

1
2 COMMONWEALTH OF PENNSYLVANIA
3 HOUSE OF REPRESENTATIVES
4 CONSUMER AFFAIRS COMMITTEE

5 IRVIS OFFICE BUILDING
6 ROOM G50
7 HARRISBURG, PENNSYLVANIA

8 PUBLIC HEARING
9 SENATE BILL 168
10 AMENDS THE BOROUGH CODE

11 WEDNESDAY, AUGUST 11, 2010
12 9:32 A.M.

13
14
15 BEFORE:

16 HONORABLE JOSEPH PRESTON, JR., MAJORITY CHAIR
17 HONORABLE BRYAN BARBIN
18 HONORABLE MARC J. GERGELY
19 HONORABLE ROBERT F. MATZIE
20 HONORABLE CHRIS SAINATO
21 HONORABLE ROBERT W. GODSHALL, MINORITY CHAIR
22 HONORABLE KAREN D. BEYER
23 HONORABLE SHERYL M. DELOZIER
24 HONORABLE PERRY SCOTT
25 HONORABLE ROB W. KAUFFMAN

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ALSO PRESENT:

HONORABLE KEVIN P. MURPHY
HONORABLE JOHN R. EVANS

DAVE VITALE, COMMITTEE ATTORNEY
GAIL M. DAVIS, EXECUTIVE DIRECTOR (D)
TIM SCOTT, RESEARCH ANALYST (D)
ELIZABETH A. ROSENTEL, RESEARCH ANALYST (D)
WENDY SHEARER, LEGAL ASSISTANT (D)
AMANDA RUMSEY, COUNSEL (R)
COLIN FITZSIMMONS, RESEARCH ANALYST (R)

BRENDA J. PARDUN, RPR
REPORTER - NOTARY PUBLIC

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P R O C E E D I N G S

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CHAIRMAN PRESTON: Good morning. The hour of 9:30 and a half having come and gone by, as posted and advertised, I'd like to be able to call the meeting of the Consumer Affairs Committee for public hearing. This is dealing with Senate Bill 168, and it is by Honorable Senator Brubaker. This amends the borough code.

I know that there are some people that have been interested in several amendments just as well. We are going to have a hearing. Some people thought were going to vote on the bill or an amendment.

For the members who are here, in case some other people have other busy schedules, I do want to -- also want to also inform you that we're dealing with the issue of municipal aggregation. I do have intent, hopefully, within the next thirty days you'll get notice. We're going to go up to the Lehigh/Northampton area, and we will also go down to the Cambria County area and have public hearings relative to the municipal aggregation bill, and see what we can try to do to try to come up with a vote in a reasonable time.

1 I have every intentions on sitting
2 down, and since -- even though this is not new but
3 it is new to the state in issues concerning, along
4 with the Senator Brubaker's bill dealing with
5 electric and rates and dealing with the consumers
6 that we're here to protect. It is my intention
7 also to have maybe separate meetings sometime when
8 we can sit down and meet with also the local
9 officials from the township commissioners, to the
10 county commissioners, which is just so we can go
11 over this and have them in working, learning the
12 process. Wanted to be able to say that.

13 That being said, Mr. Chairman, do you
14 have any comments?

15 REP. GODSHALL: Not at this time.

16 CHAIRMAN PRESTON: If I could, if we
17 could start to my right or the audience's left, if
18 we could start in the rear and have people
19 introduce themselves and where they're from.

20 REP. BRAIN: Rep. Barbin, representing
21 Johnstown.

22 CHAIRMAN PRESTON: I'm going to
23 introduce a newest members to what we call team
24 24. In my district office, some people know,
25 because we did have a farewell for her somewhat,

1 Tawna Bauer did retire, and new to us is our newest
2 member of our group, Wendy Shearer. Welcome.

3 MS. SHEARER: Thank you.

4 CHAIRMAN PRESTON: Members.

5 REP. MATZIE: Rob Matzie, Beaver and
6 Allegheny County.

7 REP. SAINATO: Chris Sainato. I
8 represent parts of Lawrence and a small section of
9 Beaver County.

10 REP. GODSHALL: Bob Godshall,
11 Montgomery County.

12 CHAIRMAN PRESTON: Joe Preston,
13 Allegheny County, and I work for Bob Godshall.

14 REP. GODSHALL: He always says that.

15 CHAIRMAN PRESTON: The first person to
16 come forward is Gary -- do I pronounce that Nace?

17 MR. NACE: Yes, that's correct.

18 CHAIRMAN PRESTON: Who is the borough
19 manager and secretary for the Borough of Ephrata,
20 of which this bill basically does.

21 If you would come forward. Appreciate
22 if you would sit down and repeat your name again
23 for the stenographer to record.

24 Also, for everybody's information, this
25 is being recorded on PCN, so those people who may

1 want a record of it, you can make your request to
2 them.

3 I would also ask that you would move
4 that microphone as close as possible. Closer,
5 closer.

6 MR. NACE: Closer.

7 CHAIRMAN PRESTON: Okay. And however
8 you want to start, you may again.

9 MR. NACE: Thank you.

10 Good morning, Chairman Preston,
11 Chairman Godshall, and members of the Consumer
12 Affairs Committee. My name is Gary Nace, and I am
13 the manager for the Borough of Ephrata, in
14 Lancaster County.

15 On behalf of the borough, I thank you
16 for convening this public hearing and for the
17 opportunity to provide testimony on Senate Bill
18 168.

19 Before discussing the bill, I wanted to
20 note that for most of the last thirty years, I have
21 served two Pennsylvania boroughs with municipal
22 electric systems, including the last twenty or so
23 in Ephrata Borough.

24 In addition, I am a past vice president
25 of the Pennsylvania Municipal Electric Association,

1 which is a trade association representing the
2 municipal electric systems in Pennsylvania. I am
3 currently vice president of the Pennsylvania
4 Municipal Power Agency, which was formed under the
5 borough code to consider power supply alternatives
6 on behalf of Pennsylvania boroughs.

7 And I also hold the Pennsylvania seat
8 on the board of trustees of American Municipal
9 Power, a Columbus-based, not-for-profit corporation
10 offering power supply alternatives to its
11 one-hundred-twenty-eight-member municipal power
12 systems in six states, including thirty municipal
13 systems in Pennsylvania.

14 During my years in this industry, I've
15 seen tremendous changes in the wholesale electric
16 business. In Ephrata, we've seen it move from a
17 fully regulated environment where we were required
18 to take supply from the investor-owned utility that
19 had the transmission system serving us and under
20 rates that were approved by the Federal Energy
21 Regulatory Commission to a somewhat deregulated
22 environment where we were free to contact suppliers
23 other than our host supplier to consider their
24 power supply offers, and finally moving toward the
25 creation of energy capacity in ancillary services

1 markets run by the Pennsylvania-New Jersey-Maryland
2 interconnection.

3 It is this last step that has resulted
4 in extremely volatile pricing and significant cost
5 increases for the power supply for Ephrata
6 Borough.

7 Ephrata is one of thirty-five boroughs
8 in PA that own and operate municipal electric
9 systems for the benefit of our residents,
10 businesses and local industry. We got into the
11 business to fulfill our customer's need to have
12 electric available at all times. We've remained in
13 the business for over a hundred years because we
14 provide a significant value to our consumers by
15 offering consumer electric rates that historically
16 have been priced on par or slightly lower than
17 rates offered by private sector suppliers, which
18 certainly has been good for economic development in
19 our communities.

20 We've offered stable consumer electric
21 rates over time, which facilitates financial
22 planning and budgeting not only for the borough but
23 also for local businesses and industry.

24 We've provided a very, very high system
25 reliability to our customers with interruption

1 indexes well below industry average. And we've
2 reinvested any proceeds of the electric operation
3 back into the Ephrata community.

4 Since Ephrata and other municipalities
5 serving their customers with electric power are
6 dependent upon the wholesale market for power
7 supply, the high prices and volatility of the
8 current wholesale market structure threaten our
9 ability to continue to offer those competitive
10 electric rates to our consumers and to continue
11 offering stable rates over time.

12 Just by way of example, the whole sale
13 power rates paid in Ephrata are 200 percent higher
14 today than they were in 2003. That's a three-fold
15 increase.

16 To reduce the borough's reliance on the
17 wholesale power market, Ephrata Borough council has
18 chosen a long-term power supply strategy that
19 involves the borough joining with other public
20 power municipalities both within and outside of
21 Pennsylvania in constructing generating facilities
22 to serve at least the base-load needs of the
23 borough and its customers.

24 Borough council desires to diversify
25 its power supply portfolio by purchasing modest

1 amount of capacity from municipal generation
2 projects.

3 Under the Pennsylvania Borough Code, we
4 already have the authority to construct and own
5 generation plants. However, the load in Ephrata is
6 so small that it's not cost effective to do that on
7 our own.

8 In addition, if we were to construct a
9 single plant to serve our needs, all of our risk
10 would be tied up in that one plant instead of
11 diversified among a series of generation plants.

12 Also under the borough code, we have
13 the authority already to join with other
14 municipalities in forming joint power agencies,
15 and, in fact, we've done that in PA. That power
16 agency, the PA Municipal Power Agency, was formed
17 again to jointly consider building and owning
18 generation plants for its members. Unfortunately,
19 there are currently no projects on the horizon for
20 PMPA.

21 So Ephrata Borough became a member of
22 AMP, American Municipal Power. AMP is the only
23 member organization serving PA municipalities that
24 is currently building generation projects for its
25 membership. The electric output in this jointly

1 owned generation projects offers price stability
2 through cost-based rates rather than through
3 market-based rates.

4 Here's where Senate Bill 168 comes in,
5 project financing. As you know, the credit markets
6 are tougher today than they have been in the past,
7 and it's difficult to finance the large projects
8 that these generation plants represent, typically
9 millions of dollars, in some cases hundreds of
10 millions of dollars.

11 The standard way of financing these
12 projects is for the joint-action agency like AMP or
13 PMPA to go into the market and issue tax-free debt
14 to support the capital needed for these projects.

15 Repayment of that debt is backed up
16 through power supply contracts with the various
17 members of those agencies interested in the output
18 from those plants. Bond holders naturally want as
19 strong a provision as they possibly can get to
20 assure their repayment in return for the low rates
21 that they're offering on the debt.

22 These contracts, these power supply
23 contracts, typically have take-or-pay and take-and-
24 pay provisions. A simple explanation of those
25 certainly is warranted at this point.

1 Take-or-pay provisions are those that
2 are typically used where a joint-action agency is
3 building a project and the member municipalities
4 are guaranteeing that they will repay the debt
5 associated with that facility regardless of whether
6 the facility is actually operating.

7 Take-and-pay provisions are ones where
8 the joint-action agency is pledging to deliver a
9 certain quantity of electric power at a particular
10 location and the municipality is promising that it
11 will pay for that power if it is delivered and will
12 take ownership of it at that delivery point.

13 If the state codes governing
14 municipalities that participate in these projects
15 do not specifically authorize the municipalities to
16 enter into take-or-pay and take-and-pay provisions,
17 the rating agencies and the investors view that
18 participation as a weakest link, and it reduces the
19 strength of the entire deal. In other words, there
20 would be higher financing costs associated with
21 that project, absent these provisions.

