Noble Energy, and we appreciate the
15 fact that Mr. Hudson is willing to share the
16 microphone with her.

17 MR. HUDSON: Yeah. I'm actually
18 pleased to be joined by Becky from Noble. Noble is a
19 member of RESA. So I'm glad that she was able to
20 join us this morning.

21 So good morning, Chairman Daley and
22 Members of the Committee. My name is Richie Hudson.
23 I'm the Pennsylvania Chairman of the Retail Energy
24 Supply Association, which is a trade group
25 representing a broad and diverse cross-section of

R. Hudson

1 competitive electricity suppliers operating here in
2 Pennsylvania and other restructured energy markets in
3 the U.S.

4 I'm also employed directly as the
5 director of regulatory and legislative affairs for
6 ConEdison Solutions, a retail provider of electricity
7 and energy-related services here in Pennsylvania and
8 other restructured states.

9 As you are aware, RESA members are
10 active participants in the competitive retail
11 electricity market here in the Commonwealth serving
12 all types of customers, including residential
13 consumers, small businesses, and large business
14 consumers.

15 We appreciate the opportunity to be
16 here today to testify on the recent price impacts
17 facing consumers and the retail suppliers due to the
18 severe cold weather in January and February and the
19 unprecedented wholesale energy market price impacts
20 resulting from the polar vortex.

21 As explained by both Commissioner
22 Witmer and Mr. Bresler, the polar vortex weather
23 conditions in January and February were severe and
24 had severe impacts on wholesale energy market
25 conditions.

R. Hudson

1 I won't reiterate all of the statistics
2 shared with you by Mr. Bresler, but I'll highlight a
3 few key points. First, natural gas prices reached as
4 high as \$123 per MMBtu in January in certain eastern
5 market areas. This is compared to prices in the \$4
6 to \$5 per MMBtu range just a few weeks previous to
7 that.

8 The load-weighted average locational
9 marginal price, which is the hourly spot market price
10 in the PJM market for January, was \$126.75 per
11 megawatt hour compared to \$38.67 for calendar year
12 2013. That's a four-fold increase.

13 In January, there were instances where
14 LMPs, locational marginal prices, due to emergency
15 conditions, cleared at \$1,800 per megawatt hour. And
16 due to extremely high reliability-related uplift
17 costs, the market, as a whole, paid over \$600 million
18 in January of this year for reliability-related
19 energy uplift costs.

20 Now, that's more occurring in one month
21 than was seen in an entire year in calendar year 2010
22 and 2011. And those costs are unhedgeable. So our
23 retail supplier, even though it had procured all of
24 the energy necessary in their fixed price agreements
25 to serve its consumers, still had to pick a fair load

R. Hudson

1 ratio share of these energy uplift costs. As was
2 also mentioned, FERC granted an extraordinary waiver
3 of the \$1,000-per-megawatt-hour offer cap.

4 Now, these extreme wholesale market
5 prices have had a significant financial impact on
6 retail suppliers and our customers. Although these
7 price impacts were driven by actual conditions and
8 severe and unprecedented situations in the wholesale
9 energy market, we fully understand that this
10 explanation provides very little consolation for the
11 customers who were impacted.

12 So that's why RESA, as an organization,
13 and our members have taken a number of proactive
14 measures to help customers address this situation.
15 First and foremost, it's important to point out that
16 hundreds of thousands of customers in Pennsylvania
17 that were on fixed price products from competitive
18 suppliers were largely protected from these severe
19 winter price impacts. This resulted in hundreds of
20 millions of dollars in price protection for
21 consumers.

22 Despite the significant financial
23 stresses on the industry in January and February,
24 retail suppliers continued to offer fixed price
25 products throughout January and February, including

R. Hudson

1 options that were at or below the utility's price to
2 compare.

3 In my testimony, there's a chart from
4 late February showing the availability of fixed price
5 offers in all of the major utility service
6 territories. You can see there were dozens of fixed
7 price offers available to customers in the midst of
8 these emergency situations.

9 Some suppliers have also offered
10 one-time bill credits to help customers manage these
11 cost increases providing millions of additional cost
12 mitigation measures to customers.

13 Other suppliers, as you've likely read
14 in the press, are voluntarily capping rates and
15 absorbing much of the increased cost impacts. Some
16 suppliers are waiving early termination fees for
17 customers that desire to migrate to a new product,
18 such as a fixed price product, return to the
19 utility's default service, or customers who choose to
20 shop with another competitive supplier.

21 Our members are helping to enroll
22 customers in budget billing and payment arrangement
23 plans which are facilitated by the utilities. And
24 members are also working with customers on an
25 individual basis to allow them to spread the January

R. Hudson

1 and February cost over future months to mitigate the
2 immediate impact.

3 RESA has also, for the last several
4 years, made a customer education guide available to
5 its members, to stakeholders, and to customers, that
6 explains the differences between different product
7 options, including fixed versus variable rates.

8 There's a link to this consumer
9 education guide in my testimony. And if any of you
10 would like printed copies available for your
11 constituents, I would be happy to arrange that.

12 Although the industry has undertaken
13 many proactive measures to help customers address the
14 winter price impacts, policy makers, including this
15 Committee, are rightfully focused on customer impacts
16 from the polar vortex, including the consideration of
17 policy changes to help protect consumers.

18 As Commissioner Witmer has noted, the
19 Public Utility Commission has already made
20 significant progress in adopting new regulations to
21 respond to the situation, including adopting
22 regulations to provide for accelerated switching that
23 will allow customers to change their electric
24 generation supplier within three business days,
25 enhance disclosure rules governing retail supplier

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1 contracts with consumers, the creation of a new
2 contract summary document that all suppliers would
3 have to adopt in their contract and disclosure
4 statements.

5 This is modeled after the Schumer Box,
6 as you've seen in the consumer credit card industry.
7 This contract summary document would provide key
8 contract terms in a standardized, but easily
9 readable, chart so consumers can readily understand
10 things like whether they're on a fixed or a variable
11 price product, the price, the term, whether there's
12 any early termination fees, and other key
13 information, requirements to provide two notices
14 prior to the expiration of a fixed price contract and
15 prior to any contract renewal, requirements to
16 provide advanced notice of price changes, including
17 30 days notice prior to the change of price or other
18 changes to terms and conditions.

19 RESA would like to take this
20 opportunity to commend the PUC for its efforts to
21 address this issue. These new rules will enhance the
22 consumer shopping experience and will help customers
23 make better and more informed choices.

24 Accelerated switching, in particular,
25 will be a powerful tool to help customers in this

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1 situation by empowering them to vote with their
2 pocketbooks and change electricity suppliers if they
3 find themselves on an undependable rate.

4 In the 21st century where customers can
5 obtain instant approval for credit card or change
6 cell phone providers at a mall kiosk or over the
7 Internet, consumers should be able to change their
8 electricity suppliers quickly. RESA has long favored
9 accelerated switching. We put proposals for it as
10 recently as two years ago on this very issue.

11 While we support the actions the
12 Commission has already taken, we also recognize that
13 this Committee is considering similar changes via
14 legislature.

15 RESA is committed to working with this
16 Committee and all policy makers as you consider
17 changes to promote a better customer experience.

18 RESA supports policies focused on clear
19 and full disclosure of product terms, price, and
20 other aspects of service, disclosure policies that
21 encourage suppliers to voluntarily include price caps
22 or limits on their variable rate products.

23 And I would note that in Texas, they
24 have adopted regulations several years ago on the
25 variable price issue that provide an incentive for

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1 suppliers to voluntarily include a price cap in their
2 variable rate products, and we believe this can serve
3 as a model for consideration here in Pennsylvania.

