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**Testimony of ConEdison Solutions  
Before the  
Pennsylvania House Consumer Affairs Committee  
On  
Municipal Aggregation  
August 31, 2010**

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Good morning Chairman Preston, Chairman Godshall and Members of the Committee. My name is Ritchie Hudson. I am the Director of Regulatory and Legislative Affairs for Consolidated Edison Solutions, Inc. ("ConEdison Solutions"), a retail provider of electricity and energy related services in this Commonwealth and other states that have enacted retail choice. ConEdison Solutions is a wholly owned subsidiary of Consolidated Edison, Inc., the corporate parent to Consolidated Edison Company of New York, the local utility in the New York metro area, as well as Orange and Rockland Utilities, Inc., which through its Pike County Power & Light company provides utility service to customers in northeastern Pennsylvania. To be clear, my testimony today is on behalf of ConEdison Solutions, which is a fully separate and distinct entity from these public utility companies that we are affiliated with. As you are aware, ConEdison Solutions is an active participant in the Pennsylvania retail electric market serving all types of customers, including residential consumers, small businesses and large businesses. We entered the PPL market in late 2009 and are proud to be providing savings to thousands of Pennsylvania residents and businesses, including some of you and many of your colleagues and staff.

The topic of today's hearing is municipal aggregation. At your preliminary hearing on this topic earlier this year, I stated our support for properly structured, opt-out municipal aggregation programs. We have extensive experience with aggregation programs including serving over 200,000 customers under the Cape Light Compact aggregation program in Massachusetts. We are excited about the opportunity to bring the value of competitive energy markets to residents and small business here in Pennsylvania through municipal aggregation. My testimony from February is attached for your review. In that testimony I explain how municipal aggregation programs can be structured and why opt-out aggregation can be an effective way to overcome "status quo" bias that unintentionally leads to many customers remaining on utility provided default service even when there are opportunities for significant savings from other, competitive providers.

Today, now that House Bill 2619 has been formally introduced, I wanted to comment on a few areas of the bill that have changed since the draft version that was discussed in February. I would also like to propose some suggested amendments that we believe will protect consumers and ensure that they get the best value out of future municipal aggregation programs.

House Bill 2619 contains some important changes that improve the bill and I will discuss many of the proposed changes that we support in a moment. However, to begin I wanted to highlight the one critical area of the bill that we disagree with. The bill would enable opt-out aggregation where customers are enrolled with the selected aggregation supplier unless they affirmatively opt out after receiving an opt-out notice. As currently drafted, the bill would allow the aggregation supplier to lock customers into a long term contract and would specifically allow the aggregation provider to impose cancellation fees, penalties or other restrictions on customers that fail to opt-out initially but later chose to take service from another supplier. We believe that it is fundamentally inappropriate to lock customers into a contract that they did not affirmatively commit to.

Without the customer protections that we are advocating, customers can be unknowingly assigned to an aggregation program to find out months later that they are barred from selecting a supplier of their choice. Imagine this scenario. You are currently getting cellular phone service from Verizon on a month to month plan, you have no contract or commitment with Verizon. Six months, or a year goes by and you see an offer from T-Mobile where you can get the latest and greatest smart phone and a new service plan for 20 percent less than you are paying Verizon. So you call T-Mobile to sign up. But after pulling up your phone number, the T-Mobile rep tells you that you are currently under contract with Verizon and may face a significant fee if you enroll with T-Mobile. After you hang up the phone, you call Verizon to ask what's going on. They tell you that you were locked into a contract with them and you should have known all about it because you they sent a notice in the mail 3 months ago, but you are free to cancel your contract and enroll with T-Mobile for a \$150 penalty.

This is precisely the scenario that would play out under HB 2619 as written. A customer that fails to respond to the opt-out notice can be locked into taking service from the aggregation provider. This will prevent customers from taking advantage of lower priced offers and more innovative products and services in the future. While the bill does require that customers be provided with opt-out notices that fully explain the terms and conditions of the program, we all know what usually happens to those mandatory notices that show up in the mailbox. They go right in the recycling bin along with all those credit card offers and pizza coupons that litter your mailbox every day. In order to avoid great customer frustration and to ensure that customers retain their rights to affirmatively select a supplier of their

choice, I urge you to include amendatory language that would prevent any opt-out program from locking customers into a contract or imposing penalties or other switching restrictions. Attached to my testimony is language that would accomplish this.