22 In fact, that is such an important
23 issue that Ephrata and other PA boroughs that have
24 been desiring to participate in the projects that
25 AMP has sponsored have been precluded from doing so

1 in order to make sure that the projects were
2 financed at the lowest possible rates.

3 Senate Bill 168 will rectify this
4 problem by adopting provisions similar to those
5 found in other states and making them applicable to
6 the Pennsylvania boroughs.

7 Please remember that participation in
8 generation projects is strictly voluntary. It's up
9 to the decision of each borough council that
10 operates an electric distribution system to
11 determine whether or not participating in
12 generation projects is a good option for each
13 community.

14 There are provisions in Senate Bill 168
15 that these contract will have up to a fifty-year
16 term. It sounds like a very long time. However,
17 the projects that are being contemplated -- hydro
18 projects, sometimes gas-fired projects -- all of
19 those projects have lifetimes at least as long as
20 fifty years. It makes sense to have the contract
21 match the lifetime of the project.

22 Municipalities are looking for long-
23 term stability in their power supply, and a fifty-
24 year term on these contracts provides that
25 stability.

1 In addition, the debt that will be
2 issued for these projects typically has a thirty-
3 five or maximum forty-year life. The best years
4 from the municipality's standpoint for power supply
5 are the years after the debt is retired.
6 Obviously, the price of power will decline at that
7 point.

8 Finally, Ephrata Borough, at least, is
9 very familiar with long-term contracts. We have
10 what is essentially a perpetual contract to provide
11 waste water treatment services to five
12 municipalities that surround us.

13 Senate Bill 168 also includes a step-up
14 power provision. What step-up power is, is in the
15 event of a default by one of the participants in a
16 project, the other participants may be, first of
17 all, asked to assume the obligations of that
18 defaulter, and if no one steps forward to assume
19 that, there can be up to a 25 percent increase in
20 an individual municipality's obligation by taking
21 on a part of the defaulter's obligation.

22 This is simply another tool for
23 providing assurances to the bond holders that their
24 investment is safe.

25 I believe it's very unlikely that a

1 default will occur in the projects that we've been
2 looking at. First of all, all of the participants
3 in these projects are other municipal systems.
4 They are in need of the physical power that's
5 coming from these generation facilities. It's not
6 a financial arrangement for them, it's a physical
7 arrangement.

8 Secondly, most AMP projects have been
9 oversubscribed, meaning that there has been more
10 interest in capacity for the members than has been
11 available in any of the projects.

12 Senate Bill 168 also includes an
13 exemption from the standard bidding requirements of
14 the Pennsylvania Borough Code. That standard
15 requirement envisions that there will be an
16 advertisement in local newspaper and then folks
17 will respond by submitting sealed bids. They will
18 be open at a particular time, evaluated over a
19 period of possibly days or even weeks sometimes,
20 and then a decision made by borough council after
21 that evaluation has occurred.

22 That process simply cannot work in
23 today's wholesale power market. The speed of price
24 changes on electric power is -- is astounding.
25 Prices are typically good for a period of hours,

1 never good for more than the same day.

2 So the competitive bidding process that
3 the borough code currently includes is ineffective
4 when it comes to acquiring wholesale power supply.

5 I should mention, however, that it
6 is -- that every PA borough that is in this
7 business that I'm familiar with uses some
8 competitive process for acquiring its power. It
9 typically is in a request for proposals process
10 that works much faster than a bidding process but
11 there still is a competitive evaluation made.

12 In closing, I would like to note that
13 both the PA Association of Boroughs and the PA
14 Municipal Electric Association have supported the
15 passage of Senate Bill 168. Senate Bill 168
16 provides a needed tool to municipalities that have,
17 in the past, done a great job of meeting their
18 customer's needs and have done that for a very long
19 time.

20 The wholesale market has changed and
21 the borough code needs to change in order to allow
22 PA boroughs to be competitive in the electric
23 business.

24 Thank you for the opportunity to speak
25 with you today. I'd been happy to answer any

1 questions that you might have.

2 CHAIRMAN PRESTON: Thank you very
3 much.

4 Before we begin, we've also been joined
5 by the lady from Cumberland County.

6 Introduce yourself.

7 REP. DELOZIER: I'm Sheryl Delozier,
8 representing the 88th District.

9 CHAIRMAN PRESTON: Okay. Thank you.
10 And I will agree. I've had a
11 conversation with the boroughs association as well,
12 and they've confirmed your thoughts.

13 That being said, questions?

14 Rep. Barbin.

15 REP. BARBIN: I think that, right now,
16 given the situation that all of the local
17 governments find themselves in, we need to do
18 whatever we can to help stabilize electric
19 purchases for all government entities, so I would
20 support the premise to this bill.

21 I have one technical question about the
22 bill. How did you come up with the 25 percent
23 increase? I understand the concept where you want
24 to have a higher rate or a lower rate for your
25 bonds so you want additional assurances for your

1 bond holders, but why is it 25 percent? Why isn't
2 it 20 percent?

3 Because, you know, we're looking at
4 rate caps coming off, and you've experienced a 200
5 percent increase since 2003. You need some
6 legislative help. But, why not a lower number
7 there, because if you're -- if the number is lower,
8 and it's a per-year increase, why wouldn't be it
9 lower, because you're contract's going to be in
10 place for fifty years?

11 MR. NACE: Well, I don't know that 25
12 percent represents any kind of annual change. I
13 think it's more of a one-time change, when a
14 municipality -- if a municipality would default,
15 then their obligation would be apportioned among
16 the remaining municipalities in the project.

17 Twenty-five percent was a negotiated
18 amount. We talked to PMEA, and we worked out what
19 we thought was a reasonable number to protect the
20 boroughs from having to take a much larger amount
21 of power.

22 REP. BARBIN: Is there anything under
23 the bill that would say that 25 percent can be
24 spread out over a period of time?

25 MR. NACE: I believe the contracts that

1 we have considered entering into for a project do
2 spread that over time. It's not that you have to
3 meet that entire obligation today. It's spread
4 over the remaining life.

5 REP. BARBIN: So the 25 percent is only
6 -- it's a project increase?

7 MR. NACE: Yes.

8 REP. BARBIN: Is there -- that's my
9 question. My question about the bill is how do you
10 practically, you know, you allow boroughs to have
11 this additional power, and one person in this
12 contract defaults, and that borough is facing a 25
13 percent increase because of the default.

14 How do we make sure that that doesn't
15 force the borough into a default?

16 MR. NACE: That's a good question. And
17 I think we need to look back at how are
18 municipalities planning to participate in
19 projects. If they were to buy all of their supply
20 from a single project, your concern would be one
21 that I would share. But that's not the way that
22 we're planning to go about it. We're looking at
23 buying small slices of multiple projects. We need
24 to diversify our load, our supply, so that we don't
25 have to worry about the situation you describe.

1 REP. BARBIN: Thank you. I appreciate
2 those responses.

3 Thank you, Mr. Chairman. That
4 concludes my questions.

5 CHAIRMAN PRESTON: And it is a valid
6 question. And please note, for the members, it is
7 up to 25 percent. It doesn't mean that that would
8 be the case. It also does not mean that, with the
9 association, I think how many is it? Is it thirty-
10 five?

11 MR. NACE: Thirty-five in PA, yes.

12 CHAIRMAN PRESTON: Thirty-five boroughs
13 participate now. And it doesn't mean that if one
14 may or may not drop off and they need to diversify
15 their portfolio, but it doesn't mean that someone
16 else cannot also participate with that.

17 And I do want to also note that people
18 may not realize, we buy an awful lot of our -- I
19 mean, our local companies -- a lot of our power
20 does come from a lot of other states just as well
21 through the normal route, and people need to be
22 aware of that. And I was surprised that we have
23 things that come all the way from Illinois as far
24 as just electrical power, but we can deal with
25 that.

1 So I just wanted the members to be
2 cognizant of that fact. And, again, there are
3 certain limits, and as long as they're looking at
4 diversification. I had certain reservations when I
5 started hearing about fifty years as well, you
6 know, because all too often we elected officials
7 are always doing the easy thing and leaving the
8 hard work for someone else, but for someone to have
9 to go to build their own capacity, and the costs of
10 these plants, we already know for the -- when we
11 were at the bigger plants, different plants, six to
12 ten billion dollars. Regular power plant could be
13 several hundred million to a billion.

14 So these are the different things that
15 we're looking at, and the bill itself relates
16 primarily to Ephrata. My understanding is that
17 there was questions from the service area as far as
18 AMP, and we will hear testimony from the people who
19 represent the group in Ohio where they're looking
20 at going into an agreement with. And that, not
21 just because the equipment for their expansion is
22 going to be made in the state of PA, but I think
23 that members really need to look at the fact that,
24 as we look at this process, that this is boroughs
25 making their own determination, developing

1 portfolios, staying diversified. It doesn't mean
2 that it has to be fifty years, but that's going to
3 be up to their choice to develop and look at what
4 they feel is going to develop an area of
5 stability.

6 That being said, Chairman Godshall.

7 REP. GODSHALL: Thank you, Chairman
8 Preston.

9 I read through this bill, and to say
10 that I understood it would be an understatement; I
11 didn't. I read through it again this morning.

12 You know, right now, a borough that has
13 an electric company can buy from anywhere they want
14 to basically. So what's the advantage of going
15 into this co-op? I don't understand. I'm not --
16 there's a number of things.

17 I have two municipalities, by the way,
18 in my district that have their own power plants.
19 And I know, what -- I'm familiar with both of them,
20 my office is in one of them, so what's the
21 difference between buying wherever you want at the
22 cheapest rate -- because right now, under the laws
23 that we have in Pennsylvania with the PUC, our
24 electric companies are required to buy at the
25 lowest rate. I mean that's a requirement that's

1 already in law.

2 So I don't know that it applies to the
3 boroughs, but -- you know, but -- that have their
4 electric, but it does to everybody else. I mean,
5 what's the -- you know, what's the benefit here?
6 What are we doing?

7 MR. NACE: Yes. Thank you. Good
8 question.

9 The most -- most of our -- most of our
10 supply right now comes from the wholesale market.
11 We get a very, very small slice from hydroelectric
12 projects in upstate New York. And many
13 municipalities do. I think both Hatfield and
14 Lansdale do.

15 REP. GODSHALL: But they could buy it
16 from hydroelectric if they want to.

17 MR. NACE: They could. But here's the
18 way it works from a practical perspective today.
19 Suppliers look at the PJM market and they determine
20 what their anticipated return will be from that
21 market price wise, based on the transparency that
22 they can see in that market as far as that
23 transparency goes. And that's the way they price
24 the contracts that they're willing to offer
25 municipalities. It's based on what that market

1 view is. It's not based on the cost of generation,
2 it's based on what that market will bear.

3 If we're participating with other
4 municipalities in the construction of generation
5 facilities, and they're going to be managed by our
6 folks, if you will, by our joint-action agency,
7 we're going to get rates for our electric from that
8 plant based on what it costs to generate there.
9 There's no market markup, there's no middle man to
10 worry about. There's no fluctuation greatly like
11 there is with the PJM market. That's the
12 advantage.

