



Comments of the Retail Energy Supply Association

House Consumer Protection, Technology & Utilities Committee

HB 1578 Protecting Consumers: Training and Bonding for Retail Energy Suppliers

September 12, 2023

Background

In 1996 Gov. Tom Ridge signed into law the Electricity Generation Customer Choice and Competition Act which restructured the state's electricity industry to provide for customer choice among competing electricity suppliers ("EGS"). The Natural Gas Choice and Competition Act was put into place in 1999, giving energy choice to Pennsylvanians across the state and separating the supply and delivery of natural gas ("NGS"). Now, energy consumers in most areas of Pennsylvania have the power to choose from a variety of natural gas and electricity supply plans and other offers from competing companies.

The Commission in *Title 52, Chapter 54, PA Code § 54.32 Application process for electricity suppliers* and *Chapter 62, PA Code § 62.103 Application process for natural gas suppliers* requires suppliers to complete an application for a license and receive Commission approval prior to serving retail energy products. The applicant must agree to "*comply with relevant Commission regulations, orders and directives that may be adopted.*"

The application requires the submission of documents that support the competency of an EGS and NGS's ability to carry out its obligations under which it shall operate in the Commonwealth of Pennsylvania. It requires an authorized affiant of the company to sign an Operations Affidavit of General Compliance which among other items certifies to the Commission that the "*Applicant will abide by all applicable federal and state laws and regulations and by the decisions of the Pennsylvania Public Utility Commission.*"

Although well intentioned and meaningful, the application and the Affidavit in no way ensures or guarantees that the supplier and their employees/contractors are familiar with or are even



knowledgeable of the consumer protection rules surrounding the provision of electricity and natural gas by retail energy suppliers.

HB 1578 has two objectives:

- To test the supplier's knowledge and familiarity with the consumer protection and market rules established by the Commission, which shall include the proficiency and competency of all aspects of, but not limited to Title 52, Chapters 54, 56, 57, and 62 of the PA Code.
- Requires an EGS or NGS to post a bond or security required for a supplier engaging in person-to-person sales of either natural gas or electricity at the residence of a customer in the amount of \$1,000,000.00. This shall be in addition to the bond or security required by the commission or utilities and conform with any other bonding and security requirements for a company licensed in this Commonwealth.

Objective

Training, Education and Certification of Licensed Suppliers

The objective of HB 1578 is to create an ongoing training and certification process for Electricity and Natural Gas suppliers that will better ensure that suppliers are knowledgeable of the applicable statutes, regulations, and other requirements, and as important are accountable for their actions and behavior.

Effective September 2018, the District of Columbia Public Service Commission requires all current and new electricity supplier licensees to complete the Electric Supplier Education Workshop on an annual basis. The Workshop is posted online and maintained by the Commission. The Workshop and Test confirms suppliers have a proficient understanding of the Commission's supplier licensing rules, consumer safeguards and other relevant provisions to ensure utility consumers are protected within a competitive market.

A similar undertaking by the Pennsylvania Public Utilities Commission ("PA PUC" or "Commission") could help avoid issues currently being experienced by ensuring that all suppliers have a working knowledge of the rules and protections that have been set up for consumers. The Commission is concerned about the escalating complaints being received around telemarketing and door-to-door solicitations by suppliers who are not adhering to the rules governing these sales approaches. The purpose of the training/retraining would be to ensure that each and every supplier is familiar with and has a working knowledge of Title 52 of the PA Code, with emphasis on Consumer Protection rules and requirements. Retraining for existing licensees could occur after a certain time-period lapses, either annually, bi-annually or in the event of new rules going into effect. The cost of such an undertaking could be covered either by increasing assessments to suppliers who currently contribute towards funding the cost of



operating the Commission, or through increased fee assessments for initial or continued application fees.

This process can be implemented by the Commission through modifying its rules for requiring suppliers to be tested and pass the testing process demonstrating a working knowledge of the consumer protection and marketing requirements.

Stakeholders, which would include RESA members, are ready and willing to participate in a working group to aid the Commission in the development and implementation of a training, certification, and education program. Such a program should aid in eliminating the negative connotation that plagues the retail energy market.