Now that I have discussed the main area that we have concerns with, I will move onto the areas of HB 2619 that we support.

HB 2619 contains additional definitions that provide important clarity to the bill. We support the proposed definition of small commercial customer as those customers with peak demand less than 25 kW. This definition is current used in the Public Utility Commission's regulations that define small commercial customers for purposes of various customer notice and consumer protection rules.

HB 2619 also contains a definition of "price-to-compare." As the name implies the price to compare is used to describe the rate that the customer would pay if he or she took electric generation service from the utility. The price to compare should be a true apples-to-apples comparison and should include all of the charges that the customer would avoid if he or she chose to take generation service from a competitive supplier instead of the utility. I recommend some additional language in this definition to clarify this intent. Specifically, the price-to-compare should be a customer specific value. In some utility's the rate a customer pays may decrease as usage increases—for example, the price may be 8 cents for the first 500 kWh, and 5 cents for all kWh above 500. Mathematically, this means that the price-to-compare changes based on the specific amount of electricity used in a given month.

HB 2619 requires the electric distribution companies to cooperate with aggregation providers in providing customer data, such as usage information and contact information for providing opt-out notices. These provisions are important to ensure that aggregation providers can operationally implement the program.

The bill also requires that customers under existing contracts with competitive suppliers be excluded from the aggregation program. The bill has provisions to ensure that customers that are inadvertently included in the aggregation program and their respective generation suppliers are held harmless from any costs resulting from the accidental switch. The bill also permits the Commission to assess additional penalties on the aggregation provider in order to compensate suppliers whose customers are accidentally switched. These provisions are essential to ensuring that aggregation providers have the proper incentive to follow comprehensive quality control measures to prevent the accidental enrollment of customers served under existing contracts with other suppliers.

In conclusion, while ConEdison Solutions supports opt-out municipal aggregation in concept, it is important to preserve customers' right to affirmatively select a supplier and generation service product of their choice. As I testified in February, opt-out aggregation generally leads to greater participation, which provides benefits to customers and suppliers. However, with these benefits, comes the responsibility to ensure that customers are not harmed.

Thank you for the opportunity to testify.

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Proposed Amendatory Language

P.12, lines 25 through 30, and p. 13 lines 1 through 4:

(d) Opt-out programs; notice and opt-out procedures.

(1) No consumer may be bound by a contract between a municipal aggregator of electricity and an electric generation supplier in opt-out municipal aggregation ~~until not less than 30 days following the mailing of the opt-out notices required under this subsection and the expiration of any waiting period for a consumer to cancel the pending change to the electric generation supplier following written confirmation by the electric distribution company as prescribed by regulation.~~ CUSTOMERS RECEIVING ELECTRIC GENERATION SERVICE UNDER AN OPT-OUT MUNICIPAL AGGREGATION PROGRAM MAY SWITCH TO AN ELECTRIC GENERATION SUPPLIER OTHER THAN THE SUPPLIER TO THE MUNICIPAL AGGREGATION PROGRAM AT ANY TIME WITHOUT PENALTY, CANCELLATION FEES OR OTHER RESTRICTIONS, PROVIDED THAT THE SWITCH SHALL TAKE PLACE PURSUANT TO COMMISSION APPROVED SWITCHING PROCEDURES.

P. 14, Lines 24 through 30 and p. 15, line 1:

...participating in the municipal aggregation, including any early termination penalties any any surcharges that may be assessed. Early termination penalties shall not BE ASSESSED TO ANY CUSTOMER PARTICIPATING IN AN OPT-OUT AGGREGATION PROGRAM THAT ELECTS TO TAKE SERVICE FROM AN ELECTRIC GENERATION SUPPLIER OTHER THAN THE SUPPLIER TO THE AGGREGATION PROGRAM. ~~apply to a consumer that moves outside the municipal aggregator of electricity's geographic boundaries or that becomes eligible for and remains in an electric distribution company customer assistance program at the time of termination.~~

P. 21, lines 4 through 8:

(5) The following shall apply to the notice of municipal aggregation and opt out notice:

(i) Each municipal aggregator of electricity shall ensure that only eligible consumers are included in its municipal aggregation. WHEN REVIEWING AND APPROVING MUNICIPAL AGGREGATION CONTRACTS UNDER SECTION 2806.3 (C), THE COMMISSION SHALL ENSURE THAT THE MUNICIPAL AGGREGATION PROGRAM CONTAINS APPROPRIATE QUALITY CONTROL MEASURES TO PREVENT THE INADVERTANT ENROLLMENT OF INELIGIBLE CUSTOMERS, INCLUDING CUSTOMERS UNDER EXISTING CONTRACTS WITH ELECTRIC GENERATION SUPPLIERS, IN THE MUNICIPAL AGGREGATION PROGRAM, AND TO EXPEDITIOUSLY CORRECT INSTANCES IN WHICH INADVERTANT ENROLLMENTS OCCUR.