13 It's cost-based electricity and it's
14 stable-priced electricity. That's the advantage
15 for us. And we can pass that on to our consumers
16 then. That's what we do.

17 REP. GODSHALL: Okay. I -- I mean, I
18 know that long-term contracts are available, you
19 know, out there now, and when you -- when a borough
20 has their own electric company, the -- the
21 constituents in that borough have to buy the
22 electric from that electric -- municipal electric
23 company; right?

24 MR. NACE: Yes, That's correct.

25 REP. GODSHALL: And, to tell you the

1 truth, the two that I got are charging more than
2 what you could buy, your consumers could buy, on
3 the market, especially in PP&L territory. PP&L
4 just went up, but knowing they have an option. You
5 know, these people here have no option; they're
6 compelled to buy from that municipality no matter
7 what that municipality charges.

8 MR. NACE: I think that's a good reason
9 why those municipalities should be looking at
10 alternatives to buying all of their wholesale power
11 from the PJM market.

12 If they can lower that cost, they can
13 pass that along to their consumers, hopefully
14 reduce their rates below what the surrounding
15 investor-owned utilities are charging.

16 We have been successful in doing that
17 for a very long time in Ephrata, and there are many
18 other examples in PA where that is the case, where
19 the municipal rates are lower than the investor-
20 owned utilities surrounding the --

21 REP. GODSHALL: Well, maybe in your
22 area, but I have a different opinion in my area.

23 What -- is -- the way I read this bill,
24 and I went over it with my staff yesterday and I
25 tried to go over it, this would also allow you to

1 sell outside of the borough.

2 MR. NACE: I think municipalities
3 already have that alternative. In our case, as an
4 example, Ephrata Borough council could decide to
5 sell power outside of the community, but, in return
6 for that, we would be required to allow our
7 consumers to choose any supplier that they would
8 wish to choose. We could no longer keep our border
9 safe from competition.

10 REP. GODSHALL: So, say -- you know,
11 I'll take Lansdale. I'll take Lansdale. If
12 Lansdale would want to today, they could go out and
13 pick off Merck, say, and give Merck a very low
14 rate, and are your constituents in the borough,
15 would they -- if they come out and give, say, Merck
16 a rate of maybe three or four cents a kilowatt,
17 would they be compelled also to give their
18 residents that same rate, or is there any
19 regulation at all in the current law? And I don't
20 know the answer to that.

21 MR. NACE: Municipal systems are
22 considered self-regulated, and --

23 REP. GODSHALL: I know that. That's
24 been a problem in my area.

25 MR. NACE: It may be in your area, but

1 in my area and some others that I'm familiar with,
2 it's a very, very effective way of keeping electric
3 rates as low as possible.

4 When you have a room full of
5 citizens talking to a borough council, you know,
6 your neighbors, your friends, talking about their
7 electric rates, it's a very, powerful motivator for
8 borough councils to cut those rates to the bone.

9 That's been the case in Ephrata. I
10 can't speak to Lansdale because I'm not that
11 familiar with Lansdale, but in Ephrata, that is the
12 case.

13 REP. GODSHALL: In some cases, the
14 electric -- the fund has become a cash cow to
15 balance the budget, unfortunately and that's the
16 case and that's the reason for the rates that
17 are -- you know, where they are. And but it's --
18 if they would go outside again, I'm not sure, the
19 answer to my question, I was thinking of something
20 else possibly. But can -- if they go outside of
21 the borough, say, and offer, like Merck, and, you
22 know, a very low rate, would that rate be
23 subsidized by the people in Lansdale Borough, or
24 would Lansdale borough have to get the same? They
25 could charge their own residents whatever they want

1 to.

2 MR. NACE: I'm not a legal expert, and
3 I will really don't know the definitive answer to
4 your question. I'm sure we can get that for you,
5 but I don't have it at this point.

6 REP. GODSHALL: I am concerned about
7 that, because what this looks -- you know, when I
8 read the bill, I thought, you know, the boroughs
9 are looking to become electric companies, you know,
10 or electric distribution companies, and it -- and I
11 know that you don't fall under the PUC, but I would
12 think that if you go outside of your own
13 municipalities you would have to have the PUC look
14 and have some regulation someplace along the line.

15 An example that I have, I had a problem
16 back home just this spring, and didn't pay the bill
17 and the electric was to be shut off the next day.
18 And, you know, and so forth, and then I know what
19 the regulations are pertaining to the regulated
20 companies. You get thirty days, they've got to
21 give you notice, that have to give -- well, you
22 know, that hasn't been done. I think that's been
23 rectified in one of my municipalities to some
24 degree at least.

25 But I -- you know, it's really -- what

1 you're looking at here is trying to become an
2 unregulated electric distribution company.

3 MR. NACE: Well, we're already an
4 electric distribution company. What we are trying
5 to do now is try to get the lowest cost, reliable,
6 stable-priced supply that we can get. Already in
7 the business. We're going to continue to be in the
8 business. We have, I think, a great system of
9 regulation because we have that borough council
10 that's overseeing everything.

11 In our case, in Ephrata's case, we more
12 than meet all the PUC guidelines for shut off both
13 in the wintertime and normally. We exceed those
14 that our people, while they don't actually have the
15 PUC protection, they get the same kind of treatment
16 that they would if they were part of investor-owned
17 utility's customer base.

18 REP. GODSHALL: Another question, on
19 the 25 percent default, I read the -- I guess it
20 was from -- in the senate, their appropriations
21 committee report, and they said in there that the
22 boroughs could be -- would be held responsible for
23 somebody else's default, whether this state or out
24 of state or anywhere in state or whatever. Is
25 that -- and if that question was answered before, I

1 apologize for a problem that I have right now --
2 but is that true?

3 I mean, can your borough in Ephrata be
4 held in default for somebody defaulting say in Ohio
5 or in western Butler County, for instance?

6 MR. NACE: Well, we wouldn't be held in
7 default. But if they were --

8 REP. GODSHALL: They were going--
9 Butler County was going to -- the borough would go
10 into default, can Ephrata be held responsible for
11 that default in Beaver county?

12 MR. NACE: Yeah, what would happen
13 under those circumstances is, the future
14 obligations of the defaulting municipality could be
15 spread among all of the participants in that
16 particular project. So if there were eighty
17 participants in the project, that's eighty
18 municipal participants in the project, as an
19 example, each of those seventy-nine remaining
20 municipalities might pick up a portion of what the
21 defaulting municipality's obligations were going
22 forward.

23 REP. GODSHALL: Do you think your
24 residents in Ephrata would be happy when you put
25 something on the bill and increase their bill for

1 default in Ohio?

2 MR. NACE: Well, we have to remember
3 that while the municipality defaulted, I'm also
4 picking up their share of electric power coming out
5 of that facility. So it's not as though I'm not
6 getting something in return for that. It could be
7 that I'm buying more power from that facility that
8 I expected to buy. But the good news is, it's
9 still cost-based rates, and I'm able to provide
10 that power from the defaulting municipality to my
11 customers.

12 REP. GODSHALL: If you need it.

13 MR. NACE: If I need it. If I don't
14 need it. I may have to sell back in the market;
15 that's correct.

16 But I also have this portfolio of
17 resources which I will have to adjust in the future
18 if I'm now assuming somebody else's obligation.
19 I'll have to make a change in my portfolio as I
20 move down the road so that I don't have too much
21 power.

22 REP. GODSHALL: How far, say, outside
23 of Ephrata could you go and sell electric to a
24 company -- you know, in Harrisburg or in Lancaster
25 city? How far could you go with this legislation,

1 and, you know, and sell outside of your borough
2 limits? You know, where's the limit?

3 MR. NACE: Well, I guess if you look at
4 the PJM footprint which goes from New Jersey and
5 Illinois and maybe a little bit beyond that --

6 REP. GODSHALL: You could sell in
7 Illinois?

8 MR. NACE: I guess I could, but then I
9 become a speculator in the market. I'm looking at
10 financial arrangements for power as opposed to the
11 physical arrangements. I need this power in my
12 portfolio to serve customers within my borders. I
13 don't need it, and I'm not interested, frankly, and
14 borough council in Ephrata's not interested in
15 providing that power outside of our borders.

16 REP. GODSHALL: Okay. Thank you,
17 Mr. Chairman.

18 I'd like to go some time, you know,
19 through the bill. As I said, I did not -- when I
20 went through it, I read it, and I read it again
21 yesterday, and I read it again this morning, and I
22 had -- there's some concerns I have with the
23 limited experience that I do have, and -- but -- I
24 do have questions that I think have to be
25 answered.

1 Okay. Thank you, sir. Thank you.

2 Thank you, Chairman Preston.

3 CHAIRMAN PRESTON: Thank you.

4 And I guess my only question, before we
5 go to the next people to testify, without the bill,
6 would you still be able to do -- in your opinion,
7 would you still be able to do everything without it
8 being in the statute? Is that a possibility?

9 MR. NACE: Well, I think Ephrata will
10 continue to be in the electric distribution
11 business for our customers. I think our customers
12 are likely to have higher overall rates for the
13 long-term because we are going to be purchasing all
14 of our power supply needs except for that little
15 hydro piece that we already have from the PJM
16 market.

17 We've seen volatility. We've seen run
18 up in prices. They're down a little bit now, but
19 we expect that they're going to go back up, and
20 we'll be in the business, but we'll be providing
21 our consumers with higher overall cost for the
22 electric that we provide to them.

23 REP. GODSHALL: I would have one
24 follow-up to that.

25 CHAIRMAN PRESTON: Go ahead.

1 REP. GODSHALL: If I may.

2 CHAIRMAN PRESTON: Of course.

3 REP. GODSHALL: Right now, I purchased
4 -- I'm in PPL territory. I purchase power and --
5 from one of the alternative suppliers that are out
6 there, and my costs is just a little under ten
7 cents a kilowatt. That's what I'm paying in that
8 PPL territory.

9 I do know that one of my municipalities
10 that -- just say a municipality that has their own
11 system is probably almost 40 to 50 percent higher
12 than that. And I don't understand that. But I --
13 I mean, that's the case.

14 MR. NACE: I think that's unfortunate.
15 In our case, one of our measurements of success in
16 the business is how our rates compare to PPL,
17 because they surround us as well. Right now we are
18 slightly below where they are for residential
19 customers, and that's our goal, is to keep our
20 rates at or below what PPL surrounds us at this
21 time, at any time.

22 REP. GODSHALL: Thank you, sir.

23 And thank you.

24 CHAIRMAN PRESTON: Thank you very
25 much. We look forward and also please note that

1 Senator Brubaker will be here. He's going to be
2 the last person to testify in questions relative to
3 that, that's where the legislation came from on
4 behalf of the borough of Ephrata.

5 Thank you very much.

6 MR. NACE: Thank you.

7 CHAIRMAN PRESTON: Next we have John
8 Bentine, Bentine?

9 MR. BENTINE: Bentine.

10 CHAIRMAN PRESTON: Who is from Chester
11 Willcox and Saxbe from Columbus, Ohio. He is here
12 on behalf of the American Municipals Power,
13 Incorporated, which is the connection in dealing
14 with this. And I think this will help explain the
15 connection between that and the municipality.

