



Vol. 9, No. 3 – March 28, 2007

Sonny Popowsky: In His Own Words

Sonny Popowsky is a really nice guy who has both a loud bark and, when necessary, a big bite.

Sonny is Pennsylvania's residential utility consumer watchdog. He runs Pennsylvania's Office of Consumer Advocate (OCA), with 15 lawyers and 20 other staff, and has done so since 1990 when he was first appointed and confirmed by the Pennsylvania Senate. His OCA tenure actually began in 1979, when he became a lawyer there shortly after graduating from the University of Pennsylvania School of Law and Yale University.

Those who have worked with and battled against Sonny know that he is not just nice but also smart, thoughtful and committed to the well-being of residential utility consumers. Sonny Popowsky has been in the ring for many battles, winning and losing gracefully, and has emerged no worse for wear.

Legislators, governors, and commissioners of the Pennsylvania Public Utility Commission (PUC) come and go. But for the last three decades, Sonny has kept litigating leading cases – including the landmark United States Supreme Court case, *Barasch v. Duquesne Light*, which Sonny personally argued and won – as well as shaping state policy through his advice and testimony on matters like the Electricity Generation Competition and Customer Choice Act and the Alternative Energy Portfolio Standards Act (AEPS).

No person has had a bigger impact on electricity and utility law and regulation in Pennsylvania than Sonny Popowsky.

During Popowsky's tenure, enormous change has swept through the electric industry. Popowsky saw the rise and fall of nuclear power in Pennsylvania, joining the office of Consumer Advocate in the year that the meltdown took place at Three Mile Island and litigating countless nuclear power plant cases. As a result of decisions made by the PUC approving massive nuclear investments, Pennsylvania went from having no nuclear power in the 1960s to getting

about 40 percent of its electricity from nuclear power by the 1990s.

With billions and billions of nuclear investment placed in rates, electric rates skyrocketed, especially in the Duquesne Light and PECO service territories. Residential customers of both Duquesne Light and PECO paid the equivalent in the 1990s of about 13 cents per kilowatt-hour in today's dollars just for generation, with total rates even higher. While the 1960s to the 1990s saw the growth of nuclear power, renewable energy was almost non-existent in Pennsylvania, and the typical Pennsylvania electric utility spent much less than 0.5 cents per kilowatt-hour to help consumers conserve energy.

The Energy Policy Act of 1992 changed the rules of the wholesale market for electricity by moving wholesale generation to competitive pricing and requiring open access to the nation's transmission lines and non-discriminatory rates for use of the transmission services.

Sonny Popowsky was heavily engaged in the debates that followed in Pennsylvania. He helped write the 1996 state law ending the retail generation monopoly for electric utilities. His office litigated all the PUC utility restructuring cases that were filed to comply with the law, winning settlements that included temporary rate cuts, increased funding for low-income conservation and assistance programs, and provided rate caps on generation and transmission and distribution rates that were much longer than the rate caps provided in the new law. The generation rate caps included the cost of fuels so consumers in Pennsylvania have been protected from paying much higher coal and natural gas prices, a major difference from the old system.

In the restructuring cases, utilities agreed to rate caps in return for "stranded cost payments." Stranded cost payments were charges paid by consumers to utilities to insure that utilities could repay investments they made, primarily in nuclear plants. Stranded cost charges amount to \$1.2 billion per year in current

rates and are removed from bills when the generation rate caps end in a service territory.

The combination of stranded cost payments and the generation rate caps that together last as long as 14 years has made entry by competitive retail suppliers impossible in many areas of Pennsylvania. Competitive retail suppliers argue that making market entry difficult or impossible will ultimately harm consumers. Sooner or later, both generation rate caps and stranded costs charges end, as they did in the Duquesne Light Service territory in 2002. In that service territory, 47 percent of the load is now served by competitive suppliers.

Through all the changes, Popowsky has proven he has keen insight and that his views matter. That is why we wanted to interview him now, as Pennsylvania nears the end of its electricity restructuring transition period.

