Before the Senate Consumer Protection and Professional Licensure Committee and the Senate Environmental Resources and Energy Committee

Testimony of Patrick Cicero, Executive Director

Pennsylvania Utility Law Project

Joint Hearing on the Alternative Energy Portfolio Standards Act (AEPS).

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Introduction

Good afternoon Chairman Tomlinson, Chairman Boscola, Chairman Yaw, Chairman Yudichak, and members of the Senate Consumer Protection and Professional Licensure Committee and the Senate Environmental Resources and Energy Committees. Thank you for your invitation to provide testimony about the future of the Alternative Energy Portfolio Standards Act (AEPS).

My name is Patrick Cicero. I am the Executive Director of the Pennsylvania Utility Law Project (PULP). PULP is a legal aid office and part of the statewide Pennsylvania Legal Aid Network. For almost four 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 for heating and cooling under reasonable terms and conditions and at affordable rates is an ongoing concern.

Any conversation about changes to AEPS must start, but should not end, with the current debate concerning whether a new tier should be added to accommodate nuclear energy. We have been closely following the developments and debate in the Senate concerning Senate Bill 510 and its companion legislation in the House (HB 11).

While the conversation today is more broadly focused on the AEPS as a whole, I would be remiss to not take this opportunity to tell the Committee that on behalf of our low-income clients, **we oppose SB 510, as it would result in potentially untenable utility bill increases that our clients cannot afford.** However, before I discuss either SB 510 or potential changes to the AEPS, I want to make sure that the Committees debating these bills are familiar with the scope of economic hardship facing many Pennsylvania households – notwithstanding the relatively positive economic trends.

Economic Struggle of Low Income Pennsylvanians

A significant number of Pennsylvanians are unable to afford life's basic essentials – food, water, medicine, medical care, housing, energy, transportation, and childcare. In Pennsylvania, 300,000 households live at or below **50% of the federal poverty guidelines**, which for a family of 4 means that their income would be less than $12,050 per year. In total, there are approximately 1.25 million Pennsylvania electric customers with income below 150% of the poverty level,[1] for a family of four this is approximately $37,600 per year.

[1] See Pa. PUC, BCS, 2017 Report on Universal Service Programs and Collections Performance, at 7 (Estimated Low Income Electric Customers) (2018), http://www.puc.state.pa.us/filing_resources/universal_service_reports.aspx

The ability of these households to make ends meet is significantly constrained. Low income households often have to choose between competing needs: feeding and clothing their families, paying rent, heating their homes, buying medicine, or paying for transportation to get to work. The competition for scarce resources is endless. Quite literally, low-income families almost always have to choose which bills to pay now and which can be paid later. This balancing of priorities and consequences is difficult under the best of circumstances and, more often than not, impossible.

For well over a decade, low income wages have remained too low to meet household needs, even as wages have grown for higher-paid jobs after the recent economic recession.[2] Pennsylvania's minimum wage was last raised on July 24, 2009, and currently stands at just $7.25 an hour, [3] but for a household to meet basic needs and address emergencies as they arise, a single adult living in Pennsylvania would need to make $16.41 per hour, while a single adult with two children would need to make $31.67 per hour.[4] In addition to stagnant wages for low income workers, those who rely on Social Security, Supplemental Security Income (SSI/disability), and veteran benefits have also experienced many years of income stagnation – with yearly cost of living adjustments lagging behind actual inflation for many years.[5]

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[2] See Nat'l Employment Law Project, Occupational Wage Declines Since the Great Recession: Low-Wage Occupations See Largest Real Wage Declines (Sept. 2015), http://www.nelp.org/content/uploads/Occupational-Wage-Declines-Since-the-Great-Recession.pdf.

[3] Pa. Dep't of Labor & Industry, Ctr. For Workforce Info. & Analysis, Analysis of the Pennsylvania Minimum Wage (March 2017), http://www.workstats.dli.pa.gov/Documents/Minimum%20Wage%20Reports/Minimum%20Wage%20Report%202017.PDF.

[4] Id. at 31.