4 We support creative price transparency
5 measures through the posting of historic price
6 information so consumers can understand the range of
7 prices they potentially may experience on a variable
8 rate product.

9 We also support advanced notice of
10 price changes and, importantly, robust enforcement of
11 consumer protection rules, including holding bad
12 actors fully accountable.

13 While RESA supports enhanced disclosure
14 requirements, greater price transparency, and other
15 measures, it's also important to maintain a wide
16 range of options for consumers.

17 There is a rule for variable rate
18 options in the marketplace. For example, with
19 increased Shale gas production, it has been mentioned
20 today, energy crisis in the wholesale market, January
21 and February being the recent exceptions to this,
22 have generally been relatively low compared to
23 historic periods.

24 And some customers, particularly small
25 business customers, have demanded products that give

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1 them access to these relatively low and stable
2 wholesale marketplaces such as index or LMP-base
3 products. These are variations of variable rate
4 products.

5 Some customers also prefer not being
6 locked into a long-term fixed price agreement that
7 may contain early termination fees. Customers with
8 solar panels or other on-site generation may desire a
9 time-of-use based rate that allows them to capture
10 the full value of their behind-the-meter generation,
11 and a variable rate product is the way to do that.
12 Variable rates can serve as a bridge product for
13 consumers that are in-between two fixed price
14 contracts.

15 So as you consider legislation on this
16 issue, we would encourage you to focus on enhanced
17 disclosure, increased price transparency, and greater
18 customer education as opposed to policies that would
19 eliminate products from the marketplace or stifle
20 market innovation.

21 Again, I would like to thank you for
22 the opportunity to be here today, and I'm happy to
23 answer any questions.

24 MR. DALEY: Thank you very much.

25 Ms. Merola.

B. Merola

1 MS. MEROLA: Thank you very much. I
2 appreciate this on such short notice.

3 MR. DALEY: We do, too.

4 MS. MEROLA: Yeah. I took your advice
5 and booked a rental car, canceled my flight and took
6 a rental car over. So I appreciate that advice.

7 Chairman Daley, Members of the Consumer
8 Affairs Committee, my name is Becky Merola, and I am
9 responsible for government affairs for 10 of the 15
10 open retail markets in the lower 48 that Noble
11 Americas Energy Solutions participates in.

12 At the behest of Representative Daley,
13 I appreciate the opportunity to give comments before
14 the Consumer Affairs Committee focusing on the price
15 increases from this past winter.

16 Noble Americas Energy Solutions is part
17 of the Noble Group. Just to make this real brief,
18 we're a global company whose North American
19 headquarters is located in Stamford, Connecticut.

20 We're a retail licensed EGS in
21 Pennsylvania and supply retail products and services
22 to the commercial and the industrial customers in the
23 Commonwealth.

24 Noble shares the Committee's concern
25 regarding the recent cost impacts to Pennsylvania's

B. Merola

1 rate payers. We are deeply concerned that the
2 response to recent winter events can cause a negative
3 perception for our industry, and that is one of our
4 chief reasons for being here.

5 As part of our testimony, we want to
6 provide a quick summary of what we see in the
7 marketplace. There are many types of product
8 structures offered by various suppliers in the
9 marketplace to customers with different levels of
10 sophistication with different terminology.

11 With that said and that in mind, there
12 are basically three general types, and this is
13 Noble's opinion, of course, of product
14 classifications.

15 There are fixed agreements where
16 there's a mutual agreed set price. There are index
17 prices that have a floating price. But these
18 floating prices and index prices follow generally
19 some type of established public index, the LMP, the
20 locational marginal price, or the inter-continental
21 exchange, things of that nature that can be followed,
22 and they're in the public domain.

23 Finally are variable prices. With the
24 variable price, this is determined by a supplier and
25 may change from time to time. Noble does not offer

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1 that type of product to our consumers.

2 And to make one last note, there are
3 fixed and index prices. So you could have a
4 combination where part of the energy is fixed and the
5 ancillary services are fixed, and part of it is also
6 on an index. So you might have a base load or
7 something of that nature. And I won't go into much
8 more detail since I have my competitor sitting to my
9 right.

10 With that said, and speaking for Noble,
11 we believe that you will find in many contracts
12 regulatory provisions where there is change in law
13 clauses or regulatory action clauses, and those are
14 common in the marketplace as well.

15 Those clauses are there to protect the
16 parties in the event they impact the change in law
17 regulation that you pass to the consumer's fixed
18 price.

19 In the recent instance, however, PJM
20 has confirmed that there are no such regulatory
21 changes enacted during January. And simply stated,
22 the changes for ancillary services, there was a raise
23 in the ancillary service prices. They're just higher
24 right now.

25 Certainly, Noble is very concerned as

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1 to the transparency of what led to the unprecedented
2 cost increases and energy and ancillary service
3 charges through the charges we received from PJM.

4 However, suppliers know or should know
5 that ancillary service charges are market based and
6 can fluctuate. Noble offers fixed-price products and
7 hedge the risks for those products so that when
8 prices move, they are protected against those
9 losses.

10 For our fixed-price contracts, Noble is
11 not claiming a regulatory action, which would allow
12 for a pass-through event for a customer that had
13 fixed such components, or our floating price
14 contracts that are based on indices that are in the
15 public domain.

16 We hope that our brief comments
17 provides some insight into the retail electric
18 marketplace, and we certainly would entertain any
19 questions that you may have. Thank you.

20 MR. DALEY: Thank you, very much. Any
21 questions? Representative Matzie.

22 MR. MATZIE: Thank you, Mr. Chairman.
23 Thank you, both, for your testimony. I think the one
24 thing that really has come out of this whole
25 situation in the last couple of months, and Richie, I

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1 think you stated it very well in your testimony, the
2 enhanced disclosure of it all and obviously taking
3 care of bad actors.

4 Because I think the one constant that
5 came about this, at least as far as what I heard, was
6 the concern from folks that feel that bait and switch
7 was occurring.

8 And I think that the desire of the
9 industry to police itself to a degree, to be out
10 front, at least as far as a large majority of the
11 folks, be out front in favor of some of the policy
12 changes that are being discussed and be willing to be
13 a partner in the room to come up with desired
14 policies that makes sense for the consumer,
15 obviously, as a policy maker, that makes me happy,
16 because the last thing we want is a combative
17 relationship that just forces us knocking each other
18 down back and forth.

19 I was reminded from a reporter when
20 this came about, about how some states do it. And
21 the one state that continually came up was Texas.
22 Apparently, Texas, you're able to switch immediately,
23 from what I gather.

24 And I think your testimony nailed it.
25 I think with technology and this 21st Century that we

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1 have, that, you know, while the PUC is talking
2 three days, instant is probably something that could
3 happen, I would imagine.

4 If it's being done in another area,
5 another state, then it's something we can and should
6 be looking at potentially doing, because this isn't
7 the stock market. That is a basic need and
8 necessity.

9 And, you know, I think that that's
10 something that we should really be striving for as we
11 move forward with this because, as Chairman Daley
12 stated so eloquently when we talked yesterday in
13 Harrisburg, we have the polar vortex, but the solar
14 vortex may be coming.

15 So he put on his meteorology hat and
16 said the solar vortex may be coming. So we need to
17 really look at how we, as policy makers, can make
18 things work.

19 And I was very appreciative of your
20 candid remarks in your testimony, because I think a
21 lot of what you said here in your testimony are basic
22 things that we've been throwing around, just going at
23 it as far as what potentially could be in language in
24 legislature to better protect consumers, because
25 variable rates aren't a bad thing.

