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COMMONWEALTH OF PENNSYLVANIA  
HOUSE OF REPRESENTATIVES  
CONSUMER AFFAIRS COMMITTEE

CITY HALL  
CONFERENCE ROOM  
BETHLEHEM, PENNSYLVANIA

HOUSE BILL 2619  
PUBLIC HEARING  
MUNICIPAL AGGREGATION

THURSDAY, SEPTEMBER 9, 2010  
9:39 A.M.

BEFORE:

HONORABLE JOSEPH PRESTON, JR., MAJORITY CHAIR  
HONORABLE JOSEPH F. BRENNAN  
HONORABLE ROBERT W. GODSHALL, MINORITY CHAIR  
HONORABLE KAREN D. BEYER  
HONORABLE BRIAN L. ELLIS  
HONORABLE DOUGLAS G. REICHLEY

ALSO PRESENT:

HONORABLE JOHN R. EVANS  
HONORABLE RICHARD R. STEVENSON

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1 ALSO PRESENT: (cont'd)

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3 ELIZABETH A. ROSENTEL, RESEARCH ANALYST (D)  
4 MARCI SANTORO, COMMITTEE LEGISLATIVE ASSISTANT (D)  
5 COLIN FITZSIMMONS, EXECUTIVE DIRECTOR (R)  
6 AMANDA RUMSEY, COUNSEL (R)

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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 having come and gone by, I'd like to be able to call the meeting together for the Consumer Affairs Committee. We're here in the thriving metropolis Bethlehem -- Bethlehem, and for the purpose of the hearing as we deal with the municipal aggregation issue.

I'd like to start to my right, to the audience's left, and have the members introduce themselves and the counties they represent.

REP. BEYER: Good morning. Rep. Karen Beyer, Lehigh, Northampton Counties.

REP. GODSHALL: Bob Godshall, Montgomery County. And I do owe a vote of thanks to Ralph Carp, your parks and public property director for Bethlehem, who led me in here when he found me out on the highway.

REP. BRENNAN: Good morning. Rep. Joe Brennan, 133 District, Lehigh, Northampton County.

I'd like to thank Chairman Preston for holding this hearing today in almost my district. We are in Rep. Samuelson's district. And I'd like to thank Bob Donchez, president of city council,

1 and the mayor of Bethlehem, John Callahan, for  
2 allowing us this beautiful venue.

3 REP. ELLIS: Good morning. I'm Brian  
4 Ellis. I represent the 11th District in Butler  
5 County.

6 REP. STEVENSON: Good morning. Rep.  
7 Dick Stevenson, the 8th District, Mercer and Butler  
8 Counties.

9 CHAIRMAN PRESTON: This, in a sense, is  
10 the second hearing that we've had concerning the  
11 bill, municipal aggregation. Last week we were in  
12 the Cambria County area. And this is a concept  
13 of -- I've tried to broach. We've sat down, we've  
14 had meetings with local elected officials, one on  
15 one, without industry present, having -- going over  
16 the definitions and nomenclature and dealing with  
17 the municipal aggregation with business.

18 We've also sat down over the last  
19 couple of years, last year and a half, almost two  
20 years, of going down almost every source of energy  
21 manners that we have. I think that this is a way  
22 to be able to help the big guy and the little  
23 person on equal ground.

24 One of the concepts that was brought to  
25 me, and I'd like to be able to say this, as I said

1 at the hearing we had yesterday, this is not an  
2 idea of Joe Preston. This is an idea by a group of  
3 other people, and as I also said yesterday, if you  
4 hear a politician say this was their idea, run from  
5 them because they're lying. We are too busy, and  
6 the ideas should come from individuals, people, and  
7 as entities, people put forth their ideas so that  
8 we can have an honest, robust discussion. I'd like  
9 to be able to keep it that way.

10 Mr. Chairman, do you have any  
11 comments?

12 REPRESENTATIVE GODSHALL: No comments.  
13 Thank you.

14 CHAIRMAN PRESTON: The first person to  
15 present is Richard Hudson, director of regulatory  
16 and legislative affairs, ConEdison Solutions.

17 MR. HUDSON: Good morning. Is this  
18 on?

19 Thanks. Good morning. My name is  
20 Richie Hudson. I'm the director of regulatory and  
21 legislative affairs for ConEdison Solutions.

22 First, a little bit about my company.  
23 ConEd Solutions is a competitive retail electricity  
24 provider serving all types of customers --  
25 residential customers, small business customers,

1 and large business, and institutional customers --  
2 in states like PA that have enacted retail choice.

3 We operate in twelve other states and  
4 the District of Columbia. We've had a very  
5 successful market entry here in PA in the PPL  
6 service territory, and we're serving several  
7 thousand residential customers in PPL.

8 We're also a well diversified energy  
9 company. We have a vibrant energy efficiency  
10 performance contracting unit, and we're also  
11 heavily involved in green and renewable energy,  
12 particularly with the focus on solar energy  
13 investment.

14 I also have a role with our trade  
15 association, known as RESA, which is the Retail  
16 Energy Supply Association, which is a broad and  
17 diverse group of competitive providers similar to  
18 ConEdison Solutions.

19 Just to be clear, my testimony today is  
20 on behalf of ConEd Solutions, but I have been  
21 authorized by RESA to state that the trade  
22 association shares many of the sentiments and  
23 concerns that I'll be discussing today about House  
24 Bill 2619.

25 In my previous testimony on this issue

1 earlier this year and last week, I've made clear  
2 that my company supports opt-out municipal  
3 aggregation in concept as a way to promote the  
4 development of the retail market here in PA and  
5 overcome the status quo bias that currently exists  
6 in favor of utility-provided default service.

7           However, today I want to focus my  
8 remarks on one major concern that we have with  
9 House Bill 2619 as it is currently drafted. Under  
10 opt-out aggregation, as you know, city officials  
11 would negotiate a contract with an electricity  
12 provider and the city's residents, and under this  
13 bill, small businesses would be automatically  
14 enrolled with that supplier, under the terms and  
15 conditions negotiated by city officials.

16           Customers would be provided with the  
17 terms and conditions and they would be given a  
18 written notice, such as thirty days with a period  
19 of time to call or send in a postcard to opt-out of  
20 being enrolled in the opt-out aggregation program.

21           However, under this bill, if a customer  
22 fails to respond in that time line, thirty days,  
23 the supplier is allowed to lock the customer into a  
24 contract that he or she never affirmatively agreed  
25 to, and I think that's important point. The



1 customer could be locked into this contract for an  
2 indefinite period of time, and the supplier would  
3 be permitted to impose early termination fees and  
4 other owner-switching restriction on the customer  
5 if they should decide at a later point in time to  
6 take service from another competitive provider.

7 We believe it's fundamentally  
8 inappropriate to lock customers into a contract  
9 with onerous switching fees and other types of  
10 penalties when they never affirmatively agreed to  
11 that contract in the first place. And we would  
12 urge this committee to adopt the amendatory  
13 language that we're putting forward that would  
14 specify that any opt-out aggravation program would  
15 not permit a supplier to impose the types of  
16 switching fees and other types of restrictions.

17 I'd like to give you an anecdote.  
18 Consider this following scenario: A customer  
19 decides they want to enroll with a cell phone  
20 service provider. They decide they want to enroll  
21 with Verizon, and they don't want to be subject to  
22 a contract, so they pay for their phone out of  
23 pocket. And then six months later they see a great  
24 advertisement from T-Mobile for the brand-new  
25 iPhone and for a contract that would allow them to

1 save about 20 percent off of their cell phone  
2 service. So they call the T-Mobile and say, Sign  
3 me up. But the T-Mobile representative tells them,  
4 I'm sorry but we can't enroll you because you're  
5 locked into a contract with Verizon, and you could  
6 be subject to a significant fees if you were to  
7 switch with us at this time.

8 So, confused, you call Verizon and try  
9 to find out what's going on, and the Verizon  
10 representative tells you that you were sent a  
11 notice in your bill about two months ago that told  
12 you about the terms and conditions of an opt-out  
13 cell phone aggregation program and you were locked  
14 in to a contract with Verizon for three years  
15 because you failed to respond within the specified  
16 time period.

17 Of course, you're free to switch and go  
18 to T-Mobile if you're willing to pay Verizon a  
19 hundred fifty dollar fee. Of course you're going  
20 to be outraged, and that's exactly what can happen  
21 under this bill without the amendatory language  
22 that we are recommending.

23 The 1996 Electric Choice and  
24 Competition Act was designed, as its name implies,  
25 to empower customers of choice. And you'll hear

1 from others today that this bill will not harm  
2 customers and that it will, in fact, enhance  
3 competition. But make no mistake, as currently  
4 drafted, this bill robs customers of choices that  
5 they have today and it will stifle competition by  
6 allowing one or two dominant suppliers to lock  
7 customers in to a contract under this type of  
8 municipal aggregation program.

9           If this does indeed happen, these  
10 suppliers will not enter the market because all of  
11 the customers are going to be captive under the  
12 aggregation program.

13           PA currently has the beginnings of a  
14 vibrant competitive market. There are twelve  
15 suppliers competing for service in the PPL service  
16 territory today, and the question to ask yourself  
17 is whether you want this type of vibrant  
18 competition all across PA or whether you want  
19 effectively an unregulated monopoly providing  
20 service.

21           Finally, I'd like to say that it is not  
22 necessary to lock customers into this type of  
23 contract with these types of fees and switching  
24 restrictions in order to have a successful  
25 aggregation program. The value of opt-out

1 aggregation comes from the initial economies of  
2 scale and scope that are present when you enroll a  
3 large group of customers all at once and can avoid  
4 the marketing and other customer acquisition costs  
5 involved with picking up customers one by one.

6           You can achieve these benefits under an  
7 opt-out aggregation program that preserves the  
8 types of choices and options customers have today,  
9 and, in fact, ConEdison Solutions, the company that  
10 I represent, is a supplier to just such a program  
11 in Massachusetts called the Cape Light Compact, and  
12 under this program, a group of about a hundred  
13 sixty thousand customers have seen millions of  
14 dollars in savings since we began serving the  
15 program in 2005, and we've been able to provide  
16 very competitive pricing and significant benefits  
17 to customers without having to resort to the types  
18 of onerous switching fees and other restrictions  
19 that I've discussed.

20           So, in sum, I'd like to thank you for  
21 the opportunity to be here today, and I'm very  
22 happy to answer any of your questions.

23           CHAIRMAN PRESTON: Questions?

24           Representative Ellis.

25           REP. ELLIS: Thank you very much

1 Mr. Chairman.

2 Thank you, Richie, for coming today.

3 Just real quick, you brought up the --  
4 your concern with the aggregation prior being able  
5 to lock customers in and impose exit and  
6 termination fees. What would you suggest as an  
7 alternative to that?

8 MR. HUDSON: What I am suggesting is  
9 that the opt-out municipal aggregation program be  
10 structured just as utility default service is  
11 today. So, today, if you're a PPL customer, PPL  
12 will go out and procure energy on your behalf under  
13 what's known as default service, under a  
14 procurement plan that's regulated by the Public  
15 Utility Commission, and you're free to leave that  
16 default service without restriction or penalty.

17 So I'm proposing language which is  
18 attached to my testimony that would clarify that  
19 under an opt-out aggregation program, the provider  
20 would not be able to impose switching fees or other  
21 types of restrictions.

22 REP. ELLIS: Okay. Thank you.

23 CHAIRMAN PRESTON: You mentioned the  
24 town in Massachusetts. I take it they do not  
25 charge a opt-out fee; correct?

1 MR. HUDSON: That is correct. We are  
2 the supplier to that program in Cape Light, and we  
3 do not impose any type of restrictions on  
4 customers.

5 CHAIRMAN PRESTON: Is that by law or is  
6 it by choice?

7 MR. HUDSON: As we were able to  
8 research in a little bit of an expeditious manner  
9 this morning, the law in Massachusetts, as I  
10 understand it, and I'm not an attorney, has a  
11 six-month period in which customers, after the  
12 aggregation program is put in place, customers,  
13 within one hundred and eight days after the program  
14 starts, are able to switch without penalty.

15 CHAIRMAN PRESTON: So if you wanted to,  
16 you could charge in an opt-out fee.

17 MR. HUDSON: Only after six months.

18 CHAIRMAN PRESTON: If you wanted to.

19 MR. HUDSON: Yes, but only after six  
20 months.

21 CHAIRMAN PRESTON: Now, you know, I  
22 went through a lot of things when we -- as we had  
23 conversation briefly yesterday, but in the last  
24 five or six years, people in this area thought  
25 competition would not happen. And I watched

1 companies, you know, come in, and I even talked  
2 about members, there's going to be competition.  
3 It's not going to happen.

4           And in the central part of Harrisburg  
5 yesterday, I know there are eleven people  
6 competing, and I think, roughly, weak estimate, 50  
7 percent of them do not charge a fee for  
8 cancellation.

9           One of the things that is different in  
10 your manner that you gave for the example was a  
11 telecommunications company. The issue in this bill  
12 is that the people themselves chose an elect the  
13 spokespersons who are going to negotiate and have a  
14 ordinance, and most times an ordinance has to be  
15 publicly noticed, where the people have a choice  
16 even to say to their borough council people or  
17 township commissioners or supervisors, no, we don't  
18 want you to do this.

19           That's what they elect people to be  
20 able to somewhat make that decision for them, which  
21 is different than the private sectors. I can't  
22 tell your CEO, I can't tell Verizon's CEO, I can't  
23 tell the company in AT&T, whatever, I can't tell  
24 them, but I had a choice of any elected, as a  
25 citizen for the people that I chose to be able to

1 have a voice that be able to represent us. And  
2 that's part of what the deal is in this.

3           And then the PUC checks and monitors  
4 the agreement between the provider and the township  
5 or borough or city that negotiates this contract,  
6 and that's a little bit different. I'm not saying  
7 that -- what you're asking me -- asking in a sense  
8 is that we want to tell a company that you can't do  
9 this, and so, therefore, the company that may want  
10 to choose a fee as compared to -- like in  
11 Harrisburg there are some that choose a fee versus  
12 the company that doesn't choose a fee to opt out.  
13 Now I understand you say you just want people to  
14 just opt out any time. I'm looking at that.

15           But I just wanted to raise that issue  
16 to you and to the members, some of the things that  
17 we're looking at, that it's different between the  
18 private sector and here we are talking about three  
19 towns on one side of the river and five towns on  
20 the other side of the river can form and negotiate  
21 a contract if all of the entities, the legal  
22 entities, pass an ordinance to come together and  
23 then agree on a contract and then it's still  
24 approved by the PUC.

25           So we are talking about something



1 different, where they can have a larger pool, and  
2 to be able to maintain that pool and the benefit  
3 also goes to the municipalities to be able to have  
4 a lower rate as well. I just wanted to be able to  
5 say that.

6 Do you have any comments?

7 MR. HUDSON: Yeah. You raised some  
8 very interesting points, and I recognize the fact  
9 that under this bill it would be duly elected city  
10 officials that would be negotiating the terms and  
11 conditions of the contract. However, despite well-  
12 intended customer notice provisions that are  
13 provided for this bill, most customers first are  
14 going to ignore the opt-out notices that they  
15 receive. We all know what you do with those  
16 mandatory notices when they show up in your  
17 mailbox. They pretty much go straight in the trash  
18 and you never look at them. And secondly, most  
19 people just aren't going to know what's going on at  
20 the city council level in order to, you know, be  
21 educated and informed about this.

22 So what, in effect, you have happening  
23 is well-intended city officials are going to  
24 negotiate in good faith a contract that they think  
25 is the best thing for their residents, but it may

1 turn out that another supplier three months down  
2 the road, six months down the road, a year down the  
3 road is able to enter the market and provide a  
4 lower price offer or a more innovative product than  
5 exists for the aggregation program, and I think  
6 most people would agree that, you know, you don't  
7 want to find out after the fact that you're barred  
8 from taking advantage of this new product and  
9 service or this lower price because of something  
10 your elected official did really without your  
11 knowledge.

12 CHAIRMAN PRESTON: Okay. I just want  
13 to raise that issue, because in this, no one is  
14 saying currently right now in the bill, and we just  
15 found out yesterday wasn't in this print about the  
16 three years. Doesn't mean that the township or  
17 borough has to negotiate a contract for three years  
18 and that was part of the conversation we were  
19 talking about before. They can negotiate one year  
20 or two years or three years. And I'm even thinking  
21 about even raising that, and I'll address that a  
22 little bit later.

23 Rep. Beyer.

24 REP. BEYER: Thank you, Mr. Chairman.

25 Good morning, Richard. How are you?

1 MR. HUDSON: Good morning.

2 REP. BEYER: I actually agree with just  
3 about everything you said. I don't like the  
4 thirty-day notice. I don't think it's long  
5 enough. I mean, consumers are not even going to  
6 see a difference in their bill, really, or not even  
7 acknowledge or experience a reduction when it's  
8 just a thirty-day issue. So I like that.

9 You know, Rep. Ellis brought up a  
10 really good point at the last hearing. How do you  
11 feel about school districts being included in --  
12 since we have small businesses included in  
13 residents, how do you feel about perhaps school  
14 districts being included in the whole process?

15 MR. HUDSON: As you know, the current  
16 bill doesn't contemplate that. We personally at  
17 ConEd Solutions would be in favor of that. We  
18 think school districts are well positioned to  
19 benefit from various types of aggregation programs,  
20 including a program like this.

21 REP. BEYER: And in your aggregation  
22 agreements elsewhere, are school districts  
23 included?

24 MR. HUDSON: Actually in the Cape Light  
25 aggregation program that I referenced, there are no

1 restrictions on who is eligible to participate.  
2 All customers are in that program.

3 REP. BEYER: All. How about large  
4 businesses, medium-sized businesses, are they?

5 MR. HUDSON: They are. They are  
6 included. However, the large customer segment  
7 tends to be more actively involved in shopping for  
8 service from a -- you know, one-on-one relationship  
9 with competitive providers, so from a theoretical  
10 perspective, I can certainly understand and agree  
11 with the sentiment in this bill to exclude those  
12 customers from the aggregation program.

