

Before the Pennsylvania Public Utilities Commission

Retail Markets Investigation : Docket No. I-2011-2237952
March 21, 2012 En Banc Hearing :
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**Comments of the Pennsylvania Coalition Against Domestic Violence Regarding
the March 21, 2012 En Banc Hearing –
End-State Default Service Models and Consumer Education**

The Pennsylvania Coalition Against Domestic Violence submits the following comments in response to the March 21, 2012, en banc hearing on the issues of end state default service and consumer education. PCADV's comments are issued on behalf of our membership, which includes 60 domestic violence programs across the Commonwealth and the thousands of victims and families each program serves.

PCADV has been involved in the Retail Market Investigation since it was launched in April 2011. We are grateful to the PUC for its continued consideration of the unique issues facing victims of domestic violence throughout the transition to electric choice.

The following comments are in response to the PUC's request for comments on the exploration of alternative default service models and on the potential for a comprehensive consumer education plan.

I. Introduction

PCADV strongly asserts that default service in Pennsylvania should only be changed if it is evident through the examination of empirical data that such a shift is necessary, cost-effective, and advantageous to consumers. PCADV is in lock step with the Pennsylvania Utility Law Project (PULP), Community Legal Services (CLS), and AARP in its position that "elimination of the current Default Service Model in favor of any of the proposed Models is inconsistent with Pennsylvania's current statutes, regulations and policies, fails to adhere to the polestar principles articulated [in 66 Pa. C.S. §§ 2802, 2807, and 2809], and would not result in a desirable outcome for Pennsylvania's

residential customers.”¹ We, like PULP, CLS, and AARP, believe strongly that the PUC must halt its consideration of the proposed alternative default service models and reassess the value of such a transition because, to date, there has not been any meaningful inquiry into the costs and benefits of a transition in default service provision. The PUC’s attention and resources should instead be focused on encouraging competition through full and appropriate adherence to Act 129 and developing an effective and informative consumer education campaign.

PCADV is particularly concerned that, in its exploration of alternative default service models, the PUC has not considered how to ensure strict adherence to specific regulatory and statutory protections for victims of domestic violence. As the law currently stands, an alternative default service plan would require significant legislative and regulatory changes as well as extraordinary education efforts to ensure the continuation of important protections for victims of domestic violence. Moreover, PCADV has repeatedly commented – and continues to strongly assert – that the PUC has paid insufficient attention to legitimate customer safety and privacy concerns in its exploration of default service alternatives. Customer privacy and security should be front and center in any discussion about a shift in the current default service structure. It would be imprudent for the PUC to move forward with any transition in the provision of default service before fully addressing these pressing issues.

Finally, with respect to the PUC’s consumer education plans, PCADV urges the PUC to adopt a well-balanced and comprehensive campaign to enable consumers to make a true choice. An education campaign designed to enable customer choice must address the full scope and magnitude of the choice, including the risks associated with the switch, the protections afforded to the consumer, and the realistic benefits that a consumer can expect. Without the inclusion of each of these integral components, the PUC’s planned education campaign would only amount to a state-sanctioned and

¹ See AARP, PULP, CLS, *Comments in Response to Staff Discussions Document on End-State Default Service Models*, Docket No. I-2011-2237952, at 3 (filed April 4, 2012).

consumer-funded commercial advertising campaign. No consumer should have to subsidize a commercial advertising campaign for a profitable industry. To that end, PCADV urges the PUC to consult with all interested consumer advocates to ensure that the education campaign provides consumers with all of the necessary tools to make a fully informed decision.

II. The PUC must fully address how any proposed shift to default service will impact the availability of statutory and regulatory consumer protections for victims of domestic violence before proceeding with any transition or disruption to default service.

Prior to the March 21, 2012, en banc hearing, the PUC released a Secretarial Letter, which contained a Staff Discussion Document setting forth three possible end-state default service models. None of the models set forth in this document specifically address the continued viability of statutory and regulatory consumer protections. This omission is, quite simply, unacceptable.