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1 Some folks want variable rates.
2 Obviously, they want that opportunity, and they're
3 willing to take that risk. But other folks aren't,
4 and I think those folks that are stuck with the
5 variable rate and don't necessarily realize it
6 because of maybe not having that plain language
7 contract or understanding of what they've signed is a
8 big concern, especially for the elderly population.

9 We need to recognize that oftentimes,
10 stuff that comes out of even government is not
11 necessarily in plain English for folks to recognize
12 and understand.

13 So I appreciate your testimony and look
14 forward to working with you as we move forward.
15 Thank you, Mr. Chairman.

16 MR. DALEY: Thank you. It has been
17 reported to us that -- and this is probably
18 directed -- well, it's directed to both of you, but
19 people are still being charged \$0.40 per kilowatt
20 hour when they should be back down to \$0.10. Is that
21 a true assessment, or is that something that's just
22 misinformation?

23 MR. HUDSON: So as a trade association,
24 we don't have insight into the rates that our
25 individual members are charging consumers. Just to

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1 provide some background on how the, you know, billing
2 time lines work and the marketplace, customers do
3 have, you know, mid-month meter readings.

4 So there could be a situation where a
5 supplier incurred significant costs in February and
6 then did not receive the bill for those costs from
7 PJM. PJM operates on a 60-day settlement process.
8 So you don't know your full bill for the cost as a
9 retail supplier until 60 days after the end of a
10 particular month.

11 So the cost impacts that occurred in
12 January and February are just now starting to -- the
13 full magnitude of those are just now starting to show
14 up in our PJM financial statement.

15 Now, the \$0.30 to \$0.40 price issue, I
16 would certainly, you know, encourage any customer
17 that sees, you know, rates in that range to reach out
18 to their supplier and try to work out a payment
19 arrangement plan.

20 I would also note that what has been
21 seen in the media has been, I think, only a portion
22 of suppliers operating in the marketplace. My
23 company, for example, ConEdison Solutions, even
24 though we have a few thousand customers in variable
25 rate contracts, we never saw prices anywhere near

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1 that range for our customers. The highest rates that
2 our consumers experienced were in the \$0.12 to \$0.13
3 per kilowatt hour range.

4 MR. DALEY: Thank you. Thank you for
5 your participation. Thank you very much. The next
6 testifier will be Terry Fitzpatrick, President and
7 CEO of Energy Association of Pennsylvania and former
8 Commissioner of the PUC. Terry, welcome this
9 morning. You can begin when you're ready.

10 MR. FITZPATRICK: Good morning,
11 Chairman Daley, Members of the Committee. Thanks
12 very much for inviting me to testify here today. I
13 am Terry Fitzpatrick. I'm president of the Energy
14 Association of Pennsylvania. We're a trade
15 association that represents the Commonwealth's
16 electric and natural gas utilities.

17 I'm here today on behalf of the
18 electric utility members, which are also known in
19 industry jargon as "electric distribution companies"
20 or "EDCs."

21 I am not going to read my testimony.
22 I'll try to paraphrase and skip around to save time
23 here. I think the Members of the Committee know the
24 background of what led us here and what happened in
25 the wholesale market and the prices the customers

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1 saw.

2 But as a result of these high wholesale
3 electricity prices that were discussed, many retail
4 customers that were on these variable rate plans got
5 bills for January 2014 that were three to four times
6 higher than the previous month.

7 Now, in most cases, it's the electric
8 utilities which are actually doing the billing for
9 that because the EDCs have entered into agreements to
10 purchase receivables from the EGSS, and then these
11 charges are included on the electric utility's bill.

12 Naturally, as a result of all of this
13 and what happened, the electric utilities have been
14 receiving a high number of calls from customers
15 regarding the bills that reflected these variable
16 price products.

17 When that happens, if the customer is a
18 low-income customer, the utility's customer service
19 representatives will try to direct the customer to a
20 variety of low-income assistance programs, including
21 the Federal Low Income Home Energy Assistance Program
22 or LIHEAP, in addition to the utility's own customer
23 assistance programs. The EDC's representatives will
24 also discuss payment plans and budget billing options
25 for these customers as a way to try to deal with

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1 this.

2 Now, you know, the major thing that's
3 being discussed here that's of concern to electric
4 utilities is the idea of trying to address this
5 situation by accelerating the switching period where
6 a consumer who's on one of these plans would switch
7 either to another EGS product, another EGS, or,
8 perhaps, back to the electric utility's default
9 service.

10 Currently, it can take from 11 to
11 40 days to affect such a switch. And I'll go through
12 the steps of how this works. When an EDC receives
13 notification from an EGS that the customer wants to
14 switch, the EDC is currently required under the law
15 to send a confirmation letter asking the customer to
16 contact the EDC if the customer does not want the EDC
17 to complete the switch; and that's designed to
18 prevent slamming. It's a protection scenario to
19 protect against that.

20 Assuming the customer does not cancel
21 the switch, the EDC is then required to submit
22 information to PJM to schedule capacity and
23 transmission charges that will apply to the new
24 supplier.

25 If the customer's meter read date

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1 happens to fall just after all of these preliminary
2 steps we would have to take, then the switch could be
3 made as soon as 11 days.

4 If the meter read date happens to fall
5 just before all of these tasks are completed, then
6 the switch can take up to 40 days, because it will
7 not take effect until the next regular meter reading
8 occurs.

9 And this is so because the meter
10 reading and billing systems of electric utilities in
11 Pennsylvania are currently capable of including the
12 charges of only one supplier per bill. Because this
13 approach to switching is driven by the EDC's billing
14 cycle, I'll refer to it as "one-cycle switching."

15 Now, it is or it will be possible for
16 EDCs to accelerate the switching process by making
17 off-cycle switches. This can best be accomplished
18 with the deployment of advanced meters throughout the
19 electric utility system and will also require changes
20 to the electric utility's billing system so that
21 bills can reflect charges for more than one supplier
22 per bill.

23 Act 129 of 2008 required EDCs subject
24 to that law to obtain approval from the PUC of plans
25 to deploy advanced meters throughout their systems.

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1 The EDCs that are subject to that law have obtained
2 this approval from the PUC, and the length of time it
3 will take to deploy advanced meters throughout their
4 systems varies based on the circumstances that are
5 facing each utility, because utilities in
6 Pennsylvania really reflect the diversity in the
7 Commonwealth.

8 You have urban utilities such as
9 Duquesne Light here in Pittsburgh is probably a good
10 example of that. Then you have electric utilities
11 such as maybe Penelec, or Pennsylvania Electric, that
12 represents a lot of rural areas. So it's very
13 different.

14 I think the advanced meter roll-outs
15 under the plans approved by the PUC, I think the
16 latest date by which they'll be completed is the year
17 2019.

18 When these advanced meters have been
19 deployed, it will then take additional time; and the
20 EDCs will incur additional expense to make the
21 billing system change as necessary to provide
22 off-cycle switching.

23 Now, if you look around at the states
24 that allow for customer choice of electricity
25 suppliers, the overwhelming majority of states that

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1 allow customers to choose their supplier, including
2 Ohio, New York, New Jersey, Massachusetts, Maryland,
3 Illinois, among others, use one-cycle switching, the
4 same as we do here in Pennsylvania. Currently, the
5 only state that provides for off-cycle switching is
6 Texas.

7 Advanced meters are currently deployed
8 throughout the areas of Texas that allow customer
9 choice. Whereas, in Pennsylvania, we're still in the
10 process of doing that and will be for another
11 five years.

12 However, I note that Texas does not
13 require a customer notification letter such as
14 currently required here, which gives the consumer an
15 opportunity to cancel and switch to prevent slamming
16 prior to making the switch.