Required Posting of a Bond or other Financial Security

HB 1578 sets a high standard for retail suppliers that utilize door-to-door campaigns to market and enroll customers. EGS's and NGS's would be required to post a \$1 million bond, or an equivalent amount of financial security, in addition to the other financial security suppliers must post with the PUC and the utilities.

In the words of Representative Mullins in his April 17th co-sponsorship memorandum, such a requirement would hopefully deter those "fly-by-night companies from doing business in the Commonwealth." All too often we see complaints coming to the PUC from consumers alleging that they never agreed to sign with a supplier, and in those cases where they have agreed to enroll, they were subjected to rates that are completely out of line with market dynamics. Those EGS's and NGS's that practice these tactics are the companies that this piece of the legislation is targeting. It is our hope that if the bar is set high enough, it will result in eliminating the "fly-by-night" companies from using these practices.

It is for these reasons that the Retail Energy Supply Association urges the committee to give HB 1578 a favorable recommendation and approve passage of this important step towards improving the retail energy market.

We thank Representative Mullins for introducing this bill and for his efforts in attempting to improve the Retail Energy Market.

Thank you for your time.

Tony Cusati
Pennsylvania State Chairman

September 12, 2023



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Rep. Robert F. Matzie, Chair
Rep. Jim Marshall, Republican Chair
House Consumer Protection, Technology & Utilities Committee
House of Representatives
Pennsylvania General Assembly

Dear Chair Matzie, Chair Marshall, and members of the House Consumer Protection, Technology & Utilities Committee:

On behalf of its membership, the Retail Energy Supply Association (“RESA”)¹ offers this written testimony in **strong support** of one measure before the House Consumer Protection, Technology & Utilities Committee (“Committee”) today: House Bill 1578, sponsored by Representative Mullins.

RESA is a non-profit organization and trade association that represents the interests of its members, who are active participants in the competitive retail markets for electricity in New England, New York, the Mid-Atlantic, and the Great Lakes regions. As such, RESA is a broad and diverse group of 16 retail energy suppliers dedicated to promoting efficient, sustainable, and customer-oriented competitive retail energy markets. Several RESA member companies are licensed by the Pennsylvania Public Utility Commission (“PUC”) to serve residential, commercial, and industrial customers in Pennsylvania and are presently providing electricity service in the Commonwealth.²

Retail Energy Supply in the Commonwealth

As the Committee is aware, for most of the 20th century, homeowners, businesses, and industrial manufacturers had only one choice when it came to purchasing electricity and natural gas for their homes, businesses, and factories. That sole source option was largely the result of policy determinations that it was more efficient, and energy consumers would benefit from economies of scale, if the retail sales of electricity and natural gas were made by utilities with monopoly-protected service territories at regulated rates. Utilities were provided rates that guarantee they recoup their investment and earn a reasonable profit as determined by state regulators.

¹ The comments expressed in this testimony represent the position of RESA as an organization but may not represent the specific views of any of its individual members. More information on RESA and its members can be found at www.resausa.org.

² RESA members currently licensed in Pennsylvania include AEP Energy, Aggressive Energy, APG&E, Calpine Energy Solutions, CleanSky Energy, Constellation NewEnergy, ENGIE Resources, Freepoint, IGS Energy, Just Energy, NextEra Energy Services, Shell Energy, Spark Energy, and Vistra Energy.

Over time, however, economists and energy policy experts concluded that monopoly-protected price regulation was an inefficient model that needlessly imposed additional costs on consumers, and instead began to realize that consumers would be better served if regulated industries were exposed to competitive forces providing strong incentives for efficiency and cost savings.

Beginning in the 1990s, the federal government acted to inject competition into markets for wholesale power production and bulk sales of electricity. At the same time, many states, including Pennsylvania,³ acted to end monopoly protections for retail sales of electricity and natural gas. Gradually, competitive wholesale power markets overseen by large regional grid operators – like PJM – were enabled by federal regulation.

