BEFORE
THE PENNSYLVANIA HOUSE OF REPRESENTATIVES
CONSUMER AFFAIRS COMMITTEE

Testimony of

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Regarding HB 1782

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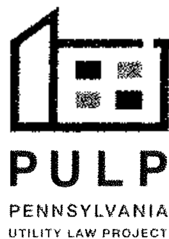

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Good Morning, Chairman Godshall, Chairman Caltagirone, and Members of the House Consumer Affairs Committee. Thank you for the invitation to testify today concerning House Bill 1782. My name is Patrick Cicero. I am the Executive Director of the Pennsylvania Utility Law Project (PULP). PULP is a designated statewide specialized project of the non-profit Pennsylvania Legal Aid Network. For three decades, PULP has provided legal representation, support, information, consultation, and advocacy in conjunction with local legal aid and community based organizations representing the interests of the Commonwealth's low-income residential utility consumers. Much of our advocacy focuses on energy issues because the ability of low income Pennsylvanians to connect to and maintain essential services needed to light, heat, and cool their home under reasonable terms and conditions and at affordable rates is an ongoing concern.

As currently proposed, House Bill 1782 would empower the Public Utility Commission (PUC) to approve an alternate ratemaking mechanism on the application of a natural gas distribution company or an electric distribution company in a utility base rate proceeding. Specifically, the legislation mentions five different alternate rate mechanisms as examples: (1) revenue decoupling, (2) performance-based rates, (3) formula rates, (4) multiyear rate plans, and (5) rates to support and fully recover the allocated costs to deploy infrastructure and distributed energy resources. The stated rationale for the legislation is "to facilitate customer access to new energy options while ensuring that natural gas and electric distribution infrastructure costs are reasonably allocated and recovered from customers and market participants consistent with the use of the infrastructure." Respectfully, we believe this legislation is unnecessary and will have the unintended and harmful consequence of raising rates for low-income and economically vulnerable households.

First, it is not clear what "access to new energy options" this legislation would enable or encourage. Currently, all households have access to renewable energy through the requirements of the Alternative Energy Portfolio Standards (AEPS) Act imposed on Electric Distribution Companies (EDCs) and Electric Generation Suppliers (EGSs). Furthermore, the AEPS Act and Commission regulations currently require EDCs to facilitate interconnection for net-metered residential, commercial, and small business customers seeking to install distributed energy resources on their properties. While the rate of interconnections may not be as fast as some desire, this is likely a reflection of the growing demand for distributed energy resources within the retail energy market rather than intentionally dilatory conduct by the EDCs. It is not clear how the proposed legislation will change those dynamics.

The second goal of the legislation – ensuring that natural gas and electric distribution infrastructure costs are reasonably allocated to and recovered from customers and market participants consistent with the use of the infrastructure – is already occurring through existing rate mechanisms and tools within the authority of the PUC. Every NGDC and EDC has the ability to accelerate the recovery of infrastructure investments – pipes in the ground and wires and poles – through their distribution system improvement charge (DSIC) and long term infrastructure improvement plans. These non-bypassable, between-rate-case riders facilitate the recovery of capital costs more quickly and allow utilities to ensure that their distribution networks remain reliable, safe, and capable of meeting demand. Other than these capital improvement expenditures currently recovered by DSIC, it is not clear what infrastructure this bill is designed to facilitate.

Given that utilities already have the ability to promptly and adequately recover their costs associated with needed infrastructure, it begs the question about why alternative ratemaking is

needed. Like many things, the answer depends on who you ask. From the perspective of low-income consumers, the answer is that it is not needed at all. An alternative rate mechanism's explicit purpose and intent is to shift the risk of reduced sales revenues or increased expenses from utilities and their shareholders to customers. For economically vulnerable customers, this is not a fair bargain and is both undesirable and unnecessary. Utilities are in a better position to manage risks than individual residential customers as a whole. In particular, low income customers with fixed or insufficient monthly income have **no means** to manage these risks.

While the legislation does not prescribe the type of alternate ratemaking that the PUC could adopt in the context of any given utility service territory, it does set forth five different suggested rates designs, each of which has its own inherent risks to low-income customers. I will not address all of the various rate design proposals contained in the legislation separately in this testimony. What I want to add is context regarding low-income customers who already face very tough obstacles in affording utility service. These customers are unlikely to see any improvement under the alternate rate design principles sought to be advanced by this legislation, and in fact would likely face increased levels of unaffordability.

It is essential to remember that low-income customers are particularly vulnerable to an increase in their utility bills for essential electric and gas service. When proposals for rate design changes, rate increases, and higher non-bypassable charges are under consideration, we urge the General Assembly to consider that low-income households often have a tenuous ability to maintain essential utility services. In other contexts, some have suggested that low-income households would not be put at risk from alternate rate designs because the rate changes would be very small, these households would have access to Customer Assistance Programs (CAPs)[1] to mitigate harm,

[1] CAPs are payment assistance and debt forgiveness programs for payment troubled, low income households. CAPs are intended to provide affordable monthly bill based on a set energy burden standard.

or these households would benefit through increased incentive by the utilities to promote and provide additional energy efficiency resources. These conclusions are misplaced for several reasons.