16 Before we begin and you introduce
17 yourself, we've also been joined by several other
18 members and I will ask that they will introduce
19 themselves and the county that they represent.

20 REP. BEYER: Karen Beyer, I'm
21 Northampton County.

22 REP. KAUFFMAN: Rep. Kauffman, Franklin
23 and Cumberland Counties.

24 REP. EVANS: John Evans from Erie and
25 Crawford Counties.

1 REP. PERRY: Scott Perry, northern
2 York, southern Cumberland County.

3 CHAIRMAN PRESTON: Thank you very
4 much.

5 And, Mr. Bentine, you may begin at your
6 leisure.

7 MR. BENTINE: Thank you, Chairman
8 Preston, Chairman Godshall.

9 And thank you for allowing us to
10 testify here in hearing this important bill to help
11 PA boroughs control the electricity costs for those
12 boroughs that currently have electric distribution
13 systems.

14 My name is John Bentine. I am an
15 attorney in Columbus, Ohio, with the firm of
16 Chester Willcox and Saxbe. I'm not admitted in PA,
17 so I'm not here as a PA lawyer.

18 CHAIRMAN PRESTON: We are not going to
19 hold that against you.

20 MR. BENTINE: I am pleased to be here
21 this morning. 168 is, we believe, an important
22 piece of legislation to allow the boroughs in PA
23 that have electric distribution systems -- and
24 there are thirty-five of those, I think, about
25 thirty of which are members of our organization,

1 American Municipal Power.

2 American Municipal Power is currently
3 owned and operated by a hundred twenty-eight such
4 municipality electric systems in six states. In
5 five of those states, the municipal systems have
6 the power to do what Senate Bill 168 would allow
7 the municipal systems in this state to do.

8 In fact, you will see, and we haven't
9 updated since 2007, but there's a large number of
10 other states that have exactly this same kind of
11 authority to enter into take-or-pay, take-and-pay
12 contracts, et cetera, as we are proposing here for
13 the boroughs in PA.

14 Currently, AMP has members in Ohio, PA,
15 Michigan, Virginia, West Virginia, Kentucky. PA is
16 our second largest delegation, out of that, as Gary
17 indicated, thirty boroughs are members of our
18 organization.

19 We're run by a board of trustees of
20 representatives of those municipality systems. And
21 when I say "run," I mean run. They meet monthly.
22 They tend to be the utility directors or the city
23 managers of those communities, and they make sure
24 that we're doing the best job that we can for
25 them.

1 Our members serve over a half million
2 customers in those six states, and, as Gary
3 indicated, he is the -- each state has at least one
4 board member, and Gary is the designated PA member
5 elected by the PA folks that are members of AMP.

6 The thirty-five boroughs in PA that
7 provide electric distribution systems and electric
8 power to their consumers are part of over two
9 thousand such public power systems in the United
10 States that serve forty million Americans. That's
11 about 15 percent of all electric sales in the
12 United States.

13 I point out that some of the nation's
14 largest communities in some of the high growth
15 areas are served by public power. Los Angeles;
16 Orlando; Jacksonville, Florida; Memphis;
17 Sacramento; Austin, Texas; and Seattle all have
18 publicly owned systems. Closer in Ohio, both
19 Cleveland and Columbus have publicly owned systems.

20 Some of those systems, as Chairman
21 Godshall mentioned, exclusively serve in their
22 territory, others of those have door-to-door
23 competition in different states.

24 In all cases, however, to touch on a
25 question by Chairman Godshall, the federal courts

1 have found that the provision of municipality
2 electric, water, and sewer services are subject to
3 personal property rights and subject to due
4 process. So in many cases, some of the -- some of
5 the things that -- Gary indicated that in Ephrata,
6 for example, their shut offs and many things are
7 exactly like their PUC-owned regulates -- excuse
8 me, public service commission regulates here,
9 that's common throughout the United States, because
10 often due process is just as tough or tougher than
11 the regulations provided for -- for investor-owned
12 utility systems.

13 The members, however, I mentioned a lot
14 of big ones, the members of AMP tend to be small-,
15 medium-sized communities. They're not big enough
16 themselves to invest in large-scale generation, and
17 that's one of the things that AMP tries to do, is
18 bundle purchases, and right now AMP purchases on
19 the wholesale market for its members about half a
20 billion dollars a year.

21 The wholesale market today is
22 difficult. It is very different than it was when I
23 first started this as AMP's counsel thirty years
24 ago, you could go out and buy twenty years worth of
25 power at a cost-based rate, usually from one of the

1 investor-owned utilities because they were the
2 people that had iron in the ground.

3 Today, the electric market is
4 completely different. The daily, hourly prices are
5 set by the highest generation that has bid into the
6 market and needed at any particular time,
7 regardless of the cost of provision. There are no
8 twenty-year cost-based contracts. In fact, you
9 can't really buy twenty years' worth of power even
10 on an index today.

11 Market is very, very different. Some
12 of that's good, and some of that is not so good.
13 But the ability to have another tool in the toolbox
14 of being able to buy a rice-sized piece of an
15 asset, as we're doing for our members, and a lot of
16 projects, is an important tool for communities that
17 have their own electric distribution systems to use
18 to be able to moderate their risk, to be able to
19 provide predictable and low-cost power over a long
20 time.

21 AMP itself is developing hydro systems,
22 and I think Chairman Preston mentioned that much of
23 that is being manufactured right here in PA at
24 York. AMP has entered into a four hundred million
25 dollar agreement with York for the turbines to be

1 used at a number of hydro projects that we're
2 developing. Unfortunately, because of the lack of
3 this kind of legislation, the PA boroughs were
4 unable to be in those projects.

5 We have some additional hydro projects
6 coming up. We have solar. We have wind. We are
7 working on a wind project with the borough of
8 Berlin right now that hopefully we're going to get
9 underway in the not too distant future.

10 And all of those projects, to the
11 extent that they're the larger projects, are going
12 to require long-term financing, and the long-term
13 financing requires this kind of security -- the
14 take-or-pay, take-and-pay kind of contracts -- for
15 our members to be able to participate and get the
16 lowest cost -- the lowest cost interest rate
17 possible.

18 Obviously, too, when you're talking
19 about, as the Chairman Preston mentioned earlier,
20 when you're talking about billions of dollars or
21 hundreds of millions of dollars in investment in
22 these projects, the interest rate that you get is
23 key to the provision of that power at the lowest --
24 lowest possible cost.

25 So we're happy that the committee is

1 hearing this bill and hopeful that it will move it
2 on for consideration by the full house.

3 I'm not going to repeat, and you have
4 copies of my testimony, so I'm not going to repeat
5 a lot of what Gary said and said very well.

6 I would say this: That the 25 percent
7 issue, if I might address a question, I think by
8 both Rep. Barbin and Godshall, the 25 percent is
9 basically a standard amount that is in these kinds
10 of contracts across the United States. These kind
11 of contracts are used by public power systems and
12 joint-action agencies across the United States to
13 finance these kind of investments.

14 And what happens is -- and where this
15 came from is called the weak-link analysis, and
16 when you go to Wall Street to try to finance this
17 and you've got eighty communities, as you may have
18 in one of our projects, and the credit analysis, if
19 you don't have a step-up, is to look at the weakest
20 credit in the entire eighty and that's is the
21 chances of default. That's how it gets rated, and
22 the interest rate goes up.

23 So to overcome that, you look at maybe
24 the top 75 percent in there, and say, okay, can
25 those 75 percent carry this? And you get a much

1 higher rating, so you're no longer at the worst of
2 the credits of all those communities, you're
3 looking at the best of the credits of those
4 communities. So it saves money.

5 To answer the further question, I
6 think, of Chairman Godshall, you do, as Gary said,
7 you have the power, you get the power as a part of
8 that. In other words, you don't just pay the
9 money, you get the power, and you can use it. And
10 what AMP does, whenever we go into one of these
11 projects, we have independent experts, and many our
12 communities have their own independent experts,
13 that look at how much they should take of each of
14 these projects.

15 As Gary said, we're for not having all
16 of your eggs in one basket, so we say, a lot of
17 projects, some asset-based, some purchases, so that
18 if something goes wrong with one of the
19 contracts -- I mean, a contract for purchase of
20 power is not without risk. You can have the nicest
21 contract in the world, and when somebody goes belly
22 up, and sometimes they do, you're stuck. And if
23 you're -- and if you're depending on that low-cost
24 power and they've gone bankrupt, you may be
25 spilling out in the market at a time when it is

1 very, very high priced.

2 So what you want to do is take little
3 pieces of lots of different projects, we say
4 different technologies as well, so get some hydros,
5 get some natural gas, get some coal, get some
6 purchases.

7 But we have our folks look at the
8 projected needs of each community, and when they do
9 that, they say, can we -- can that community
10 beneficially use the piece that we're suggesting,
11 plus can they beneficially use that piece we're
12 suggesting plus 25 percent?

13 So these communities and AMP itself
14 looks at whether or not they can beneficially use
15 all of the power they're buying plus that extra 25
16 percent into the future or we wouldn't recommend
17 that they buy it. So we try to take that into
18 account in all of these projects that we get into.

19 And, again, I would stress that each
20 community gets a determination of whether or not it
21 wants to be in each of our projects. Some projects
22 make sense for some communities, some projects
23 don't. We're happy. We work for them every day
24 and try to present them that menu that they can
25 choose one from column A, one from column B and

1 don't have to take column C.

2 So with that segue, I'll be happy to
3 answer any questions, and I stand on my testimony,
4 Mr. Chairman.

5 CHAIRMAN PRESTON: Mr. Godshall.

6 REP. GODSHALL: As a follow-up to that,
7 on the co-ops, say you have a given amount of
8 power, you don't need all the power that -- for
9 your -- for your partners in the co-op, what
10 happens to the surplus? Can that be sold on the
11 open market or --

12 MR. BENTINE: Well, today, what would
13 happen is one of our communities has excess
14 power --

15 REP. GODSHALL: I'm not talking
16 about -- I'm talking about the co-op itself.

17 MR. BENTINE: Oh, the co-op itself.

18 REP. GODSHALL: You have -- the co-op
19 is made up of so many -- you say seventy or
20 whatever it was.

21 MR. BENTINE: One hundred twenty-eight.

22 REP. GODSHALL: Okay. So you have
23 extra power. What do you do with the extra power?

24 MR. BENTINE: We sell it into the
25 market.

1 REP. GODSHALL: Into the spot market?

2 MR. BENTINE: Yes, unless we can sell
3 it for some longer period of time.

4 We -- AMP itself and its communities as
5 a whole are short of assets. Okay? Currently --
6 and that's one of the reasons that we're
7 building -- AMP's members are on the market for
8 over 60 percent of their base-load power. That's
9 where that -- some of five hundred billion dollars
10 in purchases that I mentioned comes from.

11 So one thing, as an organization, that
12 we're trying to do by building these generation
13 assets is get off this market, which as Gary's
14 testimony demonstrated, has not been -- has not
15 been a good market for somebody that's stuck on it
16 that doesn't have any alternatives, so it gets sold
17 into the market.

