

**Before the  
Senate Local Government Committee &  
Senate Environmental Resources and Energy Committee**

**Joint Public Hearing to Discuss Senate Bill 275 (Energy Choice)  
May 11, 2021**

**Comments of  
Terrance J. Fitzpatrick, President and CEO  
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Good morning Chairman Dush, Chairman Yaw, Minority Chairman Kearney, Minority Chairman Comitta, and members of the Senate Local Government and Environmental Resources and Energy Committees. I am Terry Fitzpatrick, President and CEO of the Energy Association of Pennsylvania (“EAP” or “Association”), a trade association comprised of electric and natural gas utilities—also known as electric and natural gas distribution companies—operating in Pennsylvania. EAP advocates for its members before the General Assembly and state agencies, assists its members by facilitating sharing of information and best practices, and provides educational opportunities for employees of its members and others through its operations and consumer services conferences. Thank you for this opportunity to comment on behalf of EAP’s gas utility members<sup>1</sup> in support of Senate Bill 275, legislation that preserves the right of customers to choose among currently available sources of energy.

Senate Bill 275 precludes municipalities from enacting ordinances that limit the energy choices of customers. The legislation is consistent with two principles that serve the public interest and are already embedded in state law. The first is the concept of a utility’s “obligation to serve.” Public utilities have a duty to serve all customers within their certificated service territories who request service. This duty is subject to certain conditions; for example, if the

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<sup>1</sup> Columbia Gas of Pennsylvania, Inc.; Leatherstocking Gas Company, LLC; National Fuel Gas Distribution Corp.; PECO Energy Company; Peoples Natural Gas Company LLC; Peoples Gas Company LLC; Philadelphia Gas Works; Pike County Light & Power Company; UGI Utilities Inc.; and Valley Energy Inc.

utility does not have facilities located adjacent to the customer's premises, the utility may require the customer to bear some cost of extending the utility's facilities. But provided that these conditions are met, utilities have an obligation to provide service.

Gas utility service has been in higher demand since the development of supplies from the Marcellus Shale formation began around 2008. These ample, economical energy supplies have benefited existing gas customers and attracted prospective new customers. While the numbers vary by utility and by customer class for a variety of reasons, since 2008 the commodity (gas) portion of gas utility bills in Pennsylvania has decreased by an average of roughly 60%. Overall gas utility bills decreased approximately 27%.<sup>2</sup> Due to the increased demand for gas utility service, many gas utilities developed innovative policies such as allowing new customers to amortize the cost of gas mainline extensions over a period of years instead of paying these amounts up front. The PUC approved these filings as being in the public interest. The number of gas utility customers in the Commonwealth has increased by over 150,000 (roughly 6%) since 2008, and gas utilities now provide the source of heat for over half of the homes in Pennsylvania.<sup>3</sup>

Senate Bill 275 is also consistent with the principle that utilities should be subject to uniform, consistent regulation at the state level rather than piecemeal regulation by municipalities. The Public Utility Code provides that "[t]he commission shall have general administrative power and authority to supervise and regulate all public utilities doing business within this Commonwealth."<sup>4</sup> More specifically, the PUC regulates the rates and service offered

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<sup>2</sup> Rate Comparison Reports for 2008 and 2020, Pennsylvania Public Utility Commission <https://www.puc.pa.gov/filing-resources/reports/rate-comparison-reports/> The main reason overall bills of residential customers did not drop as much is because the distribution portion of gas bills has increased as utilities increased their spending on pipe replacement programs. These infrastructure investments have created well-paying jobs, enhanced the safety of gas distribution networks, and benefited the environment by reducing the number of gas leaks.

<sup>3</sup> U.S. Energy Information Administration, State Data, Pennsylvania Demand Data and Map, <https://www.eia.gov/beta/states/states/pa/data/dashboard/consumption>

<sup>4</sup> 66 Pa.C.S Section 501 (b)

by certificated utilities.<sup>5</sup> The Courts of the Commonwealth have long held that the Public Utility Code and its predecessor statute occupy the field of utility regulation and preclude municipalities from regulating in the area entrusted to the PUC.<sup>6</sup> This principle was recently reaffirmed in a unanimous Pennsylvania Supreme Court opinion in *PPL Electric Utilities Corp. v. City of Lancaster*,<sup>7</sup> in which the Court struck down ordinance provisions that sought to give the City authority to inspect and direct repairs to utility facilities, and to impose a fee for occupancy of the right-of-way. In this decision, the Court cited the policy reasons for state preemption set out in a previous decision:

The necessity for conformity in the regulation and control of public utilities is as apparent as the electric lines which one views traversing the Commonwealth. If each county were to pronounce its own regulation and control over electric wires, pipe lines, and oil lines, the conveyors of power and fuel could become so twisted and knotted as to affect adversely the welfare of the entire state.<sup>8</sup>

These same policy principles support Senate Bill 275. The public interest will be best served by a uniform policy in the Commonwealth regarding access to all of Pennsylvania's ample, economical sources of energy. Pennsylvania is a major producer of natural gas and generator of electricity, and economic development efforts in the Commonwealth have sought to build on these strengths. A fragmented policy environment in which municipalities impose limitations on which energy sources may be used within their boundaries will not serve the overall public interest in the Commonwealth. Senate Bill 275 will prevent this from occurring.

The problem that this legislation addresses is not just hypothetical. Municipalities in a number of states such as California, Massachusetts, and Washington have enacted ordinances seeking to ban access to natural gas service in some situations. While I am not aware that this

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<sup>5</sup> 66 Pa.C.S. Sections 1301, 1501

<sup>6</sup> *York Water Co. v. York*, 250 Pa. 115, 95 A. 396 (1915), *Duquesne Light Co. v. Upper St. Clair Township*, 377 Pa. 323, 105 A. 2d 287 (1954).

<sup>7</sup> 214 A. 3d 639 (Pa. 2019)

<sup>8</sup> 214 A.3d 650, quoting from *County of Chester v. Philadelphia Electric Co.*, 420 Pa. 422, 218 A. 2d 331, 332-333 (1966).

has yet occurred in Pennsylvania, utilities have seen numerous instances of requirements imposed on utilities by municipalities that have led to litigation, such as the *City of Lancaster* decision described earlier. We also recognize that there are different views within the U.S. and Pennsylvania on issues concerning the environment and, particularly, how to address climate change. Some believe that all fossil fuels should be “kept in the ground” and that we should immediately stop building infrastructure to transport these forms of energy.

In view of these trends, we believe it may be just a matter of time before some municipalities move toward restricting sources of energy. If this were to occur, customers and gas utilities could challenge these ordinances based upon the PUC’s exclusive authority to regulate utilities, but this litigation could be protracted and costly, and it would introduce uncertainty into the Commonwealth’s energy policy. For this reason, we believe it would be prudent for the General Assembly to pass a law that provides clear and unambiguous protection to the energy choices available in Pennsylvania.

Gas utilities recognize the public debate in the U.S. and in Pennsylvania regarding policies to combat climate change. The transition toward greater use of natural gas has benefited not just our economy but also our environment. For example, the Department of Environmental Protection has reported that carbon dioxide emissions in Pennsylvania dropped by 19% from 2005 to 2016.<sup>9</sup> Gas utilities have also contributed to the effort to reduce greenhouse gas emissions by, among other things, accelerating the rate at which they replace older cast iron and bare steel pipes with more resilient plastic pipes, which leads to fewer gas leaks and methane emissions. In addition, gas utilities encourage customers to take advantage of opportunities to use gas more efficiently. Many of EAP’s member gas utilities offer voluntary energy efficiency programs to both residential and business customers, as well as low-income weatherization programs to address individual household usage. These programs have been

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<sup>9</sup> Pennsylvania Greenhouse Gas Inventory Report (2019), Pennsylvania Department of Environmental Protection, <https://www.dep.pa.gov/Citizens/climate/Pages/GHG-Inventory.aspx>

cost effective and have reduced carbon emissions and saved customers money. On the whole, residential gas usage has remained relatively flat over the last ten years despite the growth in customers.<sup>10</sup> Gas utilities are also moving toward greater use of renewable natural gas from landfills and other applications at a rapid pace. In fact, later this year, a renewable natural gas landfill supply operation will begin in Northeast Pennsylvania which will be the world's largest renewable gas project.<sup>11</sup>

Thank you for the opportunity to provide comments and I'll be happy to answer questions.

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<sup>10</sup> U.S. Energy Information Administration, "Annual U.S. natural gas end-use deliveries by sector (2010-2020)." <https://www.eia.gov/todayinenergy/detail.php?id=47076>

<sup>11</sup> <https://www.archaeaenergy.com/projects>