13 REP. BEYER: Okay.

14 Thank you, Mr. Chairman.

15 CHAIRMAN PRESTON: Thank you.

16 And as we go along with these meetings,  
17 I have some different thoughts and suggestions that  
18 I'm going to potentially make for changes in the  
19 issue in dealing with the school districts, it was  
20 my concern just as well. One of the things I've  
21 heard from the school districts is they all kind of  
22 joint purchase themselves and negotiate currently  
23 now, the ones that can in the areas that the caps  
24 have come off in some sense and I guess even in  
25 some of the other areas, they kind of do, but we

1 are going to look at it a little bit. Okay.

2 Thank you very much.

3 MR. HUDSON: Thank you.

4 CHAIRMAN PRESTON: Next is Teresa  
5 Ringenbach, who manages midwest government and  
6 regulatory affairs for Direct Energy, LLC.

7 How are you today?

8 MS. RINGEBACH: I'm good. How are you?

9 CHAIRMAN PRESTON: Good. I guess you  
10 can start how you want with your name and --

11 MS. RINGENBACH: I'm Teresa Ringenbach.  
12 I'm with Direct Energy. I'm their manager of  
13 midwest government regulatory affairs. And I thank  
14 you for having us this morning to come discuss  
15 municipal aggregation.

16 A little background on Direct Energy.  
17 Direct Energy actually has its headquarters for  
18 North America in Pittsburgh. We have three hundred  
19 employees in that location, and then we also own a  
20 home services side, which is your HVAC, electric  
21 services, and that is spread out throughout the  
22 state. We have about eight hundred employees  
23 within PA.

24 Direct Energy is currently serving and  
25 making offers to residential, small commercial,

1 large commercial, and industrial customers  
2 throughout PA in the PPL territory. We're serving  
3 a number of residential customers when rate caps  
4 came off, we were here making offers. We're about  
5 to make offers behind Duquesne. So we are very  
6 committed to choice and competition on the electric  
7 side in PA.

8 I'm here to talk about municipal  
9 aggregation. And Direct Energy does serve  
10 municipal aggregation programs in different states.  
11 We serve municipal and natural gas aggregations  
12 that are opt-out in Ohio. We serve municipal  
13 electric aggregation in Connecticut.

14 And just a bit of background. Before I  
15 came to Direct, I actually started in the energy  
16 industry selling and as a customer in opt-out  
17 municipal aggregations in Ohio. So that's my  
18 history. And how I started in the energy industry  
19 was serving these types of programs.

20 I just want to address real quickly the  
21 point that customers aren't aware or throw out  
22 their opt-out notices. My history with these  
23 programs is actually that you see a number of  
24 opt-outs in the beginning. You're actually going  
25 to see more people opting out when the programs

1 starts, and then that gradually decreases as the  
2 programs continue.

3 Direct actually does an opt-out every  
4 year for our programs, and it's the same time every  
5 year, and we actually have customers calling before  
6 the opt-out: When is my notice coming? What's the  
7 new rate? So I would argue that these programs  
8 actually do get customers really engaged in their  
9 bill and making decisions.

10 After reading through the legislation,  
11 it's really well written. It definitely addresses  
12 a lot of the issues that you could see with these  
13 types of programs, but Direct has two points that  
14 we'd like to see addressed in the bill.

15 The first deals with the fact that  
16 customers who are already under contract with a  
17 supplier are excluded from the municipal  
18 aggregation program, and that is as it should be.  
19 However, by excluding them, it also means that if  
20 that customer should choose to break their existing  
21 contracts by their own choice, pay whatever fees,  
22 and want to join their community's program and get  
23 their community's price, they can't do it as  
24 written. Instead they would have to break their  
25 contract, return to the utility default price, and

1 the way this switching rules work, that's at least  
2 for one month they would be subject to that utility  
3 price, and then become enrolled in their  
4 community's program.

5 In Ohio, on the gas side, that's  
6 actually how it works. And I can tell you from the  
7 local leaders point of view, they don't like  
8 getting that call when their resident or whoever  
9 calls up and says: Why are you telling me I have  
10 to go back to the utility, pay a higher price for a  
11 while, and then get my community's rate? This is  
12 my community's program and I want in.

13 So what Direct is asking is that some  
14 sort of language be put into the legislation that  
15 addresses that situation. And what we've suggested  
16 is something that says -- and I'm not an attorney  
17 so I will put that out there as I write that.

18 CHAIRMAN PRESTON: That's to your  
19 benefit.

20 MS. RINGENBACH: However, nothing in  
21 this section shall prohibit and exclude a customer  
22 under contract with another electric generation  
23 supplier from contacting an electric generation  
24 supplier to request enrollment in an opt-out  
25 municipal aggregation program. The electric



1 generation supplier to the municipal aggregation  
2 program may not market to the customer for opt-out  
3 enrollment but must follow any rules -- or,  
4 sorry -- any laws or consumer protections for  
5 verification of an electric generation supplier  
6 enrollment.

7           So basically that customer can leave  
8 their contract, enroll in your community's program,  
9 but it also -- the point is to make sure that their  
10 enrollment is verified just as any other enrollment  
11 is, to avoid slamming that customer or interfering  
12 with their contract.

13           The second item that we'd like to  
14 address is -- actually, Richie touched on it but in  
15 a very different way than what Direct would like.  
16 Currently the legislation says that that customer  
17 gets to opt out or leave the program without  
18 incurring any fees at the end of the contract  
19 term. However, there's no restrictions on the  
20 contract term. So what you could have is a  
21 contract that goes out for ten years -- which  
22 there's actually ten-year aggregation programs in  
23 Ohio -- and what would happen is, at any point in  
24 that ten-year period, if that customer sees a  
25 better deal out in the market, they could incur an

1 early termination fee in order to go and switch.

2           If you have -- if you have an opt-out  
3 in 2000 and you don't have another one until 2010,  
4 then you really do have customers who are going to  
5 be in there going: Wait a second, I didn't really  
6 know I was in this program. Now you're telling me  
7 three years after I enrolled, I have to pay you a  
8 hundred dollars to go get a better rate?

9           So our take on it is slightly  
10 different. We'd actually like to see the community  
11 contract term, the municipal aggregation term,  
12 limited to three years, but customers get the  
13 opportunity to opt out without penalty every year.  
14 So that does two things. One it continues their  
15 ability to shop every year. Just like with your  
16 cell phone contract. I know every two years when  
17 it goes closer, I get excited because I get to shop  
18 again, right? But I know it's every two years.

19           In this situation, that customer knows,  
20 all right, maybe I can't leave six months into it  
21 without paying an early termination fee, but at the  
22 end of this year, I can. So I'll shop again, I'll  
23 shop before I make that decision. It's educating  
24 them. It's getting them engaged in their bill.

25           The supplier to the aggregation program

1 gets some certainty. They know that within that  
2 one-year period that if that customer leaves, they  
3 have the ability to charge a fee to recover any  
4 losses, but they get that certainty of one year. I  
5 know for one year, my supply has to go for that  
6 year.

7           The other thing is, you hear about the  
8 default service. It provides the default service  
9 providers with the knowledge that during that  
10 one-year period they're not going to see huge  
11 swings in their load.

12           So the idea is to keep the competitive  
13 market going, you know, provide that certainty to  
14 the supplier to ensure that those communities can  
15 get good rates without, you know, having a bunch of  
16 risk costs added into their pricing and to protect  
17 the market.

18           The last item is something that -- that  
19 I thought about adding, but I wasn't sure how  
20 specific you wanted to be on these issues. And  
21 Chairman Preston had talked about the commission  
22 has given some authority in the legislation to look  
23 at these programs and to do some review process.  
24 And if -- if the committee isn't willing to put in  
25 detailed language on these two issues, what we had

1 suggested was passively punting them to the  
2 commission and saying, Commission, in order to  
3 protect the competitive market, you should  
4 promulgate rules that deal with these issues. And  
5 that it gives anyone who doesn't make it to the  
6 legislative hearings or is a supplier who maybe  
7 isn't really engaged in the legislative process the  
8 opportunity to participate in a case or rule making  
9 before the commission and really vet these issues.

10 So those are my two items on behalf of  
11 Direct Energy. And, again, I thank you for giving  
12 us this opportunity to speak with you.

13 CHAIRMAN PRESTON: Good suggestions.  
14 Questions from members?

15 REP. ELLIS: I'll go first again.

16 Thank you, Mr. Chairman.

17 Thanks for your testimony today.

18 Going back to your first point where  
19 you say customers who are already in a contract  
20 with suppliers are excluded from enrollment. As I  
21 read down in your suggestion of how we fix that,  
22 you have the statement in there: May not market to  
23 the customer. Okay. The supplier cannot do that.

24 So I need you to walk me through this.  
25 There's somebody who's already in an agreement, and

1 you want to allow them to opt in, but there's going  
2 to be no way of the providers contacting them or  
3 marketing to them to suggest it. So what makes you  
4 think that people are just going to go ahead and  
5 start looking?

6 MS. RINGENBACH: The idea there was,  
7 your neighbor got a notice, and he came to you and  
8 said, "Look I get four cents with our city, don't  
9 you?" And you're sitting there going, "No. What  
10 are you talking about?"

11 So the idea is they find out about it,  
12 but your not -- you're not having these opt-out  
13 programs actually attacking the existing customers  
14 who've made that choice and are already engaged in  
15 the process.

16 REP. ELLIS: I understand the second  
17 point, but my confusion is, where is the major  
18 problem with the energy providers marketing to  
19 people that are already under contract?

20 MS. RINGENBACH: I think it depends on  
21 how they market to them. I will tell you --

22 REP. ELLIS: Because this says "may not  
23 market." So it's not depending on how they market.

24 MS. RINGENBACH: Internally -- I'll  
25 tell you what the conversation at Direct was. We

1 have a residential retail program. We like  
2 municipal aggregation because it's a way to educate  
3 customers, but, ultimately, we want customers to  
4 sign up with us on what we call organic contracts.  
5 We want them to go to the commission's website. We  
6 want to them to see our general organic market  
7 offering and put them on contracts that way.

8           So, from our perspective internally, we  
9 don't want a municipal aggregation marketing to our  
10 customers that we already have, and that was a  
11 sales decision made within Direct.

12           Do we do it in our existing programs?  
13 Do we have the community send out a letter that  
14 goes to everyone that isn't an opt-out notice that  
15 makes them aware of the program? Yes. But do we  
16 aggressively market to them? No. And I think  
17 that's what that was meant to address. Again, I am  
18 not an attorney so needs to be tweaked.

19           REP. ELLIS: I mean, I just think, you  
20 know, that we got to be careful if we're taking the  
21 ability for anyone to not market a product. I mean  
22 that's how our country works. We market products;  
23 people buy them. And so I'm very skeptical of  
24 language that says: You cannot market to  
25 customers.

1 Thank you, Mr. Chairman.

2 CHAIRMAN PRESTON: Thank you.

3 Yeah, and I want to thank you really  
4 for suggestions because we're getting close. I'll  
5 announce a little bit at the end of this meeting  
6 how close we are in dealing with this.

7 Two questions I guess I'm going ask you  
8 and every other provider. First, relative to the  
9 issue, has been some concern about the contract  
10 being three years. Would you have any objection if  
11 it's five years?

12 MS. RINGENBACH: No.

13 CHAIRMAN PRESTON: The other thing,  
14 there was a question -- and, again, I'll ask this  
15 for every other provider too -- in the dealing with  
16 the issue of small business, and I think that's a  
17 very good -- concerns a lot of us here just as well  
18 to be able to take advantage of it. Currently, I  
19 think it's thirty-seven, Gail?

20 MS. DAVIS: Twenty-five.

21 CHAIRMAN PRESTON: Twenty-five.

22 Do you have any objection, since it was  
23 raised, and two hundred fifty to five hundred for  
24 small businesses?

25 MS. RINGENBACH: I'll have to take it

1 back. My gut reaction is probably yes.

2 CHAIRMAN PRESTON: That's why I wanted  
3 to ask everybody, so I can take a little poll on  
4 that and raise it to include, to be able to give  
5 some -- there is no real clear definition of always  
6 what a small business is, and sometimes, you know,  
7 a small sheet metal manufacturer or car dealership  
8 that might fall within that to be able to take  
9 advantage of that. That's my thought.

10 And I think for the members, when she  
11 was talking about the Public Utility Commission  
12 notice, even within the language -- and I think  
13 starting around pages ten, eleven, and twelve, it  
14 kind of gives you a definition of the contract,  
15 what has to happen, what should be included to the  
16 consumer, that the ordinance itself has to be  
17 published and -- ninety days before they can vote  
18 on it and has to be public discussion on it. And  
19 even then, and I -- and I partially agree with it  
20 even more so, as we start looking at some of these  
21 things, that the PUC makes sure that the public  
22 comment and the efforts that was publication were  
23 done and the public notices were done for residents  
24 to be able to get the information before the  
25 ordinance is even voted on, to see what I'm talking



1 about.

2 But I want to thank the members' idea,  
3 and we'll be looking at that.

4 We've also been joined by a couple of  
5 other members. Like you to introduce yourself and  
6 the county that you represent.

7 REP. REICHLEY: Doug Reichley from the  
8 Lehigh and Berks County area, 134th District.

9 REP. EVANS: Good morning. I'm Rep.  
10 John Evans. I represent parts of Erie and Crawford  
11 Counties in the 5th Legislative District.

12 CHAIRMAN PRESTON: Thank you very much  
13 for coming.

14 REP. ELLIS: Mr. Chairman, before we  
15 move on, could I ask one more question I just  
16 thought of?

17 CHAIRMAN PRESTON: Sure.

18 REP. ELLIS: You said Direct Energy has  
19 parts of the PPL service area right now.

20 MS. RINGENBACH: We serve residential  
21 customers behind PPL.

22 REP. ELLIS: And currently it's my  
23 understanding that you do have termination fees and  
24 you're advocating against them?

25 MS. RINGENBACH: No, no. We're not

1     advocating against them. We're advocating that  
2     there is allowed an early termination fee for  
3     opt-out aggregation so customers get an opportunity  
4     to leave every year.

5                   REP. ELLIS: Okay. So you're okay with  
6     the fees.

7                   MS. RINGENBACH: Yes.

8                   REP. ELLIS: But you want three opt-out  
9     periods -- or if it's a five-year contract, five  
10    opt-out --

11                   MS. RINGENBACH: An annual opt-out  
12    period, yes.

13                   REP. ELLIS: I just wanted to make  
14    sure.

15                   Thank you very much, Mr. Chairman.

16                   CHAIRMAN PRESTON: Chairman Godshall.

17                   REP. GODSHALL: I just want to say, on  
18    the termination fee, like in PPL territory, which  
19    I'm in, everybody that -- I know, probably you can  
20    forget it down the road maybe, but everybody that's  
21    been promoting and -- their electricity, their  
22    energy into your area has been very clear on that  
23    there is a -- there is a -- you know, a fee  
24    involved or there isn't a fee involved.

25                   So I -- you know, I know that down the

1 road you can probably forget that there is that,  
2 but when you sign up, it's been very clear, and  
3 I've had -- living in that territory, I've had no  
4 complaints on that, at least as of this time.

5 CHAIRMAN PRESTON: Representative  
6 Beyer.

7 REP. BEYER: I'm sorry, Mr. Chairman.  
8 You said that you haven't had any complaints on  
9 termination fees? Is that what you said?

10 REP. GODSHALL: That's right.

11 CHAIRMAN PRESTON: So far.

12 REP. BEYER: Do you have any issue,  
13 though, if the bill is altered that there are no  
14 termination fees?

15 MS. RINGENBACH: Direct wouldn't oppose  
16 it. We, actually, in our municipal aggregation  
17 programs, don't. And keep in mind, that's gas in  
18 Ohio, which is a really thriving market, so the  
19 market's actually pushed it to that. The  
20 communities actually demand no termination fee.

21 REP. BEYER: Okay. So that's not a  
22 problem for Direct Energy at all.

23 MS. RINGEBACH: No.

24 REP. BEYER: Great. Thank you.

25 CHAIRMAN PRESTON: And that's one of

1 the things I'm saying now. They have an option  
2 now. All I'm saying, if someone wants to charge it  
3 right now, currently under this bill, they can.

4 But in our area, in Harrisburg, for  
5 example, half the companies that are out there  
6 marketing don't charge a fee for cancellation.  
7 Some do. So you have competition still in  
8 existence.

9 Thank you very much.

10 MS. RINGENBACH: Thank you.

11 CHAIRMAN PRESTON: Next we have Irwin  
12 Sonny Popowsky, who's the consumer advocate from  
13 PA's Office of the Consumer Advocate under the  
14 auspices of the Attorney General.

15 Good to have you here again, my friend.

16 MR. POPOWSKY: Thank you, Chairman  
17 Preston, Chairman Godshall, and members and staff  
18 of the committee. As always, it's an honor and  
19 pleasure to appear before this committee.

20 This is actually the second time I've  
21 testified on the issue of municipal aggregation.  
22 And as I did at the last hearing back in March in  
23 Harrisburg, I want to commend you, Chairman Preston  
24 and Chairman Godshall and all the committee, for  
25 the proactive and careful and deliberate approach

1 that you have taken on this issue.

2 Now, as the members of this committee,  
3 I think, our painfully aware, the last of the  
4 generation rate caps that have protected PA  
5 consumers for the last decade will be coming off at  
6 the end of -- at the end of this year, 2010. I  
7 think, though, that Act 129 of 2008, which was  
8 passed, in large part, through the efforts of this  
9 committee, I believe through that act, the general  
10 assembly has established a strong framework that,  
11 if it's implemented correctly, will continue to  
12 protect electric consumers from unwarranted  
13 generation rate increases in the future.

14 And it does that through a combination  
15 of regulation or effective regulation of the  
16 utility default service suppliers and competition  
17 from unregulated generation marketers.  
18 Specifically, under Act 129, electric consumers are  
19 free to switch to alternative competitive  
20 generation suppliers, and more than 30 percent of  
21 PPL residential customers have, in fact, already  
22 made such a switch since rate -- since PPL's rate  
23 cap expired at the end of 2009. But, at the same  
24 time, our regulated electric distribution companies  
25 are required to purchase a mix of generation

1 resources in the competitive wholesale markets that  
2 are designed to provide nonshopping customers with  
3 adequate and reliable generation service at the  
4 least cost to customers over time.