18 But that can happen, I would point out,
19 whether you have an asset or whether you have a
20 purchase. You can buy too much power, too. When a
21 plant moves out of your community and all of a
22 sudden you've got ten extra megawatts that they
23 were taking that you have got to get rid of, one of
24 the good things that AMP can do is help with that.
25 If a community has excess power, we will take that

1 and then market it at the highest price we can for
2 that community.

3 REP. GODSHALL: What about the
4 obligation that's created when you're purchasing --
5 the borough's purchasing these projects or part of
6 the projects, a limited part of the project, that
7 obligation then falls directly on the borough;
8 right?

9 MR. BENTINE: Well --

10 REP. GODSHALL: Who is the obligee of
11 that, you know?

12 MR. BENTINE: It's the borough electric
13 system. And I want to make it clear --

14 REP. GODSHALL: The electric
15 association is a division of the borough.

16 MR. BENTINE: Yes, but my point is
17 this: That there's no resort to the full faith and
18 credit of the community. There is no resort to tax
19 funds. The only security in these contracts is the
20 revenues of the electric system. So there is no
21 resort to taxpayer funds in any event under the
22 contracts. In fact, all our contracts specifically
23 say that there's no requirement for any tax funds
24 or the resort to full faith and credit of the
25 community in any of these contracts.

1 REP. GODSHALL: Even though the power
2 association, the power group in that municipality
3 is a division of that -- really has no entity in
4 itself, it can still assume obligations without
5 being an entity?

6 MR. BENTINE: Well, the obligation is
7 the community's obligation, but the obligation by
8 our contracts, and I -- is only to the revenues of
9 its electric system. So we couldn't -- if they
10 defaulted, if they defaulted, we couldn't go and
11 levy against the general fund because our contract
12 says that we are limited to going to the revenues
13 of their electric system.

14 REP. GODSHALL: At the same time, those
15 revenues of the electric company can be absorbed,
16 you know, by the municipality, and there could be
17 no additional revenues there to satisfy.

18 MR. BENTINE: Again, I'm not admitted
19 in PA. I know in -- two things, one, as Gary said,
20 you know, each municipal borough council has the
21 ability to decide -- decide that in each one. In
22 some of our states -- Ohio is one -- there is a --
23 would be a prohibition to doing that without going
24 to court.

25 REP. GODSHALL: And the groups that you

1 have that belong to the association, they must buy
2 their electric from you first.

3 MR. BENTINE: No. No. They have a
4 complete choice, Mr. Chairman, to buy from whoever
5 they want. One of the advantages of being a member
6 of our organization is you can pick and choose
7 whether you want a project, be in a project, as I
8 said, you can pick and choose whether you want to
9 buy power.

10 We have members that have basically
11 full requirements contracts with the local
12 investor-owned utility. They're a good member.
13 They say that having us as potential competition
14 got them a better deal. We pat them on the back
15 and say we've done our job. So we don't -- we
16 don't, in any way, attempt to make --

17 REP. GODSHALL: They're not obligated.

18 MR. BENTINE: They're not obligated to
19 buy from us, unless they sign a contract to be --
20 either to purchase power or we may have a block of
21 a hundred megawatts that we say, Okay, we got a
22 good deal on this. It's for five years. Here's
23 the price. Who wants to sign up.

24 They sign up for that, then, yes,
25 they'll be obligated to take that piece that they

1 signed up for.

2 REP. GODSHALL: They are obligated for
3 what they contract for.

4 MR. BENTINE: For what they contract
5 for, but they make the decision. So if you have a
6 load of twenty megawatts in a community and they
7 want to get two megawatts from us, fine. They can
8 take their other eighteen any place they want.

9 REP. GODSHALL: But if they don't use
10 those two megawatts or any part thereof, they have
11 to pay you for that electric.

12 MR. BENTINE: In most cases, yes. It
13 would be a take-or-pay or take-and-pay obligation.
14 If we have -- if we're just supplying them on a
15 monthly basis, which we do -- some of our
16 communities, in fact, most of them have a piece
17 that they float, that we may buy month to month,
18 and for that part of it, if they lose two megawatts
19 of loads, then we don't deliver it and they don't
20 pay for it.

21 REP. GODSHALL: Thank you. As I said
22 in the beginning, I did read the bill numerous
23 times and it's a lot in here, and it's quite a bit
24 different from what we're used to dealing with
25 regulated companies, and I -- you know, I

1 appreciate your comments and say thank you.

2 MR. BENTINE: Thank you.

3 CHAIRMAN PRESTON: Any other
4 questions?

5 There being none, thank you very much,
6 Mr. Bentine. We really appreciate that.

7 Next we have Ed Troxell, who's the
8 director of government affairs, PA State
9 Association of Boroughs.

10 Welcome, my friend. How are you doing?

11 MR. TROXELL: Good morning.

12 CHAIRMAN PRESTON: Move your microphone
13 close to you and introduce yourself for the record.

14 MR. TROXELL: Well, good morning
15 Mr. Chairman and members of the committee, Chairman
16 Godshall, Chairman Preston. And thank you so much
17 for enabling the boroughs association to come and
18 weigh in on this piece of legislation. It's been
19 before us -- can you hear?

20 REP. GODSHALL: As close as you can.
21 Yeah. Thank you.

22 MR. TROXELL: Okay. Sorry about that.
23 Anyway, thank you so much.

24 As the director for government affairs
25 department of PSAB, my job asks me to examine

1 pending legislation that may have an impact on PA's
2 nine hundred fifty-eight boroughs and to work for
3 changes to the borough code or any related law that
4 may benefit the more than 3.6 million residents who
5 live in our communities.

6 As our association will mark a hundred
7 years in 2011, the boroughs association would like
8 to remark that within that history, we've developed
9 a very well organized process to examine our
10 various public policy positions that we choose to
11 take. The process is very deliberative, and it
12 measures the quantitative impact of any type of
13 policy change that will impact our communities.

14 Therefore, this morning's issue is no
15 different, and under this, our association and
16 membership has supported the bill under Resolution
17 2010-18, which are the concepts of 168, changes to
18 the borough code in regards to contracts for the
19 purchase of electricity.

20 Most of the discussion on the Senate
21 Bill 168 currently has been on enabling a limited
22 amount of boroughs, communities, seeking to
23 participate in electric power generation projects.
24 True, this participation provides savings in energy
25 costs that are passed on to the municipal

1 consumers. However, PSAB would like to focus on
2 one of the primary reasons for supporting the
3 amendments to the borough code that we see here
4 today.

5 Simply put, Senate Bill 168 will enable
6 all boroughs to enjoy all the benefits of electric
7 deregulation without the cumbersome administrative
8 procedures currently outlined in the borough code.

9 The existing article of the borough
10 code that will be amended by 168 was drafted prior
11 to the era of electric deregulation.

12 That language served it's purpose
13 during that regulatory period. Today, it hinders
14 boroughs from seeking to save energy on costs
15 associated with street and traffic control
16 lighting, municipal buildings and facilities such
17 as pools, public works garages, lock-ups or jails,
18 and sewage treatment, just to name a few.

19 Currently, under Section 1402 (d)(4) of
20 the borough code, a borough must bid electric
21 contracts unless the company is under tariff with
22 the PUC, or public utilities commission. We've had
23 numerous boroughs complain about this hamstringing
24 them when they wish to join a consortium who can
25 offer them a cheaper price for their municipal

1 electric needs.

2 This hindrance was removed from the
3 second-class township code under Act 70 of 2000,
4 and townships today enjoy the flexibility that
5 deregulation provides to them. So one aspect is
6 we're looking for uniformity here.

7 Yet the most effective way to
8 illustrate this problem is to provide the committee
9 with evidences directed from our members, and I
10 have attached several documents in your packets, a
11 letter from Macungie Borough describing their exact
12 problem with this issue, as well as some analysis
13 from their solicitor regarding it, also excerpts
14 from the municipal codes of both the borough code
15 and the township code, townships of second class.

16 Overall, passage of Senate Bill 168
17 will not just be of benefit to the thirty-five
18 boroughs who currently provide electricity for
19 their municipalities, but it will help reduce costs
20 for all boroughs throughout the commonwealth who
21 seek to lower their energy costs, ultimately
22 reducing costs of borough operations.

23 I thank you for your consideration of
24 our concerns. I am available for any other
25 questions you might have.

1 CHAIRMAN PRESTON: Rep. Barbin.

2 REP. BARBIN: Thank you, Mr. chairman.

3 And thank you, Mr. Troxell.

4 I have a question. This indicates that
5 (d)(4) is the change that you would like to provide
6 uniformity along with the second-class township
7 code.

8 MR. TROXELL: Right.

9 REP. BARBIN: Why wasn't this
10 correction made at the same time that the township
11 code correction was made?

12 MR. TROXELL: I'd like to say I wasn't
13 on staff with the association at that point.

14 REP. BARBIN: That's a good answer.

15 MR. TROXELL: But -- however, it is one
16 oversight that -- I'd like to say that it was one
17 aspect that we are currently looking as well to
18 change other areas, but I gather -- I'm not
19 familiar with the exact history as to why our folks
20 weren't behind that.

21 REP. BARBIN: Are the other
22 provisions -- are the other townships class, are
23 they covered as well, or would they also need the
24 same type of language improvement or amendment that
25 the boroughs name?

1 MR. TROXELL: Well, I really can't
2 speak to the other codes in regard to this bill.
3 This bill will be affecting our borough code alone,
4 so I'm not familiar with how the townships have
5 gone out and purchased electricity, et cetera. I'm
6 not -- you know, the problems that they've had
7 similar to like Macungie's participating in the --
8 in the co-ops and things like that.

9 REP. BARBIN: Here's my objection.
10 Your -- your support for this bill is two-fold.
11 You want to help the thirty-five boroughs that have
12 their own electric utilities and put them on an
13 equal footing with the electric utilities in the
14 five other states that have the same sort of take-
15 and-pay or take-or-pay 25 percent bond provisions
16 that allow their financing to be the lowest. I
17 understand that.

18 And you also want to bring up to date
19 the borough's contracting authority, to make it
20 consistent or uniform with the second-class
21 township code. This issue really is about how do
22 you provide local governments with their lowest
23 ability to provide electric services to the people
24 within their borders.

25 Do you have any objection to this type

1 of provision being provided to other townships,
2 assuming their language hasn't been updated any
3 more than the borough code?

4 MR. TROXELL: I have no objection. No.

5 I think -- yeah, the old part about
6 this is that, you know, the second-class townships
7 are known for being less populated than our
8 municipalities are. And what's surprising about
9 this is the fact that our municipalities will have
10 more of a load. We actually have more residents,
11 more demands, more needs.

12 Ephrata mentioned how they provide the
13 waste water treatment, which uses extensive amounts
14 of electricity, things that our communities provide
15 the majority of that for most of the citizens in
16 the area. So the ability for us to utilize these
17 changes to the code are an excellent advantage to
18 pass on the savings to the operation of the
19 borough.

20 REP. BARBIN: And my last question
21 would be, would you have -- would the borough
22 association support a provision that would allow
23 for municipal aggregation as a additional tool to
24 lower the cost to boroughs that are not thirty-
25 five -- that are not in the thirty-five electric

1 utilities association group?