17 In addition, the supplier is
18 responsible for billing in Texas, not the EDC. So
19 there are differences between Texas and
20 Pennsylvania.

21 The PUC considered the issue of
22 accelerating switching time frames in its electric
23 retail market investigation. In that investigation,
24 the Commission shortened the confirmation period from
25 ten days, which was in effect back then, and

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1 shortened it to five days.

2 The Commission also said it was going
3 to start a rule making by the end of 2013 that would
4 allow it to, and I quote, "Make fully informed
5 decisions on the complex issues that are involved."

6 The Commission stated that cost
7 recovery would be handled the same way costs the
8 utility incurs as a result of a Commission mandate,
9 which left open the possibility that full and current
10 cost recovery for the utilities would be authorized.

11 However, the Commission, in the wake of
12 the variable rate problem that emerged this winter,
13 the Commission initiated a rule making recently
14 through this final omitted rule making process.

15 And in that rule making, after allowing
16 an informal seven-day comment period, the Commission
17 adopted a final rule making order that mandates that
18 electric utilities must complete a switch within
19 three business days regardless of whether they had
20 the advanced metering in place. This mandate must be
21 implemented within six months of the effective date
22 of the regulations.

23 Recovery of implementation costs on a
24 full-incurred basis was not granted. And in order to
25 recover their costs, electric utilities must seek

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1 approval to establish a regulatory asset for recovery
2 in a future base-rate proceeding.

3 In plain language, rate making is
4 generally forward-looking. You don't generally get
5 to come in and recover past expenses that you've
6 incurred. We would have to seek an exception to that
7 and show extraordinary circumstances in order to be
8 allowed to recover these implementation costs that
9 we're going to incur.

10 In addition to the PUC's adoption of
11 accelerated switching regulations legislation is
12 going to introduce that would govern how quickly a
13 switch must be completed, House Bill 2104 would
14 require EDCs to complete the switch within 14 days
15 and also states that EDCs may recover reasonable
16 costs for doing so. Senate Bill 1297 require a
17 completion of a switch within five business days.
18 It's also silent on cost recovery.

19 And none of these bills address the
20 question of how long would the utilities have to
21 implement that. I think we're just looking at this
22 legislation now, particularly, I guess I'll say this
23 with respect to House Bill 2104, which is in this
24 Committee, and we will have comments to provide to
25 the staff on what we think -- changes we would

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1 recommend to that to allow us to implement it.

2 Now, EDCs do not object to being
3 required to accelerate the current switching
4 process. However, they believe that such a
5 requirement would be best if it were consistent with
6 each EDC's PUC-approved advanced meter deployment
7 plan.

8 It should also provide adequate time to
9 make changes to the utility's billing system, and it
10 should provide utilities with timely recovery of the
11 implementation cost.

12 With respect to the recent action the
13 PUC took to accelerate the process, EDCs are
14 concerned regarding the requirement to accelerate the
15 process before the advanced metering is deployed.
16 This adds to the cost and complexity of complying
17 with the switching deadline.

18 We're also concerned that the period of
19 time to implement this change is not sufficient. In
20 fact, many or most of electric utilities indicated in
21 their comments, and they only had seven days to
22 comment, they indicated that they would have to put
23 temporary fixes in place to comply with this
24 three-day requirement and also that they would have
25 to seek a waiver of the six-month implementation

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1 period. Because after looking at this, they just
2 didn't feel they were going to be able to do this
3 within six months.

4 In addition, electric utilities would
5 submit that fairness dictates. So if they're going
6 to be mandated to incur these expenses, that they
7 would be allowed to timely recover those expenses.

8 But, again, EDCs don't object to the
9 accelerated switching process, because we do see the
10 advantages of doing that. It allows customers to
11 more quickly obtain the benefits of a pricing plan if
12 it's better. It also allows customers to more
13 quickly escape a pricing plan that the customer might
14 think is not appropriate for them, provided that the
15 customer is not subject to a termination fee, which
16 could prevent or dissuade such a switch.

17 Now, with regard to the scenario the
18 customers found themselves in last winter, a big part
19 of the problem was customers didn't know what the
20 prices were that they were paying for electricity
21 until they got the bill.

22 Now, in a situation like that,
23 accelerating the switching process is very clearly a
24 second-best solution, because the customers have
25 already been impacted by the time they go to make a

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1 switch.

2 So when you consider that, you know, we
3 would assert that the best solutions to adopt
4 policies that facilitate a customer's choice of a
5 pricing plan which is appropriate for them from which
6 customers do not need to make a hasty exit, and to
7 that end, the General Assembly and the PUC are making
8 policy changes in the process of doing that, that
9 will address the problems associated with these
10 pricing plans.

11 You know, I think I would quote a great
12 Pennsylvanian here, Benjamin Franklin, "An ounce of
13 prevention is worth a pound of cure" when it comes to
14 taking care of this problem.

15 With that, again, Chairman Daley,
16 Members of the committee, thanks for the chance to be
17 here; and I would be happy to respond to questions.

18 MR. DALEY: Thank you. Any questions
19 from the Members of the Committee?

20 (No response.)

21 MR. DALEY: Just one quick question.
22 How did the regulated companies avoid being able to
23 pass on tremendous increases in the cost for kilowatt
24 hours in this last recent polar vortex situation?

25 MR. FITZPATRICK: Thanks for asking

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1 that, Chairman Daley. I think that's important.
2 Under the default service plans that utilities have
3 to get approved by the PUC, we provide electricity to
4 costumers who don't buy from a competitive supplier.
5 That's a regulated product. We have to get approval
6 from the PUC for how we buy.

7 Now, there are some differences with
8 the differing utilities and those plans, but all of
9 them require the utilities to go out and acquire a
10 portfolio of different products.

11 So we go out at different times in the
12 market, buy different lengths of contracts. What
13 that means is that customers are not subject to that
14 spot price going up and down. So it's hedged.

15 Now, it is true that over the longer
16 term, what happened in the market this winter will
17 affect the price of default service, but it's going
18 to be much less, certainly much less of an impact
19 than customers who saw increases of two to three
20 times in their bills because of the hedging and just
21 because of the way the utilities buy.

22 MR. DALEY: Thank you very much. No
23 other questions. Thank you for your testimony,
24 Mr. Fitzpatrick.

25 MR. FITZPATRICK: Thank you,

J. Evans

1 Mr. Chairman.

2 MR. DALEY: Our next testifier will be
3 Tanya McCloskey, Acting Consumer Advocate,
4 Pennsylvania Office of Consumer Advocate, and
5 John Evans, former Member of the House, the
6 Small Business Advocate, PA Office of Small Business
7 Advocate. And you can begin your testimony when
8 you're prepared to do so.

9 MR. EVANS: Good morning. Thank you
10 very much, Chairman Daley. It's an honor to be here
11 back in Western Pennsylvania where I'm originally
12 from, with some of my former colleagues, my good
13 friend, Chairman Daley, and Members of the Committee.

14 I'm John Evans, the Small Business
15 Advocate, and I have some comments to make regarding
16 the variable rate situation. I'm going to condense
17 my written remarks, which I know you each have.

18 I would like to express some of the
19 concerns that our offices have with these supply
20 rates and how those rates impact small business
21 customers in the Commonwealth.

22 Our office has received numerous calls
23 from small business customers concerned with large
24 increases in their electric bill during the winter
25 months here and during this polar vortex.

J. Evans

1 Many of the complaints center on bills
2 that include variable rates. Some of the customers
3 have alleged increases of over 300 percent in
4 one month and also instances of switching suppliers
5 without consent.

6 I may say that what our office has been
7 doing when we receive these calls is asking the
8 business person to call that electric supplier, try
9 to work out a rebate situation.