The continued viability of consumer protections, particularly protections for victims of domestic violence, is an integral component of any default service model.² As explained by the National Association of Regulatory Utility Commissioners in comments filed with the Federal Trade Commission, “a fundamental responsibility of State and federal electric utility regulators in this transition period is to assure that vital public interests and established public benefits will be preserved in any restructuring of the electric utility industry.”³ Any shift in the provision of default service would likely require significant changes to the current regulatory and statutory scheme. Thus, the seamless transition of consumer protections into a new default service model is an issue that cannot be tabled for resolution after an alternative plan is adopted. As explained below, failure to put consumers front and center in any default service transition could

² See 66 Pa. C.S. § 1417.

³ FED. TRADE COMMISSION, COMPETITION AND CONSUMER PROTECTION PERSPECTIVES ON ELECTRIC POWER REGULATORY REFORM: REPORT BY THE FEDERAL TRADE COMMISSION STAFF, at 77 (2001), *available at* <http://www.ftc.gov/reports/elec/electricityreport.pdf> (citing NARUC at 12).

potentially cause irreparable harm to consumers, particularly victims of domestic violence.

Customers with Protection From Abuse Orders

Title 52, Chapter 56, of the Pennsylvania Code provides very specific protections and exemptions for victims of domestic violence with a Protection From Abuse Order. These protections stem from the statutory exemption in Title 66, Chapter 14 of the Pennsylvania Statutes, which provides that victims of domestic violence with a valid protection order are not subject to the disconnection, collection, and payment requirements set forth in that chapter. 66 Pa. C.S. § 1417. For instance, utility companies cannot shut off electricity during the winter months, must give 48 hours notice prior to termination, cannot charge a higher deposit or demand full payment of past-due amounts. Additionally, victims may be entitled to make special payment arrangements for deposits or late bills and cannot be held responsible for a bill in someone else's name. These are very protective provisions, which are in line with the PUC's commitment to the public's health, safety, and welfare.

But the protections for victims of domestic violence only apply to customers of regulated utility companies. If the responsibility for providing default service were to shift from regulated electric distribution companies to largely unregulated electric supply companies, victims of domestic violence would lose important protections provided under the law.

Even if the PUC were to seek to amend the voluminous protections for victims of domestic violence in Chapter 56 to include all competitive electric suppliers, it would still face the burdensome and expensive task of educating suppliers about the domestic violence protections as well as other universal services. The PUC cannot simply move forward with a monumental transition in default service provision without ensuring that all providers serving vulnerable default service recipients are subject to and knowledgeable about the protections available to victims of domestic violence.

For victims of domestic violence, it is imperative that the statutory protections are properly applied from the outset. Protections for victims of domestic violence are designed to prevent further harassment, physical harm, and mental anguish for the service recipient. Filing a complaint after the fact cannot rectify this type of harm and, therefore, must be implemented from the outset of any transition in default service to ensure that victims will not be subjected to irreparable harm. Before launching any sort of alternative default service program, all suppliers providing service to customers gained through an alternative default service model must be responsible for and trained about the protections.

Victims of Domestic Violence and Low-Income Consumer Protections

At the en banc hearing on March 21, 2012, the PUC Commissioners heard from Harry Geller, Executive Director for the Pennsylvania Utility Law Project (PULP), who expressed serious concerns over the continuation of universal service and low-income consumer assistance programs, such as LIHEAP and CAP. **Lack of structural protections for low-income energy consumers poses a distinct obstacle for victims of domestic violence, who regularly must choose between safety and economic stability.** Many victims who are attempting to live a life free of violence must struggle to meet basic expenses. Victims frequently cite lack of financial independence as the reason they remain with or return to their batterers after failing to establish financial independence.

PCADV has serious concerns over the continuation of low-income consumer assistance programs if the PUC were to move forward with any of the suggested models. **Without the certain and uninterrupted continuation of vital low-income programs, many victims of domestic violence may be forced to return to violent homes to find economic stability.** Thus, PCADV fully supports, endorses, and incorporates the testimony of Mr. Geller and the supplemental comments that were jointly filed by PULP, CLS, and AARP. The PUC should not move forward with any default service model that

does not fully and seamlessly incorporate low-income protections.