PennFuture (PF): *You raised the issue of global warming years ago in testimony. When? Where? Why did you discuss global warming at such an early time?*

Sonny Popowsky (SP): In 1990, as chair of the Electricity Committee of the National Association of State Utility Consumer Advocates (NASUCA) I helped draft a resolution on global warming that was unanimously adopted by NASUCA. The resolution acknowledged “the need to reduce emissions of greenhouse gases” and recommended that electric utility resource planning “must take into account the growth in those emissions.” The purpose of the resolution was to put electric utilities on notice that it would not be prudent to ignore the future risks and costs of carbon dioxide and other greenhouse gas emissions in their generation planning. We also called on the electric industry to give greater consideration to “climate defense technologies” such as conservation and energy efficiency.

I believed in 1990 – and I am almost certain now – that global climate change is the most serious challenge facing the electric utility industry and indeed one of the greatest challenges facing our society as a whole. It is still my hope that we can take reasonable and cost-effective steps that will reduce our emissions of carbon dioxide and other greenhouse gases in a manner that will not impose substantial burdens on utility consumers.

PF: *Even before natural gas, coal and oil prices escalated sharply, you supported utility cost recovery of charges for renewable energy and conservation programs and programs for low-income customers.*

What is your opinion of Governor Rendell’s Energy Independence Package?

SP: I am pleased to support Governor Rendell’s proposal, particularly his recommendation that our electric utilities should acquire a portfolio of resources to serve their “default” service customers at the lowest reasonable long-term cost. Under the legislation proposed by Governor Rendell, utilities would acquire a portfolio of resources — short-term and long-term, renewable and non-renewable, supply-side and demand-side — to serve those customers who continue to purchase their generation from the utility. I strongly believe that this portfolio approach is highly preferable to a sole reliance on volatile, short-term prices or a single one-time auction approach that has led to drastic rate increases in other states.

PF: *Another forum for your advocacy is as a member of the PJM Interconnection (PJM), the independent private organization that has a federal duty to operate the wholesale market in a reliable and competitive manner. PJM operates a spot market and a day-ahead market. It conducts transmission planning and commands the infrastructure that keeps the lights on and polices the markets that provide reasonable pricing. PJM’s energy prices fell 16 percent in 2006 compared to 2005.*

Since just 1999, 9,000 megawatts of new generation, including eight operating wind farms, has been built within PJM. None of the risk of cost recovery for that new generation has been placed on consumers, as would have been the case under regulation, but has been financed by investors providing the funding for new, competitive plants. More than \$1 billion of new investment in transmission has been made and about 60 percent of that paid for by companies that are not utilities. Generation plant performance has greatly improved, with the forced outage rate cut by about 50 percent. Reserve margins have steadily declined, falling from as much as 27 percent in the 1980s to 15 percent now, but the probability of a blackout due to not enough generation remains at the historic one-day-in-10-year standard.

How has PJM changed since 1996?

SP: For decades, PJM was a voluntary organization in which electric utilities in the Pennsylvania-New Jersey-Maryland region coordinated their efforts to manage the electricity grid, ensure reliability, and dispatch generation on an economic least cost basis. In my mind, the functions performed by PJM in those days provided an enormous benefit to Pennsylvania consumers.

As electricity markets have evolved, so has PJM. First of all, PJM has greatly expanded its geographic footprint to 13 states, as far south as North Carolina and as far west as Illinois. PJM still operates the grid and is responsible for system reliability, but it now also provides a number of market functions in order to enable the purchase and sale of electricity through competitive wholesale markets.

PF: *What do you think are the strengths of PJM? How have the operations of plants changed since the Energy Policy Act of 1992? What has happened to required reserve margins since restructuring?*

SP: PJM's strengths are clearly in the operation of a safe, reliable bulk power electric system. I also think that PJM is in the process of realizing another of its great potentials, which is improving the regional planning process for transmission that is needed to make the system both more reliable and more economical.