Today, consumers in more than a dozen states benefit from retail energy competition. Retail energy customers who opt to participate in competitive supply receive a bill for electricity that consists of three main costs: **(1)** transmission (electricity) or transportation (gas), **(2)** distribution, and **(3)** commodity supply (which is typically the largest contributor to the ultimate price customers pay). In states that allow customer choice for electricity and natural gas, the pipes and wires that deliver the energy to retail customers (the transmission/transportation and distribution costs) are still owned and operated by traditional monopoly-protected utility companies. Those costs are still price regulated, and the utilities receive rates reflecting their costs plus a reasonable profit. The utilities are also able to recoup any costs from ratepayers, unlike retail energy suppliers that do not have guaranteed rates of return.

It is the energy commodity – electricity or natural gas – that is competitively priced. In states with retail competition, such as the Commonwealth, the vast majority of residential customers still receive one bill for their electricity and natural gas, but they have a choice of competing retail energy suppliers vying for their business. This is driving both economic value for the customer’s energy dollar and also innovation in pricing and services that did not and does not occur under monopoly-protected price regulation.

RESA and its members hold fast to several core principles that are critical to understanding the place of retail energy markets. RESA holds that competition, not regulation, is the most effective means for efficiently allocating resources, similar to the market dynamics for other goods and services. RESA members maintain that competition among retail companies brings benefits to consumers that are not readily provided through traditional utility regulation. These benefits include the setting of efficient prices, the development of innovative products and services, and the ability to efficiently meet clean energy policy objectives. In order for competition to be effective, all consumers must be afforded the right to shop for competitively priced energy products and services, just as they shop for other products and services.

Pennsylvania Consumers Want Choice And Benefit From It

The demand for retail energy competition is evident in Pennsylvania, as demonstrated by the 1.2 million residential customers⁴ who were being served by a retail electricity supplier as of July of this year. The percentage of commercial and industrial load served by retail electricity suppliers

⁴ Pennsylvania PUC, “PAPowerSwitch Monthly Update,” July 2023, https://www.papowerswitch.com/media/uxlhzera/paps_numbers073123.pdf

is even higher – 72.7% of commercial load and 95% of industrial load. On the gas side, according to quarterly data collated by the Office of Consumer Advocate, 332,417 residential gas customers were served by a retail gas supplier as of July 1. Additionally, this on-the-ground data coincides with RESA’s National Survey in 2020,⁵ which said 74% of consumers want the ability to select their energy supplier.

Additionally, RESA’s own monthly market savings reports, based on data from the PUC’s PAMPowerSwitch website, show significant cost savings were available in August for consumers shopping for the best deal for electricity. Our calculations indicate Pennsylvania consumers could have saved more than \$258 million in July 2023⁶ and benefited from a wide range of value-added products and services by switching to competitive suppliers.

Strong Support for House Bill 1578

While RESA believes that the competitive retail market has been a successful value creator for customers, we recognize that improvements can be made to ensure the marketplace continues to operate effectively while also protecting the rights and interests of consumers.

With this in mind, we wish to express our strong support for House Bill 1578, sponsored by Representative Mullins.

We believe the bill addresses two areas in which improvements are needed to both reduce the opportunity for bad behavior by rogue actors as well as ensure that ignorance of the Commonwealth’s laws and regulations are not an excuse that can be offered by a retail supplier.

First, while door-to-door selling is an effective channel and a significant opportunity to present valuable offers to consumers, we acknowledge that there have been issues with this approach, particularly when unscrupulous companies uninterested in building long-term relationships with customers are involved. The bill would set a high standard for retail suppliers that want to market to customers using a door-to-door campaign by requiring these companies to post a \$1 million bond, in addition to the other financial security suppliers must post with the PUC and the utilities. This new requirement would have the immediate effect of deterring “fly-by-night” operators from using door-to-door campaigns. Incidentally, this would also put Pennsylvania in the pole position on door-to-door security requirements among all states with retail energy markets.