First, the evidence demonstrates that low-income households cannot afford rates as they currently exist, let alone any increase in rates - no matter how small. Data from 2015, the last year for which data is publicly available, shows that low-income customers had a significantly higher termination rate as compared to all residential customers.

Figure 1 – 2015 Total Number of Terminations and Termination Rate[2]

	RESIDENTIAL CUSTOMERS		CONFIRMED LOW-INCOME	
	Terminations	**Reconnections**	**Termination**	**Reconnection**
Electric	**218,944 households**	**162,290 households**	**98,451 households**	**72,465 households**
	4.4% Termination Rate	**76.4% Reconnection rate**	15.8% Termination Rate	73.6% Reconnection rate
Natural Gas Utilities	**101,511 households**	**68,198 households**	**54,824 households**	**34,213 households**
	3.9% Termination Rate	**67.2% Reconnection rate**	12.0% Termination Rate	62.4% Reconnection rate

As this data shows, even at current rates low-income households face significant payment trouble, face termination of service at rates 3-4 times as great as residential customers as a whole, and are **<u>less likely</u>** to reconnect service once that service has been terminated.

Some have suggested that these problems would not be exacerbated under an alternative rate mechanism because they are caused by factors unrelated to utility ratemaking. We disagree.

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[2] Report on 2015 Universal Service Programs & Collection Performance of the Pennsylvania Electric Distribution Companies and the Natural Gas Distribution Companies at 10-16. Available at: http://www.puc.state.pa.us/General/publications_reports/pdf/EDC_NGDC_UniServ_Rpt2015.pdf

The assumption embedded in this assertion is that a well-constructed decoupling or another alternative rate mechanism simply produces higher rates more steadily than a rate case, suggesting that because bills would have increased anyway under traditional rate regulation, the harm is not actually associated with rate design. This argument ignores the fact that in traditional base rate cases, utilities must demonstrate that the requested increase is just and reasonable. While costs or expenses may have increased in some areas, they must be considered in light of the potential for more efficient utility operations and lower costs in other areas. Under the proposed alternative rate design mechanisms envisioned by HB 1782, the utility gets cost recovery *in between rate cases* based on sales revenues or other complicated formulas, but is not required to demonstrate that all available means have been implemented to reduce operational or other costs so as to offset the impact of lower sales revenues.

Furthermore, rate cases, unlike automatic adjustments, provide interested parties with the opportunity to explore the need to mitigate the harm to economically vulnerable customers associated with the rate increase. Parties can – and do – make recommendations to reduce the potential for increasingly unaffordable electric and gas bills.

Second, the suggestion that low-income households are already protected from the negative effects of incremental rate increases because of the CAP program is incorrect. While it is true that CAP participation is effective at providing more affordable bills for CAP-enrolled households, ***a significant majority of confirmed low-income households are <u>not</u> enrolled in CAP.*** In 2015, the weighted CAP participation rate was only 46% for electric utilities and 35% for natural gas utilities.[3] Moreover, even for those enrolled in CAP, not all CAP programs insulate households from cost increases due to increased rates. Thus, any suggestion that low-income households

[3] *Ibid.* n. 2 *supra,* at 42.

would not be affected by incremental rate increases brought about by alternative rate designs because of CAP must account for both of these facts.

Third, when considering whether alternative rate mechanisms will incentivize utilities to increase energy efficiency resources, one has to consider the already robust energy efficiency resources available in Pennsylvania. Act 129 mandates the implementation of efficiency, conservation, and demand response programs and expenditures for the Commonwealth's electric utilities and many gas utilities have proposed voluntary energy efficiency programs[4]. Under Act 129, Pennsylvania's seven major electric utilities spend approximately $240 million annually on energy efficiency and demand response programs.[5] This is in addition to the $51.8 million in Low Income Usage Reduction Program (LIURP) spending that occurs each year.[6] To be sure, PULP actively supports increases in budgets to meet the overwhelming and under-met energy efficiency needs to low-income households. However, there is no evidence that we are aware of demonstrating exactly how much or in what form **new and additional resources** would be added as a result of either decoupling or other alternative rate designs. Act 129 is based on a statutory spending cap of 2% of 2006 EDC revenue, and LIURP is based on a utility-specific needs assessment. Utilities are required to file plans to address both, and no additional incentive has been or will be necessary for this to occur. The notion that utilities will exceed these spending thresholds on their own or will be "more willing" to accommodate energy efficiency may be a viable argument in jurisdictions without these statutory and regulatory spending requirements, but it is a dubious conclusion in Pennsylvania.