5           Now municipal aggregation would, in  
6 essence, create a third path for residential and  
7 small commercial customers to receive their  
8 generation service. That is, customers would not  
9 be required to shop as individuals for an  
10 alternative to the their utility service, but they  
11 might be able to benefit from a form of shopping  
12 that is done on their behalf by their elected  
13 municipal officials.

14           The theory behind municipal aggregation  
15 is that by aggregating the buying power of a large  
16 number of small customers, a non-profit municipal  
17 entity can get a better deal for those customers  
18 than if each of those customers had to go out and  
19 shop for electricity on an individual basis. In  
20 addition, we know that many customers, particularly  
21 residential customers, may not -- may have neither  
22 the sufficient interest or sufficient understanding  
23 to choose their own supplier for a product that  
24 they have never had to shop for.

25           To the extent that municipalities can

1 aggregate their customers as a way of achieving  
2 electric rate savings for customers within their  
3 municipalities, then I believe that option should  
4 be available. At the same time, though, I believe  
5 that municipal aggregation must be established in a  
6 manner that complements the existing choices for  
7 electric customers under Act 129 and that does not  
8 increase the costs for customers who do not  
9 participate in the municipal aggregation programs.

10 Now, at this point, I think it's  
11 important to distinguish between two different  
12 types of aggregation, both of which are permitted  
13 under House Bill 2619. Under the first type of  
14 program, opt-in aggregation, individual customers  
15 voluntarily and affirmatively choose to have their  
16 municipality purchase generation on their behalf.  
17 Under the second type of program, opt-out  
18 aggregation, customers are automatically included  
19 in the municipal aggregation program unless they  
20 choose to be removed from the program.

21 In my opinion, the opt-in provisions of  
22 House Bill 2619 could be implemented immediately  
23 and fairly easily and would not have any negative  
24 impact on PA's existing customer choice and default  
25 service programs.

1           Opt-in municipal aggregation is similar  
2 to the type of buying groups that are already being  
3 formed on a voluntary basis by local and county  
4 business groups and agencies, and I see really no  
5 objection to municipalities performing that role as  
6 well, on behalf of their residential and small  
7 business customers, for those customers who would  
8 like to have, hopefully, a less expensive  
9 alternative to their utility default service but,  
10 again, who don't want to shop on their own behalf.

11           I also think that opt-in municipal  
12 aggregation is clearly consistent with the current  
13 default service framework we have under Act 129 of  
14 2008. The electric distribution companies, through  
15 their mix of competitively procured wholesale  
16 generation contracts, will continue to serve all  
17 customers except those customers who voluntarily  
18 and affirmatively choose to be served by an  
19 alternative provider.

20           Now, other retail marketers can  
21 continue to compete for individual customers and  
22 then they also compete to provide service on an  
23 aggregated basis to customers who are part of a  
24 municipal aggregation program.

25           The more difficult questions arise



1 under opt-out aggregation. First of all, it must  
2 be recognized that under opt-out aggregation,  
3 customers are switched to an alternative supplier  
4 without their prior affirmative consent. That's  
5 why, I think, House Bill 2619 correctly, at page  
6 twenty-three, exempts municipal aggregators from  
7 what we call the anti-slamming provision of the  
8 1996 Electric Competition Law.

9 That law required that before a  
10 customer was switched, they would have to -- the  
11 electric distribution company would have to obtain  
12 their actual consent, either oral or written, to be  
13 switched. And under opt-out aggregation, if you're  
14 part of municipal aggregation, under this bill,  
15 that would not -- that would not have to occur.

16 I think that makes some sense, for the  
17 reasons that you stated, Chairman Preston, which is  
18 that these are not simply private companies  
19 slamming customers. These are elected municipal  
20 officials who must pass an ordinance, who must say,  
21 This is what we're going to do, and the voters of  
22 that community have the opportunity to say, No, we  
23 don't want that, or, No, we don't appreciate what  
24 you just did. But in any case, I think that's an  
25 important consideration.

1           The reason for that, the benefit of  
2     opt-out aggregation, of course, is, as I said in  
3     our last -- at our last hearing, it's just a matter  
4     of human nature. That if you're really looking to  
5     aggregate a large number of customers, you're more  
6     likely to do so if you do it on an opt-out default  
7     basis, rather than if you require all the  
8     individual customers to sign up.

9           But I do have a continuing concern with  
10    House Bill 2619 with respect to the timing of  
11    opt-out aggregation. That is, I think it's  
12    important to ensure that the establishment and the  
13    timing of any opt-out aggregation program does not  
14    undermine the ability of our existing electric  
15    distribution companies to provide least-cost  
16    service to the customers who do not participate in  
17    the aggregation programs.

18           Now, as I said earlier, under Act 129  
19    of 2008, we require our utilities to acquire a mix  
20    of generation resources to provide default service  
21    at the least cost to customers over time. Now,  
22    since Act 129 was passed, we have had a series of  
23    proceedings before the Public Utility Commission,  
24    complex, difficult proceedings, most of which have  
25    resulted in settlements, negotiated agreements

1 among all the parties -- the consumer advocates,  
2 the utilities, the retail suppliers, the wholesale  
3 suppliers -- that have been approved by the Public  
4 Utility Commission.

5           And under those agreements -- under  
6 those agreements, the utilities already, as we  
7 speak, are in the process of purchasing generation,  
8 entering into contracts to serve their customers  
9 during the period starting on January 1, 2011. And  
10 in most cases, those default service plans run  
11 until June 2013. So those plans have already been  
12 approved. Contracts have already been written and  
13 signed to acquire power for customers.

14           Now, when those contracts were entered  
15 into, and not all of them have been entered, some  
16 of them were continuing over the next two years,  
17 but when those plans were created, it was -- they  
18 were created under the existing law, Act 129 of  
19 2008. The utilities and the wholesale generators  
20 who entered into these contracts were certainly  
21 aware that customers could switch from their  
22 utility at any time, and they may lose customers or  
23 gain customers over the period of that two and a  
24 half years.

25           What they didn't anticipate was that

1 during that two-and-a-half-year period, entire  
2 municipalities could be taken out of the service  
3 territory en mass. That can create a problem.  
4 If -- if these -- for the generator, for the  
5 wholesale generation, for the utilities, and  
6 ultimately for the customers who have to pay the  
7 costs, because if those companies have already gone  
8 out to acquire that power, entered into contracts  
9 based on the old law, and then the rules are  
10 changed in the middle of this default service plan,  
11 we could be treating those people unfairly and  
12 raising costs to consumers.

13                   So what I would suggest at this time as  
14 what I think would be, at least, a partial solution  
15 to this problem, which I think is a very serious  
16 concern, is that the general assembly could go  
17 forward immediately with the opt-in provisions of  
18 House Bill 2619, but to state that the opt-out  
19 provisions, even if you want to go forward and  
20 approve those provisions, that they would not be  
21 implemented by any companies until the end of the  
22 current default service period, so we wouldn't  
23 interrupt or interfere with the existing plans. So  
24 that you could start work on these plans perhaps  
25 now but have them timed such that they would begin

1 at the beginning of the next default service  
2 period.

3 At that time, the utilities and the  
4 wholesale competitors, the wholesale marketers,  
5 would know, well, we have a number of -- we have a  
6 number of municipalities that we don't have to  
7 serve, so we won't worry about them, and then  
8 you'll just enter into contracts to serve the rest  
9 of the customers.

10 So my suggestion, respectfully, is that  
11 you go forward. You can go forward immediately  
12 with the opt-in aggregation but not permit the  
13 opt-out aggregation to occur until the end of the  
14 current default service period, and then the  
15 aggregations would be timed in a way that you could  
16 coordinate with the utility's default service  
17 plans.

18 One final point which I made at the  
19 last hearing as well, is, I think, to the extent  
20 that costs are incurred by a utility to create  
21 these aggregation programs, the costs should be  
22 paid by the aggregate, the municipalities that  
23 participate in the programs. Under the current  
24 law, under the current bill, those costs would be  
25 spread to all customers, including customers from

1 the municipalities who do not participate.

2           So with that, I'll close my testimony.  
3 As always I look forward to working with you and  
4 your staff as you go forward with this important  
5 legislation.

6           CHAIRMAN PRESTON: I think what's  
7 important, that you raise a valid point, because we  
8 are aware of the default issue. And some of the  
9 staff here were discussing it very much so  
10 yesterday, and when we go back today, we'll be in  
11 the car, discussing it just as well. Wanted to  
12 raise that to you.

13           You raised a good issue, because I know  
14 there was some issue concerning what -- the  
15 language in there about opt in. I put it in there  
16 anyway. Because of the way our town, thousands of  
17 towns that we have here, I was trying to imagine  
18 how long it would take if we used or put the words,  
19 so I didn't include the issue of referendum but  
20 made sure that the issue of ordinance and  
21 publication and public meetings.

22           And I think one of the things that, I  
23 guess for the members of the committee and to your  
24 fellow colleague, one of the issues that we look  
25 at, all of us have municipalities now that are

1 doing energy surveys and looking for a way to be  
2 able to cut their costs and do their plans. One of  
3 the things included in aggregation that we can look  
4 at is, they would be able to move from a pool, once  
5 they come to an agreement for the next three years,  
6 from a budget item of what that cost would be,  
7 which gives them, as we work with things, whether  
8 it heart/lung or other things, but they would know  
9 what the electric bill's going to be. And I think  
10 that is something that our municipalities have been  
11 trying to come across with without having to buy  
12 here or buy there or look here or look there that  
13 they would be able to know and work further.

14                   So that's one of the things I'm looking  
15 at, a way from just an individual consumer, because  
16 I think we have to think about the local  
17 municipalities, but I think all of you -- I mean, I  
18 have a borough with only three thousand people in  
19 it in my district. I have another borough that is  
20 nineteen thousand people. And I remember when we  
21 first had the hearings -- and I want to, again,  
22 commend you, because when we first had the hearing,  
23 I intentionally had not even introduced the bill.  
24 You remember? We were dealing with a concept,  
25 because I wanted to hear from people.

1                   And we put a lot of ideas. There was  
2 going to be some additional changes. But I just  
3 wanted to be able to raise that to you, because we  
4 did hear you, looking at the issue, the opt-in  
5 issue, that's still is an option that a  
6 municipality can do, if it so choose. I know  
7 everybody's looking at the opt-out area, because  
8 that gives them a guaranteed pool when they first  
9 start. So still looking at it.

10                   Sometimes you almost wonder if -- we  
11 have some towns that only have a hundred fifty  
12 people. If they happen -- you know, it is a  
13 question that is -- one town only has opt-in, wants  
14 to do an opt-in ordinance and ten towns around want  
15 to do an opt-out, and they all need part of that.  
16 So maybe that one town only as a rate, maybe the  
17 borough may be big and may have -- you know, make  
18 money from a plant. Can they do that? That's  
19 something else to be able to look at just as well,  
20 which I haven't thought about.

21                   But I appreciate, thank you for your  
22 comments.

23                   Questions?

24                   Thank you very much.

25                   Mr. Chairman, always.



1                   REP. GODSHALL: Thank you,  
2 Mr. Chairman.

3                   You know, your comment on page two:  
4 At the same time, I believe that municipal  
5 aggregation should be established in a manner that  
6 complements the existing choices for electric  
7 customers under Act 129 and does not increase the  
8 costs for the customers who do not participate in  
9 municipal aggregation programs.

10                   How would you go about doing that?

11                   MR. POPOWSKY: I think the key is  
12 timing.

13                   REP. GODSHALL: Pardon. I'm sorry.

14                   MR. POPOWSKY: The key is timing. If,  
15 let's say -- if we had passed this bill a year ago,  
16 we could have had -- as part of default service  
17 plan, we would have -- we would have -- we would  
18 have known that there was also certain  
19 municipalities that would not have to be served,  
20 and, therefore, the utility's plan would have taken  
21 that into account.

22                   The same thing can happen in June  
23 2013. If, before we have the next round of  
24 proceedings where we established the default  
25 service plan, if we know that there are going to be

1 municipal aggregation plans, let's say, if you're  
2 -- if you're PPL, and you know that Allentown and  
3 Scranton are going to be served by a municipal  
4 aggregators but that Harrisburg and Wilkes-Barre  
5 are not, you would develop a plan to serve the  
6 default service customers for your remaining  
7 customers, but you wouldn't include the customers  
8 who are part of the default service plan as part of  
9 your overall assumption of what customers you're  
10 going to serve.

11                   So timing, to me, is critical. That's  
12 how I think it could be done.

13                   REP. GODSHALL: You know, I also --  
14 wondering about your comments pertaining to Act 129  
15 and the requirements of Act 129. It's going to be  
16 a monumental task to -- if you don't know what  
17 electric customers you've got, you know, most --  
18 you know, most of that -- those alternative energy  
19 credits are bought in advance, for not knowing what  
20 your base is going to be.

21                   MR. POPOWSKY: I think one way we've  
22 dealt with that, and I think it's a good point, is  
23 some utilities have actually taken it -- have  
24 suggested that they would acquire alternative  
25 energy credits for -- even on behalf of the

1 competitive suppliers as well. That's one way to  
2 address the alternative energy credits.

3           But -- but even with Act 129, I mean,  
4 we know that some customers are going to shop. We  
5 don't know how many. We know -- and that the  
6 generators, the marketers and the utilities, can  
7 take that into account, but what they never took  
8 into account was the possibility that, let's say  
9 your PECO, and suddenly -- and you go out and enter  
10 into all these contracts to serve all your  
11 customers, and suddenly the city of Philadelphia  
12 decides, Well, we don't want your service any more.  
13 What are going to do at that point? Or if you're  
14 Duquesne and the city of Pittsburgh moves out.

15           So all I'm saying is, if you know -- if  
16 you -- if you time these programs so that if the  
17 city of Philadelphia says, Hey, we're going to do  
18 municipal aggregation, then the next PECO plan is  
19 going to look a lot different from the last PECO  
20 plan because they will only be -- they will know  
21 that there's a aggregator that is going to serve  
22 the bulk of the people in Philadelphia.

23           But you're right, alternative energy  
24 credits are a complicating factor as well. And one  
25 way to address that is to have utility default

1 supplier acquire the credits and then charge the  
2 marketers for their share of the credits.

3 REP. GODSHALL: Thank you very much. I  
4 appreciate your comments.

5 CHAIRMAN PRESTON: Rep. Beyer.

6 REP. BEYER: Just really quickly, so  
7 you're saying timing. Are you suggesting then a  
8 phase in of the aggregation program across the  
9 state? Is that what you're suggesting, based on as  
10 the rate caps come off?

11 MR. POPOWSKY: The rate caps will all  
12 be off as of January 1, 2011. What's interesting  
13 is that, I think all -- I think virtually all of  
14 the default service plans that we have for all of  
15 the major utilities, the major utilities, extend  
16 until June of 2013. The reason you pick June is  
17 because that's the end of the -- what we call the  
18 PJM year, which is -- our wholesale market runs  
19 from June to June. So all of the -- the current  
20 plans run till June 2013, so that would be the  
21 opportune time to begin the actual implementation  
22 of a municipal aggregation program.

23 I mean, you could begin to do the work  
24 almost -- you know, you could begin next year, if  
25 you want, to start developing these programs, but

1 you wouldn't implement them until June of 2013.  
2 From then on, I think, ideally, you would want the  
3 municipal aggregation plans to be the same length  
4 as the default service plans, so that every two or  
5 three years, I think, ideally, you would want both  
6 of these opportunities to kick in at the same time.

7 REP. BEYER: Thank you.

8 Thank you, Mr. Chairman.

9 CHAIRMAN PRESTON: Thank you. And  
10 remember, as I said, currently under the -- in the  
11 legislation, it's three years. It doesn't mean  
12 that someone can't do one, two, three years. And  
13 I'm thinking about changing the language in the  
14 amendment to make it five years, but it doesn't  
15 mean, again, that they couldn't do two years, three  
16 years, four years.

17 And let's also remember, it's the  
18 people who elect the elected official who are going  
19 to do the ordinance. Okay?

20 So Rep. Reichley.

21 REP. REICHLEY: Thank you,  
22 Mr. Chairman.

23 Just real brief, and I apologize if  
24 this was covered. Has this kind of system been  
25 implemented anywhere else in any other state or

1 even in another field other than municipal electric  
2 aggregation?

3 MR. POPOWSKY: Yes. They've had, I  
4 think, very successful municipal aggregation  
5 programs in Ohio and in Massachusetts.

6 REP. REICHLEY: How long have those  
7 been in effect?

8 MR. POPOWSKY: We are going to hear  
9 from --

10 REP. REICHLEY: Oh, okay.

11 MR. POPOWSKY: The only thing I would  
12 say is, one of the benefits of what they did in  
13 Ohio is that, I think that municipal aggregation  
14 was sort of in there right from the beginning. It  
15 was sort of built right into the competition act in  
16 the beginning, and all I'm saying is, if you're  
17 going to start a program like that, you want to  
18 make sure you start it at the right time. And in  
19 PA, I think that would probably be when our next  
20 default service plans kick in.

21 REP. REICHLEY: Okay. Thank you.

22 CHAIRMAN PRESTON: Thank you.

23 You know, I hear what you're saying so  
24 that every -- what you're saying so that everybody  
25 would have to be at the -- even playing field at a

1 particular time in respective areas in all phases.

2 MR. POPOWSKY: Right.

3 CHAIRMAN PRESTON: Thank you.  
4 Appreciate it.

5 MR. POPOWSKY: Thank you very much.

6 CHAIRMAN PRESTON: Next we have Robert  
7 Barkanic, senior director, energy policy, PPL  
8 Energy Plus.

9 I'll say this now, because -- give some  
10 people some time and thought, as we get more to the  
11 distribution companies in a minute. I have every  
12 intention that we will -- for our committee meeting  
13 on Tuesday, that this bill will be added to the  
14 calendar, so that I would -- people, today, start  
15 thinking about any thoughts you may have about --  
16 relative to that, because I have every intentions  
17 that we will vote on this.