[5] Social Security Admin., Cost-of-Living Adjustments, https://www.ssa.gov/oact/cola/colaseries.html; see also Mark Miller, The COLA Crunch: Why Social Security Isn't Keeping Up with Seniors' Costs, Reuters (Oct. 23, 2014), http://www.reuters.com/article/us-column-miller-colas-idUSKCN0IC1DP20141023 (pointing to data which "shows that Social Security beneficiaries have lost 31 percent of their buying power since 2000).

While income for poor families remain flat, the cost of basic living expenses soar. Housing, healthcare, food, childcare, transportation, childcare – and even water[6] – have continued to increase.[7] Despite lower commodity costs for natural gas and fuel oil, utility distribution costs – particularly for electricity – have nonetheless outpaced inflation, driving a continued and substantial gap in affordability for low income households.[8] In short, poor families are being squeezed from all sides, with little chance of relief.

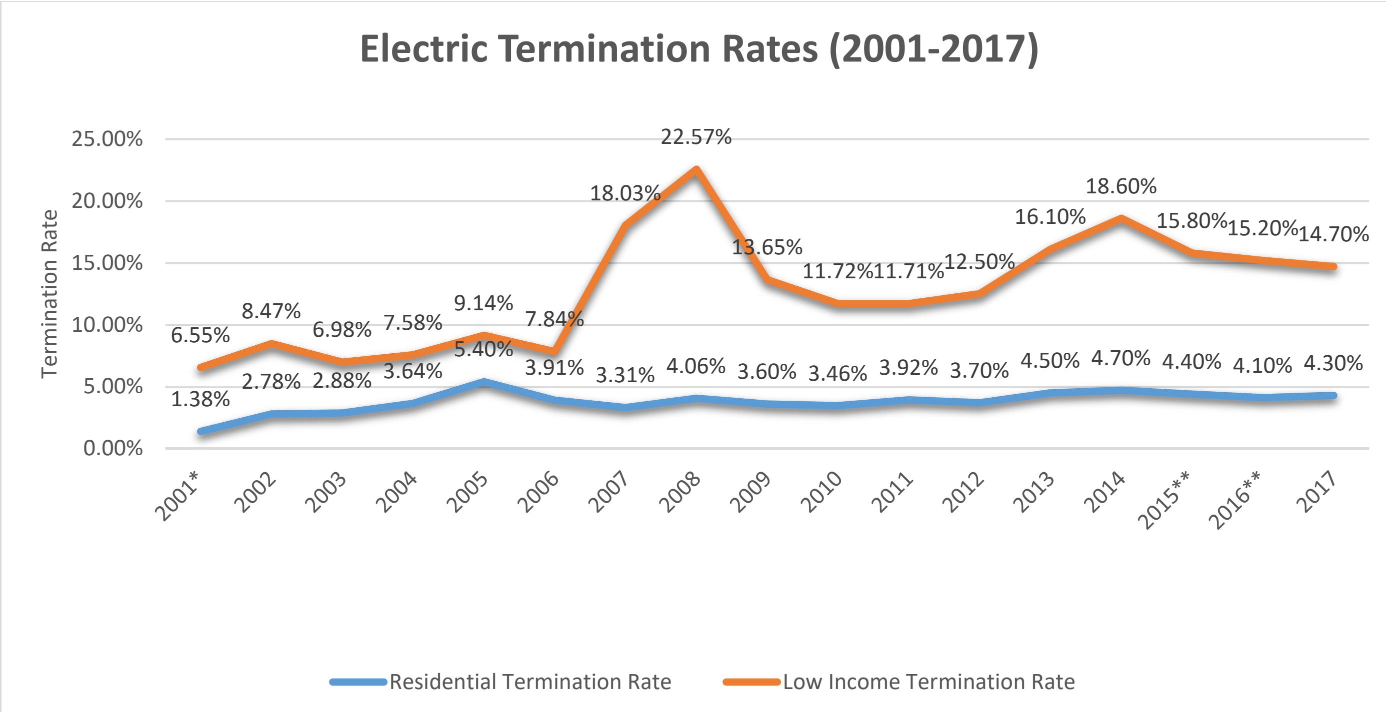
The inability to afford energy, often referred to as energy insecurity, has a particularly devastating impact on low income households and far-reaching consequences on the vibrancy of our communities as a whole. Indeed, energy insecurity leads to increased termination rates for low income households, which in turn increases homelessness rates, causes family separation, and increases abandoned and vacant property rates and the resulting tax base. Based on the most recent data available from the Public Utility Commission, **low income customers (those with household income at or below 150% of the federal poverty level) of electric utilities have a termination rate of 14.7% per year - compared to a rate of 4.3% for all residential customers.** This is not