10 Many of the reputable companies, I'm
11 happy to say, have been providing rebates to small
12 businesses in light of the increased costs. Not all
13 have, but many have.

14 We also will mention to our small
15 business people that the PUC has a mediation process
16 that's in place that if they wish to pursue some
17 mediation to try to get a fair settlement in their
18 view, they can use that resource; and it's
19 interesting to note that you do not have to have an
20 attorney present to meet with the mediation people at
21 the PUC.

22 Now, if that doesn't reach a mediated
23 settlement, we can also get involved legally with the
24 auspices of our office involved with that later on.

25 Small business customers do struggle

J. Evans

1 with competing demands for their time and attention,
2 and many of our owners are simply busy with details
3 of running the day-to-day operations of their
4 businesses, whether it be retail, food service,
5 patient, or customer care.

6 While paying bills is a part of the
7 daily operations, exponentials and unexpected
8 increase in the usual monthly expense such as the
9 utility bill can be very detrimental to many small
10 businesses' financial situations.

11 Now, the concerns we have about
12 variable rate, some of them have been mentioned
13 earlier by other speakers; but I'll very briefly
14 summarize those.

15 Variable rates can increase without
16 notice depending upon the terms of the contract with
17 the supplier. If the variable rate contracts are
18 going to continue, then the terms of the contract
19 should include an explicit indication of how much
20 those rates should change every month, perhaps even
21 having a cap on that variable rate charge
22 potentially.

23 If the rate change is unlimited, then a
24 contract should state up front in bold print just as
25 required on the terms of a credit card or a mortgage

J. Evans

1 offer.

2 The penalties for exiting the contract
3 should be stated up front and also in bold so that
4 customers understand the potential impact of future
5 contract changes.

6 It also has been suggested that perhaps
7 a uniform type of a contract template should be used
8 by all the companies doing business in Pennsylvania.
9 That would avoid some confusion when you're looking
10 at Company A versus Company B. You would have the
11 same type of a contract in place with the same
12 disclosure information.

13 Now, I have personally been in contact
14 with the PUC about the concerns that our office has,
15 certainly have urged them to make certain changes to
16 the PA Power Switch Web site, the Commission's Web
17 site where customers and small business people get
18 information about shopping for utility services and
19 approved electricity providers.

20 The Commission, again, I'm happy to
21 say, has already made a number of changes suggested
22 by my office, including the following: Highlighting
23 the fixed versus variable rates through
24 color-coding. That was something that was not done
25 before.

J. Evans

1 Revamping the sorting applications so
2 that consumers and business people can further
3 distinguish the fixed rates versus the variable rates
4 so that they're all on one page. They're not mixed
5 intermingled between one another.

6 If you look at it now on the Web site,
7 you have all variable rate products in one sorting
8 view; and in the other, you can see fixed rates. So
9 you're comparing those components rather than having
10 them intermingled and being confusing to the
11 shopper.

12 And we also work with them to make the
13 notice of risk factors for variable rate contracts
14 much more prominent so that people going into that
15 can see what a variable rate actually means. I think
16 there's a perception that some had that it would be
17 much like a variable rate mortgage, that, you know,
18 may have an uptick very slightly, back and forth.
19 That's what they kind of assumed.

20 But seeing what happened this winter,
21 it's a good illustration of the fact that in-the-spot
22 market prices can fluctuate very, very drastically,
23 and those prices are unlike what you would see in the
24 financial markets.

25 So I think that education certainly is

J. Evans

1 a component, as mentioned earlier as well, that we
2 have to work with our business people in Pennsylvania
3 to let them understand what their choices are.

4 Personally, I don't believe that
5 getting back into rate caps would be a good thing.
6 We have had success with shopping for electricity in
7 Pennsylvania in recent years, but it is extremely
8 important in that component to educate consumers.

9 And if they're coming to the end of a
10 contract, I believe that we support some of the
11 Commission's initiatives to have further disclosure
12 rather than just one notice that's sent to a business
13 person to have, perhaps, a 90, 60, 30, three
14 different notices sent out before the end of that
15 contract, just so that people don't unnecessarily
16 discard that.

17 You get a lot of mail that comes in.
18 You think it may be junk mail, toss it in the
19 circular file, and not realize that that's your
20 notice that your contract is ending soon. And if you
21 don't watch it, you can be put into from a fixed to a
22 variable rate contract in some cases when that
23 happens. So the education is a key as we have this
24 discussion moving forward.

25 That will complete my remarks. I'll

T. McCloskey

1 turn it over to Tanya, who has certainly some
2 statements to make on behalf of the Consumer
3 Advocate, and I believe we both will be able to
4 answer questions following her testimony. Thank you.

5 MR. DALEY: Thank you, John. Tanya.

6 MS. McCLOSKEY: Thank you,
7 Chairman Daley and Members of the Committee. My name
8 is Tanya McCloskey, and I'm serving as the acting
9 Consumer Advocate for the Office of Consumer
10 Advocate. Thank you for giving me the opportunity to
11 testify before you today on the issue of variable
12 rate plans.

13 As the past two months have shown, this
14 is an issue critical to the health, safety, and
15 economic well-being of Pennsylvania's residential
16 electric consumers.

17 I have provided detailed written
18 testimony, which I will not repeat here in the
19 interest of time. Today, I would like to just focus
20 on some key problems that seem to be at the heart of
21 the variable rate plan crisis.

22 The circumstances faced by PJM this
23 winter were extraordinary. But what is most unusual
24 here is the extreme impact on many Pennsylvania
25 residential consumers who were directly exposed to

T. McCloskey

1 the extraordinary wholesale market price spikes
2 through their monthly electric bill. This exposure
3 resulted in generation charges in the \$0.20 to \$0.44
4 range and monthly bills that approached and even
5 exceeded \$1,000.

6 An electric bill has a major impact on
7 a customer's life no matter the customer's income
8 level. When that bill soars to an unaffordable
9 level, it can be a life-changing event.

10 Consumers who are trying to save a few
11 dollars a month by shopping for electricity found
12 themselves overwhelmed by shocking bills that they
13 could not possibly have anticipated and now find
14 themselves in a compromised financial situation.

15 The hardship that has been created is
16 significant, as many of you have heard from your
17 constituents; and I provided some examples in my
18 written testimony.

19 In my view, this is not a situation
20 where a consumer voluntarily and knowingly entered --
21 selected a product, took a gamble in the market, and
22 made the wrong bet.

23 There is simply no way for consumers to
24 know from the disclosure statements provided by
25 suppliers, from the education about retail choice, or

T. McCloskey

1 from the independent research, that they were fully
2 exposing themselves to such extraordinary price
3 increases and to the full risk of the volatile and
4 complex PJM wholesale markets.

5 We do not yet know how many consumers
6 have been impacted by these variable rate plans or
7 exactly how they came to be on these plans. As more
8 information is coming to light, I believe that a
9 significant number of residential customers in the
10 retail market are on these rate plans.

11 Many of the plans began with a low
12 introductory rate for new consumers that looks
13 favorable, and then the variable price component
14 begins. Other customers were moved to variable rate
15 plans at the end of the fixed-price term because they
16 did not select another fixed-price plan.

17 I believe this is exactly the wrong
18 thing to do and should be stopped immediately. No
19 customer should be placed on a variable price plan
20 without the consumer's expressed affirmative
21 consent.

22 And the remainder of these remarks, I
23 would like to address three key issues: Disclosure,
24 advanced price notification, and consumer service.
25 My written testimony details several other key

T. McCloskey

1 problems and recommendations.