III. The PUC must ensure consumer safety and privacy by revising and strengthening confidentiality provisions and data exchange procedures before altering default service to avoid dire consequences for victims of domestic violence and others who are similarly situated in the Commonwealth.

PCADV is very concerned about the lack of data protections contained in any of the proposed default service plans. PCADV has commented on the need for data security in each of its comments to the PUC, but – to date – our concerns have not been addressed in any aspect of the PUC’s Retail Market Investigation.

Protecting records that contain personal information, such as name, address, telephone number, and electricity usage, is a particularly important aspect of safety planning for victims of domestic violence and others who are similarly endangered. Domestic violence, sexual assault, and stalking are the most personal of crimes, and the more personal information the perpetrator has about the victim, the more dangerous the perpetrator can be. Victims of these crimes face the greatest risk of physical harm and/or lethality after separation, when batterers regularly go to great lengths to re-establish power and control over their victims.⁴ In addition to physical assaults and stalking, batterers regularly empty bank accounts, shut off utility services, and cut off joint lines of credit after the relationship ends.⁵ When a batterer has access to private, identifying information or electric usage data of their victim, such access can facilitate further harassment, stalking, and potentially lethal physical violence.

Sharing private, personally identifying information between utility companies presents a serious risk of harm to victims of domestic violence. By way of illustration, the potential harm posed by unsecure transfer of electric customer files is very similar to the risk that

⁴ PATRICIA TJADEN & NANCY THOENNES, NAT’L INST. OF JUST. & CTRS. FOR DISEASE CONTROL & PREVENTION, EXTENT, NATURE, AND CONSEQUENCES OF INTIMATE PARTNER VIOLENCE (2000); *see also* CALLIE MARIE RENNISON, DEP’T OF JUSTICE, INTIMATE PARTNER VIOLENCE, 1993-2001 (2003).

⁵ *See* Jill Davies, *Safety Planning with Battered Women: Complex Lives/Difficult Choices* (1998).

is posed by information sharing in the healthcare, education, and financial industries. In these industries, explicit legal protections are in place to prevent unauthorized release of personal and sensitive customer information. This is because unauthorized release of health, education, or financial files could facilitate stalking or cause financial or reputational harm. Similarly, the PUC should require electric companies to obtain explicit, detailed authorization from each customer before transferring a customer's account to an alternative default service provider. It is especially important to protect personal customer information in light of the influx of smart meters, which generate volumes of granular data that, in the wrong hands, can place consumers at risk of physical or economic harm.⁶

Data protections have been inappropriately excluded from discussions about default service transition. PCADV urges the PUC to rectify this omission by including strict data protections, such as broader confidentiality provisions,⁷ in any proposed default service model prior to any transition or interruption to default service to ensure that customers are protected from any unwarranted disclosure of personal information.

IV. Consumer education should be designed to enable customers to make a meaningful choice based on realistic savings projections, particularized risks, and the availability of consumer protections.

The Federal Trade Commission, in summarizing the position of several parties on regulatory reform in the electricity market, explained: "Consumer education plans that simply raise awareness about competition by failing to provide 'nuts and bolts'

⁶ *Comments of the Electronic Privacy Information Center (EPIC) on Proposed Policies and Findings Pertaining to the EISA Standard Regarding Smart Grid and Customer Privacy*, Before the California Public Utility Commission, Rulemaking No. 08-19-2009, at 15-26 (March 9, 2010).

⁷ PCADV has repeatedly commented that the PUC's current confidentiality provisions are not strong enough to encompass the potentially endless number of contractors and subcontractors used by electricity suppliers. See 52 Pa. Code §§ 54.8, 54.43; see also 52 Pa. Code § 69.1812 ("The public interest would be served by common standards and processes for access to retail electric customer information and data ... under reasonable terms and conditions ... that give due consideration to customer privacy, provide security of information and provide a customer an opportunity to restrict access to nonpublic customer information."). Moreover, the sharing of personal data between EDCs and EGSs is not standardized and, thus is easily compromised.

information may not equip consumers with the information they need to participate effectively.”⁸ An education campaign overseen or ordered by the PUC must be designed to provide all of the “nuts and bolts” necessary to equip consumers with the information needed to make a fully informed and educated choice.