[6] See generally, Emily Previti, Why is Water Expensive, WITF – Keystone Crossroads (Feb, 24, 2016), http://crossroads.newsworks.org/index.php/local/keystone-crossroads/91273-why-is-pennsylvanias-water-expensive- ("The average cost for water provided by private companies is 43 percent higher in Pennsylvania than nationally; on the public side, its 21 percent higher...").

[7] See Nat'l Employment Law Project, Occupational Wage Declines Since the Great Recession: Low-Wage Occupations See Largest Real Wage Declines (Sept. 2015), http://www.nelp.org/content/uploads/Occupational-Wage-Declines-Since-the-Great-Recession.pdf ("[T]aking into account cost-of-living increases since the recession officially ended in 2009, wages have actually declined for most U.S. workers. Inflation-adjusted or 'real' wages reflect workers' true purchasing power; as real wages decline, so too does the amount of goods and services workers can buy with those wages. The failure of wages to merely keep pace with the cost of living is not a recent phenomenon. The declines in real wages since the Great Recession continue a decades-long trend of wage stagnation for workers in the United States.").

[8] See Christina Simeone & John Hanger, A Case Study of Electricity Competition Results in Pennsylvania (Oct. 28, 2016), http://kleinmanenergy.upenn.edu/paper/electricity-competition ("From 2000 to 2014, average annual distribution charges to the residential sector increased at rates exceeding the rate of inflation."); see also Fisher, Sheehan & Colton, The Home Energy Affordability Gap: Pennsylvania (April 2017), http://www.homeenergyaffordabilitygap.com/03a_affordabilityData.html.

a new trend. Since the year 2000, the gap between low income termination rates and general residential termination rates has continued to climb, as evidenced from **Chart 1**[9]**,** below:



High energy costs harm low-income households through the increase in utility terminations, a rise in food insecurity, poor health, dangerous living conditions, and often homelessness. On the other hand, providing households with an affordable bill helps stabilize critical housing costs, improves payments, decreases uncollectible expenses over the long term, and improves the health and wellbeing of the individual household members and of the larger community in which they live and work.

The simple reality is that without additional financial support any increase in energy costs will be devastating for low income households. This fact should be considered by the General

[9] Data gathered from Universal Service Reports (2001-2017) * 2001 - PECO includes Electric Only and Electric and Gas groups. ** In 2015 and 2016 both Duquesne and Peoples-Equitable performed limited credit and collection activities due to system conversions

Assembly when debating amendments to our AEPS – particularly when the current debate is currently focused on the unsubstantiated demands of the nuclear energy generators rather than on holistic solutions that mitigate carbon emissions while creating revenue to assist those harmed most by cost increases.

AEPS and Senate Bill 510

In 2004, the General Assembly recognized the need to incentivize the generation of electricity production by setting aside escalating targets of consumer electric demand that must be served by renewable and other alternative energy technologies. Over the past 15 years, this program has grown and to constitute nearly 18% of consumer demand by 2021. What is critical about this 18% is that the price paid is determined by markets where credits and credit futures are traded, and the costs of credits are purchased by electric distribution companies and electric generation suppliers which are then passed on to consumers.