2 MR. TROXELL: We think municipal
3 aggregation is like the key to the future of saving
4 energy costs. When we look at all the energy
5 resources that are going to be coming forth in PA,
6 not to mention natural gas, not to mention solar
7 power, not to mention wind power, things like that,
8 if our municipalities, where we say 3.5 residents
9 reside within, have the ability to become flexible
10 enough to contract for these new alternative
11 energies, I think it's going to save the
12 ratepayers, the taxpayers, everyone all around.
13 It's a win-win.

14 REP. BARBIN: Have you reviewed
15 Chairman Preston's municipal aggregation bill?
16 Because I believe that would be a fitting tool to
17 include with this problem. Would you support the
18 language that's suggested in his house bill of
19 municipal aggregation?

20 I'm looking -- I've submitted an
21 amendment to this bill, which is Chairman Preston's
22 municipal aggregation bill. Would you be in
23 support of that?

24 MR. TROXELL: We would support
25 municipal aggregation. I am not sure -- I -- do I

1 want to put myself in a position of holding
2 something like this up? 168 just needs to move to
3 the full House, and we could possibly see it by
4 this session.

5 I'm not sure how time frames are going
6 to work. Should we amend it here and send it back
7 over? I can't speak to that. The association does
8 support municipal aggregation. We -- with both the
9 opt-out and opt-in versions that are placed out
10 there.

11 REP. BARBIN: Here's my problem, this
12 session is coming to a close. And it is a good
13 idea to help the Borough of Ephrata, but if the
14 issue applies to the whole commonwealth, it is not
15 an appropriate response to say, We're going to help
16 the Borough of Ephrata, but we're not going to help
17 any other community.

18 I have nine boroughs in my district
19 that all need the same help that Ephrata does, and
20 they're not going to get it under Senate Bill 168,
21 but they would get it if there was additional tools
22 for those other boroughs.

23 So I will be supporting this bill if
24 the bill includes municipal aggregation, because it
25 will help everybody, and I won't be supporting the

1 bill if it doesn't.

2 MR. TROXELL: Okay.

3 REP. BARBIN: But thank you for your
4 testimony.

5 CHAIRMAN PRESTON: And relative to
6 this, let me be clear with my legislation dealing
7 with municipal aggregation. I have every
8 intentions on hearing hearings. The bill, in
9 itself, when we first had the first hearing, it was
10 a draft.

11 Now that we put it in writing, we've
12 sat down, and there's a wide myriad of people who
13 have an awful lot of questions. I'm not going to
14 get into all of that, other than the fact that I
15 want to have the hearings so that everybody and all
16 the interested parties have a chance to vet.

17 If we get into having anything like
18 this now, then we will have to hold up this bill
19 and give everybody a chance from every association
20 or every energy group across this state that has an
21 interest in dealing with the municipal
22 aggregation.

23 There are -- for example, I'll give
24 you -- quite honestly, I have one electric company
25 in my home area, serves me, that has problems with

1 it. And there are other companies that are for
2 it. There are companies who are against this 2
3 percent. They are companies against this 2
4 percent. None of them are all agreeable about the
5 same 98 percent of the bill.

6 So I'm not going to ask you to mention
7 it, but we've had serious conversations just as
8 well in dealing with municipal aggregation, and I
9 have every intentions on trying to bring the
10 municipal aggregation bill to the floor, but I want
11 to do the two hearing first, because we haven't had
12 the full comments, and we are still getting
13 comments from different power sources and
14 associations in this state and whether or not
15 somebody's neutral or not. So I just wanted to say
16 that for the record.

17 Mr. Godshall, do you have anything?

18 REP. GODSHALL: And this is possibly an
19 unfair question, but is the main purpose behind
20 municipal electric companies, is the main purpose
21 as a revenue enhancer for the municipality, or is
22 it, the main purpose, for providing reliable
23 electric at a reasonable cost to the constituents
24 of that borough or municipality? Which is that --
25 which supersedes which?

1 MR. TROXELL: I would like to say the
2 latter. Ideally, the borough -- well, the borough
3 and its government are the people and its
4 ratepayers, so in essence, when the borough does
5 provide revenue for itself, it turns that around
6 and provides services such as police, fire. It
7 provides parks and recreation. It provides
8 services. It can lower its tax burdens. It can
9 decrease other issues that are costs for operating
10 that government.

11 So either way, I would say the latter,
12 it does save the ratepayer, the resident of the
13 borough.

14 REP. GODSHALL: But, you know, I
15 understand what you just said, but at the same
16 time, you wouldn't be in favor of legislation that
17 says that any revenue generated from the electric,
18 you know, ratepayers, you know, has to stay with
19 the electric ratepayers, and with -- you know,
20 regulating those rates and then so forth. The
21 money has to stay there in the account, in the
22 electric account, and used for the benefit of the
23 ratepayers.

24 MR. TROXELL: Yes.

25 REP. GODSHALL: Exclusively, the

1 electric rates.

2 MR. TROXELL: I would hope so. I mean,
3 it wouldn't be the purpose of the municipality or,
4 you know, the ruling body, the borough council, to
5 pass those savings over to the ratepayers.

6 REP. GODSHALL: Okay. Thank you.

7 CHAIRMAN PRESTON: Thank you very
8 much.

9 Thank you very much, Mr. Troxell.
10 Appreciate your comments.

11 Next we are going, as Senator Brubaker,
12 who sponsors the bill, comes forward, I'd like to
13 be able to add for the record that we are -- also
14 have in attendance my colleague from my home
15 county, Allegheny County, Rep. Gergely.

16 Welcome. Thank you for coming.

17 Next testifying is Senator Brubaker,
18 who is the prime sponsor of the Senate Bill 168.

19 Welcome, Senator. We're glad you came,
20 and as we like to say, we saved the best for last.
21 And you may say your testimony and any questions
22 that you so choose.

23 SEN. BRUBAKER: Thank you,
24 Mr. Chairman.

25 I'd like to start out by taking issue

1 with saving the best for last, but I concur with
2 everything else that I've heard come out of your
3 mouth today except for that.

4 It's an honor and privilege for me to
5 be here. I'm the humble prime sponsor of this
6 bill, but by no means do I call myself an expert on
7 this issue.

8 Ephrata Borough is a local government
9 within my 36th Senatorial District, and it was
10 because of Ephrata Borough that I initiated this
11 process, but not only because of Ephrata Borough,
12 as has been stated by some of your members,
13 Mr. Chairman, that this is good for at least
14 thirty-five current boroughs and expandability
15 beyond that.

16 So I have a few very brief prepared
17 comments. And one, again, I would like to say
18 thank you to the chairmen, Chairman Preston and
19 Chairman Godshall, for -- and committee members,
20 for bringing Senate Bill 168 before this committee
21 for discussion. And I can't tell you how much I do
22 appreciate this open vetting of the process.

23 This proposal broadens options for
24 boroughs to bring electric to their constituent
25 customers at affordable rates, which becomes

1 increasingly important as energy costs have risen
2 as rate caps have expired.

3 Senate Bill 168 amends the borough code
4 to enable interested PA boroughs to participate in
5 certain electric generation projects and power
6 supply arrangements to secure affordable and
7 reliable energy for their consumers.

8 Specifically, this bill authorizes that
9 a borough is that is a member of a not-for-profit
10 membership organization to contract through take-
11 or-pay or take-and-pay contracts. It not
12 prohibited under current law and remains 100
13 percent voluntary. So boroughs would enter into
14 this on a voluntary basis.

15 Language was developed in consultation
16 with PA Municipal Electric Association, PA
17 Association of Boroughs, Ephrata Borough, Berlin
18 Borough, on behalf of the borough who would like to
19 take advantage of such energy procurement
20 opportunities and supported by AMP Ohio, the
21 non-profit corporation which Ephrata Borough would
22 like to contract. And all those individuals I just
23 mentioned, entities, are all in support of Senate
24 Bill 168.

25 So it's a privilege for me to be here.

1 If there's any technical questions of me then I --
2 with your permission, I'd like for the experts
3 sitting in back of me to be able to answer as well.

4 CHAIRMAN PRESTON: Thank you. And what
5 I would like to do, I meant to before I introduced
6 the Senator, I have been asked and I'd like to be
7 able to read for the record, which you have a copy
8 of, of two correspondence, one is dated August the
9 2nd. It is from the PA Municipal Electric
10 Association.

11 They give me an example of PMEA is the
12 trade association representing the boroughs of PA
13 which own and operate the electric distribution
14 systems.

15 (Reading) Dear Chairman Preston, as
16 president of the municipal electric association,
17 I am writing to express our organization's support
18 for Senate Bill 168, printer's number 1376, which
19 was unanimously passed in the Senate and recently
20 referred to the House Consumer Affairs Committee.
21 Thank you for your invitation to testify before the
22 House Consumer Affairs Committee at the upcoming
23 public hearing on Senate Bill 168 Unfortunately, I
24 am unable to attend, and so I am submitting this
25 letter for the record.

1 PMEA originally opposed this
2 legislation, which was sponsored by Senator Mike
3 Brubaker, because of several objections to the
4 original bill which we believed would expose our
5 member boroughs' citizens to higher electric rates.
6 PMEA, likewise, opposed the House version of this
7 legislation, House Bill 1229, for the same
8 reasons.

9 However, working with Senator Brubaker
10 and the proponents of 168, we arrived at a
11 carefully crafted compromise language which
12 accommodated each of our original concerns and
13 which was added to Senate Bill 168 in the Senate
14 Appropriations Committee. With those changes, we
15 determined that the current -- that the version --
16 that the new version of Senate Bill 168 contains
17 sufficient consumer protection, and PMEA supported
18 168 when it reached the full Senate.

19 Therefore, PMEA now supports the
20 current version of the bill. Accordingly, we would
21 request early consideration and action on Senate
22 Bill 168 by the House Consumer Affairs Committee.

23 You and other interested parties may
24 feel free to contact me or our counsel (reading
25 concluded).

1 And this is from Donald Pepe, who's
2 president of PMEA, and also borough manager of
3 Zelienople, PA.

4 SEN. BRUBAKER: Mr. Chairman, may
5 I comment on that?

6 I'm thrilled that you read that memo.
7 I hope it goes to every member's comprehension that
8 significant amount of work and compromise has gone
9 into this. There's been a lot of reach-out. And
10 as a result of that, of course, you would expect me
11 to ask -- I think would you expect me to ask, it
12 would be my respectful request that 168 ultimately
13 be reported out, unamended, so that we can advance
14 this, and then we can also work immediately on
15 other very important -- other utility issues that
16 would help to solve a lot of other local government
17 issues as well.

18 CHAIRMAN PRESTON: Also Electric Power
19 Generation Association also submitted.

20 (Reading) Thank you for the invitation
21 to testify before the Consumer Affairs Committee
22 concerning Senate Bill 168. The Electric Power
23 Generation Association has an interest in
24 legislation that is intended to provide municipal
25 governments additional authority to provide

1 electric service to their residents and appreciates
2 the opportunity to provide its comments on the
3 bill.