Perhaps PJM's greatest strength is in its internal Market Monitoring Unit (MMU), which carefully monitors all PJM market transactions in order to ensure that the markets are competitive and to identify instances of potential market manipulation. It is essential in my view that the independence of the MMU be preserved.

As to required reserve margins, it is my understanding that the amount of excess generating capacity needed to guarantee reliability on PJM has declined in recent years, and that the operation of individual units, particularly nuclear units, has greatly improved.

PF: *What are PJM's weaknesses?*

SP: I am concerned about two issues. As I mentioned above, we must have a strong, independent market monitor. I share with many other consumer representatives a growing concern that PJM is placing limits on the MMU that will undermine that office's independence. Worse yet, I believe there are now efforts within PJM to abolish the internal MMU, and replace it with an external contractor who would periodically report on PJM market results. In my opinion, the elimination of the internal MMU would be a severe blow to the credibility of PJM and would call into question any efforts by PJM to claim that its markets are truly competitive.

My second concern is what I consider to be the unintended consequences of PJM's single market clearing price methodology. I understand the economic basis for that methodology, but I am concerned with the results. Specifically, many of our existing baseload nuclear and coal units – which have been

paid for by ratepayers through depreciation and stranded cost payments – are so profitable that it is not in the interest of the owners of those plants to build new low cost generation or take any other steps that would have the effect of reducing the market clearing price. Efforts by PJM to address this problem, such as the Reliability Pricing Model (RPM), throw even more money at existing generators, without any assurance that this will lead to the development of new resources.

PF: *Please discuss demand response. Is there too little, too much, or just the right amount of it today? What should PJM do differently on demand response? What should the PUC and state do differently on demand response?*

SP: Demand response represents an unfulfilled promise. According to the PJM State of the Market Report and related data, consumers could save hundreds of millions of dollars in energy and capacity charges with a relatively modest effort at controlling peak demands. If the effort required to save a lot of money is not that great, then we should do more to get those results.

Recently, my office has taken a very close look at this issue during the PUC's investigation on demand response. We have identified, as have a number of others in this process, a strong set of established, tested programs that can be implemented in Pennsylvania. At the end of this investigation in May of this year, I hope that the Commission will move aggressively to support wide deployment of efficiency measures.

PF: *Did you support or oppose the AEPS? Why?*

SP: I supported AEPS for two reasons. First, I believed that we needed to break our over-reliance on natural gas fired plants that appeared to be the solution to every problem when we thought we had an inexhaustible supply of cheap natural gas. Second, I believed that future regulation of greenhouse gas emissions was inevitable and that Pennsylvania consumers would be better off if we began immediately to develop resources that reduce our reliance on greenhouse gas emitting fossil fuels. Basically, I think renewable resources provide a valuable hedge against fuel price volatility as well as the cost of environmental regulation. A diverse and distributed set of renewable resources can also improve overall system reliability.

PF: *How do you think implementation of the AEPS is going?*

SP: I think the PUC is doing a good job in the difficult task of developing the necessary regulatory framework within which the AEPS will operate. I hope that the Commission will allow long-term contracts for AEPS resources, because such contracts may be necessary to get Tier One resources built in a timely and economic manner.

PF: *What is your opinion of the voluntary green power market?*

SP: I think this is one area of residential retail choice that has a chance for long-term success. Whether green products are provided by third party marketers or by incumbent utilities (as in the case of the PECO Wind Tariff), I think there is a demand for such products among many consumers who are concerned with their own environmental footprint. It is important that the voluntary purchase of such products by individual consumers be treated as a supplement to, not in any way a replacement for, the AEPS requirements that are placed on the utilities and other load serving entities.

PF: *How are electricity prices in Pennsylvania today?*

SP: With most Pennsylvania consumers still protected by rate caps, rates have changed only moderately. In real (inflation-adjusted) dollars, there is no doubt that most Pennsylvania customers are paying less today for electricity than they were paying prior to restructuring.