Second, the bill requires all agents to go through a PUC-designed training program to ensure that ignorance of the rules is no excuse for any potential violations. At the conclusion of the program, a designated representative of each supplier must demonstrate through an online exam that he or she has a thorough understanding of the PUC's regulations regarding sales, consumer protection and any other matter the PUC deems appropriate. This representative will also have to attest that they have informed and educated all employees of the supplier who are engaged in any aspect of acquiring and maintaining a retail customer base. Additionally, the cost of this program will be

⁵ Ragnar Research Partners, RESA-commissioned survey, <https://www.resausa.org/resas-survey-of-americans-finds-74-of-consumers-want-to-select-their-own-energy-supplier/>

⁶ RESA, Pennsylvania Market Savings Report for July 2023, https://www.resausa.org/wp-content/uploads/2023/08/Pennsylvania-MSR_July2023.pdf

borne by retail suppliers through their existing annual assessment, or a special fee assessment developed by the PUC.

Leadership Role of Pennsylvania

Through the careful, thoughtful work of the General Assembly and the PUC, Pennsylvanians enjoy a competitive retail energy market that is held as a gold standard across the nation. The PAPowerSwitch and PAGasSwitch websites are second to none in terms of providing the consumer with valuable information on how to shop, what to look for in a supplier's contract, and the pricing and added products and services available. The educational efforts of the PUC and the Office of Consumer Advocate have helped consumers understand their choices and feel confident in exercising them. With the authority provided to it by the General Assembly, the PUC has balanced incentivizing suppliers to enter the market while also providing appropriate oversight and discipline. As a result, Pennsylvania is always brought up by stakeholders in other markets as an example of a state where choice is working and working well.

Today, we are recommending some additional tools be provided to the PUC to ensure that it continues to be in the vanguard when it comes to consumer protection and market innovation. We recognize that the competitive energy market is not perfect, just like other markets in consumer goods and services are imperfect. Keeping bad actors out and welcoming good actors in will help ensure the retail market can deliver the proper consumer protections, innovation, economic benefits, and consumer value, to the citizens of Pennsylvania.

Thank you again for the opportunity to present testimony before you today in strong support of House Bill 1578. RESA looks forward to continued opportunities to discuss the promise of retail energy choice with the Committee.

Sincerely,



Frank Caliva
National Spokesperson
Retail Energy Supply Association

**BEFORE THE
HOUSE CONSUMER PROTECTION,
TECHNOLOGY AND UTILITIES COMMITTEE**

Testimony of

Patrick M. Cicero
Consumer Advocate
Pennsylvania Office of Consumer Advocate

Regarding
HB1578

Harrisburg, Pennsylvania
September 12, 2023

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Good afternoon, Chairman Matzie, Chairman Marshall, and Members of the House Consumer Protection, Technology and Utilities Committee. My name is Patrick Cicero. I have the privilege of serving as Pennsylvania's Consumer Advocate. Thank you for the opportunity to testify about House Bill 1578.

My office, the Pennsylvania Office of Consumer Advocate (OCA), serves as the statutory advocate for Pennsylvania consumers before the Public Utility Commission (PUC). This includes issues related to the operation of the competitive gas and electric markets.

More than 25 years ago, in 1996, Pennsylvania became one of the first states to open the generation portion of its electric utilities to competition. The same thing occurred in 1999 when we restructured our natural gas utilities. My office has long supported the restructuring of our electric and gas markets to separate the generation of electricity and the production of natural gas from the regulated distribution function that utilities continue to perform in a traditional rate regulated manner. For the most part, at the wholesale level, this restructuring has been a success for consumers as it has resulted in lower wholesale electricity and gas costs that are produced because of competition.

It is worth noting, however, that in neither case did we "deregulate" our electric or natural gas utilities. First, as noted above, the distribution portion of the industry – the wires that carry electricity to our homes and businesses as well as the pipes and mains that carry our natural gas – remain a monopoly service under the traditional ratemaking process. The ratemaking process for these services provides a balancing of stakeholder interests such that investors and shareholders are provided the opportunity to recover prudent and reasonable costs as well as the opportunity to earn a fair rate of return on investment dedicated to the public service. At the same time, this

process is designed to provide ratepayers with just and reasonable rates that are easy to understand and provide adequate price signals to utilize resources in an efficient manner.