18 REP. BEYER: Do we have an amendment  
19 prepared then?

20 CHAIRMAN PRESTON: Amendment prepared,  
21 staff talked to each caucus. I want to be able to  
22 deal with this. This is the third of a series  
23 being considered. And I think before you, on the  
24 committee, I had an open meeting, as you heard me  
25 say earlier. I didn't even introduce the bill. We

1 wanted to talk about aggregation, so I could hear  
2 everybody's opinion. So they weren't talking about  
3 what was in the bill, what was not in the bill,  
4 what would be included or not.

5 We have continued to start hearings.  
6 you're already hearing some changes that are going  
7 to be happening. As I said, going to hear from  
8 everybody how they feel about the three years, five  
9 years, the issue essentially about small business  
10 as we can look at this.

11 We'll -- we'll look at issue of some of  
12 the school districts. There have been talks about  
13 whether or not the school districts would want  
14 that, because currently right now they're saying  
15 they already do it and negotiate as a bulk with  
16 some of the things. And as you heard the consumer  
17 advocate, this is kind of like a third process in  
18 choice, so we are creating even more competition.  
19 And I wanted to say that, as we would also hear  
20 eventually from the Chairman of the PUC, as we look  
21 at this too for consumer issues.

22 Set? Okay?

23 How you doing today?

24 MR. BARKANIC: Very well, thank you.

25 Chairman Preston, Chairman Godshall,



1 members and staff of the committee, good morning,  
2 and thank you for holding this hearing on the  
3 important topic of municipal aggregation.

4 My name is Bob Barkanic, and I'm senior  
5 director of energy policy for PPL Energy Plus in  
6 Allentown. And it's a great honor for me to be  
7 testifying on behalf of the PPL Energy Plus.

8 PPL Energy Plus is the competitive  
9 Wholesale and retail supplier of electricity and  
10 natural gas. We are a subsidiary of PPL  
11 Corporation but not the same company as PPL  
12 Electric Utilities, which is the regulated public  
13 utility that provides electric delivery service in  
14 twenty-nine counties in northeastern and central  
15 PA.

16 CHAIRMAN PRESTON: I understand it.  
17 There's a lot of clarification, a lot of people  
18 don't even understand it. And I think, some of  
19 conversation that we're hearing here, I think we  
20 will be hearing in the near future some of the same  
21 phraseology from other different companies in the  
22 near future.

23 MR. BARKANIC: There is strong evidence  
24 to show that electric choices opened new  
25 opportunities for PA consumers. According to

1 Public Utility Commission's website,  
2 PApowerswitch.com, a website we would encourage all  
3 consumers to explore, nearly six hundred seventy-  
4 five thousand consumers and businesses have chosen  
5 alternative electricity suppliers.

6 In the territories served by PPL  
7 Electric Utilities, more than four hundred eighty  
8 thousand customers have shopped since generation  
9 rate caps expired at the end of 2009. And  
10 two-thirds of the electricity delivered by PPL  
11 Electric Utilities is from alternative suppliers.

12 As generation rate caps expires in  
13 other markets at the end of this year, specifically  
14 PECO, Met-Ed, Penelec, and Allegheny, millions more  
15 Pennsylvanians will be able to choose competitively  
16 priced electric supply.

17 House Bill 2619 contains provisions  
18 that would extend the benefits of competition to an  
19 even greater number of residential and business  
20 customers across the Commonwealth.

21 PPL Energy Plus supports the concept of  
22 allowing municipalities to buy power as an  
23 aggregator for their residents and businesses.  
24 Municipal aggregation would enable competitive  
25 electric suppliers to work with municipalities to

1 provide alternative supply options for customers  
2 who may not have, for whatever reason, selected  
3 their own supplier.

4           House Bill 2619 represents an effective  
5 way to overcome consumer inertia and give consumers  
6 a third option, as Mr. Popowsky mentioned, along  
7 with choosing an alternative supplier on their own  
8 or accepting default supply from their local  
9 utility.

10           Municipal aggregation supports a robust  
11 competitive market by reducing customer acquisition  
12 costs, which might otherwise present an obstacle  
13 for suppliers to enter in the PA market. The goal  
14 of municipal aggregation should be to beget the  
15 best possible combination of price and service for  
16 consumers.

17           PPL Energy Plus believes that there  
18 must be complete transparency in the process  
19 municipalities use to select an electricity  
20 supplier. House Bill 2619 includes a transparent  
21 procurement process with PUC oversight, which PPL  
22 Energy Plus supports.

23           An issue we have with the legislation  
24 as drafted is the limit on business participation  
25 in municipality aggregation, the very question that

1 you asked, Mr. Chairman. The bill would not allow  
2 small businesses with a maximum peak demand of more  
3 than twenty-five kilowatts to take advantage of the  
4 municipal aggregation option. Increasing peak  
5 demand limit to five hundred kilowatts will give  
6 many more small and medium-size businesses an  
7 opportunity to benefit from this new competitive  
8 option for their supply. A larger limit will  
9 include more restaurants, retail stores, and other  
10 businesses that could reduce their business costs  
11 with an alternative electricity supplier.

12 We also encourage the committee to  
13 resist language in the bill that dictates terms and  
14 conditions in municipal aggregation supply  
15 contracts. Competitive suppliers that enter into  
16 aggregation contracts with municipalities should  
17 understand and accept the risks inherent in such  
18 contracts.

19 Efforts to legislatively mitigate risks  
20 to suppliers could result ultimately in higher  
21 costs and fees for consumers and would not advance  
22 competitive markets.

23 PPL Energy Plus appreciates the work of  
24 the committee in supporting the growth of electric  
25 competition in the commonwealth and exploring ideas

1 to advance opportunities created by electric  
2 choice. Municipal aggregation, done right,  
3 represents one more option for residents and  
4 businesses to benefit from electric choice.

5 Once again, thank you for the  
6 opportunity to speak with you today, and I would be  
7 happy to answer any questions.

8 CHAIRMAN PRESTON: Rep. Beyer.

9 REP. BEYER: Thank you, Mr. Chairman.  
10 Good morning.

11 MR. BARKANIC: Good morning.

12 REP. BEYER: Love, love, love, love  
13 it. Love the five hundred kilowatt. I think it's  
14 great.

15 What language is in here, in the bill,  
16 maybe you can point it to me, that benefits the  
17 supplier? Can you specifically direct me to it?  
18 You make a point that we should resist -- wait a  
19 second here. We should resist language that -- I'm  
20 sorry. I've now lost it.

21 Do you know what I'm referring to?

22 MR. BARKANIC: I believe so.

23 REP. BEYER: Can you just elaborate on  
24 that?

25 MR. BARKANIC: There might be

1 amendments introduced to try to dictate terms and  
2 conditions that would be better negotiated, as the  
3 Chairman even said --

4 REP. BEYER: At the municipal level.

5 MR. BARKANIC: At the municipal level.  
6 So if a supplier wants to have a termination fee,  
7 that's their choice. Me, as a competitive  
8 supplier, I might not want to have a termination  
9 fee, and that would allow me to have a competitive  
10 advantage.

11 So we don't think that the bill should  
12 limit the choices that the municipality can gain in  
13 negotiations.

14 REP. BEYER: And then you're also  
15 suggesting that there shouldn't be any time limit  
16 at all either, say five years or three years or --

17 MR. BARKANIC: Yeah. I think the idea  
18 that Mr. Popowsky mentioned about coordinating them  
19 with the default supply contracts is a good one. I  
20 don't -- but, again, I think the municipalities  
21 should have the right to negotiate that. If they  
22 can negotiate a longer or shorter deal and get a  
23 better price, more power to them.

24 REP. BEYER: That's it, Mr. Chairman.

25 Thank you.

1 CHAIRMAN PRESTON: Rep. Ellis.

2 REP. ELLIS: Thank you, Mr. Chairman.

3 Just real quickly, on the small  
4 businesses. What -- what would be the effect of  
5 inclusion going from twenty-five to five hundred?  
6 What kind of companies are we now talking about? I  
7 mean, you said restaurants.

8 MR. BARKANIC: There's -- I know one in  
9 particular, a doctor's office, that has not been  
10 able to get any suppliers to -- to provide offers  
11 for them because they're not quite big enough to be  
12 a large industrial and their not -- certainly not a  
13 small or residential customer.

14 So a doctor's office would be that way.  
15 You know, gyms, but larger restaurants as well.

16 REP. ELLIS: So at five hundred  
17 kilowatts, that would basically take everybody up  
18 until they're considered a large.

19 MR. BARKANIC: And it's not as black  
20 and white as that. They overlap.

21 But when you look at the number of  
22 people who -- the residents who have shopped, those  
23 numbers are fairly solid in the 32 percent in PPL  
24 Electric Utility service territory. This would  
25 help them tremendously.

1           The large industrials have 95 percent,  
2   94 percent of that load has already switched in PPL  
3   service territory. The one that seems to be  
4   missing is that middle piece

5           REP. ELLIS: Okay. Thank you very  
6   much.

7           CHAIRMAN PRESTON: For example, I have  
8   a company in my area that does nothing but sharpen  
9   knives, so the machines are going all the time, but  
10  it's not a heavy -- it is not 220. It's regular  
11  110 line, but they're always going, but kind of  
12  includes a lot of them and that's what we can look  
13  at.

14          REP. ELLIS: Mr. Chairman, I was just  
15  really seeing if car dealerships would be covered  
16  under that.

17          CHAIRMAN PRESTON: Depends on how big.

18          REP. ELLIS: For instance, a one-acre  
19  car lot with seventy, you know, brand-new cars and  
20  forty used cars like there may be in Butler, PA, a  
21  friend of mine, brother, may participate in. I'm  
22  curious if he would be able participate.

23                 That's all.

24          CHAIRMAN PRESTON: Any other  
25  questions?



1                   There being none, thank you very much.

2                   We are going to invite the chairman of  
3 the PUC to come forward, but what I'd like to do is  
4 first to give the stenographer just a little break,  
5 so we're going to take a -- I want everybody to  
6 hear this -- a four-minute break. Four-minute  
7 break. So, run now. Four minutes. Okay.

8                   (Whereupon, a brief break was taken.)

9                   CHAIRMAN PRESTON: I wanted to do this  
10 while she's not here. When she comes in, I'm going  
11 to announce it. It's Gail's birthday. So this  
12 works out even better. I always like to surprise  
13 people.

14                   Next person to testify is the chairman  
15 of the Public Utility Commission, Mr. James H.  
16 Cawley.

17                   Thank you very much for coming,  
18 Mr. Chairman. We really appreciate you spending  
19 the time here and coming to Bethlehem to go over  
20 this issue. I think you've had a chance to hear  
21 some of the conversation just as well and we look  
22 forward to hearing your testimony.

23                   MR. CAWLEY: Thank you, Chairman  
24 Preston and Chairman Godshall and members of the  
25 committee.

1                   It is a genuine pleasure to be here  
2 with you --

3                   CHAIRMAN PRESTON: Pull that closer.

4                   MR. CAWLEY: To be here with you, and  
5 to discuss House Bill 2619.

6                   I'm not merely giving you lip service  
7 when I compliment the sponsors of the bill and this  
8 committee for rolling up its sleeves on this  
9 issue. We eat and sleep this sort of thing every  
10 day, and it's -- it's a genuine pleasure to have an  
11 oversight committee that takes the time to educate  
12 itself. And this bill shows the -- the fruits of  
13 your labors.

14                   I have gone over this bill with a fine  
15 tooth comb, and as an old legislative staffer, I  
16 appreciate fine work. This is an elegantly drafted  
17 bill. The necessary definitions are there. The  
18 cross references are correct. The bill is  
19 structurally sound.

20                   So, let me, on behalf of my colleagues,  
21 say that we support this bill. We think it's going  
22 to -- if enacted, is going to go a long way to  
23 getting the next group of electric customers to  
24 switch from their higher-priced default service to  
25 lower-priced suppliers.

1                   And let me, by way of introduction,  
2 remind the committee and everyone present here what  
3 the legislature intended when it enacted customer  
4 choice in Pennsylvania. The idea was to get as  
5 many customers off default service and onto an  
6 alternative supplier so that they could receive  
7 lower prices than they would otherwise receive from  
8 the default supplier, and they would receive  
9 innovative products that the default supplier can't  
10 or won't do.

11                   And, in fact, the design was that the  
12 default supplier would provide essentially plain,  
13 vanilla service, not with all the bells and  
14 whistles that an electric generation supplier could  
15 provide. So the hope was that there would  
16 really -- if this all worked properly, there would  
17 only really be a small residue of customers who,  
18 for some reason, stayed with the higher-priced  
19 default service.

20                   So when we consider anything bearing on  
21 electric choice, and in this case, municipal  
22 aggregation, what we are concentrating on is a  
23 design which will enhance customer choice. Enhance  
24 customer choice. If it doesn't do that, then we  
25 shouldn't enact municipal aggregation.

1           My colleagues and I are convinced that  
2 only -- even with the best of opt-in programs --  
3 which is what we have, what electric choice in PA  
4 is, it's an opt-in -- you have to program, you have  
5 to affirmatively choose an additional supplier --  
6 even with the best programs, you're only going to  
7 get about a third of the customers. And for  
8 whatever reason, chiefly, I think, apathy and just  
9 plain misunderstanding or mistrust or misguided  
10 brand loyalty of staying with the distribution  
11 company, people don't switch.

12           So how do you get the other two-thirds  
13 or a good chunk of the next two-thirds? Municipal  
14 aggregation is the answer. It's worked in Ohio.  
15 It was started in Massachusetts and doing very well  
16 there. So how do we design a program?

17           Under the bill, I think -- I think the  
18 bill should be changed in one significant way. I  
19 don't think that there should be any restrictions  
20 whatsoever on switching. None. And there should  
21 be no early termination fees.

22           Now, you're probably wondering, well,  
23 isn't it the chief inducement for an electric  
24 generation supplier to enter into this contract  
25 that it's going to get a captive block of customers

1 at a fixed price for a substantial term? Well,  
2 that probably is an inducement for an electric  
3 generation supplier, but -- it's great for an  
4 electric generation supplier, but it's not for the  
5 customers.

6 If you really have as your chief goal  
7 promoting electric choice, then you shouldn't  
8 restrict the customer in switching at any time or  
9 you shouldn't charge them any early termination  
10 fees. They should be able to come and go as they  
11 please.

12 Will an electric generation supplier  
13 still enter into contracts? You're darn right they  
14 will, because the biggest benefit to an electric  
15 generation supplier is saving on customer  
16 acquisition costs. They get a block of customers  
17 instead of having to attract them individually.  
18 And it can cost as much as a hundred fifty dollars  
19 a customer to try to attract them individually.

20 Once the municipality, through its  
21 officials, enters into a contract like that -- like  
22 this, customers tend to be sticky. They stay where  
23 they are. They stay where they are. Most of them  
24 stay. Even if they're allowed to switch, most of  
25 them will stay where they are. They trust their

1 municipal officials. They may or may not educate  
2 themselves to other alternatives, even if they're  
3 allowed to switch during the term. I think that  
4 would be the biggest benefit to improving this  
5 bill. And it would promote, I think, the  
6 legislative intent in the first place, which was to  
7 promote electric choice at all costs.

8 I would allow the electric generation  
9 supplier to renegotiate the contract to lower the  
10 price or add other inducements to keep the  
11 customers even more stickier than they are, but I  
12 wouldn't let the supplier raise the price during  
13 the term. I think that's within the good judgment  
14 of legislative official -- or of municipal  
15 officials.

16 But, to me, that's the biggest change I  
17 would make in this bill. I mean, if we're really  
18 serious about giving customers a choice, that's  
19 what you got to do. Clear the barriers to  
20 switching and give full choice.

21 Now, I notice the bill doesn't have  
22 anything to say about the duration of a contract  
23 that a municipality may enter into.

24 CHAIRMAN PRESTON: That was --  
25 unfortunately, as I say, was the original intent.

1 It was three years, maximum. This version we just  
2 noticed it, in printing, like I say, a printing  
3 error that we caught up. One of the amendments --  
4 look at the overall amendments that we're looking  
5 at, thinking about going from three to five years.  
6 That's why I was asking the opinion of everyone.

7 MR. CAWLEY: Well, the question is,  
8 should there be a term limit of some kind, one or  
9 more years? I don't think you should have any more  
10 than a two-year-period limit.

11 Why do I say that? Because the longer  
12 the term that can be entered into, the more the  
13 migration risk to the energy supplier.

14 Now, I've already said you should let  
15 customers switch if they want to with no early  
16 termination fee. So there's already somewhat of a  
17 risk, but the longer you make a -- the term of a --  
18 a contract, the more likelihood, over that period  
19 of time, is that a lot of customers are going to  
20 eventually find a better deal and they'll leave.  
21 And even more practically speaking, nobody's  
22 crystal ball works very well beyond two or three  
23 years.

24 It's been our experience, in talking  
25 with various suppliers, that they are exceedingly

1 reluctant to enter into supply contracts beyond two  
2 or three years, because they don't know what their  
3 generation costs are going to be in two or three  
4 years. They don't know how many customers are  
5 going to switch in two or three years. They don't  
6 know if there's going to be another hurricane in  
7 the gulf that is going to drive up natural gas  
8 prices and, therefore, wholesale electricity prices  
9 because of federal pricing mechanisms. They don't  
10 know what's going to happen in national,  
11 international events which is going to have an  
12 adverse effect on their fuel costs.

13           So they -- just put it at two years.  
14 The longer you make it, it's probably not going to  
15 be availed of anyway. And I fear that you're  
16 liable to have municipal officials who will not  
17 have the knowledge that I've just described, and  
18 they'll be tempted to enter into a five-year  
19 contract, and it's a good chance, within that five-  
20 year period of time, that market prices are going  
21 to go below the locked-in price in the contract,  
22 and you're going to have captive ratepayers, and  
23 you're going to have very unhappy electors come  
24 municipal election time.

25           Now, that's assuming that you don't



1 take my advice and just eliminate all the switching  
2 restrictions. I think eliminating the switching  
3 restrictions cures a lot of problems. And if you  
4 really want to make it five years, fine, but don't  
5 prevent people from switching. But don't be  
6 surprised if the premium in the bids is more  
7 substantial because of the risk that the supplier  
8 foresees with a contract of that length.