P.7, lines 12 through 16:

“Price-to-Compare.” A line item that appears on a retail customer’s monthly bill for default service. The price-to-compare is equal to the sum of all unbundled generation and transmission related charges to a default service customer for that month of service. THE PRICE TO COMPARE IS A CUSTOMER SPECIFIC PRICE FOR A GIVEN MONTH OF SERVICE REFLECTING ALL COST COMPONENTS THAT THE CUSTOMER AVOIDS WHEN CHOOSING TO TAKE ELECTRIC GENERATION SERVICE FROM AN ELECTRIC GENERATION SUPPLIER.



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**Testimony of the ConEdison Competitive Energy Businesses**  
**Before the**  
**Pennsylvania House Consumer Affairs Committee**  
**On**  
**Municipal Aggregation**  
**February 2010**

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Good morning Chairman Preston, Chairman Godshall and Members of the Committee. My name is Ritchie Hudson. I am the Director of Regulatory and Legislative Affairs for Consolidated Edison Solutions, Inc. ("ConEdison Solutions"), a retail provider of electricity and energy related services in this Commonwealth and other states that have enacted retail choice. ConEdison Solutions is a wholly owned subsidiary of Consolidated Edison, Inc., the corporate parent of Consolidated Edison Company of New York, Inc., the local utility in the New York metro area, as well as Orange and Rockland Utilities, Inc., which through its and Pike County Light & Power Company utility subsidiary, serves customers in northeastern Pennsylvania. To be clear, my testimony today is on behalf of ConEdison Solutions, which is a fully separate and distinct entity from these public utility companies that we are affiliated with. As you are aware, ConEdison Solutions is an active participant in the newly emerging Pennsylvania retail electric market serving all types of customers, including residential consumers, small businesses and large businesses. We entered the PPL market in late 2009 and are proud to be providing savings to thousands of Pennsylvania residents and businesses, including some of you, your colleagues and staff.

The topic of today's hearing is municipal aggregation. As an initial matter, I'd like to state that ConEdison Solutions supports properly structured, opt-out municipal aggregation programs. We have extensive experience serving aggregation programs including serving over 200,000 customers under the Cape Light Compact and the City of Marlborough aggregation programs in Massachusetts. However, it is important that these programs be properly designed in order to provide customers with maximum benefit and flexibility. Accordingly, ConEdison Solutions would support the proposed legislation with one significant change. Namely, an opt-out municipal aggregation program should not lock a customer into a contract with the aggregation supplier.

Let me begin by explaining what municipal aggregation is and the two general ways that it can be structured—as an opt-in program or as an opt-out program. Municipal aggregation is a way for a

government entity, a city, township or county, to buy energy on behalf of its residents. The municipality negotiates a contract with an electric generation supplier and works out the details such as the price, the relevant terms and conditions and the time frame of the program. The supplier can be chosen through informal negotiations with the supplier or as a result of a formal RFP or auction process. The municipality then establishes a process to enroll customers with the selected generation supplier. Under the “opt-in” approach, customers must affirmatively choose to participate in the program by signing a form, enrolling online or over the phone. Under the “opt-out” approach, customers are provided a notice about the program and are given a limited period of time in which to “opt out” of the program. Today, municipalities or other entities such as trade associations or other customer groups are free to aggregate under the “opt-in” approach. However, legislation is needed to authorize municipalities to conduct “opt-out” programs.