2 For a consumer to make a knowing choice
3 of any product and enter into any valid agreement or
4 contract, there must be clear and complete disclosure
5 about the product.

6 For my review of the disclosure
7 statements provided to our office by customers,
8 serious questions arise as to whether the
9 Commission's requirement that both the conditions and
10 limits of variability to be disclosed were being met
11 and whether the disclosure statements were so vague
12 and so open-ended as to be meaningless. I provided a
13 few examples in my written testimony.

14 It's hard to see from these disclosures
15 that customers were exposing themselves to such
16 significant price increases and fully exposing
17 themselves to the risks of the complex wholesale
18 markets.

19 It is also impossible to determine from
20 these disclosures how the price being charged to the
21 consumer is being said. Disclosure requirements must
22 be strengthened, and additional steps need to be
23 considered given the complexities of the markets and
24 these products.

25 I provided several recommendations to

T. McCloskey

1 improve disclosure in my written testimony. Key
2 among them is that a ceiling or a limit on the price
3 variability stated in a cents-per-kilowatt hour or
4 maximum-percentage change be required in every
5 disclosure statement.

6 A disclosure statement should not just
7 say that there is no limit on the variability of
8 price, as this provides customers with no meaningful
9 basis upon which to compare offers.

10 Legislation setting forth these
11 protections is necessary. I would also note that I
12 must respectfully disagree with Commissioner Witmer
13 on the legal sustainability of the Commission's prior
14 order on variable prices that require the statement
15 of a ceiling price. And I would also note that we
16 worked through the Commission's informal process to
17 address disclosure statements.

18 But more to the point, the Commission's
19 prior order precisely captured the information that
20 is needed by customers to make a fair and complete
21 evaluation of offers, and that is the ceiling price
22 or the maximum amount that they may be charged.

23 The second problem I would like to
24 discuss here today is the need for advanced
25 notification of the price to be charged to the

T. McCloskey

1 consumer.

2 We have heard from consumers that they
3 were not told and, even upon request, could not get
4 the price they would be charged until after they
5 received the bill.

6 As a consumer recently said to me, that
7 would be like pulling into a gas station, filling the
8 tank, and then finding out 30 days later that you
9 filled your tank for \$12 a gallon rather than the \$3
10 to \$4 you expected.

11 Without information about what you're
12 being charged, the consumer cannot make informed
13 choices about their energy use or their energy
14 service.

15 Variable rate suppliers should be
16 required to provide customers the price the customer
17 is going to be charged before the billing cycle
18 begins.

19 This notice should be given
20 sufficiently far in advance so that a customer who
21 wants to switch away from the supplier, return to
22 default service, or change their plan, has the time
23 to do so.

24 Customer service is the next
25 significant problem I would like to highlight today.

T. McCloskey

1 It was bad enough that customers were provided a
2 monthly bill that in some instances exceeded their
3 monthly income. But when they tried to contact the
4 supplier, they could not get through at all or had
5 long wait times.

6 Poor customer service impacted
7 customers in several ways. Importantly here, if a
8 customer wanted to leave their supplier and return to
9 default service, they could not do so until they
10 contacted the existing supplier and requested a
11 return to default service.

12 The General Assembly should make it
13 clear that every consumer has a right to return to
14 default service by contacting their utility and
15 making that request.

16 Pennsylvania consumers and perhaps even
17 the Pennsylvania retail choice market cannot continue
18 to weather such events. I still believe that with
19 the right design, the right rules and regulations for
20 consumer protection, and with oversight, the
21 competitive generation market as Pennsylvania
22 envisioned it could bring benefits to consumers.

23 I would like to thank this Committee
24 for allowing me to testify on this critical issue. I
25 look forward to working with the Members and the

P. Cicero

1 General Assembly to help ensure that the essential
2 protections are put in place on variable rate plans.

3 MR. DALEY: Thank you, Tanya. Thank
4 you, John. Any questions from Members of the
5 Committee?

6 (No response.)

7 MR. DALEY: Thank you for your
8 testimony. Our next testifier will be
9 Patrick Cicero. He's the Co-Director of Pennsylvania
10 Utility Law Project. Again, when you're ready,
11 Mr. Cicero.

12 MR. CICERO: Thank you, Mr. Daley.
13 Good morning, Chairman Daley, Members of the House
14 Consumer Affairs Committee. It's my pleasure to come
15 here before you again to testify on what is a
16 critical issue for our clients.

17 I'm the Co-Director of the Pennsylvania
18 Utility Law Project. We are a legal office serving
19 the entire state and represent the interests of
20 low-income residential customers in utility
21 proceedings and work in conjunction with
22 community-based organizations and other legal-aid
23 providers to represent low-income customers.

24 All of my clients are poor, incredibly
25 poor. And just to give you an example of how poor,

P. Cicero

1 the average income in the year 2012 from the data
2 that was last available for customers enrolled in
3 electric utilities customer assistance programs,
4 which are assistance programs that provide reduced
5 bills, was \$14,350 for the year. That's not a lot of
6 money.

7 And so for customers making that amount
8 of money or less or even slightly more than that,
9 getting a bill which they cannot afford is
10 life-threatening.

11 I mean, if it happens in the winter and
12 there's a moratorium, fortunately, service is not
13 going to be terminated immediately; but they can't
14 get caught up.

15 And it is now April, and utilities are,
16 consistent with regulations and state law, using the
17 termination process to collect bills that have
18 accrued.

19 And so we believe we'll see an increase
20 in the number of terminations as a result of this
21 problem, and we're concerned about it. And we are
22 grateful that this Committee, the General Assembly,
23 and the Public Utility Commission are taking these
24 issues very seriously and addressing them.

25 I just want to present, though, that

P. Cicero

1 even before this variable rate problem, low-income
2 customers have not faired well in the competitive
3 electric market.

4 All of the data that we have -- and
5 admittedly, we don't have much, because it's either
6 proprietary or difficult to get or we have to get it
7 from the utilities in the context of proceedings; but
8 all of the data that we do have demonstrates that the
9 overwhelming majority of low-income consumers
10 enrolled in consumer assistance programs who are
11 participating in the competitive market are paying
12 more for supply than they would pay if they had
13 stayed with the utility. This makes absolutely no
14 sense from our perspective.

15 I'll give you an example. In a recent
16 case, we got information from EPL that 67 percent of
17 the low-income CAP customers, customers enrolled in
18 the customer assistance program who were receiving
19 supply from a competitive electric supplier, were
20 paying more than they would have paid. Two thirds of
21 those customers were paying more than they would have
22 paid in 2013 than if they had remained with the
23 default service supplier.

24 This is a problem. And the problem, in
25 our view, is only getting worse. We believe that

P. Cicero

1 more must be done to protect economically-vulnerable
2 consumers.

3 So I want to spend most of my
4 testimony -- I put a lot of detail in the written
5 testimony. I don't want to go over that entirely,
6 but I want to spend most of my testimony talking
7 about what can be done to prevent future harm.

8 We believe there are about six things
9 that the General Assembly needs to do. We're
10 grateful that the Public Utility Commission is
11 aggressively looking at this. We look forward to
12 continuing to work with them on the issues that they
13 present, but we think that there are some things that
14 the General Assembly ought to do.

15 The first one, and most significantly
16 from our perspective, is that the General Assembly
17 should enact protections to ensure that CAP
18 customers, those customers at or below 150 percent of
19 poverty who are in payment trouble, who have already
20 demonstrated they cannot afford their bills at full
21 tariff rates, that they should not be able to enter
22 into contracts that require them to pay more than the
23 default service price.