Any large-scale campaign designed by the PUC should fully fund and support the development of readily accessible materials replete with information about the availability of customer choice, balanced with information about the risks of shopping and the availability of consumer protections. The Office of Consumer Advocate (OCA), for instance, provides consumers with the well-balanced information consumers need to make an informed choice about their electricity provider. The OCA’s Residential Electric Shopping Guide provides a plethora of unbiased information about choosing a supplier.⁹ This type of information should be provided in various accessible formats such as webinars, booklets, and in-person trainings and should be geared toward various discreet populations to ensure that each subgroup of customers has information relevant to their situation at their fingertips. What works for a wealthy customer, for instance, is often the polar opposite from what would work for a low-income customer or a customer who is a victim of domestic violence. If developed and promoted across the state in a targeted effort to reach various subgroups, an educational plan like this could make a discernable impact on the number of *satisfied* electric shoppers across the Commonwealth.

A well-balanced, accessible, large scale education campaign will avoid high rates of dissatisfaction and disillusion with electric shopping, which were illustrated through the testimony of Dallas Smith of Smith Village Home Furnishings at the March 21, 2012, en banc hearing. Mr. Smith testified that his shopping experience was largely negative from the start, as he was unable to find the time to research various suppliers and was

⁸ See FED. TRADE COMMISSION, *supra* note 3, at 72.

⁹ Office of Consumer Advocate, *Residential Electric Shopping Guide*, available at <http://www.oca.state.pa.us/Industry/Electric/elecomp/ElecGuide.pdf>.

unable to quickly access unbiased information in order to choose a competitor who could meet his needs. Mr. Smith testified that it was only after he attended a training by his local Chamber of Commerce that he finally found a supplier who met his needs. This experience is not unique to small and medium businesses. Residential consumers are also strapped for time and find it overwhelming to weed through the piles of advertising materials in order to locate a deal that fits their lifestyle.

It was suggested by several retail energy suppliers that ratepayers should bear the cost of any consumer education. Ratepayers should only be required to share the cost of an education campaign if that campaign is truly designed to provide the “nuts and bolts” necessary to equip consumers with the information needed to make a fully informed and educated choice. Suppliers should not, under any circumstances, be allowed to charge the ratepayer for a for-profit advertising campaign that is masquerading as an education campaign. Such a result is against the principles of a market economy. The suppliers’ request for subsidy to advertise to electric consumers is as absurd as suggesting that the general assembly should impose a flat tax or fee for all clothing or car sales so that competitive clothing stores can advertise to customers. This is simply not how the free market works.

In moving forward with its education plans, PCADV truly hopes that the PUC will reach out to all interested consumer and advocacy groups to ensure that its education campaign is well balanced to fully inform customers from each population, including those who are most vulnerable, about what electricity shopping will mean for them.

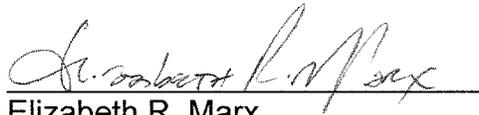
V. Conclusion

PCADV is firmly opposed to any shift in the provision of default service in the Commonwealth without first engaging in a careful assessment of the potential benefits and risks of such a transition. As it stands, all of the proposed alternative models lack key assurances that consumer protections, particularly protections that victims of

domestic violence rely on in order to achieve physical safety, will be able to seamlessly transition to a new market structure. This is unacceptable.

In moving forward with electricity market transition, the PUC would better serve consumers by focusing its attention and resources toward launching a true education campaign that will educate customers about all aspects of consumer choice. In doing so, the PUC would ensure that customers are able to reap the full benefits of consumer choice without being needlessly exposed to a risky and uncertain alternative end-state default service model.

Respectfully Submitted,



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On behalf of:
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