The real question, though, is what will happen when the rate caps come off. So far, we have seen mixed results in Pennsylvania – ranging from positive, in the case of Duquesne Light Company, to horrendous, in the case of Pike County Light & Power Company.

PF: *What is your view of electricity prices in DQE? Why has there been no rate shock there, even though rate caps ended more than three years ago?*

SP: Actually, the residential rate caps in Duquesne ended in 2002, and residential customers are still paying less – even in nominal dollars – than they were paying prior to restructuring. I think there are a couple reasons for that. First, Duquesne has not relied on volatile short-term auctions, but has instead applied a longer term portfolio approach to its default service acquisition policy. As a result, it has been able to provide a series of multi-year fixed price offers to residential customers that have avoided rate shock and maintained prices at a reasonable level. Second, Duquesne is located in a portion of PJM that has lower wholesale prices than its central and eastern Pennsylvania neighbors.

Overall, I continue to point to Duquesne as the major success story in Pennsylvania restructuring, but a story that may not be repeated to the extent that other utilities acquire their post-rate cap service through auctions in higher priced PJM areas.

PF: *Companies seeking to enter Pennsylvania tend to disagree with you about how default utility service for consumers who have not switched to a competitive supplier should be priced. You favor fixed price default products that last for at least a year. You believe customers who do not shop should be given a product that has little price volatility. Companies seeking to offer competitive retail products often argue that the utility default service should be a real-time product or priced for periods less than a year, changing every month or every 3 months, as do natural gas rates for residential customers.*

Please discuss the key points of a good Provider of Last Resort Service (POLR) policy.

SP: A good POLR policy is only as good as the wholesale market from which POLR supplies are procured. So the first step is to try to ensure that PJM is providing a truly competitive wholesale market platform in which necessary generation, transmission, and demand side resources are made available.

Within Pennsylvania, the key point in my view is that our utility POLR providers should utilize a portfolio of resources to provide default service, particularly for residential customers. The portfolio should include long-term and short-term contracts, renewable and non-renewable products, and supply-side and demand-side resources. It is a mistake, I believe, to provide POLR service by relying solely on volatile short-term markets or to roll the dice in one-time auctions for load-following service.

The goal of the residential POLR provider should be to provide reliable service at stable, reasonable prices. If retail marketers can beat that price, or offer some other value to customers such as green products, that is all the better. But retail shopping is not an end in itself; it is one possible means to the goal of providing the least cost reliable service to all customers.

PF: *Why did Pennsylvania have no wind farms prior to restructuring but a lot of nuclear plants?*

SP: In the late 1970s and early 80s, when we were looking at whether PECO should build Limerick, and whether Duquesne and Penn Power should build the Central Area Power Coordinating Group (CAPCO) plants, the basic question for utility planners was

whether they should build big nuclear plants or big coal plants. That was before the era of massive cost overruns and plant cancellations that has taken the nuclear option off the table in both restructured and non-restructured states for more than two decades.

First the Public Utility Regulatory Policies Act (PURPA), then the Energy Policy Act of 1992, and then restructuring in Pennsylvania and other states all led to a greater diversity of ownership and plant types across the electric generation industry. Renewable resources got a further boost from federal tax policy (production tax credits) and state renewable portfolio standard requirements. Wind, in particular, has benefited from all these developments and stands today as an economical, non-emitting source of electricity in Pennsylvania and many other states.

Pennsylvania now stands at an energy fork in the road. One road would be back to the future: a return to the days of monopolies that keep out new companies and technologies, burn fossil fuels, and render consumers impotent. The other road takes us to a future of old and new companies with new technologies providing clean electricity competing for market shares, and of consumers who have the tools to manage their energy consumption. While Sonny Popowsky has spent most of his professional life as a public servant in government, Sonny has proven that he is not an opponent of change and has guided Pennsylvania toward a much better energy future.