24 These customers should not pay more
25 than that which they would pay had they remained with

P. Cicero

1 the utility. We believe it's unreasonable and bad
2 public policy to approve discounts and reduced rates
3 for low-income customers, shift the responsibility of
4 foregoing revenue to other consumers, but then allow
5 EGSs to charge whatever they want and charge higher
6 rates that result in unaffordable and higher bills.

7 That won't be stopping with the EGSs,
8 but that will be stopped with the customers, the
9 low-income consumers, themselves, and other rate
10 payers who pay for the CAP programs.

11 While arguably and respectfully we
12 disagree with the Commission that it does not have
13 the authority to regulate EGS rates charged to CAP
14 customers, we believe that they do. They have
15 recently concluded that they don't have the
16 authority. You heard Commissioner Witmer say here
17 today unequivocally that she doesn't believe that
18 they have the authority.

19 Accordingly, we believe the
20 General Assembly should act and clarify that the PUC
21 does, in fact, have the authority to regulate EGS
22 rates charged to CAP customers and prohibit EGSs from
23 charging customers enrolled in CAP prices higher than
24 that which they would have paid under default
25 service.

P. Cicero

1 Second, we believe that door-to-door
2 sales of electricity should be prohibited. The
3 General Assembly should not allow these marketing
4 channels to occur. It's a one-on-one interaction
5 with customers in a private home that carry a long
6 history of abuses.

7 There are several reasons why
8 door-to-door sales give rise to potential for abuse
9 and to deceptive marketing. For example, the
10 consumer is marketed with oral statements and
11 information that may and, based on experience, often
12 is contradicted by the print of the actual agreement.

13 These oral representations are not
14 recorded, but customers rely on those statements and
15 often view the verifications as a mere formality.
16 While the written agreement may not promise savings,
17 the oral agreements or the oral representations often
18 do or at least imply that savings will occur.

19 Finally, the consumer is typically not
20 as knowledgeable about the competitive electric
21 market, the role of the utility, and the price to
22 compare, and is often misled, either deliberately or
23 not, that the person at the door has some type of
24 official status or, at the very least, is far more
25 knowledgeable about what their bill will be in the

P. Cicero

1 future.

2 In our view, there's simply no good
3 reason for electricity generation service, an
4 essential good and service, to be sold in a
5 door-to-door transaction. This is particularly true
6 for low-income consumers.

7 Third, customers' affirmative consent
8 should be required before converting a fixed rate
9 contract into a variable rate contract. The
10 General Assembly should require an EGS to obtain
11 affirmative consent from a customer to renew a
12 contract with any change in price or material term.

13 The key consumer protection issue here
14 is how an EGS can interpret a consumer's silence as
15 an agreement to change terms or renew an expiring
16 contract.

17 We believe it is unreasonable to allow
18 suppliers to change the terms of an existing contract
19 when that term affects price or fees without the
20 consumer's affirmative consent.

21 Simply put, you shouldn't be able to
22 change a fixed price to a variable price nor alter
23 the fixed rate without obtaining the consent of the
24 consumer.

25 In many ways, we believe things are as

P. Cicero

1 bad as they are now because this was permitted to
2 occur. Consumers who lack default service or were
3 switched from one EGS to another agreed to be served
4 by a supplier, and they've agreed to a certain
5 bargain. They have affirmatively provided evidence
6 of that bargain for the verification process.

7 The supplier should not be able to
8 interpret this initial agreement to allow that
9 supplier to change the basis of the bargain without
10 first assuring that the customer knows what they're
11 getting into in the second round. An agreement to
12 become a customer is not an agreement to allow the
13 supplier to make a unilateral price change based on
14 customer silence.

15 Fourth, we believe changes are needed
16 to the Purchase of Receivables program. Under the
17 Purchase of Receivables, or POR program, electric
18 distribution companies do billing for electric
19 generation suppliers and then purchase the
20 receivables of the EGS.

21 EGSS receive payment for their charges
22 whether or not the EDCs receive payment from
23 customers, and there's almost no incentive for EGSS
24 to control those costs. They get paid and move on.

25 The utility and its customers, on the

P. Cicero

1 other hand, must deal with the increased
2 uncollectible expenses, credit collection costs, and
3 the cost of potential termination of service.

4 The General Assembly should require
5 that the Public Utility Commission, either through
6 legislation or other oversight, to modify the
7 existing POR programs to ensure that there is a
8 discount factor for EGSs will be paid based on the
9 average uncollectible ratio experienced by those
10 companies, by the electric distribution companies,
11 for all accounts in the specified rate class. This
12 would share the risk.

13 Five, changes are needed to add bill
14 clarity and consistency of charges. The
15 General Assembly should require that electric
16 distribution company consolidated bills make these
17 bills much more understandable.

18 At a minimum, informational bills
19 should be presented in a manner that is simpler and
20 easy to compare. Our office has seen countless bills
21 with a price comparison represented as 8.75 cents,
22 and the EGS price is presented as \$0.0875.

23 The difference in presentations is
24 needlessly confusing. Both prices should be
25 presented in the same way so that consumers can make

P. Cicero

1 an apples-to-apples comparison.

2 Sixth, the EGSs should be required to
3 provide historic pricing history. The
4 General Assembly should require the PUC to directly
5 or through a third party to publish and collect EGS
6 pricing data for every pricing plan offered in
7 Pennsylvania to residential customers.

8 This historical data should extend back
9 12 to 18 months and should be readily available to
10 customers either by calling the PUC or through the
11 PUC's PA Power Switch Web site.

12 Such a public presentation of EGS
13 prices and how those prices have compared over time
14 would be a valuable public resource. Accessed
15 information upon which a consumer can make informed
16 choice is a hallmark of a fair and competitive
17 marketplace.

18 We believe that no such information
19 exists today. That which is currently on display on
20 PA Power Switch is not a list of current or past
21 prices paid by customers. It is a list of current
22 offers to prospective customers.

23 Many customers who are caught in
24 variable rate contracts heard about this from the
25 news media. We've heard consumers who have said,

P. Cicero

1 "When I heard about it, I checked the PA Power Switch
2 Web site, and I looked and saw what was being offered
3 by my company; and I thought I was okay."

4 It turned out that they were wrong.
5 And the reason is that those are offers. They're not
6 prices. They're not prices that are being charged
7 under current contracts. This is a subtle, yet
8 meaningful, difference; and we believe that there
9 should be clarification.

10 I thank you for the opportunity to
11 testify about these critical issues. We look forward
12 to working with Members of this Committee, the Public
13 Utility Commission, other consumer advocates, as well
14 as the suppliers and the EDCs, to help to ensure that
15 this situation will not present itself in the
16 future. Thank you. I look forward to answering any
17 questions that you may have.

18 MR. DALEY: Patrick, thank you once
19 again for testifying before the Committee. You
20 testified in Harrisburg at the last hearing. We
21 really appreciate your testimony.

22 Any questions from any Members of the
23 panel?

24 (No response.)

25 MR. DALEY: Thank you very much.

R. Landis

1 MR. CICERO: You're welcome.

2 MR. DALEY: Our last testifier is
3 Ray Landis, the Advocacy Manager of AARP. And I
4 would like to note that we're five minutes now ahead
5 of schedule.

6 MR. LANDIS: We've done a great job in
7 catching up, haven't we?

8 MR. DALEY: We have.

9 MR. LANDIS: Thanks, Chairman Daley,
10 Members of the Committee. I truly appreciate the
11 opportunity to be here today on behalf of AARP's
12 1.8 million members in Pennsylvania, as well as
13 hundreds of our volunteers, a number of whom are
14 sitting in the audience today and have hung in here
15 for the entire hearing; and I really appreciate them
16 being here.