4 Let me begin by saying that the goal of
5 providing customers with the best possible electric
6 price is laudable. Indeed, this is precisely why
7 EPGA strongly advocates for competitive electric
8 markets and competitively procured electricity.

9 With that in mind, there are several
10 components of Senate Bill 168 that EPGA would like
11 to refer to now that would like to address.

12 The first component relates to
13 municipal government's ability to purchase
14 electricity through a non-profit membership
15 corporation or other authorized bulk power
16 purchasing pool. This concept, often referred to
17 as aggregation, provides a unique opportunity to
18 provide local governments to combine their
19 individual electric needs with those of other
20 municipalities to obtain greater bargaining power
21 for the customers.

22 Aggregation can be an effective tool in
23 allowing municipal electric systems to negotiate
24 competitive and stable prices for their membership.

25 EPGA generally supports the concept of

1 aggregation and notes that individual
2 municipalities, working alone and with other
3 municipalities, are already using the competitive
4 markets to achieve savings.

5 Recently, ten entities, including the
6 City of Pittsburgh, saved a combined 1.03 million
7 over three years on electricity costs by pooling
8 their use and seeking bids from competitive
9 suppliers. This aggregation component of Senate
10 Bill 168 is an extension of this idea.

11 EPGA believes that municipalities which
12 distribute electricity can, much like the City of
13 Pittsburgh, seek competitive offers from electric
14 suppliers and retailers.

15 An additional component of Senate Bill
16 168 would allow municipal government, through
17 non-profit membership corporations, to contract for
18 the development, operation, and transmission of
19 electric generation facilities on a long-term
20 basis.

21 EPGA encourages the committee to
22 strongly consider the potential pitfalls of this
23 particular section of the bill.

24 Essentially, a government entity would
25 be authorized to enter into long-term power

1 purchase agreements to facilitate the financing of
2 new electric generation, enter into power purchase
3 agreements with existing power plants, acquire
4 ownership interest in existing or new power
5 facilities, and distribute the power supply at cost
6 among the other entities. This is more likely to
7 raise costs for the entities' customers, not lower
8 them.

9 The risks associated with the
10 exorbitant costs of generation construction,
11 operation and maintenance, and environmental
12 compliance are best borne by private investor and
13 not captive customers.

14 As you may recall, shifting those risks
15 was a primary reason the commonwealth restructured
16 the electric industry in 1997. The commonwealth
17 rejected ratepayer-subsidized generation in favor
18 of competition, knowing that it would shift risk to
19 investors, increase inefficiencies, and put
20 downward pressures on prices, which it has.

21 Today, PA electric prices are well
22 below the national average and are far below the
23 1997 rates on an inflation-adjusted basis.

24 The same concept applies to this
25 legislation, creating a government agency,

1 municipal cooperative, or non-profit membership
2 cooperation to engage in the business of electric
3 generation will not lower the cost of electricity
4 since no power producer can avoid the dominant cost
5 drivers of generating electricity: fuel,
6 environmental compliance, and construction costs.

7 In fact, the only guaranteed result of
8 government-owned and -operated power plants will be
9 that taxpayers and customers will bear the risks
10 for running electric generation units, including
11 investment decisions by elected official or their
12 appointees.

13 Under this proposal, the costs of
14 construction, maintenance, outages, and regulatory
15 compliance will fall squarely on local taxpayers.
16 Indeed, the danger of having a political
17 bureaucracy in the middle of building, owning, and
18 operating generation plants is well illustrated by
19 the financial problems that some local governments
20 currently face as a result of historical forays
21 into the energy, utility business.

22 Today, Harrisburg City teeters on the
23 verge of bankruptcy as a result of its investments
24 in an electric generation project that was supposed
25 to make the city money by converting trash to a

1 form of cheap energy. Philadelphia has recently
2 faced financial difficulties operating the
3 Philadelphia Gas Works, often seeking the support
4 of the commonwealth to bail out this perennially
5 troubled municipal utility.

6 History has shown us that the
7 government cannot generate electricity at a lower
8 cost than can be produced in a competitive market
9 where each and every electric generator must
10 compete for market share based on a least-cost
11 dispatch system.

12 Finally, Senate Bill 168 would allow
13 for municipalities to enter into contracts with
14 municipal electric cooperatives or other authorized
15 consortium without having to advertise, bid, or
16 price quote. While provisions are included that
17 would allow borough council to advertise, bid, or
18 price quote, if the council determines that the
19 advertising, bidding, or price quotations are in
20 the public interest, the explicit exemption raises
21 concerns, particularly that in contrast to the
22 competitive procurement requirements that exist for
23 electric distribution companies.

24 In fact, the legislation should
25 specifically require municipalities to

1 competitively bid all contracts for electricity to
2 assure consumers are getting the most competitively
3 priced product, which is the underlying intent of
4 this legislation.

5 In closing, municipal governments that
6 provide electric service to their residents can be
7 beneficiaries of the wholesale competitive markets,
8 and with tools such as aggregation, they can
9 increase their ability to leverage more competitive
10 opportunities. However, allowing local governments
11 to build, own, and operate electric generation
12 facilities would imprudently shift the risks of
13 electric generation to captive taxpayers.

14 On behalf of the Electric Power
15 Generation Association, whose members own and
16 operate approximately one hundred thirty thousand
17 megawatts of electricity generation capacity in the
18 United State and employ over nineteen thousand
19 Pennsylvanians, I want to thank you for your time
20 and consideration of our views (reading
21 concluded).

22 I wanted to read those because I was
23 asked by members of the committee to read both
24 letters, and so I did, into the record.

25 That being said, do you have any

1 comments, additionally, on that letter? And then
2 I'll ask members for questions.

3 SEN. BRUBAKER: Thank you,
4 Mr. Chairman. I would like to make a comment, if I
5 may, on that letter.

6 I appreciate also you reading that
7 letter. That was from the Electric Procurement
8 Generation Association?

9 CHAIRMAN PRESTON: Electric Power
10 Generation.

11 SEN. BRUBAKER: Power.

12 Within my comprehension of that letter,
13 I heard that they support aggregation, this
14 aggregation bill, so they support aggregation
15 themselves but not certain other components of the
16 marketplace is what it sounds like to me. It's
17 interesting.

18 They said they support the best deal
19 possible to provide electric services, and I think
20 that's exactly what we're attempting to do.

21 They also went on in that letter, when
22 I could comprehend that letter, to identify some of
23 the worst of the thousands or tens of thousands of
24 examples that are out there within the state of PA
25 and the United States. They attempted to find

1 worst-case scenarios to compare this issue to.

2 I don't know about the rest of the
3 members of this committee, but I generally don't
4 attempt to compare, find the worse possible example
5 and compare myself to that. What we try to do, I
6 hope, is find the best possible examples and
7 compare ourselves to that. We have to sell a lot.

8 So I have some issues, obviously, some
9 disagreements with the basis of that letter. We're
10 simply looking to give flexibility to local
11 governments so that they could pass on appropriate
12 savings.

13 And I guess my final comment would be,
14 I would assume that the Electric Power Generation
15 Association would take a similar perspective to
16 local governments owning waste water treatment
17 facilities. It's a capital investment. It's a
18 long-term capital investment, thirty-plus years,
19 totally owned by local governments to provide
20 services to their constituency.

21 I'm failing to understand the
22 significant difference. I understand there's a
23 difference. I know the difference between a sewage
24 treatment plant and electricity procurement, but I
25 believe that there's an analogy, and I think that

1 that letter that was just read fails to see the
2 analogy.

3 So local governments are currently --
4 and even investing and reinvesting in local
5 sewage -- significant capital projects in local
6 sewer plants because they need to. So I would
7 imagine the author of that letter then would
8 support no longer local governments doing that but
9 only private sector companies coming in and
10 providing sewer treatment plant.

11 I would imagine they would argue that
12 there's no way a local government could operate a
13 local sewage treatment plant at a cost equal or
14 less than the private sector, so why not abandon
15 all municipally owned sewage treatment plants. I
16 don't think anybody's advocating that.

17 But I can't imagine they could take
18 that position and not take a position to disband
19 all publicly owned sewage treatment facilities and
20 then go to totally private sector because it would
21 be their position that only the private sector
22 could provide that more cost effectively.

23 Thank you, Mr. Chairman.

24 CHAIRMAN PRESTON: And I don't want to
25 comment that much on the letter other than the fact

1 that we've all been paying attention to what's
2 happened -- there's a long history somewhat, having
3 been here for a while -- with the Harrisburg issue
4 as they try to effectively work that out.

5 And I'd also like to be able to say
6 that the comments go with the -- go with the gas
7 works. When you look at the fact that they -- the
8 state got involved with it and this committee has
9 been involved with it. For the first time, the
10 bond rating improved just recently in valuation.
11 They've been solidified. There's still a lot more
12 work that we have to be able to do.

13 They've increased their issue as far as
14 their -- their debt ratio is working to improve.
15 And they've made some very dramatic strides in the
16 last eighteen months. So we continue to work with
17 that just as well.

18 Also relative to the issue of dealing
19 with the bill of aggregation as compared to dealing
20 with the bill with Ephrata transition association,
21 there's another one and the reason why I want to
22 deal with the whole concept, not that I have put it
23 in writing, and everybody's had a chance to really
24 vet it, being able to vet the issue of municipal
25 aggregation separately this term from your bill

1 just as well.

2 Rep. Beyer.

3 REP. BEYER: Thank you, Mr. Chairman.
4 Senator, I'm -- did you not see this
5 Electric Power Generation letter before you gave
6 testimony?

7 SEN. BRUBAKER: I probably did. I
8 don't have it within my memory, but I probably
9 did.

10 CHAIRMAN PRESTON: To locate it, the
11 letter's dated -- I'm sorry, I didn't read the
12 date -- it's dated August 10th, which was
13 yesterday.

14 SEN. BRUBAKER: Okay. I'd like to
15 change my answer then. If the letter was authored
16 that currently, then I'm sure I didn't read it
17 because then I would have remembered it.

18 REP. BEYER: I just wanted to tell you
19 quickly that I like your bill, and so I look
20 forward to supporting it, especially since Macungie
21 is very close to my district.

22 So I just wanted to ask you very
23 quickly, in boiling it all down, you said
24 flexibility, this bill offers flexibility and pass-
25 on savings, so how much do you anticipate the

1 constituencies would save if this bill is enacted?
2 Do you have any idea?

3 SEN. BRUBAKER: A great question. I
4 don't have a quantified answer for that. But I
5 would expect, because of the compromise and
6 modification that's being made, these contracts can
7 only be executed after a great deal of thoughtful
8 discussion and dialogue. There's been effort made
9 to ensure -- it's like any long-term relationship
10 contract, there's some level of market risk. But
11 in exchange for market risk, there's an up-side to
12 the -- to your economy of providing that service.
13 And that's what some local governments are looking
14 to do.

15 So they will only do it through
16 thoughtful analysis. In the end, they would have
17 some kind of concept of savings before they went
18 ahead and executed that. They'd have to do it in
19 specialty market. It'd be an investment then.