Second, and equally important from my view, even with respect to electric generation and natural gas service, our electric and natural gas companies continued to serve as the “default service providers” so that all Pennsylvania consumers can continue to receive essential electric and natural gas service even if they choose not to switch to a retail supplier. In my view, the most significant protection the General Assembly enacted when it restructured the electricity and gas markets is to ensure that consumers who do not choose an electric generation supplier or natural gas supplier, or whose supplier drops them, retain access to competitively priced, reasonable, and stable default service. This has been central to Pennsylvania’s successful transition from a vertically integrated electric and natural gas utility system to a restructured, competitive market with retail access. Default service allows retail competition to meet the needs of customers, while at the same time ensuring safe, adequate, reliable, stable, and affordable service for all Pennsylvania customers. Utilities are required to purchase their electric generation and natural gas supplies from competitive wholesale markets and then pass the costs of those supplies on to their default service customers with no added markup or profit margin. That means Pennsylvania consumers receive the full benefit of the competitive wholesale market without taking the personal risks of participating in the retail market.

Finally, the PUC also continues to play an important role in ensuring that competitive retail markets are fair, transparent, and understandable. This is manifest in the PUC’s operation of important consumer shopping websites such as papowerswitch.com and pagasswitch.com, as well as their retail supplier licensure regulations, and their marketing regulations. This oversight role by PUC is at the heart of the protections that are outlined in HB1578.

Before I address the particulars of HB 1578, I want to note some concerns I have about the retail market that are not addressed by the bill. Specifically, the rate impact that shopping has had for residential customers. Many suppliers and their trade associations will tout the current rates and offers that are available at present to support claims about savings from shopping. Moreover, I have seen what I consider to be misleading representations about the savings that are available monthly in the competitive market – representations that simply compare the then-current offers with the offers of the utilities. While our office supports retail access to the competitive market for consumers who want it, it is important to note that the signals have been clear over the last few years that customers have not saved money overall when served by retail electric suppliers. To be sure, there are currently offers in the competitive market that are lower than the utility’s default service price, but when one looks at the data, overall *retail* electric choice has been more expensive for consumers. Based on data collected in the recent default service cases filed with the PUC, we know that Pennsylvania’s residential electric shopping customers have been charged \$1.5 billion more than they would have been charged on default service over a 5-year period.

Table 1: Aggregate Residential Shopping Charges in Excess of Default Service¹

Utility	Dates Analyzed	Aggregate Shopping Charges in Excess of Default Service Price
PECO Electric	Jan. 2015 – April 2020	\$733,197,940
PPL Electric	Jan. 2015 – May 2020	\$295,828,735
Duquesne Light	Jan. 2017 – May 2020	\$102,869,316
FirstEnergy Utilities	Aug. 2017 – Dec. 2021	\$431,152,822
Total		\$1,563,048,813

These numbers count all customers who switched and saved and those who switched and paid more. In other words, they are net numbers that account for all shopping. There are likely many reasons why this data is the way that it is, including customers being misled based on marketing tactics, which would hopefully be curtailed to some degree by the changes proposed in HB 1578, but misleading marketing tactics are not the only source of concern. What our office has seen is that customers typically, though not always, make good choices when they initially enroll, but

¹ Competitive market pricing data was compiled through litigation in each of the electric utilities’ default service plan proceedings, where competitive market issues are addressed. The data is all part of the public record and is available at the below cited dockets.

Petition of PPL Electric Utilities Corp. for Approval of a Default Service Program for the Period of June 1, 2021 through May 31, 2025, Testimony of Harry Geller on Behalf of the Coalition for Affordable Utility Service and Energy Efficiency in Pennsylvania (CAUSE-PA), Pa. PUC Docket No. P-2020-3019356, at 8 & Exhibit 1 (dated June 25, 2020).

Petition of PECO Energy Co. for Approval of a Default Service Program for the Period of June 1, 2021 through May 31, 2025, Testimony of Harry Geller on Behalf of the Coalition for Affordable Utility Service and Energy Efficiency in Pennsylvania (CAUSE-PA), Pa. PUC Docket No. P-2020-3019290, at 10 & Exhibit 1 (dated June 16, 2020).

Petition of Duquesne Light Company for Approval of a Default Service Program for the Period of June 1, 2021 through May 31, 2025, Testimony of Harry Geller on Behalf of the Coalition for Affordable Utility Service and Energy Efficiency in Pennsylvania (CAUSE-PA), Pa. PUC Docket No. P-2020-3019522, at 10 & Exhibit 1 (dated July 17, 2020).

Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company for Approval of their Default Service Programs for the period commencing June 1, 2023, through May 31, 2027, , Testimony of Harry Geller on Behalf of the Coalition for Affordable Utility Service and Energy Efficiency in Pennsylvania (CAUSE-PA), Docket Nos. P-2021-3030012, -13, -14, -21 , at 7 & Exhibit 1 (dated Feb. 25, 2022).

either do not understand that their rates are fixed for only a short period of time – often as little as three months – or at the end of a contract term customers make no affirmative choice and are, thus, rolled onto whatever rate their supplier sets which is more often than not considerably higher than their initial contract rate and is typically variable each month. For these reasons, our office believes that there are reforms that need to be made to the competitive retail electric market for that market to serve customers well. We would welcome the opportunity to talk about them more fully with this Committee. While the reforms suggested by HB 1578 are good, my fear is that they will serve as mere window dressing disguising the very real and core issues that need to be addressed both legislatively and administratively. While not exhaustive, the following additional protections would go a long way to creating a fairer market for consumers:

- Prohibiting Electric Generation Suppliers (EGSs) and Natural Gas Suppliers (NGSs) from charging variable rates for residential consumers.
- Prohibiting EGSs and NGSs pricing more than the default service price for low-income customers.
- Requiring EGSs and NGSs to return residential customers to default service following expiration of a contract term unless the customer makes an affirmative election to sign on for an additional contract with their EGS or NGS or another supplier.

I would be pleased to work with the General Assembly on these more significant reforms that would work to constrain the excesses of the market.

This brings me to a discussion of the particulars of House Bill 1578. The bill, if enacted, would amend the natural gas and electric restructuring statutes and do two principal things:

First, the bill would require the PUC to develop a training and education program for NGSs and EGSs and require “a designated representative” of the NGS or EGS to take the training and be assessed via a test. Proposed §§2208(i); 2809(h).

Second, the bill would impose a new bonding requirement of an additional \$1,000,000 for any EGS or NGS engaging in person-to-person sales at a residence. Proposed §§2208(c)(1)(i); 2809(c)(1)(i).

Our office supports the training, education, and testing provisions of HB 1578. The PUC's dockets are full of examples of supplier misconduct that is attributable to their employees or contractors not adhering to existing requirements. The changes proposed in HB 1578 would make incremental improvements. However, the bill as currently drafted would only require one designated representative of the EGS and NGS to receive this training, education, and testing. It is not at all clear how providing training to a single individual will reign in abuses that are occurring within the market as it would rely on that person to transmit the knowledge to the rest of the individuals in the company. In my view, all employees and agents of any supplier selling energy to any consumer in the Commonwealth should go through a PUC-sponsored training, education, and testing program.

Regarding the bonding requirements, it is not clear what ends this additional bond would serve. While the OCA certainly supports adequate and sufficient bonding of all EGSs and NGSs, if the General Assembly is going to impose additional bonding requirements for those who engage in door-to-door sales, it should consider whether the bonding requirement should be increased for all sales to consumers. In addition, the General Assembly should take the opportunity to clarify legislatively that the PUC has the authority to order refunds by EGSs and NGSs who engage in fraudulent or deceptive marketing practices or otherwise violate the Public Utility Code or regulations. This legislative clarity is needed as it would correct a gaping hole in the law that does

not specifically authorize the PUC to issue refunds as the Commonwealth Court recently determined in a case decided in 2020.²

Thus, in our view, HB 1578, while well intended, would not address the most persistent abuses in the market. I would be happy to work with the bill's sponsors and this committee to bring additional needed reform to the competitive market.

Thank you for the opportunity to submit testimony on these critical issues. I am available to respond to any questions you have about my testimony.

² *Blue Pilot Energy, LLC v. Pa. PUC*, 241 A.3d 1254 (Commw. Ct. 2020) (Finding that the PUC exceeded its authority by granting refund relief to all customers because the refund provisions of 66 Pa. C.S. § 1312(a) did not apply to EGSs, nor did any other statute expressly authorize ordering an EGS to establish a refund pool, and the availability of other remedies counseled against implying refund authority by necessity.).