9           So you want these bids to be as low as  
10 possible. Don't be putting provisions in the bill  
11 that are going to drive up the risk premium.

12           Of course, the opposite could occur.  
13 You could -- municipal official could be a hero if  
14 suddenly market prices go way above the locked-in  
15 price, but I -- again, I just don't think anybody's  
16 crystal ball is that good, and I want municipal  
17 officials to undertake these programs. I don't  
18 want to create disincentives for them to do so by  
19 having to make, perhaps, in their minds, the  
20 Hobson's choice between a market price that may go  
21 above or below the locked-in price.

22           Again, eliminate the switching  
23 restrictions and my concerns would be -- would be  
24 significantly diminished.

25           Opt-in as well as opt-out, you've

1 added opt-in. I'm going to quibble with you here a  
2 little bit on this. Maybe if a municipal official  
3 has the opportunity to implement an opt-in program,  
4 he or she will be more willing to do that than an  
5 opt-out program, if the official sees an opt-in  
6 program as locking up the customers and giving them  
7 the impression that they're captive, but, on the  
8 whole, I think it complicates the bill needlessly.

9 I would -- I will tell you, frankly --  
10 and I'm sure you already know this -- opt-in  
11 programs are much more effective than -- I mean,  
12 opt-out programs are much more effective than  
13 opt-in programs. As I said, we have opt-in already  
14 in PA, and you only get about a third of the  
15 customers. What makes -- what makes us believe  
16 that another opt-in program is going to have a  
17 significant effect on making or convincing people  
18 they should switch?

19 I -- again, I'm not going to quibble  
20 with you too much on this. But I think you should  
21 look at page seventeen, line twenty-seven, about  
22 the exclusions, which for some reason apply only to  
23 opt-out programs but not opt-in programs. I don't  
24 see why. I think those exclusions should probably  
25 apply to opt-in programs as well, but I may be

1 missing something here.

2           Coordination of the electric  
3 distribution company default supply procurement  
4 programs with aggregation programs. The consumer  
5 advocate's point is well taken. This is a concern  
6 because it -- when the commission approves these  
7 default supply programs ahead of time, we know very  
8 well that the suppliers are counting on a certain  
9 number of default customers. And if you add  
10 municipal aggregation to the mix, particularly if  
11 it grows over -- substantially over time, then you,  
12 again, add to the risk premium that the wholesale  
13 bid is going to be made.

14           In other words, if you're the  
15 supplier -- and there are two ways of going about  
16 this. There's -- an electric distribution supply  
17 may have a full requirements program where the  
18 wholesale suppliers bid to provide full  
19 requirements, everything. And, therefore, if --  
20 and always included in those bids already is a risk  
21 premium for certain amount of customer migration.  
22 They know a certain number of customers are going  
23 to switch. This would accelerate that risk  
24 potentially significantly.

25           So you can't have those wholesale bids

1 be made and the supplier counting on a certain  
2 level of customers when the supplier has to suffer  
3 the shortfall if too many customers leave. The  
4 supplier then has to try to get rid of the power  
5 that it's lined up to serve an anticipated number  
6 of customers, and the market may not allow that  
7 excess power to be sold at a profit, and they'd  
8 have take a loss, so they're going to up the risk  
9 premiums more. You don't want that because what  
10 the bids are for is default service, those who  
11 don't switch. You don't want to drive up the  
12 default service prices.

13           The goal here is to get the default  
14 customers to switch, but you don't want to be  
15 onerous on them by driving up their cost  
16 intentionally to get them to switch. That's not  
17 the game we're playing here.

18           What we're trying to do is to keep the  
19 default prices as low as possible through wholesale  
20 competitive bidding, which we require, and then  
21 once that cost is determined by competitive  
22 procedures, that value is passed through to  
23 customers dollar for dollar, no markup. That's why  
24 the EDCs don't care if you switch. They can't make  
25 any money on electricity because we won't let them.

1 They would just as soon that they not have to get  
2 any default supply and that everybody is switching,  
3 and that whole having to get default supply would  
4 be off their backs.

5 But, anyway, you have to coordinate  
6 these programs. I would suggest to you that, under  
7 the broad language you've given us in the bill, to  
8 promulgate regulations to implement this act, that  
9 you leave this up to us. We are going to have to  
10 sort this out. And I think we would hold hearings,  
11 and we would figure out how to coordinate the plans  
12 for advance procurement with the times when  
13 municipalities can enter into agreements. Because  
14 if you don't coordinate it, you're going to have  
15 problems. There's no doubt about it.

16 So what I call aggregation windows, we  
17 may have a period of time when we say, Okay,  
18 municipalities, if you're going to enter into a  
19 aggregation program, you got to do it within this  
20 period of time, because we, the commission, are  
21 keeping track of how many aggregation programs  
22 there are going to be so we can coordinate it with  
23 how much default supply the EDCs have to acquire.  
24 I mean, that's the only sensible way to do it, but  
25 please don't be too prescriptive in the bill. Give

1 us a little play in the joints so we can sort this  
2 out.

3 I'm going to stop talking, and ask any  
4 questions.

5 Again, it's a pleasure to be here. My  
6 colleagues and I support this bill. We look  
7 forward to working with you as the bill goes  
8 through the legislative process.

9 CHAIRMAN PRESTON: I want to thank  
10 you. I think because, even in your last several  
11 paragraphs, comment that there may be a way that we  
12 can try to handle the situation, and we did have a  
13 concern in dealing with it not a total level  
14 playing field with everybody as we go through  
15 this.

16 The other thing is, when we were in  
17 Johnstown, and I think Rep. Beyer and I, when we  
18 were -- the three-year basically was shorter than  
19 an average four-year term for the local elected  
20 official. Looked at two year, four year, sort of  
21 the situation, you know, when you have different  
22 groups facing in with local elected officials.  
23 Doesn't mean they can't do two years.

24 But at the same time, when you go into  
25 a two-year agreement, you got to have borough

1 council come in, the other half coming for  
2 election two years later, about keeping the onus on  
3 the local elected officials just as well, it means  
4 that almost after twelve months they have to start  
5 negotiating again. And a lot the small towns, you  
6 know, they have a solicitor, borough manager,  
7 controller, and maybe one or two other clerks. And  
8 that's one of the things I was looking at, because  
9 I'm lucky enough where I represent -- 70 percent of  
10 my district is a city that has a lot of staff, but  
11 then the boroughs that I have a lot of, I look at  
12 what they have between the clerk, manager.

13 That was part of the reason why, you  
14 know, looking at the issue of the five years. I  
15 see your point just as well because sometimes we  
16 fail to forget how fast technology in the world has  
17 been changing with things and how things do  
18 fluctuate, so something I agree with looking at.

19 The issues, I don't know if you were  
20 here or not when I explained that a lot of people  
21 weren't happy about putting in the opt-in. So  
22 sometimes you say, perfect bill is either where  
23 everybody disagrees on everything or there's parts  
24 of it that everybody disagrees with but none of the  
25 same people disagree on the same parts. So it

1 means everybody has to be a little bit more  
2 accountable. That's what's the issue there,  
3 because, you know, in other states, they have  
4 referendums, and I didn't want -- so I wanted to  
5 give another option. That was the reason behind  
6 that. I just wanted to explain it. I'm not for or  
7 against one way or another. And we'll deal with  
8 that.

9           So I just wanted to explain that to  
10 you, especially dealing with the three years,  
11 because it came to my attention, even -- I guess  
12 there are some townships where the supervisors are  
13 elected up to six years. So it is -- it is just,  
14 you know, a variance of what we're dealing with  
15 small towns as compared to the bigger companies,  
16 and I think it gives the companies some type of  
17 advantage that is shorter, little short terms.

18           The local boroughs, if you have --  
19 imagine twelve or fifteen towns where there's only  
20 anywhere from four hundred to five thousand people  
21 in the town that have a -- have an agreement,  
22 unless they decide, if they're fortunate enough to  
23 be close to a bigger city where they form an  
24 aggregation and might be able to give extra support  
25 staff, but also causes to affect their operating



1 costs. I just wanted to explain that to you.

2 Questions?

3 CHAIRMAN PRESTON: Rep. Ellis.

4 REP. ELLIS: Thank you, Mr. Chairman.

5 Chairman Cawley, thank you for coming  
6 today. I just have a question. You had promoted  
7 the concept of no termination fees or penalties for  
8 switching, but, at the same time, you suggest that  
9 one of the problems we may be stuck with is the  
10 risk premiums going up because of heavy migration.

11 If there is no way to offset the costs  
12 of somebody switching and losing that customer,  
13 wouldn't that also possibly raise the risk factor?  
14 That whenever they are making their initial bid,  
15 they're going to say, Well, we're not going to be  
16 able to collect anything and we're going to have 12  
17 percent of the people during the contract opt-out  
18 or, you know, migrate to another provider, we have  
19 to factor that in.

20 I mean, it seems to me like they're  
21 going to do that. So on one end, you want to stop  
22 it, and on the other end, you're promoting it.

23 MR. CAWLEY: You can't avoid some risk  
24 premium. But you're -- you're dealing primarily  
25 here with residential customers who don't switch

1 much. I wish they did but -- I think experience  
2 has shown that once people make a choice, very few  
3 change. They're happy with the program. So, sure,  
4 there's going to be some risk premium in there, but  
5 they can live with that. They can live with that,  
6 particularly when they're getting such a big block  
7 of very likely what I call sticky customers.

8           And that is why I would not  
9 legislatively raise the small commercial customer  
10 above twenty-five-kilowatt-hours demand, because  
11 above that, business customers do switch. They're  
12 in the business of watching their costs very  
13 carefully, and they will switch. That will  
14 significantly add to the migration risk and I think  
15 would add to the risk premium.

16           On top of that, I don't think you need,  
17 by the way, to raise it above twenty-five-kilowatt-  
18 hours demand because that market is significantly  
19 served already.

20           I didn't catch the figure from PPL,  
21 but --

22           CHAIRMAN PRESTON: It was five hundred.

23           MR. CAWLEY: I thought -- I thought  
24 there was some description of middle level  
25 commercial businesses that have not switched. But

1 the -- if you look at the number of licensed  
2 electric generation suppliers, there are probably  
3 at least two or three dozen that are after the  
4 commercial market. It is highly, highly  
5 competitive. You don't need, I don't think, to  
6 include that level or that size of businesses in  
7 these programs. They're already getting offers  
8 right and left already, and if -- and the  
9 competition is really working.

10 So, yes, you're going to have some risk  
11 premium, but the non -- the residential customers  
12 is a fairly low migration risk and, therefore, a  
13 fairly low risk premium, but if you include too  
14 many larger businesses, you raise the migration  
15 risk and you raise the risk premium.

16 REP. ELLIS: Okay. And I appreciate  
17 that, and I was going to actually ask you about the  
18 raising it from twenty-five kilowatt hours, because  
19 I -- I have run a small business, and I've  
20 experienced, whenever we did with the telephones a  
21 decade ago, and AT&T, one day we switched to them,  
22 and realized a month later we didn't like them and  
23 switched to MCI and did all that. And what I find  
24 specifically with my business, we have -- we are  
25 mindful of the bottom line that we have. And we

1 are constantly looking, but once you get -- you  
2 make a bad switch once, then you're less likely to  
3 look.

4                   So I mean, I think -- I mean, there is  
5 a tail off of the -- the small business customers  
6 searching, and I think what you'll find is we are  
7 trying to make a profit in these tough times, and  
8 so we're looking at it, but eventually we get  
9 comfortable, just like the residential consumers.

10                   So if you do have any kind of migration  
11 numbers that you may be able to provide to the  
12 committee, how many residential versus how many  
13 small businesses are switching companies, I don't  
14 know if you have that information or have access to  
15 it, but I'd like to see it.

16                   Mr. Chairman, I don't know if we have  
17 access to that or maybe staff could provide that  
18 for us, but I'd like to see that.

19                   CHAIRMAN PRESTON: Chairman Godshall.

20                   REP. GODSHALL: Pertaining to your  
21 comments about the capabilities of negotiating  
22 contracts at municipal level, I have, in my  
23 district, a couple municipalities that did do a  
24 five-year deal, lock-in deal, starting at 17.6  
25 cents a kilowatt for five years. That's -- I'm not

1 sure -- and, unfortunately, in those situations,  
2 they are captive customers. So that's a lock-in  
3 type deal, and I think that displays a danger, and  
4 also sometimes of -- we have of the knowledge that  
5 I may have or some of my municipal officials may  
6 have pertaining to the actual markets and what's  
7 going to happen in the future, and nobody knows. I  
8 don't know. I'm not sure that they know.

9           And you mention in there pertaining to  
10 certain risk premiums, if there's too many people  
11 that migrate out, we know what's going to migrate  
12 out, basically we have an idea, but municipal  
13 aggregation holds promise for significantly more  
14 customer migration, thus even higher risk premiums  
15 added to default supply bids.

16           Could you go into that just a little  
17 bit?

18           MR. CAWLEY: Well, municipal  
19 aggregation has the promise of significantly adding  
20 to migration, which is good. That's what, I think,  
21 the legislature wanted, again, to get as many  
22 people to switch as possible. It's not a problem  
23 for the suppliers and will not add to the risk  
24 premium if the suppliers know ahead of time or have  
25 a pretty good idea of what aggregation programs are

1 going to be implemented. That's -- and that's why  
2 I -- towards the end of my testimony, I suggest  
3 that you leave this in our hands to implement or  
4 adopt what I call aggregation windows, where we are  
5 -- and data collection from the EGSs and the EDCs  
6 about, what are your plans -- and municipalities,  
7 what are your plans? Are you planning to do this?  
8 Because if you are, we need to know about it so  
9 that when we approve the default supply procurement  
10 plans, we can take into account that there's going  
11 to be a certain level of migration that is going to  
12 be likely because of these aggregation programs.

13           And in a perfect world, of course,  
14 everybody would have perfect knowledge and the bids  
15 that were made for default service would have  
16 absolutely accurate numbers of how many people are  
17 going to switch. That's not possible. The closest  
18 we are going to be able to come is to try to  
19 coordinate the information and approve the plans  
20 accordingly, so that we don't approve too high a  
21 bids and the suppliers know what to bid.

22           So it's a question of coordination,  
23 which I entirely agree with.

24           And, by the way, I would disagree with  
25 my friend, the consumer advocate, on one point. I

1 don't want to wait until 2013 to implement these  
2 programs. And I don't think we need to wait quite  
3 that long.

4           If you will let us implement this, I  
5 think we would do it on phased-in basis, and it's  
6 going to take a while to get the -- the regulations  
7 hammered out so that it works properly, so that the  
8 coordination is going properly.

9           But -- don't put us off to 2013.  
10 There's too many people who need to save money  
11 between now and then.

12           REP. GODSHALL: And at the same time,  
13 all these contracts have to fit into the Act 129  
14 requirements.

15           MR. CAWLEY: They do.

16           REP. GODSHALL: Which is a little bit  
17 more complicated.

18           MR. CAWLEY: They do, but, again, we  
19 can sort that out. I don't have any problems  
20 saying that. Just so you don't lock us in to too  
21 many restrictions.

22           You do a very good job of overseeing  
23 us. So -- and if we really get off the track on  
24 this, I'm sure that you would have us in for a  
25 little chat.

1                   REP. GODSHALL: Thank you,  
2 Mr. Chairman.

3                   CHAIRMAN PRESTON: Rep. Beyer.

4                   REP. BEYER: Good morning, Chairman.  
5 Cawley.

6                   MR. CAWLEY: Good morning.

7                   REP. BEYER: All right. So I admit it,  
8 I'm a sticky customer, because when the rate caps  
9 came off here -- I live just a few miles from  
10 here -- but my home was inundated with calls,  
11 choice, but, you know, I just stayed with PPL.  
12 It's just -- I don't know what it is. You know,  
13 PPL's been a great company. And so I'm one of  
14 those folks that don't -- not a switcher.

15                   I completely agree with you that there  
16 should be no switching requirement and no early  
17 termination fees. I completely agree with you on  
18 that.

19                   I guess my sticking point with you  
20 would be, why not have it to five hundred  
21 kilowatt? You know, why not -- even though there's  
22 much more competition, as you suggest, in that  
23 medium business group, there's a risk. And they're  
24 going to move in and out, but so are customers when  
25 they start getting savvy on this. And



1 municipalities could be able to do that. They  
2 could negotiate a one-year contract with one group  
3 and then turn around and do another the following  
4 year. So I'm not sure that there's a real strong  
5 case not to include or expand at least the small  
6 business base.

7 I'm interested in putting school  
8 districts in this. I have DeSales University in my  
9 legislative district. I'd love to put colleges and  
10 universities in this.

11 So those are my comments.

12 MR. CAWLEY: Number one, you should  
13 switch.

14 REP. BEYER: Why should I switch?

15 MR. CAWLEY: Because I say to people --

16 REP. BEYER: Save money?

17 MR. CAWLEY: -- if you -- this is  
18 probably a poor example for a lady. But I say, if  
19 you can afford to light a cigar with a hundred  
20 dollar bill or two cigars with a hundred dollar  
21 bill every year, then don't bother to switch,  
22 because obviously a hundred or two hundred dollars  
23 doesn't mean anything to you. But if that's  
24 serious money to you, you should switch.

25 REP. BEYER: I should switch.

1 MR. CAWLEY: And PPL does not care.  
2 They don't care. They don't make any money in  
3 electricity.

4 REP. BEYER: Who do you recommend  
5 then?

6 MR. CAWLEY: Really, it doesn't matter  
7 which one you take. You're going to save somewhere  
8 between 10 and 15 percent a year.

9 REP. BEYER: Okay.

10 MR. CAWLEY: And PPL has remained under  
11 PUC-regulated distribution rates all along, right  
12 from the get-go, and that's the way it's going to  
13 continue.

14 But anyway, let me answer your question  
15 more directly. You will, I think, add to the  
16 migration risk if you put bigger businesses in  
17 there and that will add to the risk premium. And  
18 that will drive up default prices. You don't want  
19 to do that.