[4] The Commission has recently approved voluntary Energy Efficiency and Conservation Program Plans for UGI Gas, UGI Penn Natural Gas, and Philadelphia Gas Works.
[5] See Energy Efficiency and Conservation Plan, Docket No. M-2014-2424864 (Final Implementation Order at June 19, 2015) at 11, n. 23.
[6] *Ibid.* n. 2 *supra,* at 38. LIURPs are a part of each EDC and NGDCs statutorily mandated universal service and energy conservation programs that assist low-income household with high usage reduce their usage through energy efficiency improvements/weatherization, and education.

Every utility in the state is authorized to file base rate cases to recover their just and reasonable costs and expenses. When a base rate case is filed, the utility's actual revenues and expenses and investments are reviewed and taken into account when establishing the revenue requirement, the rate of return, and rate structure for its customers. If "lost revenues" due to efficiency, distributed generation, or other social and economic factors apparent in the service territory require a change in revenue requirement and rates, the utility can file a base rate case. At that time, all the competing factors and developments affecting sales and revenues can be reviewed with the utilities' operational costs and investments. To single out "lost revenues" due to efficiency programs or distributed generation ignores the fact the utilities have control over other aspects of their revenue, and eliminates the ability for the public to review how the utilities have taken internal measures to reduce their operational expenses to reflect changes in revenue streams.

Finally, it is necessary to address one of the more harmful proposals that I see in the current version of HB 1782 – that is, the notion that utilities could receive performance based rates or performance incentives. This is a perilous path. As a preliminary manner, we are concerned that a performance based rate structure would alter the successful Act 129 policy that focuses on a penalty mechanism if the efficiency and demand response mandates are not achieved. Pennsylvania EDCs have largely avoided penalties and have substantially complied – and often exceeded – the Act 129 mandates and Commission savings targets. Any consideration of rewards or incentives to utility shareholders for performance in excess of program targets or efficiency results would result in another mechanism to increase both shareholder earnings and, in turn, customer rates and the cost of distribution service. Of course, such a result is circular, as it undermines the savings achieved for consumers who adopt energy efficiency measures through the programs.

Policies that will increase shareholder earnings at the expense of residential customers to achieve program results for energy efficiency should not be encouraged without a showing that they would work better than the current cost recovery and penalty structure. Furthermore, every customer service requirement imposed on Pennsylvania's utilities could be a justification for creating rewards and incentives to meet or exceed regulatory mandates. There is no basis for assuming that efficiency programs should be the subject of rewards and incentives when compared to the wide variety of customer service obligations and Universal Service program mandates imposed by the PUC. Electric utilities have a statutory and regulatory obligation to provide energy efficiency programming through both Act 129, and both gas and electric utilities have obligations to adequately fund LIURP under their universal service obligations imposed by the gas and electric Choice Acts and the Commission's regulations. The General Assembly should not condone incentives for performance of obligatory requirements.

The implication behind performance rates seems to be that any performance mechanism would be for performance that is above and beyond that which is required. However, it is not at all clear where the additional revenue would come from to achieve this additional energy efficiency, or what metrics might be used to determine whether a utility is performing at a high level. It is a doubtful conclusion to suggest that shareholders will pay for additional energy efficiency with their dollars, at least not to a greater degree than the amount of the performance incentive. In reality, ratepayers may well be left paying more for an incentive than they receive in value for energy efficiency.

In conclusion, we do not believe that any alternative rate designs are necessary or prudent given the tools already in place for utilities and consumers. Every rate design and rate mechanism comes with positive and negative attributes in terms of customer bill impacts, utility incentives,

and public interest compliance with statutory mandates. Utilities and their shareholders often seek rate designs and rate recovery mechanisms that guarantee recovery of costs and the approved revenue requirement. However, utilities do not always recognize or address the need for internal efficiencies and reforms that might result in lower costs to offset their lower revenues. Consumers typically oppose rate designs that shift current volumetric rates to fixed or demand charges because those rate designs harm lower use and lower income customers. Regardless of how many prudence reviews are conducted when rates are changed outside a full rate case, if one component of a utility's cost of service is essentially put on autopilot, consumers are at risk of being charged too much. Any shortfall related to revenue reductions will likely be short-lived because utilities can – and do – file for a general rate increase as frequently as they feel it is needed, whenever the combined impact of all relevant factors cause it to begin to under-earn. Overearnings situations are not nearly so quickly remedied, and alternative rate designs can allow rates to increase without utility overearnings being corrected.

For all of these reasons, and the reasons outlined more fully by the Consumer Advocate, we do not believe HB 1782 is in the interests of low-income consumers and urge the General Assembly to proceed cautiously with any proposals to made radical changes in current residential rate design. Thank you for the invitation and opportunity to provide this testimony. I am available to entertain any questions that you may have.