

Comments of James H. Cawley
Former Commissioner and Chair
Pennsylvania Public Utility Commission¹
to the
Maryland House of Delegates
Economic Matters Committee
March 4, 2021

Regarding House Bill 1327 - Providing for a Transition of Public Utility Default Service

Members of the Economic Matters Committee,

In the spirit of full disclosure, I represented Green Mountain Energy Company (now a part of NRG Energy) before the Pennsylvania Public Utility Commission (PUC) from the beginning of electric choice in 1997 until I rejoined the Commission in 2005. I am currently a consultant to NRG. That said, the comments about retail energy competition I submit today have been my publicly stated opinion and passion long before I began advising NRG.

Your consideration of this bill calls to mind a frequent motivational question that my friend, former Pennsylvania Governor Bob Casey, posed to his administration's leaders: *"What did you do when you had the power?"*

It was his forceful way of exhorting them to accomplish his administration's public interest goals before his term ended, and to minimize their post-power regrets.

After serving over sixteen years as a Pennsylvania Public Utility Commissioner, *I have one overriding post-power regret: My concerted efforts in 2013-14 failed to reform electric choice default service (your "Standard Offer Service")² substantially in the manner proposed by HB 1327.*

Pennsylvania's Electricity Generation Customer Choice and Competition Act of 1996 provides the PUC with the authority to designate the EDC in each service territory *or some other appropriate entity* as the default service supplier. Starting out, all the EDCs were designated, but not irrevocably.

As one of the few former state public utility regulators (perhaps the only one) who had served in the early 1980's and again in the 2000's and who had regulated investor-owned electric utilities under traditional rate base/rate of return principles and under a restructured electric industry where generation was "unbundled" from the rate base, I had concluded that Pennsylvania had adopted a "half baked" retail electric restructuring model in 1996 that would very likely never achieve its

¹ Former Chairman (2008-2011) and Commissioner (1979-1985; 2005-2015).

² Defined as requiring the Electric Distribution Company (EDC) in a "restructured" retail electric market to acquire supply from the wholesale electricity market for those customers who do not shop for their electricity from a competitive generation supplier.

announced legislative goals, especially for residential and small commercial customers.

Consequently, the Pennsylvania retail energy market had fallen (and continues to fall) short of its potential . . . for customers, for the Commonwealth's economy, for the environment . . . *because the adopted default service method put the Electric Distribution Companies (EDCs) in direct competition with the competitive suppliers who were supposed to be the new retail sellers.*

The self-defeating contradiction was stunning: Mostly unknown suppliers (some of whom had parent companies larger than and at least as financially strong as any Pennsylvania EDC) were charged with persuading customers to purchase their electricity from them, while most of the Pennsylvania EDCs with longstanding relationships with their customers, like Ma Bell at the beginning of telecommunications reforms, resented anyone who messed with **"their"** customers and did everything they could to frustrate and defeat reforms. In short, monopolies, either directly or indirectly, like to remain in control of their and their competitors' destinies.

By enacting House Bill 1327, Maryland has an opportunity to do one better than her neighbor to the north and finish the job of building a robust competitive retail electricity marketplace, as envisioned in the Maryland Electric Customer Choice and Competition Act of 1999. As I understand it, the Act established a temporary "Standard Offer Service" provided by public utilities that was originally intended to sunset as the final step of the transition to full competition. But that final step was never taken. HB 1327 can jumpstart that transition.

Before I elaborate on why and how that jumpstart should occur, let me relate Pennsylvania's experience which may be helpful to you.

When the Pennsylvania Electricity Generation Customer Choice and Competition Act became law in 1996, Pennsylvania's electric rates were significantly higher than the national average. The primary goal of the law was to reduce prices without sacrificing reliability by introducing limited competition into the staid world of electric public utility monopolies.

It was the Pennsylvania Legislature's intention that customers benefit in three ways.

First and foremost, the utility's monopoly over electricity generation (power plants) was eliminated and replaced with independent power generating companies *to shoulder the costly risks of constructing, maintaining, and operating power plants*. Captive utility customers no longer were stuck with the bill for construction cost overruns, inefficient power plant operation costs, and nuclear refueling delay costs.

Second, utilities no longer sold electricity. Consequently, *they could concentrate on constructing and operating their transmission and distribution systems for peak efficiency, safety, and reliability*. New PUC-licensed entities, called "Electric Generation Suppliers" (EGSs) took over the selling function by buying power wholesale from the electric grid (the marketplace for risk-taking independent power generators) and reselling the power to Pennsylvania customers at retail.

Third, EGSs *competed against each other on price and innovative product offerings*.

So, customers benefited by lower kilowatt-hour prices, by immunity from power plant

boondoggles, and by new and exciting service offerings such as “green power” that allow customers the choice to move away from the one-size-fits-all utility monopolies.
We thought we did something pretty great. But that was so “20th Century.”