20 REP. BEYER: Thank you. Thank you,
21 Senator.

22 Thank you, Mr. Chairman.

23 CHAIRMAN PRESTON: Rep. Kauffman.

24 REP. KAUFFMAN: Yes. I wanted to thank
25 the maker of the bill for being here today and also

1 the chairman for considering this bill by having
2 this hearing.

3 I am one of the legislators who has a
4 municipality who I believe would benefit from this
5 legislation. The Borough of Chambersburg has
6 operated very well and has actually electric
7 generation capacity, and the borough, its
8 residents, have realized significant financial
9 benefit from what they do in the borough.

10 And this legislation, my hope would be,
11 would only benefit them additionally. The eighteen
12 thousand residents of the Borough of Chambersburg
13 have found the borough a great place to live, in
14 part, because of the low cost of utilities and the
15 services that the borough provides, under proper
16 management.

17 You know, comparing this kind of thing
18 to the City of Harrisburg is a bit odd to me, you
19 know. The Chambersburg Borough and the Borough of
20 Harrisburg are polar opposites: one's poorly
21 managed, one's very well managed.

22 And the Borough of Chambersburg has
23 done well in this process, and so I am supportive
24 of this idea and thank the Senator for bringing
25 this bill forward and certainly would encourage

1 Chairman Preston to consider this legislation for
2 the benefit of our residents who have already seen
3 great financial gains from this process in our
4 municipalities.

5 Thank you.

6 CHAIRMAN PRESTON: Thank you.

7 Chairman Godshall.

8 REP. GODSHALL: Some of the questions I
9 have, and I said before you got here, I went
10 through the bill a couple times and didn't
11 understand exactly what I was going through.

12 And some of the questions I had, you
13 know, were covered, but, you know, what was in the
14 Electric Power Generation Association letter were a
15 number of the points which I haven't seen until I
16 got here, were some that I brought out earlier.
17 And one of my main concerns, I guess, was when we
18 did the deregulation back ten, eleven years ago, we
19 were taking the burden off of the burden of
20 building facilities and guaranteeing the facilities
21 and operating the facilities away from the
22 ratepayers hands and putting them in stockholders
23 of the companies and taking that obligation. And
24 we're putting that, you know, back here again.

25 And I guess one of the things that I

1 looked at, and I looked at the Senate version of
2 the appropriations, what your Appropriations
3 Committee put out, and where it said that about the
4 25 percent obligation, and, you know, I do have a
5 couple municipalities also, and, you know, I guess
6 I am concerned.

7 If there's a surcharge notice on there
8 that we're increasing your electric this month by
9 so many dollars because somebody in Ohio or
10 Maryland defaulted, you know, and this falls right
11 back on my electric, you know, people. And I do
12 have a drawer for complaints and now I can't
13 imagine what would happen, you know, with the
14 public when -- if that notice would ever be printed
15 on a bill that "we're charging you more because a
16 default some place in another state."

17 You know, I -- I did vote for the --
18 and work with Chick Tulli, Rep. Tulli, on the
19 deregs and so forth. And I am not convinced that
20 that isn't the right way to go. I just -- here
21 we're putting back again. The ratepayers are going
22 to be the owners of plants and the owners of
23 obligations, you know.

24 SEN. BRUBAKER: Thank you,
25 Mr. Chairman.

1 I don't think the action from this
2 committee and/or from the House general floor does
3 change the obligation. It simply provides local
4 government the opportunity to do that. And so,
5 therefore, then the local government would need to
6 be in that position. Ultimately, they'd have to do
7 a public vote. But that would only come after
8 thoughtful study.

9 My personal perspective is that, A,
10 that I trust the local government officials to be
11 thoughtful, intelligent before they enter a long-
12 term contract.

13 We talk about default. I would -- then
14 I would ask the experts sitting to my rear to talk
15 about default mechanisms, to make sure that should
16 that occur, what kind of default mechanisms can be
17 put in place to ensure the rate. Our request of
18 the constituency is not damaged, but I think there
19 are mechanisms that could alleviate and/or
20 potentially eliminate that.

21 REP. GODSHALL: And another concern
22 that I did have and I expressed was the fact of,
23 you know, how far out can a municipality, one of
24 yours or one of mine, go? And I do remember when
25 the Harrisburg Municipal Authority here, which

1 almost bankrupted the city, was building golf
2 courses up in the Poconos.

3 It's how far are we going to -- you
4 know, can we go out with the electric, you know,
5 and when -- if there's no regulation on -- no
6 regulation here at all? And, as I mentioned, if I
7 have a municipality that picks off, say, a major
8 corporation, like Merck Sharp and Dohme, which is
9 right down in my area, and we're going to give you
10 energy for two or three cents a kilowatt, but if
11 that's going to be subsidized by the rest of the
12 people living in that municipality to get that low
13 rate, so you have some empire builders.

14 You know, I really think there's got to
15 be some regulation some place along the line about
16 what you can do and can't do. I really do and very
17 sincerely I do.

18 SEN. BRUBAKER: Mr. Chairman, I agree
19 with your statement. And I believe that there --
20 that this is -- this is not a piece of regulation
21 that, if successful, makes the entire utility
22 regulation free. I would argue that it does not
23 make it regulation free. There's rules by which a
24 local government would need to follow and protect
25 its ratepayers within this legislation. So there's

1 currently regulation within.

2 And then I would go back to my other
3 example again of -- of course, this is not the golf
4 course expansion bill, so there's no golf course in
5 this bill by your example. So it's utilities. And
6 we have local governments currently within the
7 commonwealth of PA that already engaged in this
8 kind of activity. And I would classify it as a
9 slight modification of the manner in which existing
10 municipalities that are engaged in this practice
11 can continue to modify how they do their business
12 to try to pass -- attract and pass on savings to
13 the ratepayers, our mutual constituency.

14 REP. GODSHALL: You don't think we're
15 going to have anybody out there to compete with PPL
16 to sell electric and -- or PECO?

17 SEN. BRUBAKER: I think -- sir, I think
18 we have that now. So, therefore, are you -- is
19 your position that we should not have competition?

20 REP. GODSHALL: Okay. I'm going to
21 look at this. You know, we had a lot of testimony
22 here that I want to go over, and I appreciate, you
23 know, your coming out.

24 SEN. BRUBAKER: Mr. Chairman, as you
25 well know, I have a lot of respect for you, and

1 clearly you have studied this thoroughly, so I
2 stand at your call for a meeting, anytime at all,
3 for you and I to personally discuss this further.

4 REP. GODSHALL: Thank you, sir.

5 CHAIRMAN PRESTON: Any others?

6 Rep. Barbin.

7 REP. BARBIN: Thank you, Mr. Chairman.

8 And thank you, Senator.

9 I applaud you for this bill. It is
10 very easy, in the current situation, to decide not
11 to become involved in an issue that is so
12 potentially divisive because the effect on
13 residential ratepayers.

14 Bottom line is, your bill does help
15 Ephrata. It does provide additional authority to
16 boroughs that other townships have.

17 My only objection to the bill is the
18 fact that currently there are forty-seven bills
19 that have passed in the House that have been voted
20 in the Senate. There are a hundred fifty-seven
21 bills that have passed the House that have not been
22 voted on in the Senate.

23 There is no current law or
24 constitutional provision that provides if the
25 member of -- if a bill from the body of the full

1 House or the full Senate is passed, that it must be
2 voted on before the session ends.

3 So I say to you this: Your bill is a
4 very good attempt to do some good for ratepayers.
5 And it should be looked at very closely because it
6 does do good as opposed to just criticize.

7 On the other hand, there are a lot of
8 people that won't be helped by this bill, and there
9 is no good reason, other than process itself, for
10 not having a vote on municipality aggregation.
11 Unfortunately, if your bill comes to the floor of
12 the House, an amendment to your bill may be the
13 only way for municipal aggregation to be voted on
14 within this session. And for that reason, I'm
15 going to go forward with my amendment, which is
16 Chairman Preston's bill, as an amendment, not
17 because I think there's anything wrong with your
18 bill but because if I don't do it that way, this --
19 that issue which affects everybody in the
20 commonwealth of Pennsylvania, may not be voted on
21 before we adjourn.

22 But thank you for all the work you've
23 done on the bill.

24 SEN. BRUBAKER: May I comment?

25 Thank you. I understand and respect

1 your point of view completely. So two different
2 perspectives. One, and I think you accurately
3 stated -- I can't recite the bills, one of them is
4 one hundred fifty-seven bills and the other was
5 forty-something. I won't question whether those
6 numbers are accurate or not. I believe them to be
7 accurate, I just don't have those numbers in front
8 of me. So I think your argument is powerful.

9 So now the question is -- and each
10 member has to decide for themselves -- do we
11 attempt -- you said you support the bill but it
12 doesn't go far enough, and there's other bills that
13 would be parallel and/or complementary and/or
14 amendment that potentially would make it better,
15 and that's what we're wrestling with.

16 So do we take what you call a good
17 bill, pass it unamended, in the hopes that it might
18 be a part of a log-jam release? Or do -- you made
19 up your mind; I respect that. Or do we say, no.
20 If there's log jam there, there's going to be a log
21 jam here, and we're going to do -- we are going
22 to -- we're not going to move one, we're going to
23 combine. And so every member has to make up your
24 mind individually for that.

25 Me, personally, I understand that this

1 occupation that we're all involved in, we don't --
2 unfortunately, we don't all get everything we
3 want. So, occasionally, I will support something
4 that goes part way there believing that I can build
5 out along the way to get this larger good as a
6 result. So I respect your point of view very much.

7 CHAIRMAN PRESTON: Thank you very much
8 for your comments.

9 And I know how he feels, and I know how
10 you feel, so I would like to just get a little
11 piece of something that I want just as well, that's
12 the history of our body of politics, but I look
13 forward to having discussion and trying to work out
14 what we can on this bill, Senator.

15 I want to thank you very much for
16 coming.

17 I want to thank the members for -- in
18 attendance, as we continue to work with the issue
19 of infrastructure and serving our customers with
20 effective costs when dealing with consumption as
21 far as utilities are concerned. We are
22 continuously working. For the next four weeks, I
23 think we're going to be extremely busy with some of
24 these tough decisions.

25 That being said, unless there's further

1 questions -- Chairman?

2 SEN. BRUBAKER: Yes. I just want to
3 say thank you to both chairs and to your entire
4 committee. It's really -- I'm very impressed with
5 your committee. It's really clear that there's
6 been a lot of research on the end of both chairs as
7 well as each rank and file -- each member. And I
8 just appreciate the fact that you're taking this so
9 seriously.

10 You've given us a real fair hearing,
11 and I really do appreciate that.

12 CHAIRMAN PRESTON: Thanks very much,
13 and tell your friends in the higher house that we
14 appreciate your comments and we respect them and we
15 hope that they continue to show us the same respect
16 for those of us who are in the lower house.

17 That being said, we are adjourned.

18 (Whereupon, the hearing concluded at
19 11:17 a.m.)

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REPORTER'S CERTIFICATE

I HEREBY CERTIFY that I was present upon the hearing of the above-entitled matter and there reported stenographically the proceedings had and the testimony produced; and I further certify that the foregoing is a true and correct transcript of my said stenographic notes.

BRENDA J. PARDUN, RPR
Court Reporter
Notary Public