ConEdison Solutions supports the “opt-out” approach. The transition to competition in the PPL area has been widely reported as a success story. Indeed, over 300,000 customers are already participating in retail choice. This is, by any measure, a great result just two months after the expiration of rate caps. However, an examination of the PPL situation provides some insight into the need for municipal aggregation as a way to introduce greater numbers of customers to the benefits of retail choice. Put simply, inertia is a very powerful force. Despite significant coverage by the media, aggressive customer education efforts by PPL and the Commission, and despite the fact that customers can save 10 percent or more as compared to PPL’s rates, 75 percent of PPL’s residential customers are still taking service from PPL. In the Duquesne Light service area, where rate caps ended several years ago, only about 20 percent of customers are shopping. And in Penn Power, where the rate cap ended in 2007, less than 15 percent of customers are shopping, even though suppliers are offering savings of 10 to 15 percent. This illustrates that despite strong economic incentives to switch suppliers, many customers are slow to do so.

This is natural. People lead busy lives and for many, shopping for an electric supplier is not a top priority. Behavioral scientists have conducted numerous experiments on human decision making and have found that people overwhelmingly rely on default options if they are given one. For example, if a company offers a 401k program in which employees are enrolled automatically, the majority of employees participate. Conversely, if employees have to take specific action to enroll in the 401k program, the majority of employees do not participate. This is known as “status quo bias” where people often prefer the status quo situation to any of the alternatives, despite logical reasons to prefer one of the alternatives.



Pennsylvania law establishes the utility as the default service provider, which inadvertently leads to the majority of customers staying on default service and paying higher rates. Opt-out municipal aggregation is a way to overcome this issue of customer inertia. Elected city officials are empowered to negotiate favorable terms for electric generation service on behalf of their local constituents. Customers get the benefit of a lower price that they may not have actively sought out otherwise. Suppliers benefit because the opt-out approach ensures greater customer participation and produces economies of scale.

While ConEdison Solutions supports opt-out municipal aggregation in concept, it is important to get the details right. Accordingly, we are very concerned about one aspect of the draft bill. The bill appears to allow a municipal aggregation program to lock customers into a three year contract with the aggregation supplier. Additionally, the legislation contemplates allowing the aggregation supplier to impose cancellation fees or other penalties on customers who choose to leave the aggregation program to take service from another generation supplier. ConEdison Solutions strongly opposes this aspect of the draft bill. The opt-out nature of a municipal aggregation program means that a customer has not affirmatively selected the supplier or the terms and conditions of service. Because of this, it would be inappropriate to lock a customer into a service arrangement that they did not agree to.

The aggregation program may provide an initial benefit to participating customers by offering a rate that is lower than the utility's default service price. However, another supplier may be able to offer an even lower rate to a specific customer or group of customers than the aggregation program rate. Obviously no customer would want to hear that they are precluded from taking advantage of a potentially lower electricity offer because they were included in an aggregation program that the customer may not have been aware of. Additionally, locking customers into a long-term contract under an aggregation program could prevent customers from selecting innovative new products that may become available from different suppliers in the future.

Allowing an aggregation provider to lock customers into a contract or charge penalties or exit fees also creates competitive market concerns. A dominant supplier could lock up a substantial portion of the market by offering financial incentives to the municipality in exchange for selecting that supplier for the aggregation program.

ConEdison Solutions proposes language [COMMENT: NOT CLEAR TO ME WHERE THIS PROPOSED LANGUAGE IS –IS IT IN THE MARK-UP OF THE LEGISLATION OR IS IT A SEPARATE ATTACHMENT?], which is attached to my testimony, to address this concern. Our proposal would explicitly prohibit any type of switching restrictions, cancellation fees, or penalties under an opt-out aggregation program. This will

preserve a customer's right to affirmatively select an electric generation supplier of the customer's choice. The opt-out approach to municipal aggregation produces tangible benefits for both consumers and suppliers. But with those benefits comes the responsibility to ensure that a customer's individual right to choose is respected. Customer choice was, after all, the overriding purpose of the Electric Choice and Competition Act.

I also address a few other issues in the mark-up of the draft legislation attached to my testimony. For example, the draft bill proposes to limit the aggregation program to residential and small commercial customers, but does not define small commercial. I propose a definition that would define small commercial customers in accordance with the customer classifications already established under each utility's default service plan. The legislation also requires the Commission to adopt regulations governing and supporting opt-out municipal aggregation. As part of this regulatory process, I also recommend that the Commission establish procedures to ensure that opt-out municipal aggregation programs are properly integrated into the utilities default service plans. For example, several utilities have already executed contracts for their default service supply. The Commission should consider how large scale municipal aggregation could impact these existing contracts.

In conclusion, I would like to thank this Committee for the opportunity to present ConEdison Solutions' input on this important topic.

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