20 You don't need to include those bigger  
21 companies, I don't think. Now maybe we need a real  
22 study to really get this absolute. But these  
23 people are already getting lots of offers. And I  
24 suspect that if a larger company said, "Wait a  
25 minute. I'm legislatively not included here, but

1 I want that good deal too," the winning supplier  
2 would probably include him. And if they won't --  
3 if that company won't do it, I'd bet you one of the  
4 three dozen other ones will.

5 So I just don't think you need to add  
6 to the risk by including more, bigger customers.  
7 I -- I'm willing to be convinced otherwise on that  
8 point, but I'd let the marketplace take care of  
9 that problem.

10 REP. BEYER: Is it too personal to ask  
11 you who your provider is? Do you mind?

12 MR. CAWLEY: I don't mind, no. I  
13 jumped in real early.

14 REP. BEYER: I would think that you had  
15 the inside track on it.

16 MR. CAWLEY: No, really. I looked at  
17 lowest price with no switching fee, and I signed up  
18 with ConEd Solutions. And I saw their market --  
19 their number dropped, and I went to them, and I  
20 said, Hey, I'm a customer. How come I don't get  
21 the lower price? And they thought about it for a  
22 while. And I said, Don't you want to keep me  
23 rather than having me go to another EGS for a lower  
24 price. And they thought about it, and they said,  
25 you know, you're absolutely right.

1 REP. BEYER: They're here today too.

2 MR. CAWLEY: Well, Richie Hudson left.  
3 So -- but it doesn't matter which one you go with,  
4 you're going to save.

5 REP. BEYER: Right.

6 MR. CAWLEY: You should do it.

7 REP. BEYER: Okay. Thank you.

8 Thank you, Mr. Chairman.

9 CHAIRMAN PRESTON: Mr. Evans.

10 REP. EVANS: Thank you, Mr. Chairman.

11 And in contrast to my colleague, the  
12 lovely lady from Lehigh Valley, I won't ask any  
13 personal questions about your accounts, personal  
14 accounts.

15 I did want to try to clarify a little  
16 bit on the term limits. And from a layman's point  
17 of view, you know, if you are a local elected  
18 official, the feeling would be, I would guess, that  
19 the longer term limit you have, the better in the  
20 way of saving money, but in your testimony, you  
21 mention that there are some other factors that  
22 perhaps could allow a shorter term to be more  
23 beneficial from a cost basis for that  
24 municipality.

25 I wondered if you could expand on that,

1 and in looking at some of the other risk factors  
2 that a long-term contract would -- would create a  
3 disincentive.

4 MR. CAWLEY: Well, the markets go up  
5 and markets go down. And if you legislate that a  
6 municipality can enter into a contract with a  
7 supplier at a fixed price for, let's say, five  
8 years, it is highly likely that during that  
9 five-year period, the available market price, other  
10 offers are going to be above and are going to be  
11 below that locked-in price.

12 The -- the disincentive for an elected  
13 official to take the risk that the market is going  
14 to drop substantially below the locked-in price may  
15 be so great that the elected official will say, You  
16 know, I'm not going to take the chance. I know if  
17 we -- if we do this right, customers can save some  
18 money and we might be able to get them a better  
19 deal than they can get individually, but I'm going  
20 to just let them individually try to get the best  
21 deal. I'm not going to take the risk that I'm  
22 going to enter into a price that is going to be too  
23 high come election time.

24 So I want elected officials to enter  
25 into these programs because it gets people to

1 switch. People have faith in their elected  
2 officials to make a good judgment, to look into the  
3 programs that are available and to make a good  
4 choice. And that overcomes the -- the current  
5 distrust, the misconceptions, the apathy. None of  
6 which any member of this committee is guilty of,  
7 I'm sure.

8 So that's the deal.

9 REP. EVANS: From the utility's point  
10 of view, looking at risk, you mentioned some  
11 possible scenarios that don't know in the future  
12 what could happen, the failure of the grid, of  
13 natural disaster, those types of things, so the  
14 provider also would be looking at risk in a long-  
15 term contract as well, would they not?

16 MR. CAWLEY: Oh, they are. And, as I  
17 said, their crystal ball isn't any better than  
18 yours or mine. And our experience is, is that  
19 they're going to put a risk premium in there. If  
20 they sign a contract for five years when they don't  
21 know what their generation costs are going to be,  
22 they would be -- they would be very foolish  
23 businessmen not to try to protect themselves,  
24 They'll try to -- if I were they, I'd try to put a  
25 provision in the contract that allowed them to

1 renegotiate it if the contract price varies  
2 significantly over the five-year period. Maybe the  
3 municipal officials would want to do that.

4 But -- now, again, you cure a lot of  
5 this if you eliminate the switching restrictions  
6 and the early termination fees.

7 So if a municipal aggregation program  
8 is for five years and the bottom falls out of  
9 natural gas prices and the contracted price is way  
10 above market prices, the customers, I hope, even  
11 though they're fairly sticky, it's going to get  
12 around that they can get a much better deal  
13 elsewhere, and they'll leave, and then the  
14 municipal officials have egg on their face.

15 So I would leave that out -- that out  
16 to let customers have real choice here and create  
17 incentives for municipal officials to enter into  
18 these programs.

19 REP. EVANS: Thank you.

20 CHAIRMAN PRESTON: Rep. Reichley.

21 REP. REICHLEY: I will make this real  
22 fast. I know we are about twenty minutes over  
23 schedule now.

24 MR. CAWLEY: That's my fault, not you.

25 REP. REICHLEY: You're answering a lot

1 of questions.

2           Going to try to combine two questions  
3 into one. On page seven of your testimony, in the  
4 middle paragraph, the middle sentence: If too many  
5 customers migrate, the supplier may be stuck with  
6 excess wholesale generation that cannot be resold  
7 profitably.

8           And that sentence stuck out to me. Is  
9 the way that that gets solved with the risk  
10 premiums that they're going to incorporate in the  
11 bid price, or do we need to be concerned that --  
12 with the prospect of mass migration of wholesale,  
13 with the -- excuse me -- municipal aggregators, we  
14 are going to be stuck the companies that are all of  
15 a sudden now becoming unprofitable, and then we've  
16 got a market declining in terms of competitive  
17 providers?

18           And the last part is, is there  
19 anything, as the regulator of this, anything  
20 controversial about this topic that we should also  
21 be aware of?

22           So with that I'll --

23           MR. CAWLEY: First of all, there  
24 certainly will be a risk premium that will be  
25 higher than otherwise would be if municipal



1 aggregation starts cutting in to the amount of  
2 default supply that's needed.

3           If the wholesale supplier who's bidding  
4 is not given better knowledge than we currently  
5 give them about the amount of migration that is  
6 likely -- that was a long sentence. Let me try to  
7 say it simpler. The way you cure it is, as I tried  
8 to deal with in my testimony, is -- is to gather  
9 information about who's going to municipally  
10 aggregate, and we share that with the suppliers so  
11 their bids can be more educated and they see this  
12 is coming, the amount of default supply is not  
13 going to be as high as it normally would because of  
14 the aggregation. We don't have to bid to supply as  
15 much power, and we have a pretty good idea what the  
16 level of customers are going to be.

17           If you do that, then it will be more  
18 educated bids and there won't be as high a risk  
19 premium involved. It's -- it's fairly, fairly  
20 easily dealt with, I think.

21           And as far as whether there's anything  
22 controversial here, to me, the only thing  
23 controversial about this legislation is -- is  
24 giving municipal customers the idea that you're  
25 putting them in jail for a period of time that

1 they've got to pay a price.

2 I think, even if it is a better price  
3 than the default price, or even better than they've  
4 been able to get individually from suppliers, the  
5 whole idea that "I'm locked" in rubs people the  
6 wrong way, and the municipal officials are smart  
7 enough to see that and, therefore, they may be  
8 reluctant to enter into these programs because they  
9 just don't want to deal with this.

10 So, again, the way you cure it, in my  
11 view, is I wouldn't -- I wouldn't even bother with  
12 opt-in programs. I would have opt-out programs  
13 only but eliminate the switching restrictions and  
14 the early termination fees. Therefore, you're not  
15 locked in. We have an opt-out program that gets  
16 everybody in; you don't have to do a thing. I  
17 trust you, public official. You've looked into  
18 this. And if I don't like it, I can get out any  
19 time.

20 Municipal official's more likely to  
21 enter into the program and the customers are more  
22 likely to stay. And, therefore, we reduce down to  
23 hopefully a very small residue of those who haven't  
24 switched.

25 CHAIRMAN PRESTON: Thank you very much,

1 Commissioner. We really appreciate it.

2 MR. CAWLEY: My pleasure.

3 CHAIRMAN PRESTON: Next we have Brian  
4 Crowe, vice president, energy acquisition for PECO  
5 Energy Company.

6 Before you get started, I will just  
7 simply say this real quick. Today is Gail Davis's  
8 birthday. She is old. We all want to wish her a  
9 happy birthday. (Applause.)

10 That being said, Mr. Crowe.

11 MR. CROWE: Thank you, Chairman  
12 Preston.

13 Chairman Preston, Chairman Godshall,  
14 members of the committee, thank you for inviting me  
15 here today. I am Brian Crowe, the vice president  
16 of energy acquisitions for PECO. In that role, I  
17 oversee the purchasing of power for default service  
18 customers as well as the interaction with all the  
19 retail suppliers who serve customers in the PECO  
20 territory.

21 I appreciate the opportunity to testify  
22 here today on behalf of PECO on House Bill 2619,  
23 introduced by Chairman Preston. PECO believes that  
24 municipal aggregation legislation, if properly  
25 structured, can provide a complementary option to

1 support competition and choice in PA, as you've  
2 heard.

3 PECO's committed to successfully seeing  
4 its customers through the transition period, as we  
5 come out of rate caps at the end of this year and  
6 we're moving into the competitive market  
7 structure. We believe competitive markets provide  
8 the best opportunity for customers to procure  
9 reasonably priced power.

10 Over the past year, we've worked to  
11 educate customers about the end of rate caps on  
12 January 1st and encouraging them to shop for  
13 electricity from alternative suppliers and  
14 understand what their choices are.

15 In addition to promoting shopping among  
16 customers, we also are procuring energy from the  
17 competitive market for customers who do not select  
18 an alternative supplier. And to date we've  
19 completed three of four scheduled procurements for  
20 2011. That's about 72 percent of the supply we  
21 need for the residential customers in the PECO  
22 territory. The remaining 28 percent we'll be  
23 procuring shortly, on September 20th, and that will  
24 complete our procurements for 2011.

25 There's basically two elements in the

1 bills that go to customers that delivery rates, and  
2 PECO has a pending settlement before the commission  
3 effective January for the delivery rates. And we  
4 also have the generation supply that we talked  
5 about. And while they both are still pending in  
6 terms of the final outcome, we anticipate at this  
7 point that PECO customers would see an increase of  
8 less than 10 percent when the rate caps expire  
9 in the end of this year. So, for the average  
10 customer, that's about eight dollars on a  
11 residential bill.

12 PECO respectfully recommends, as you  
13 approach legislation on municipal aggregation in  
14 PA, members of the committee and the general  
15 assembly should ensure that it meets a couple of  
16 criteria. One, that customers are informed and  
17 that adequate consumer protections are involved;  
18 consistency of municipal aggregation procurements  
19 with the competitive market model; and then  
20 protection against cost shifting from one group of  
21 customers to another in the market.

22 While we support the concept of  
23 municipal aggregation and many provisions of House  
24 Bill 2619, we continue to have a few areas of  
25 concern about the legislation as it's currently

1 written, which I'd like to briefly discuss, and  
2 there's three.

3           The first is assurance of a competitive  
4 process for aggregation procurements that includes  
5 a requirement for least-cost procurement. So when  
6 municipalities and the folks working with them go  
7 out, we want to make sure they're getting the best  
8 possible price for the customers and requiring that  
9 they do that on a least-cost basis through a  
10 competitive model.

11           This is similar to the competitive  
12 market models that we use that are approved by the  
13 commission that ensure the best possible prices for  
14 the customers that are on default service.

15           This is important because there is a  
16 potential with the legislation to have some longer-  
17 term contracts that bind customers for a number of  
18 years, potentially, and particularly on an opt-out  
19 basis, and if there are penalty fees associated  
20 with that, the customer should at least have had  
21 the opportunity to get the lowest price at the time  
22 that it was procured.

23           Second item is what was discussed  
24 earlier about integration of the aggregation plans  
25 with utility default service plans. PECO believes

1 it's essential to include language that would  
2 coordinate the electric distribution company  
3 default service plans with any municipal  
4 aggregation programs that municipalities may  
5 implement.

6           Opt-out procurements, unlike opt-in  
7 procurements, are folks, you know, signing up with  
8 suppliers themselves, can cause large blocks of  
9 load, customer load, to move in and out of the  
10 default service programs. And it is difficult for  
11 the wholesale suppliers who provide service to us  
12 over a period to determine how much that load is.  
13 As was discussed earlier, that would involve,  
14 then -- they're going to price in a risk premium  
15 for that.

16           Synchronizing the municipal aggregation  
17 programs with the default service programs would  
18 reduce this under an opt-out model, and we would  
19 want to make sure that they sync up so that the  
20 customers who remain on default service are getting  
21 the best price they can and the municipal  
22 aggregation customers are getting the best price  
23 they can.

24           The third item I'd like to discuss is  
25 to give the PUC the authority to limit the duration

1 of the municipal aggregation contracts and  
2 determine the terms and conditions under which  
3 customers in opt-out programs are required to pay  
4 exit penalties. So we've talked about whether  
5 they're required or not required. The commission  
6 might have this latitude and do it. For a certain  
7 period of time, they may be allowed longer  
8 contracts; they may be allowed for the initial  
9 period but not later in the period. So we think  
10 there's some options there.

11 When you look at longer term contracts,  
12 obviously, over time, market prices do move, and  
13 there will be pressure from customers to exit the  
14 program early, if the price that they're paying,  
15 they can find a cheaper price in the market. So,  
16 you know, the PUC should have the ability to  
17 determine the maximum allowed length of the  
18 municipal aggregation programs and the duration at  
19 which customers may pay penalties, if they're  
20 allowed.

21 Finally, we believe the PUC should be  
22 authorized to establish financial security  
23 requirements of energy suppliers for aggregation  
24 programs, so having the aggregation supplier post  
25 some type of financial security to make sure they



1 don't walk away from the contract. So if these  
2 contracts go a couple of years -- obviously if  
3 market prices go up and it costs them more to serve  
4 those customers then is in their contract, you  
5 don't want them to walk away and send the customers  
6 back and the customers not to see their discounts.  
7 So we think that that security should be there for  
8 the term of the contract.

9           So, in conclusion, we support the  
10 concept of a well-structured municipal aggregation  
11 program. And we think the key to this is really to  
12 have the consumer protection and make sure it's  
13 consistent with the competitive market model.

14           I'd like to commend Chairman Preston  
15 for his leadership on this issue as well as  
16 Chairman Godshall and the rest of the committee for  
17 their willingness to consider the elements that  
18 we've raised today.

19           So we hope that the members of the  
20 committee and the members of the general assembly  
21 will strongly consider these issues as we move  
22 forward, and I thank you for your time and be happy  
23 to answer any questions that you have.

24           CHAIRMAN PRESTON: I don't have any  
25 questions other than the fact to say, as you've

1 watched today, and, you know, what we had last week  
2 and the conversation's been going on, you can see  
3 us listening and trying to work things out even as  
4 we're going through here and then hearing the  
5 chairman in his statements.

6 I think that some of your concerns,  
7 doesn't mean that everything can happen, but we're  
8 going to -- you know how I am, we're going to see  
9 what we can really try to do.

10 And it will not -- it will not be  
11 blindsided by everything. We will see what we can  
12 do. That's the best I can say.

13 MR. CROWE: Thanks for your  
14 consideration. We appreciate the opportunity to be  
15 here.

16 CHAIRMAN PRESTON: We're going to  
17 trying to see, because we knew this problem was  
18 coming and trying to figure it out, but hearing the  
19 conversations gelling today, I think it gives us  
20 more of a chance to look at it, and I think that  
21 the members themselves, and as you have had a  
22 chance to feel that too. And then we'll be able to  
23 hear that, you know, the people who come after you,  
24 be interesting to hear the give and take.

25 Okay?

1 MR. CROWE: Thank you, Chairman.

2 CHAIRMAN PRESTON: Thank you very much.

3 We're go to -- I'm sorry. Chairman  
4 Godshall.

5 REP. GODSHALL: You mentioned briefly  
6 something that was brought up before pertaining to  
7 the rising costs of customers remaining in a  
8 default service pool. How do you -- I mean, what  
9 are your thoughts on that as far as a bill? And  
10 what would -- how would that affect your company at  
11 this point?

12 MR. CROWE: Well, when the --

13 REP. GODSHALL: With the bill, if it,  
14 you know, would go through as it is.

15 MR. CROWE: If it would go through  
16 without synchronizing the default service plans  
17 with the municipal aggregation programs, two things  
18 will happen. First, the suppliers who are already  
19 serving us, who have locked in prices to serve us,  
20 they're going to be -- have additional risk because  
21 there are now chances of larger customers -- large  
22 groups of customers being moved in and out. So  
23 they've got some risk with the current plan they've  
24 committed to.

25 I would say the other piece that

1 happens, is future bidders, whether the ones on  
2 September 20th, into our last procurement, or  
3 future procurements that we're doing, they're going  
4 to have to factor that in and say, there's a  
5 potential for a large group of customers to leave  
6 and -- and they're only going to leave if the price  
7 is better somewhere else. Right? So it's clearly  
8 a risk premium.

9           If the price, you know, in market goes  
10 higher, and they've committed to a price,  
11 they're -- you know, the customer's going to stay  
12 with us. So there is a risk premium that they're  
13 going to factor into their bids, if legislation  
14 passes or even pending legislation, that they're  
15 going to have to anticipate what's going to happen  
16 in the future with these opt-out programs. And it  
17 does provide price risk that gets back and then  
18 gets paid by the people who remain on the default  
19 service plan.