In Pennsylvania, all energy to meet consumer demand is procured by electric distribution companies and electric generation suppliers on the wholesale electric market, which is governed and run by PJM Interconnection, LLC. PJM is a regional transmission organization authorized under the Federal Power Act to manage the availability, reliability, and accessibility of the interstate electrical system across 13 states and the District of Columbia. PJM does this, in part, by creating wholesale electricity markets where electricity is sold as a commodity. These markets determine which power plants are generating electricity at any given time and the price to be paid for that electricity. Generators who are eligible to receive subsidy credits through AEPS (or other sources) can bid their generation into these markets at lower prices than they would have without these subsidies. Thus, the 18% AEPS requirement essentially provides a subsidy credit that allows non-competitive energy sources to compete in the market and is meant to show that at least this much energy procured through PJM meets AEPS requirements. The remaining 72% of Pennsylvania's wholesale procurement is operating without subsidy – and thus – without additional cost to ratepayers.

While this *wholesale* electric market has its flaws, it has resulted in lower prices for consumers over the last 10 years.[10] Lower wholesale energy prices are a good thing for consumers – particularly low income consumers. The introduction of additional AEPS requirements has the very real potential to further distort the prices in these markets, which would, in turn, increase prices for consumers if not properly structured. But SB 510 is uniquely harmful for several reasons that I would like to discuss.

First, unlike the current AEPS requirements, SB 510 would require an immediate and substantial ramp up that would require electric utilities to purchase a quantity of credits equal to 50% of the electricity demand in Pennsylvania. It will take 17 years to ramp up to 18% within Tiers I and II, but SB 510 would require an almost immediate imposition an additional 50% of consumer demand – at a cost of more than $500 million **per year** for consumers.

[10] This is not to be mistaken for the *retail* electricity market – where retail electric suppliers contract directly with consumers. All of the publically available evidence demonstrates that on whole, low income consumers do not fare well in the retail energy market and often end up paying substantially more than they would have paid if they had simply remained on default service with their electric utility. See Petition of PPL Elec. Utils. Corp. for Approval of a Default Serv. Program for the Period June 1, 2017 through May 31, 2021, Docket No. P-2016-2526627 (Opinion and Order dated Oct. 27, 2016) (finding that when PPL's low income CAP customers elected to shop for competitive electric supply, they routinely paid rates above the utility's default service price. The harm amounted to additional costs of $2.7 million per year, or $10.5 million over a 46-month period of time); see also, Petition of Metropolitan Edison Co., Pennsylvania Electric Co., Pennsylvania Power Co., West Penn Power Co. for Approval of a Default Serv. Program for the Period Beginning June 1, 2019 through May 31, 2023, Docket Nos. P-2017-2637855, P-2017-2637857, P-2017-2637858, and P-2017-26378566 (Opinion and Order entered Sept. 4, 2018) (finding that over a 55 month period of time, across all two-thirds (65%) of all low income customers enrolled in FirstEnergy's CAP who contracted for electric generation supply service from a competitive supplier paid higher rates than the default service price, which resulted in a net increase in the costs to low income CAP customers enrolled in the discount program of $18,336,440. This averages out to be $316,146 per month or $3,793,759 per year).

Second, unlike the current Tier I and II, the newly proposed Tier III would not readily result in competition among emission-reducing power sources, but instead would set a target and program rules that are clearly designed to preference the nuclear power producers in Pennsylvania. Both the price – including price floors and caps -- *and* the 50% carve out of electricity demand are set a levels that are conspicuously close to the total output of Pennsylvania's nuclear fleet and the nuclear fleet owner's requested financial demand of $500 million per year.

Third, nothing in SB 510 would further reduce carbon emissions in Pennsylvania or foster the development of new renewable energy. Unlike Tiers I and II, which were meant to spur the development of lower emissions electricity production, the new Tier III is meant to preference nuclear-generated electricity over other forms of alternative energy. Theoretically, the intent is to preference the fact that nuclear energy's zero-carbon attributes are being ignored by the wholesale electric markets. While it may be true that the wholesale market does not put a price on carbon, SB 510 doesn't do so either. Instead, it determines that nuclear energy is the preferred energy source, thus locking in one form of energy supply for the indefinite future at the expense of all other carbon-neutral or carbon-less-intensive energy sources and, ultimately, energy affordability across the Commonwealth.