17 This is an issue that has affected all
18 of our members, all consumers across Pennsylvania.
19 And instead of reading my testimony, I would like to
20 note in the testimony that we have included a number
21 of suggestions how the bill that Chairman Godshall
22 and Chairman Daley have introduced, House Bill 2104,
23 could be improved from the consumer perspective.

24 I think we got a number of highlights
25 and ideas that we hope we could discuss with the

R. Landis

1 Committee and incorporate to protect consumers in
2 that Bill; and we truly appreciate that that Bill has
3 been introduced and the action of the Committee to
4 address this situation.

5 Also, on behalf of AARP, I would like
6 to strongly endorse many of the ideas that were
7 brought up by the Office of Consumer Advocate and the
8 Pennsylvania Utility Law Project. We agree with most
9 of the ideas, if not all the ideas, that were brought
10 up in the previous testimony.

11 So what I would like to do is highlight
12 a couple things that we have encountered and that our
13 members have encountered over the last couple months
14 and highlight one of the critical things that we
15 believe is important about the current electric
16 marketplace, and that is the maintenance of default
17 service.

18 One thing that has been a lifesaver for
19 a number of people that have encountered these
20 variable rates, even though it will take them a long
21 time to switch back, is the fact that the default
22 service provides them a safe landing place to go back
23 to and knowing that default service exists and will
24 provide a relatively stable electric price for them
25 as they've come out of this incredibly volatile

R. Landis

1 situation that they encountered in the variable
2 rates.

3 Commissioner Witmer displayed a chart
4 that shows that default service is not a fixed rate.
5 It is a variable rate, and that is true. But as
6 Mr. Fitzpatrick described, the way that electric
7 default service, the providers, purchase their power
8 ensures that although it can be a variable rate, it
9 is a relatively stable variable rate; and we're not
10 going to see the wild swings in default service.

11 And, frankly, that is what many
12 electric customers want. You know, you've heard
13 electricity compared to telephone service and that
14 there can be -- some of the marketers talk about the
15 great innovations that are there in electric service,
16 and they compare it to the options that are available
17 for telephone service.

18 But the reality is that most electric
19 customers want to make sure that the lights come on.
20 They want to make sure that the refrigerator is
21 running. They want electricity to come into their
22 homes and be stable and not have wild price spikes
23 and changes in prices that will impact them
24 dramatically in their household budgets.

25 And we've seen those impacts. We've

R. Landis

1 seen the 300, 400 percent increases. I had the
2 opportunity to appear on a KDKA radio show a couple
3 weeks ago, and the callers that called into that
4 radio show expressed the frustrations and the
5 dramatic impact that these price increases are going
6 to have on their household budgets. And, frankly,
7 many of them were very concerned about how they will
8 be able to pay these drastic increases in their
9 electric bills.

10 A couple things that I just wanted to
11 highlight about from my testimony, from the written
12 testimony, is the concerns about the high-pressure
13 marketing that is out there.

14 Patrick talked about the door-to-door
15 sales, and we certainly agree that door-to-door sales
16 are not a good way to market electricity. But we're
17 also concerned about high-pressure telephone calls
18 that have been coming into many of our member's homes
19 and many consumers' homes across Pennsylvania.

20 And an example of that, I would cite,
21 is a gentleman that works in this building that I was
22 speaking to earlier today who is working with his
23 elderly parents and maintains their bills and ensures
24 that their bills are being paid and works with them
25 on their home utilities.

R. Landis

1 And he talked about how when he visits
2 his parents, the phone is constantly ringing and
3 constantly ringing with calls from electric marketers
4 trying to get his parents to switch to another
5 electric service.

6 And he talked about, finally, he was
7 tired of the calls, and it sounded so good that he
8 gave into it; and then he slept on it. He woke up
9 the next morning and said he realized he had done
10 something bad.

11 And he was able to call Duquesne, the
12 default provider, and work with Duquesne to ensure
13 that this switch didn't actually take place and that
14 his parents were protected from the variable rate
15 plan that he had inadvertently signed them up for.

16 The fortunate thing was that the
17 protections that we have in the law right now were
18 the switch had to be confirmed through a letter that
19 came to his household, ensured that that switch
20 didn't actually occur. So those protections were
21 very important.

22 But we do think that there is something
23 going on right now with our telemarketing laws that
24 are allowing these calls to come into the households,
25 even if they are on the do-not-call list. They are

R. Landis

1 just getting inundated with calls from electric
2 marketers and the high-pressure sales, including
3 calls that I've received at home, that have told me
4 that the General Assembly is going to force everyone
5 to switch electric providers and so I might as well
6 do it right now.

7 Now, fortunately, that electric auction
8 Bill that was pending over in the Senate seems to
9 have been withdrawn, and it looks like that situation
10 we're not going to have to deal with; but marketers
11 were using that as a bait to get folks to switch.

12 One final point I would like to make is
13 that, you know, right now, we do have the most
14 prolific electric competition marketplace in the
15 country right now outside of Texas.

16 And based on the experience of AARP
17 Texas and my colleagues who work in Texas, I would
18 not recommend Texas as an example that Pennsylvania
19 should be trying to live up to in the electric
20 marketplace.

21 But of other states, we have more folks
22 that are out there shopping for electricity right now
23 than any other state. But the situation we have just
24 encountered does not give Pennsylvania consumers
25 confidence in the electric marketplace.

R. Landis

1 And, in fact, for the first month since
2 the rate caps have come off, last month we saw a
3 decline in the number of Pennsylvania consumers who
4 are using an alternative electric supplier; and I
5 suspect that the next month we'll see even more of a
6 dramatic decline in that number because of the number
7 of people that will have gone back to default service
8 because of the variable rate problems.

9 So unless we see that the
10 General Assembly pass some comprehensive reforms and
11 provide for a strong enforcement in penalties, I do
12 not believe that the confidence of Pennsylvania
13 consumers is going to remain in the electric
14 marketplace.

15 And I want to ensure the Committee that
16 AARP is not against electric shopping. We've gone
17 out. We are trying to educate our members and talk
18 to them about what they need to do to be smart
19 shoppers in the electric marketplace.

20 But part of that smart shopping in the
21 electric marketplace is the idea that for individuals
22 who might not have Internet access, who might not be
23 good with a computer and can go and compare the rates
24 and can see the rates to compare on the Internet,
25 that those individuals have that safe landing place

R. Landis

1 with default electric service.

2 We just think it's critical to maintain
3 the default service while looking at changes that
4 have been suggested, that we've suggested, that
5 others have suggested that can improve the current
6 marketplace that's out there.

7 With that, I'll wrap up. I really
8 appreciate the opportunity to be here today and to
9 talk about AARP's perspective on this issue. And if
10 there are any questions, I would be glad to answer
11 them.

12 MR. DALEY: Ray, thank you very much
13 for your testimony. Any Members of the Committee
14 have a question?

15 (No response.)

16 MR. DALEY: We're looking forward to
17 your participation with Amanda and Beth and our
18 respective staff on current legislation that we have,
19 also the future legislation we are working on which,
20 as you know, we are fast-tracking; and we would
21 really love to have your participation and your
22 ideas, comments, and concerns.

23 Having that said, no other questions,
24 I'm going to thank everyone for coming to testify,
25 the Members of the Committee, the public, all the

1 testifiers. And thank you. This meeting is
2 adjourned.

3 (Whereupon, the above-entitled matter
4 was concluded at 12:10 p.m., this date.)

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C E R T I F I C A T E

I hereby certify that the proceedings and
evidence are contained fully and
accurately in the stenographic notes taken
by me on the hearing of the within cause
and that this is a correct transcript of
the same.

Amanda M. Murphy, Notary Public