20           REP. GODSHALL: This was mentioned by  
21 both PUC and Sonny as a -- as one of the concerns.

22           And the other thing I wanted to ask  
23 about was something that was unique about the  
24 authorized -- PUC authorized to establish financial  
25 security requirements for energy suppliers for

1 aggregation programs. Is that true today in any  
2 form?

3 MR. CROWE: No. Today's suppliers  
4 pay --

5 REP. GODSHALL: I know PECO's not there  
6 yet at this point, but, you know, with the other  
7 companies, do any of these companies that are  
8 coming in, like -- as I said, I'm PP&L, and I have  
9 fourteen, fifteen different companies that  
10 contacted, you know, me concerning that. Are any  
11 of those -- any of those customers have any kind of  
12 a backup?

13 And I guess I'm looking at Enron a few  
14 years back.

15 MR. CROWE: We actually had a program  
16 in the earlier part of the decade that resulted  
17 from our restructuring settlement in 1998, and we  
18 agreed to do something called competitive default  
19 service, where we agreed to take 20 percent of the  
20 residential customers and have them bid out for a  
21 discount off PECO's rate. And I believe at the  
22 time the discount was 2 percent.

23 The winning bidder was a company called  
24 New Power, which was a combination of AOL, and  
25 Enron was involved in that as well. And basically,

1 during the period of the contract, when market  
2 prices rose, they walked away. And they turned the  
3 customers back. And in the PJM power pool, those  
4 customers immediately went back to PECO's load, so  
5 PECO had to, you know, through its default service  
6 at that time, had to absorb the risk of getting  
7 those customers back during the period of rising  
8 prices.

9           So it is possible that folks -- if they  
10 see the end of the contract and they're out of  
11 money on the contract, there is a risk that they  
12 could send those customers back, and we'd like to  
13 see some type of financial security that's at risk  
14 for them in order to keep them in the market when  
15 prices go out of the money. Obviously, they'll  
16 stay if the customers are profitable, but if, for  
17 the remainder of the term, you know, it's going to  
18 cost them, potentially, more to serve those  
19 customers than they can charge, we want to make  
20 sure they fulfill those obligations to the  
21 customers.

22           REP. GODSHALL: I totally agree with  
23 that. I was one of the ones that signed up with  
24 Enron. You know --

25           MR. CROWE: It was Enron, AOL, and IBM

1 were the three. So three big -- pretty big  
2 companies.

3 REP. GODSHALL: It was a good deal at  
4 the time. And -- so I really -- I think that's an  
5 excellent suggestion. You know, there should be  
6 some kind of a guarantee, and there should be some  
7 security requirements to back those contracts up.

8 Thank you. That's all I have,  
9 Mr. Chairman.

10 CHAIRMAN PRESTON: Thank you.

11 Thank you very much.

12 MR. CROWE: Thank you.

13 CHAIRMAN PRESTON: Next, Tony Banks,  
14 vice president of product and market development,  
15 FirstEnergy Solutions; and Sharon -- do I pronounce  
16 that Noewer?

17 MS. NOEWER: Noewer.

18 CHAIRMAN PRESTON: Noewer, director,  
19 mass marketing and product development, FirstEnergy  
20 Solutions.

21 See you twice on both sides of the  
22 state.

23 MR. BANKS: That's right.

24 CHAIRMAN PRESTON: Just so everybody --  
25 I got certain limits where they're going to kick me

1 out of this building and so on. But now that you,  
2 come in -- like I said before, now that you've  
3 heard some of the things going on, and I guess you,  
4 being a marketer and producer, gives us a good  
5 chance to hear your opinions on these.

6 MR. BANKS: Okay. Look forward to your  
7 questions after our presentation.

8 Chairman Preston, Chairman Godshall,  
9 members of the committee, good morning, and thank  
10 you for the opportunity to address this committee  
11 today on legislation to create opt-out municipal  
12 aggregation in PA, legislation we believe is timely  
13 and will promote greater competition and savings  
14 for residential and small business customers in the  
15 commonwealth.

16 As already mentioned, I'm Tony Banks,  
17 vice president of FirstEnergy Solutions, a  
18 competitive energy supplier, serving business and  
19 residential customers here in the commonwealth and  
20 in five other states in the region.

21 With me today is Sharon Noewer. She's  
22 our director of mass marketing and product  
23 development for FirstEnergy Solutions. And  
24 Sharon's been involved in Ohio's governmental  
25 aggregation program for purchasing electricity



1 since its inception ten years ago. She'll be  
2 available to answer any detailed questions about  
3 how governmental aggregations work in Ohio and how  
4 we anticipate that it could work here in PA.

5 As you may know, FirstEnergy Solutions  
6 is a wholly owned subsidiary of FirstEnergy Corp.,  
7 which announced in February a proposed merger with  
8 Allegheny Energy, an investor-owned utility based  
9 in Greensburg, PA. FirstEnergy Solutions currently  
10 sells competitive electric generation to  
11 commercial and industrial customers in PA, and we'd  
12 very much like to see larger numbers of residential  
13 and small business customers enjoy the benefits of  
14 savings afforded larger commercial and industrial  
15 customers.

16 So let me assure you that FirstEnergy  
17 Solutions will remain an active participant in PA's  
18 competitive marketplace for electricity following  
19 the FirstEnergy's merger with Allegheny.

20 So, opt-out municipal aggregation. We  
21 have talked about this a few times before, but we  
22 feel it is one of the most effective options to  
23 bring savings to larger numbers of small businesses  
24 and residents in PA. That's why FirstEnergy  
25 Solutions strongly supports House Bill 2619, which

1 would make this effective rate mitigation tool a  
2 reality for communities and customers through the  
3 commonwealth.

4 We also believe that now is the time to  
5 move forward with this bill, because the longer we  
6 wait, the longer residential and small business  
7 customers will pay more for electricity than they  
8 need to. With rate caps expiring for Penelec,  
9 Met-Ed, West Penn Power, and PECO at the end of  
10 this year, nearly three and a half million, or more  
11 than 60 percent, of utility customers in the  
12 commonwealth will experience electricity price  
13 increases beginning January 1, 2011.

14 House Bill 2619 gives us an opportunity  
15 to help those customers offset the impact of those  
16 price increases. And we can look right next door  
17 to Ohio to see that customers are receiving real  
18 benefits and savings on their electric bills as a  
19 result of governmental aggregation.

20 In my previous testimonies, I provided  
21 a basic explanation on what municipal aggregation  
22 is and what it is not, so I'd like to quickly cover  
23 those points again.

24 Opt-out municipal aggregation is a way  
25 for local communities to combine their residents

1 and small businesses into a single, large buying  
2 group. This will attract participation from more  
3 electric generation suppliers and will promote  
4 greater competition in the retail electricity  
5 marketplace.

6           And the concept is pretty  
7 straightforward. Rather than compete for  
8 individual customers, which drives up marketing and  
9 administrative costs, electric generation suppliers  
10 would compete to serve the larger buying groups  
11 established by the local municipalities on behalf  
12 of its citizens. And the lower cost to enroll  
13 these customers allows the supplier to pass these  
14 savings on to customers in the form of lower  
15 prices.

16           A very important point to make here is  
17 that opt-out municipal aggregation does not take  
18 away choice from the customer. It merely provides  
19 another alternative for customers to shop for  
20 electricity. Even if a local government elects to  
21 provide opt-out municipal aggregation opportunities  
22 for their residents, customers have several  
23 opportunities to opt out of the municipal buying  
24 group and choose a different supplier for their  
25 electric generation. Customers who do not choose a

1 different supplier would remain in the larger  
2 buying group and receive savings on their electric  
3 bills.

4           So simply put, by being part of the  
5 municipal aggregation buying group, customers will  
6 save money on their electric bill even if they do  
7 nothing at all.

8           We also believe that opt-out municipal  
9 aggregation is the most efficient method to provide  
10 greater retail choice to residential and small  
11 business customers, since it works very well within  
12 PA's existing structure for default service.  
13 Today, if customers take no action to shop for  
14 electric generation service, they automatically  
15 receive default service from their local electric  
16 utility.

17           Similarly, under opt-out municipal  
18 aggregation, customers who take no action will  
19 automatically default to the electric generation  
20 supplier with whom their municipality's negotiated  
21 a price. And that price, presumably, would be  
22 lower than the default service price of their local  
23 electric utility.

24           In both cases, the prices that  
25 customers pay are established through a competitive

1 procurement process, but customers are not  
2 obligated to stay with the municipal program and  
3 will still have the opportunity to choose, since  
4 they can opt-out of a municipal program, they shop  
5 with a different electric generation supplier, or  
6 take default service with their local utility.

7           So opt-out municipal aggregation simply  
8 establishes an additional option within the  
9 existing structure that should result in a lower  
10 price than utility default service price, even if  
11 the customer takes no action at all.

12           This process also enables  
13 municipalities to set the parameters of their  
14 competitive procurement process. For example,  
15 communities that value energy-related products and  
16 services such as energy-efficiency programs or  
17 renewable generation could request that suppliers  
18 provide those value-added services along with lower  
19 electricity prices as part of their bids.

20           So, again, with opt-out municipal  
21 aggregation, the average customer will have the  
22 same buying power and opportunity to save as a  
23 group of larger business and industries. And for  
24 those residential customers or small businesses who  
25 don't have the time, expertise, or desire to shop

1 for electric generation themselves, they will  
2 benefit from being part of a buying group that  
3 should be able to negotiate a better deal than an  
4 individual customer could get on a stand-alone  
5 basis.

6 Another important point about opt-out  
7 municipal aggregation is that a municipality is not  
8 obligated to become an aggregator. Under the  
9 proposed legislation, the municipality's merely  
10 provided an opportunity to make opt-out electric  
11 aggregation an option for its citizens if there's a  
12 benefit in doing so. Presumably, a muni, a  
13 municipality, would aggregate on behalf of its  
14 citizens only if there is an opportunity to reduce  
15 their electric bills.

16 So here's how we see opt-out municipal  
17 aggregation working in PA under House Bill 2619.  
18 First, municipalities would adopt an ordinance in  
19 order to apply for an electric generation supplier  
20 license with the PA Public Utility Commission.  
21 This license would enable that entity to act as a  
22 municipal aggregator of electric generation supply  
23 service on behalf of its citizens.

24 The aggregator would then conduct a  
25 competitive process and negotiate with various

1 electric generation suppliers to eventually enter  
2 into a contract with a supplier with the most  
3 attractive offer. Once a contract is signed by the  
4 municipality and the winning supplier, all  
5 eligible residential and small commercial customers  
6 within the municipality's boundaries who do not opt  
7 out of the municipal aggregation program would be  
8 enrolled and served by the selected generation  
9 supplier.

10 If no action is taken by the customer  
11 during the defined thirty-day opt-out period or the  
12 additional ten-day utility rescission period, the  
13 customer would remain a participant in the  
14 municipal aggregation program and pay the lower  
15 price negotiated by the municipality.

16 Customers who choose to opt out of  
17 municipal program and take default service from the  
18 local utility or select another generation supplier  
19 of their choice, the same two options they have  
20 today with municipal aggregation legislation -- I  
21 mean, without municipal aggregation legislation.

22 In addition to being able to opt out of  
23 the municipal aggregation program during the  
24 defined opt-out periods just mentioned, aggregated  
25 customers would receive additional notices every

1 three years regarding their right to opt out of the  
2 municipal agreement at no charge.

3           So if we take a look at Ohio, where  
4 FirstEnergy Solutions has hands-on experience,  
5 municipal aggregation, called governmental  
6 aggregation in Ohio, is providing more choices for  
7 customers while supporting a strong and robust  
8 market for electricity.

9           More than two hundred counties, cities,  
10 villages, and townships have implemented  
11 governmental aggregation for their communities.  
12 And today, more than one million customers served  
13 by those groups receive savings every month from a  
14 variety of qualified suppliers.

15           The Ohio Consumers' Counsel estimates  
16 that a residential customer using eight hundred  
17 fifty kilowatt hours of electricity is saving up to  
18 one hundred ten dollars annually through  
19 governmental aggregation. And Ohio's two largest  
20 governmental aggregators report that residential  
21 and small business customers in their member  
22 communities have saved more than one hundred  
23 million dollars through these programs.

24           In fact, governmental aggregation is  
25 responsible for about 90 percent of the shopping



1 activity among residential customers as well as 70  
2 to 80 percent of commercial customers switching to  
3 competitive generation suppliers in Ohio. It's  
4 safe to say that this level of shopping and savings  
5 for residential and small business customers would  
6 not occur without opt-out municipal aggregation.

7           So, to summarize, I'm convinced that  
8 opt-out municipal aggregation, as proposed in House  
9 Bill 2619, will provide significant energy savings  
10 to residential and small business customers here in  
11 the commonwealth through increased customer  
12 shopping with a variety of generation suppliers.  
13 And with price increases just around the corner,  
14 timely passage of House Bill 2619 will help  
15 residential and small business customers offset  
16 those increases.

17           Finally, I'd like to reiterate the very  
18 important fact that the proposed legislation would  
19 simply give local officials the opportunity, not  
20 the obligation, to decide whether municipal  
21 aggregation is the right choice for their  
22 community. Nothing in the bill would mandate that  
23 municipalities pursue aggregation.

24           So we commend Chairmans Preston and  
25 Godshall for their leadership on this issue and

1     urge timely passage of this legislation so that the  
2     benefits of electric competition in PA can be more  
3     fully realized by the small customer groups.

4                     FirstEnergy Solutions looks forward to  
5     working closely with this committee, the general  
6     assembly, and the commission to make opt-out  
7     municipal aggregation a reality in PA.

8                     So I want to thank you again for the  
9     opportunity to testify today. And my colleague,  
10    Sharon Noewer, and I are available to answer any  
11    questions you may have.

12                    Thank you.

13                    CHAIRMAN PRESTON: Chairman Godshall.

14                    REP. GODSHALL: And your Ohio  
15    contracts, are they basically -- is that -- I mean,  
16    is everyone, every municipality, is it a different  
17    contract, or is it within law, specifically a law  
18    that prescribes the ins and outs of, you know, the  
19    contract? Is it unique to every municipality?

20                    MS. NOEWER: No, it's not prescribed --

21                    CHAIRMAN PRESTON: Want to move that  
22    closer to you.

23                    MS. NOEWER: No, it's not prescribed by  
24    law. The community contracts between us, as a  
25    supplier, and the community can be unique. I would

1 say, for the most part, though, they're pretty  
2 standardized contracts that we have for each of our  
3 community groups. And it can vary, depending upon  
4 the type of product that the community decides to  
5 use for their particular community pricing. The  
6 term can be different. The price and the product  
7 can be different. But the terms of the contract  
8 are pretty standard.

9 REP. GODSHALL: How about the opt-out  
10 provision? As you say here, you were talking  
11 about -- we're talking about three years and  
12 opt-out. Does that mean if you opt -- you're  
13 automatically in to begin with unless you opt out?

14 MS. NOEWER: Right. The way --

15 REP. GODSHALL: So the bulk of the  
16 people are going to be in the contract, if we look  
17 at what happened before in PA with opting out of  
18 existing -- you know, from an existing supplier, we  
19 had about 30 percent. You know, so the bulk of  
20 those people will be in. And once they're in, say  
21 because they didn't take the option to opt out, are  
22 they automatically in for the duration of the  
23 contract, or can they opt out at any time after the  
24 contract starts?

25 MR. BANKS: The one point to be made is

1 that the length of contract is separate and apart  
2 from the opt-out period. So you can have a  
3 contract for twenty years, if you want, but the  
4 customers get a chance to opt out, in our case,  
5 every three years with no penalty.

6 REP. GODSHALL: But you're  
7 automatically in for three years.

8 MR. BANKS: You're automatically in.  
9 In our case, in Ohio.

10 REP. GODSHALL: PUC just testified, and  
11 I -- of opting out at any time that you decide to  
12 opt out, and that's different from what you have in  
13 Ohio.

14 MR. BANKS: That is different. And,  
15 you know, we've heard a lot of different views  
16 about how often people should be able to opt out  
17 and whether or not they should have fees associated  
18 with opting out earlier than the contract allows,  
19 and I'll just say that the bulk of our contracts in  
20 Ohio have a twenty-five-dollar fee for residents to  
21 opt out. We have had residents opt out at twenty-  
22 five dollars, like has been indicated. If prices  
23 drop low enough, it's pretty easy to cover that  
24 twenty-five dollars.

25 We also have contracts with other

1 communities where we don't charge a fee because the  
2 competition has dictated that we can't charge a fee  
3 and be competitive. So you'll see a variety of  
4 those kinds of things, but I think one of the  
5 comments I heard earlier that I fully subscribe to  
6 is that the negotiation and the terms and  
7 conditions of that contract should be allowed to  
8 happen. And competition will dictate whether or  
9 not you can include fees or not include fees.

10 Market prices will dictate whether a  
11 customer will start to migrate away because of more  
12 competitive offers out there. And in our case, the  
13 twenty-five dollars, I mean that is an exit fee but  
14 it's enough of a fee if there's a good enough  
15 price --

16 REP. GODSHALL: So you can opt out the  
17 contract by paying with that --

18 MR. BANKS: With the twenty-five  
19 dollars.

20 REP. GODSHALL: By paying an exit fee  
21 to leave?

22 MR. BANKS: Yes. In our case, it's  
23 twenty-five dollars.

24 REP. GODSHALL: So it's not an  
25 automatic, you're stuck for three years. It's --

1 you have at least an option of getting out by  
2 paying that exit fee.

3 MR. BANKS: Yes, that's correct.

4 REP. GODSHALL: Okay. That's what I  
5 wanted to clear up.

6 Thank you, Mr. Chairman.

7 CHAIRMAN PRESTON: Thank you.

8 You know, this is the third time you've  
9 been here in the state of PA.

10 MR. BANKS: Yes.

11 CHAIRMAN PRESTON: And I want to thank  
12 you. As you can see, we're getting close. And  
13 like I said, I plan on having this up for a vote on  
14 Tuesday. I want to say that enough so everybody  
15 hears it, that we plan on having this vote on  
16 Tuesday.

