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House of Representatives
Commonwealth of Pennsylvania
Harrisburg

COMMITTEES **# 3054**
CONSUMER AFFAIRS, CHAIRMAN
INSURANCE
LEGISLATIVE BUDGET & FINANCE

May 12, 2014

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IRRC
2014 MAY 13 PM 3:53

The Honorable John F. Mizner, Chairman
Independent Regulatory Review Commission
333 Market St., 14th Floor
Harrisburg, PA 17101

Re: Regulation #57-305 (IRRC #3053) L-2014-2409385 and
Regulation #57-306 (IRRC #3054) L-2014-2409383

Dear Chairman Mizner:

As majority Chairman of the House Consumer Affairs Committee, I am writing to express my concerns related to the above-referenced regulations. While I wholeheartedly agree with the Public Utility Commission (PUC) that action is necessary to mitigate the possibility of future rate increases, similar to the unexpected increases experienced by consumers with variable rate electric generation supplier contracts over this past winter, the Final-Omitted Rulemaking process eliminates many important procedural steps that are necessary to ensure that the regulations are in the public interest.

The Commonwealth Documents Law (45 P.S. § 1204) permits an agency to use the final-omitted rulemaking process in three limited circumstances:

1. When comments from the public are not appropriate, necessary or beneficial.
2. When all persons subject to the regulation are named and given personal notice.
3. When notice is impractical, unnecessary or contrary to the public interest.

In its Final-Omitted Rulemaking Orders, the PUC concluded that the third circumstance is applicable to these rulemakings and that the public interest warranted an exemption to the notice requirements. *Final-Omitted Rulemaking Order re: Rulemaking to Amend the Provisions of 52 Pa. Code, Section 54.5 Regulations Regarding Disclosure Statement for Residential and Small Business Customers and to Add Section 54.10 Regulations Regarding the Provision of Notices of Contract Expiration or Changes in Terms for Residential and Small Business Customers*, L-2014-2409385 (Order entered April 3, 2014) and *Final-Omitted Rulemaking Order re: Rulemaking to Amend the Provisions of 52 PA. Code, Chapter 57 Regulations Regarding Standards for Changing a Customer's Electricity Generation Supplier*, L-2014-2409383 (Order

entered April 3, 2014). I disagree and believe that notice of these regulations was necessary, in the public interest, to (1) provide an opportunity for a thorough examination of the regulations and (2) provide an opportunity for public comment and a PUC response thereto. These steps are needed to ensure that the regulations effectively address the issues raised therein. The absence of notice has deprived electric distribution companies, electric generation suppliers and consumers of the opportunity for a comprehensive review of the regulations to identify potential problems and pitfalls.

While additional consumer protections are certainly needed to ensure that customers are well informed of their contract terms, fully understand those terms and receive sufficient notices from an electric generation supplier, the traditional rulemaking process focuses on getting it right as opposed to getting it done quickly. Given the importance of these regulations to consumers and the electric industry, a transparent process that provides ample time for evaluation and discussion related to the regulations is needed to ensure that regulations are well-reasoned, balanced and accomplish the state intent. The final-omitted rulemaking process does not provide the level of transparency I believe is necessary to fully vet these regulations.

I am also concerned with the prospect of these regulations being implemented while legislation addressing the same issues is before the House for consideration. HB 2104 establishes requirements for customer disclosures related to contracts with electric generation suppliers and for switching a customer's electric generation supplier. This bill was reported unanimously from the House Consumer Affairs Committee on April 30, 2014 and is ripe for consideration by the full House.

In many instances, the provisions of HB 2104 go further than the regulations being promulgated by the PUC. In a letter to the PUC on March 25, 2014, my co-Chairman Pete Daley and I indicated our intent to pursue legislation addressing these same issues and outlined a concern that implementing regulatory changes on an expedited basis may result in inconsistency with any legislation enacted shortly thereafter. Like the PUC regulations, HB 2104 seeks to improve the process by which customers shop for electric generation and strengthen consumer protections related to the contracts offered by electric generation suppliers.

Any inconsistencies between PUC regulations and enacted legislation will require a new set of regulations to be promulgated to implement the legislation. This will result in additional costs to both the PUC and the industry that will be recovered from ratepayers. The March 25th letter encouraged a "measured and coordinated" approach in order to mitigate these costs. To that end, the PUC was invited to participate in the drafting process related to an omnibus amendment

offered in committee that addressed issues raised by many stakeholders including electric generation suppliers, electric distribution companies and various consumer advocacy groups. Unfortunately, the PUC did not offer comments to HB 2104 or the draft committee amendment until after the bill was reported from committee. My staff and I continue to attempt to work with the PUC related to its concerns to HB 2104 and will be meeting with PUC Vice Chairman Coleman and his staff on May 22, 2014. HB 2104 represents sweeping changes to current policy related to electric generation suppliers. It is important that these issues are addressed legislatively prior to action by a regulatory agency.

Substantively, I fully support accelerated switching but am concerned about the ability of electric distribution companies to comply with the 3-day switching time contained in the regulations within the six month implementation period proposed by the PUC. Significant changes to electric distribution company billing systems are necessary to comply with this regulation and the six month implementation schedule may not provide adequate time for these changes to be made in a manner that does not disrupt other portions of the system. I am concerned about the possibility of billing errors and loss of customer data that may result if electric distribution companies are required to hastily implement software upgrades as a result of this regulation. Implementation of accelerated switching should be carefully reviewed and vetted to mitigate unintended consequences. In the process of negotiating committee amendments to HB 2104, this issue was examined and language was added by the House Consumer Affairs Committee to facilitate accelerated switching in a manner that is workable to the impacted electric distribution companies.

I also favor strengthening the type, form and content of customer disclosures related to contracts offered by electric generation suppliers. The regulations continue to allow electric generation suppliers to offer no limit variable rate contracts to consumers and only require customers to be notified regarding the level of variability that accompanies the contract. I cannot support this regulation as it fails to adequately protect consumers from large rate increases. Even if provided notice of an expected increase of more than 50%, as required by the regulation, many customers will not fully understand the impacts of such an increase until after they receive a bill which is usually well into the next billing cycle. Additionally, "no limit" variable rate contracts can be extremely detrimental to the average residential consumer. Such contracts may also be an impediment to the success of a competitive electric generation market in the Commonwealth as even if consumers are aware that a variable rate contract is subject to unlimited increases, once they experience a dramatic rate increase they may choose to return to default service rather than venture again out into the competitive marketplace for a new contract from a different electric

generation supplier. HB 2104 establishes a 30% cap on the amount a variable rate may increase per billing cycle and will ensure that consumers can accurately anticipate increases in variable rate products.

Given the procedural and substantive concerns outlined above, I urge IRRC to delay or disapprove these regulations as not in the public's best interest.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert W. Godshall". The signature is written in a cursive style with a large initial "R".

Robert W. Godshall, Chairman
House Consumer Affairs Committee

cc: George D. Bedwick, Vice Chairman
W. Russell Faber, Commissioner
Lawrence J. Tabas, Esq., Commissioner
Dennis A. Watson, Esq., Commissioner