Fourth, SB 510 is not targeted or means tested. Instead, it is based on the dubious premise that absent state action *all* nuclear power plants will close. While this may be true of Three Mile Island – and perhaps Beaver Valley in 2021– these closures are based on the economic projections of power producers that have not been made public. ***If my clients who seek $500 in grant assistance from LIHEAP to pay their energy bills cannot simply say "trust me, I need the money," then Exelon, Talen, and FirstEnergy should not receive $500 million per year by essentially saying the same thing.*** What we know is that *all* of Pennsylvania's nuclear power plants, with the exception of TMI, are currently profitable and project to continue to be profitable for the foreseeable future. Despite this, SB 510 would handsomely pay already profitable plants a premium, thereby enriching shareholders for doing nothing more than maintaining business as usual. Plants would not have to show any economic need in order to receive millions of dollars in subsidy paid for by electric ratepayers.

Ordinary Pennsylvanians who seek assistance in paying for their energy bills — through federal or utility-funded assistance — have to prove they have insufficient income before grants are provided. At the very least, the same rules should apply to the owners of the power plants seeking this wealth transfer: The energy companies seeking more than $500 million in energy subsidies paid for by Pennsylvania's electric ratepayers should be required to open their books to the scrutiny of regulators and demonstrate need before Pennsylvanians bail them out.

Further Expansion of Tier I and Tier II

Others who testified today have made the case that the state should prioritize expansion of Tier I and Tier II AEPS – either instead of or in addition to a new Tier III. Unlike my concerns about Tier III, the expansion of Tiers I and II would at least be market based and fuel neutral. That is, setting expanded targets for renewable or other alternative fuels would not dictate who wins and who loses. Instead, it would expand the market for low emission producers which, unlike funding existing sources, could incentivize the creation of newer renewable and alternative energy sources. If appropriately phased, this expansion could accommodate new renewable energy growth while not immediately jeopardizing affordability. Thus, while it would also be likely lead to increased prices, an increase from 18% Tier I and Tier II to 30% over the next decade would have far less of an impact than what would occur if SB 510 were enacted as proposed.

In my view, however, the AEPS as a whole is not the most effective way of addressing the root of the problem that we actually have: How do we address growing concern about carbon emissions without significantly increasing costs for ratepayers? Under SB 510, $500 million would be transferred from consumers and businesses in Pennsylvania without guaranteeing any reduction in carbon emissions. Under an expansion of Tier I and Tier II, while the impact might not be as great, and the result may incentivize new carbon free energy sources, the revenue would nonetheless be paid for by ratepayers and would go to energy producers. There are better ways to reduce carbon that don't necessitate such a large ratepayer impact.

For example, Pennsylvania could join the Regional Greenhouse Gas Initiative (RGGI) – which is a market-based cap and invest program to cut carbon pollution from power plants. The "cap" part of this would put limits on carbon emissions from all Pennsylvania power plants and require all carbon-emitting plants to purchase "allowances" for every ton of carbon that they emit. The proceeds from these allowances would flow back to Pennsylvania, which could then "invest" them in a host of beneficial purposes – including bill rebates for all consumers – or targeted investment in energy efficiency, renewable energy, or other social purposes. A cap and invest approach would undoubtedly cost hundreds of millions of dollars, but rather than those dollars flowing to coffers of the shareholders of publically traded companies – in the case of SB 510 – the investments would flow back to Pennsylvania and could be returned to the very ratepayers who paid them in the first instance. This approach should be explored along with, and before, entertaining any substantial amendments to the AEPS.

Conclusion

I want to thank the Committees for inviting me to testify today. Regarding the specifics of SB 510, I would urge the Consumer Protection and Professional Licensure Committee (and the Senate as a whole) to vote no. There has been an insufficient showing of need to justify the cost to ratepayers. For my clients, the increased costs would yield no benefit, but would materially impact their continued ability to continue to afford their bills.

I am happy to answer any questions that any member of the Committee may have about my testimony.