17 And if you know our rules, the issue  
18 about amendments, I would suggest that people get  
19 in touch with staff, because we are going to be  
20 talking, I think both of us are going to be talking  
21 on our way back on the highway as we look at these  
22 things, because of the print in dealing with the  
23 legislative reference group.

24 But we really thank you very much for  
25 your comments.

1 MR. BANKS: You're welcome.

2 CHAIRMAN PRESTON: Next we have Divesh  
3 Gupta. Did I pronounce that right?

4 MR. GUPTA: Almost correct. Divesh  
5 Gupta.

6 CHAIRMAN PRESTON: Divesh.

7 MR. GUPTA: Yes.

8 CHAIRMAN PRESTON: Senior counsel for  
9 Constellation Energy Commodities Group. I always  
10 get nervous when companies send an attorney. But  
11 don't worry about it, I'll just --

12 MR. GUPTA: To ease your fears, I'm  
13 just filling in for David Fein, who couldn't be  
14 here today because of the Jewish holiday.

15 CHAIRMAN PRESTON: Thank you.

16 MR. GUPTA: Thank you, Chairman  
17 Godshall and Chairman Preston, for giving me the  
18 opportunity today to speak in front of you. This  
19 is the first time that we are testifying live about  
20 the opt-out aggregation bill.

21 So a little bit of background on our  
22 companies. I'm with Constellation Energy and  
23 representing Constellation Energy Commodities  
24 Group, Inc., and Constellation NewEnergy, Inc.  
25 Constellation Energy Commodities Group is one of

1 the largest wholesale suppliers of electricity in  
2 the country, supplying municipalities, wholesale  
3 requirements to municipalities, cooperatives,  
4 utilities, and other wholesale customers. This  
5 includes through procurements of the types of the  
6 utilities here in PA hold, and we've been very  
7 active in the commission's proceedings to determine  
8 those plans and develop those plans, and we've been  
9 looking at the opportunities for bidding in those  
10 as well.

11           Constellation NewEnergy, Inc., is one  
12 of the largest retail suppliers in the country to  
13 commercial, industrial customers throughout all  
14 competitive markets. We also recently have entered  
15 into the residential market in New Jersey and  
16 getting our feet wet there, so that is a new market  
17 that we're excited about, getting familiar with,  
18 and hoping to grow.

19           You've heard a lot of background about  
20 default service, and hopefully we can provide a bit  
21 of a different perspective in that of a -- both a  
22 wholesale supplier who's very active as well as a  
23 retail supplier.

24           I won't go into too much background  
25 about how default service is structured. For



1 instance, I think Mr. Popowsky from the OCA did a  
2 very good job of giving some background on that,  
3 and you're familiar with it anyway.

4           So, to get right into it, then, you  
5 know, it's with that background, with our  
6 experience on both the wholesale and retail side  
7 that we can provide some insight into our thoughts  
8 on municipal opt-out aggregation in particular.

9           To a large extent, we see House Bill  
10 2619 as a solution in search of a problem. We  
11 think that PA's been very effective in developing  
12 competitive markets here and in setting up the  
13 proper framework so those markets can grow. You  
14 have very competitive wholesale markets that are  
15 serving the utilities in PA. And we've seen those,  
16 the procurements that have been set up, be very  
17 competitive and the prices that come out be very  
18 competitive, so that even those customers that  
19 aren't choosing retail electric supply from  
20 competitive EGSs in the state are still receiving  
21 the benefits of competition through wholesale  
22 competition in the markets.

23           You've also seen the rules and  
24 structures for the retail markets be developed,  
25 again, very effectively, where rate caps have come

1 off, for instance in PPL Electric, we've seen a lot  
2 of success.

3 I think -- you know, you've heard some  
4 of the statistics, but almost four hundred thousand  
5 residential customers are shopping in PPL's zone  
6 right now, and that's about 32 percent of their  
7 residential load. When you look at the commercial,  
8 industrial customers, it's about 85 percent of  
9 their -- of their C and I load, their commercial,  
10 industrial load is taking service from competitive  
11 EGSs.

12 So those are the metrics that show  
13 that, okay, well, competition is working. Given  
14 some time to work, it's taken hold. So, you know,  
15 we do think that that kind of success will also see  
16 its way into the other communities throughout the  
17 commonwealth as rate caps expire, in particular in  
18 PECO Energy Company's, in the West Penn Power  
19 Company, and in the Met-Ed, Penelec zones.

20 With all the success to date and the  
21 continuing ongoing work of the PUC to bring the  
22 benefits of competition to everyone, again, those  
23 that choose and that don't, we really wonder  
24 whether consideration of this bill -- of a bill of  
25 this type should be held in abeyance until

1 competition is given some time to take a foothold  
2 and grow.

3           The question bears further weight in  
4 particular when the potential risks of such  
5 programs are carefully considered, including the  
6 detrimental effects that they may have on utility's  
7 existing, well-developed, and successful default  
8 service plans. And we've heard some of those  
9 risks, but, as well, to any of the utility's  
10 customers that remain on default service.

11           To explain, under House Bill 2619, two  
12 types of municipal aggregation are addressed,  
13 opt-in and opt-out. And we've talked about both of  
14 those today.

15           With respect to opt-out aggregation, in  
16 particular, all residential and small commercial  
17 customers in a particular municipality within a  
18 utility's territory are bundled together and  
19 requested to take their service from an EGS that's  
20 chosen by the municipality.

21           However, as it's currently structured,  
22 even where municipal opt-out aggregation is in  
23 place, utility's still on the hook to provide  
24 default service. And that's -- in the case that  
25 customers opt out of the program before its run, or

1 in the case that customers return to default  
2 service if something happens to their EGS provider  
3 for them. For instance, if the EGS walks away, say  
4 in the case that we talked about with PECO, for  
5 instance, those customers come back to the utility  
6 and must be served by default service again.

7           And that's something that hasn't been  
8 talked about as much. We talked about the risks of  
9 load shifting away from default, but from the  
10 perspective of a wholesale provider, it's very  
11 important to also talk about that risk that comes  
12 back, of customers coming back, because we see that  
13 as really an option. It's a large amount of load  
14 that could return very quickly, not a gradual  
15 amount of load that would return quickly as  
16 individual customers decide to return to service  
17 for whatever reason.

18           As a result, the creation of municipal  
19 opt-out aggregation programs, under current well-  
20 established default service structures in place in  
21 the commonwealth, will impose significant risk to  
22 existing, successful default service structures,  
23 risks that will be borne by default service  
24 suppliers, utilities, and customers likely in the  
25 form of increased rates for those customers who

1 remain on default service.

2           You could imagine the scenario, for  
3 instance, where there are two municipalities that  
4 are in the same utility zone and that are -- that  
5 border each other where one municipality has  
6 implemented municipal opt-out aggregation and has  
7 one particular rate because the rates for default  
8 service are increasing. You know, there could be  
9 an increasing disparity between those two  
10 municipalities' rates, if the other one either  
11 wasn't able to implement municipal aggregation or  
12 just chose not to.

13           If the general assembly, nevertheless,  
14 adopts legislation to allow for the creation of  
15 municipal opt-out aggregation programs, such new  
16 policy should not alter existing commission-  
17 approved default service plans and should honor any  
18 and all wholesale supply contracts that have been  
19 entered into for such plans.

20           Furthermore, to the extent that a  
21 municipal opt-out aggregation program is created,  
22 the operation of any such program should be  
23 considered in a context of any future default  
24 service plans.

25           And let me go into a little bit of

1 detail now about what those risks are. You've  
2 heard some of them from other folks, but I'd like  
3 to give you our perspective as well.

4           As I mentioned, municipal opt-out  
5 aggregation substantially changes the nature of  
6 each utility's default service. For instance,  
7 problems arise in a scenario in which the utility  
8 uses a commission-approved default service plan  
9 that relies on full requirements contracts. And  
10 that's the case for almost all utilities, the large  
11 utilities, in the commonwealth currently. And  
12 that's where the utility holds competitive  
13 procurements for wholesale suppliers to serve a  
14 load-following percentage of the utility's default  
15 supply requirements.

16           Wholesale suppliers, bidding to serve  
17 that utility's default service, are on the hook and  
18 accept and account for the fact that the utility's  
19 load will change as customers, at their own  
20 election, choose to leave default service for  
21 competitive retail supply from an EGS, and that  
22 such individual customers again, individually, may  
23 at some point in time return to default service.

24           Municipal opt-out aggregation, however,  
25 fundamentally changes the patterns and ways in

1     which customers both leave and return to default  
2     service.  If the general assembly establishes  
3     municipal opt-out aggregation policies, or if it  
4     seems that such policies are likely to be  
5     implemented in the near term, bidders in  
6     procurements under default service plans already  
7     approved by the commission will recognize and  
8     account for the significant load variability  
9     differences that municipal opt-out aggregation  
10    programs present with respect to serving even a  
11    portion of the utility's load.

12                   In order to address those, you know --  
13    and we've heard this -- bidders are going to either  
14    account for those risks through increased premiums,  
15    or the other way that they're going to do that is  
16    just by limiting their participation in those  
17    procurements.  And we've seen very robust  
18    participation in procurement to date, and that  
19    could change.

20                   Either of these ways of accounting for  
21    that risk is going to be to the detriment of  
22    customers that remain on default service, again  
23    those customers that either choose to opt out of  
24    municipal aggregation or don't have the opportunity  
25    for that or customers that are returned to default

1 service because the EGS defaults on its  
2 requirements.

3 I'm not going to go into detail about,  
4 you know, the other structures that other utilities  
5 may use throughout the commonwealth, because those  
6 also pose risks in very similar ways, and, in some  
7 cases, in greater ways, when municipal opt-out  
8 aggregation is implemented.

9 So, in summary, the implementation of  
10 municipal opt-out aggregation represents a new  
11 default product for certain municipalities'  
12 customers that will increase the cost of the  
13 utility's statutorily mandated default service  
14 product for all customers.

15 Potentially wide and growing  
16 disparities between customers, including between  
17 municipalities, that may result in municipal  
18 opt-out aggregation would be harmful to the  
19 commonwealth's energy future.

20 For all these reasons, Constellation  
21 urges the commonwealth to carefully consider these  
22 risks associated with these programs and address  
23 them appropriately if such policies are approved.

24 I'd like to just touch on a couple of  
25 the ways that we think you can address some of



1 these risks, if you do, nevertheless, intend to go  
2 forward.

3 First, there are steps that you should  
4 take to ensure that the timing of any newly created  
5 municipal opt-out aggregation program won't affect  
6 the existing commission-approved default service  
7 plans and already-executed contracts. And we've  
8 talked about some of these methods today already.

9 Additionally, the existence of any  
10 municipal opt-out aggregation program must work  
11 within the framework, timing, and other aspects of  
12 any future default service plan. For instance,  
13 specifically with respect to such future plans, the  
14 general assembly should enact measures that allow  
15 for the exclusion of any customer load included in  
16 the municipal opt-out program from the default  
17 service procurements and supply for all other  
18 customer load within a utility's territory. Again,  
19 that's to protect from the premiums that would need  
20 to be included for customers returning to default  
21 service.

22 So it's key and necessary, in our  
23 opinion, that House Bill 2619 include amendments  
24 such that, first, any municipal opt-out aggregation  
25 procurements and enrollments must occur prior to

1 any procurements under default service plans; that  
2 the commission is provided with explicit authority  
3 to enact administrative rules that govern the  
4 operation of any of these programs; to ensure  
5 consistency with default service plans and protect  
6 consumers; to ensure that customers, under the  
7 municipal opt-out program that return to default  
8 service may not return to a fixed-price service  
9 with the electric utility, instead they should  
10 default -- or at least the existing fixed-priced  
11 service for that utility, instead they should  
12 default into some sort of hourly or day-ahead  
13 pricing; and that any municipal opt-out aggregation  
14 program must utilize a competitive procurement  
15 process, overseen by the PUC, for EGSs seeking to  
16 serve the program through which an EGS offer is  
17 chosen to serve that municipality.

18 Finally, EGSs should be prohibited from  
19 providing financial inducement to municipalities  
20 utilizing municipal opt-out aggregation programs,  
21 and customers served by an EGS should be excluded  
22 from any municipal opt-out aggregation programs.

23 With that, you know, that concludes my  
24 remarks, but, you know, definitely open to answer  
25 any questions that you may have from our

1 perspective.

2 CHAIRMAN PRESTON: The only thing I'll  
3 say is, first relationship, Constellation's been in  
4 front of the committee and always had a great  
5 relationship, so glad to have you back because it's  
6 been a while.

7 The other thing is, and I think about  
8 like this, Mr. Chairman, currently right now, the  
9 seventy-four municipalities across this state,  
10 there are -- I think at least thirty-four or  
11 thirty-five of them, most of them are home rule,  
12 and the question is, you know that they can do this  
13 now.

14 So I think what we're trying to do is  
15 give the little and middle guy an opportunity to do  
16 the same thing that the big guys can already do  
17 right now. Part of the concern that I'm looking at  
18 is, if they can do it all right now, it kind of  
19 makes you wonder what it is that they're  
20 negotiating, and we're hearing about some of the  
21 situations that we're having to do, you know, to  
22 create more of a playing field and also to create  
23 certain protections for the smaller people.

24 And that's why I was saying to the  
25 chairman of the Public Utility Commission that they

1 don't have all the staff that the Pittsburghs and  
2 the Philadelphias and the Eries have in -- even the  
3 question is, can a home-rule county -- for example,  
4 in Allegheny County currently now, would they have  
5 to have all hundred and thirty municipalities do  
6 it, because they have a home rule? Or do they --  
7 can they negotiate that now and then ask the  
8 counties, Do you want to opt in? I don't know that  
9 yet.

10           And that's part of the issue that we're  
11 trying to give the smaller person the same chance,  
12 and it's no different than we have a river with  
13 a -- you know, there's a county border. This  
14 person's over here, that person's over there were  
15 they can't get together; where, in Johnstown, I met  
16 with elected officials and gave them the ideas, and  
17 one thing they thought, Well, we can either come  
18 together ourselves, we can come together with the  
19 city of Johnstown, but we would never come together  
20 with the county.

21           But part of the function, I think, of a  
22 legislator is to give people an opportunity to try  
23 to set their own destiny but also to try to set up  
24 the same amount of protections that are necessary.  
25 And I think that that's one of the things we're

1 trying to do, because it makes me nervous to think  
2 that you have all these towns out here that can do  
3 it right now without what kind of protections that  
4 we're talking about today.

5 And that's one of the things I wanted  
6 to think about, because you raised some very valid  
7 issues here and things about those other towns that  
8 can go ahead and do it, and you wonder what they're  
9 negotiating.

10 MR. GUPTA: Certainly. And for those  
11 reasons, it is important that the default service  
12 continues to be provided appropriately, because  
13 until those other municipalities can figure out  
14 what they're doing, if they're able to, you want to  
15 make sure that they're provided competitive  
16 electricity prices.

17 CHAIRMAN PRESTON: And to give you an  
18 example, I say our City of Brotherly Love, I guess,  
19 already been talking about it, and to my knowledge  
20 I don't know if they've passed an ordinance or  
21 scheduled to pass an ordinance -- they have passed  
22 an ordinance already. I'm just giving you an  
23 example, so if they're doing it, so it's only fair  
24 to let the mom and the pops, per se, at the table,  
25 but I think what we are here talking about is

1 protection, and it's going to be an issue that  
2 we're going to have to be able to deal with going  
3 forward for the bigger municipalities just as  
4 well.

5 Yes, sir.

6 REP. GODSHALL: Your comment about the  
7 City of Brotherly Love, my neighboring  
8 municipality, also has a gas company, Philadelphia  
9 Gas Works, that they're likely to sell to  
10 Montgomery County or any other takers, so I'm not  
11 going to worry about that right now.

12 But, you know, I do have -- this is  
13 about the third or fourth time about existing  
14 contracts that you brought up, which I do have a  
15 concern about, and the -- I'm not sure that 2011 or  
16 2013 is a magic number or anything else. I -- PUC  
17 has testified that they can work things out and  
18 phase in, you know, working with those existing  
19 contracts, which I think are important, because, as  
20 you say in here, I have, the life of me, can't  
21 figure out if you -- because of existing law, you  
22 purchased electric to service a certain area as a  
23 default provider and at the same time you've got to  
24 get rid of that electric someplace and somebody has  
25 to pay for it.

1                   So, you know, if -- those are a couple  
2 things that I think we have to work out.

3                   And do appreciate your testimony as  
4 well as everybody else that's here today. I think  
5 it's -- have been a rewarding set of hearings for  
6 me and gained a lot of knowledge of things I had no  
7 idea existed as of a year or two ago.

8                   So thank you and appreciate your  
9 testimony.

10                  MR. GUPTA: Thank you.

11                  CHAIRMAN PRESTON: I'd also like --

12                  REP. GODSHALL: Like the City of  
13 Brotherly Love, you know --

14                  CHAIRMAN PRESTON: What did I say  
15 yesterday? Chill out.

16                  I'd also like to say for the record  
17 that we have received testimony from Amy Sturges,  
18 director of governmental affairs, PA League of  
19 Municipalities and Cities; and also Thomas  
20 Chiomento, III, director of governmental affairs  
21 for Exelon Generation.

22                  I'll be able to say that. And again,  
23 it's interesting, because you have a letter of the  
24 Pennsylvania League of Municipalities, which also  
25 has a brief statement about they encourage us to be

1 cautious but already they're already advising and  
2 have other people advising their own municipalities  
3 that have the privilege of being able to do  
4 something that we haven't given the another couple  
5 of thousand of towns to be able to do so.

6 At this point, I look forward to it.

7 Don't forget, as I said, this -- we  
8 have every intention, the legislature, for very  
9 dramatic change to vote on this this coming  
10 Tuesday, next week. So look forward to seeing  
11 everybody there, and get your comments in. Don't  
12 hesitate. But have a safe trip home.

13 And we are adjourned.

14 (Whereupon, the hearing concluded  
15 at 12:30 p.m.)

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## 1 REPORTER'S CERTIFICATE

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

9  
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11 BRENDA J. PARDUN, RPR  
12 Court Reporter  
13 Notary Public  
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