After nearly 25 years of existence, that “old” electric competition structure needs a 21st Century update. Stated again, the self-defeating contradiction in Pennsylvania’s 1996 Competition Act which hampers realization of the intended benefits of the Act is this: The utility is permitted to buy and deliver electricity from the grid for customers who do not buy their electricity from competing EGSs. For these non-shoppers, the utility, which was meant to be the “wires-only” or “delivery-only” entity, incongruously acts as the “default” electricity supplier *in competition with* EGSs.

With the goal of fostering competition to reduce customers’ electric utility bills and innovate as staid EDCs never would, policymakers in 1996 knew that it would be difficult to overcome the inherent advantage that electric utilities enjoyed with all their economic power, brand recognition, and longstanding relationships with their distribution customers. This enormous competitive advantage over lesser known EGSs was certainly viewed as a major obstacle to the legislation’s success.

Experience has demonstrated that the legislative compromise of allowing customers the option of continuing to receive electricity from their utility *by simply doing nothing* was a huge mistake because it encouraged many customers to make no effort to obtain a better deal from EGSs. This misstep has resulted in only about 30 percent of Pennsylvania residential and small commercial customers availing themselves of affordable and more innovative EGS offerings than the utility’s plain vanilla default priced service. It also stunted the growth of the market. Suppliers have no incentive to invest in more innovative offerings when they are at risk of losing customers to the utility and cannot establish a long-term relationship with their customers.

This is the lesson for Maryland. Customers have never realized the innovative benefits of a truly flourishing electric choice program, principally because the utility effectively competes with EGSs.

The failure of the policymakers’ aspirations, especially for residential and small commercial customers, has taught us that we should have transitioned the distribution utilities out of the default service role to concentrate on what they do best: deliver electricity.

Transitioning EDCs out of the default supply role is vitally necessary to ensure the efficiency and strength of the energy delivery infrastructure. As I read it, HB 1327 at its core is an infrastructure bill that will accomplish that vital need.

HB 1327 will free Maryland’s public utility companies from the burden of supplying commodity default service so they can focus their attention and resources on the reliability and safety of the poles and wires that deliver electrons from power plants to their customers’ homes, workplaces, and schools.

How critical is it that utilities focus their full attention on maintaining and upgrading the electric distribution infrastructure? I’ll cite just three significant examples.

Number one. The recent Texas energy emergency was caused by a failure to invest in infrastructure improvements. The emergency was the result of a chain of events and infrastructure issues triggered by unprecedented winter weather. Compounding the situation is the fact that Texas is not interconnected with neighboring power grids, unlike the PJM grid that serves Maryland, effectively cutting off Texas from backup sources of electricity.

Number two. The devastating and deadly wildfires in California in 2017 and 2018 were sparked by faulty utility distribution equipment. Again, a tragedy caused by lack of attention by a local electric distribution company to its infrastructure.

Number three. Going back in time a little further, in August 2003, 55 million people in the Northeast U.S. and part of Canada were unplugged for a day because a distribution utility company didn't properly trim trees away from transmission lines. Hospitals, water supplies, transportation systems, communications, and businesses large and small were crippled. Infrastructure neglect.

Let me emphasize this point. The energy market reform legislation before this Committee would relieve Maryland's electric distribution companies from the distraction of supplying commodity default service so they can focus on the infrastructure for delivering power safely and reliably.

As I described above regarding EDCs' goal of maintaining control, under the current structure in both Maryland and Pennsylvania, the utilities perform all the market transactions for retail suppliers. In essence, the utilities control the customer enrollments, billing, and data of their competitors. Much of this arrangement reflects early agreements with suppliers to get electric choice and competition underway, and to accommodate the financial and technical inadequacies of many small suppliers. The marketplace has substantially changed in the ensuing decades, but many EDCs cling to their monopolistic tendencies when they should instead be focusing their expertise and resources on strengthening and extending their transmission and distribution systems.

Finally, electric choice and competition is a lot more than saving money, especially for those interested in renewable sources of power and carbon reduction and concerned about global warming. If HB 1327's carefully conceived reforms are adopted, Maryland energy customers will have enhanced say over whom they buy their electricity from as well as how it is made. This includes access to 100% renewable electricity, distributed energy resources, and innovative energy-saving tools. The result will be affordable and cleaner energy for all Marylanders.

I also believe that, without heavily subsidized distribution utilities creating a barrier to full energy competition, Maryland's economy will benefit from jobs created by incentivizing entrepreneurial and innovative companies to invest private capital toward alternative energy research and development.

In sum, Maryland should complete its originally intended transition to full competition by adopting the thoughtful and needed reforms contained in HB 1327, which I respectfully encourage the Committee to favorably report.

James H. Cawley, jhcesquire@gmail.com