



**Testimony Before the House Consumer Affairs Committee  
House Bill 2619 – Municipal Aggregation  
September 9, 2010**

**INTRODUCTION**

As this Committee is aware, electric utilities are required by Pennsylvania law to provide Default Service, which includes the full requirements of wholesale energy supply products necessary to meet the electric supply needs of such utilities' respective retail customers, who do not or cannot purchase their electric supply from competitive electric generation suppliers (EGSs). The provision of Default Service is governed by certain laws and regulations, and the structures for individual Default Service Plans vary for each utility. All of the Default Service Plans for procurement have already been approved by the Public Utility Commission (PUC), procurements have been conducted and are continuing, and contracts have been executed between wholesale suppliers and the electric utilities.

Constellation Energy Commodities Group, Inc. (CCG) has been an active participant in the PUC's proceedings to establish Default Service Plans for the Commonwealth's utilities, and has been active in bidding to supply utilities' Default Service supply requirements under the Plans resulting from and approved by the PUC in those proceedings.

Constellation NewEnergy (CNE) also has been an active participant in the PUC's Default Service proceedings, as an active EGS in Pennsylvania providing comprehensive energy solutions for commercial, industrial, governmental, non-profit, and various other

end-users of electricity. Most recently, CNE has begun selling electricity to residential consumers in New Jersey.

It is against this backdrop that CCG and CNE (collectively, Constellation) provide Testimony on some of the challenges and issues surrounding the implementation of Municipal Aggregation as outlined in HB 2619, particularly in a state like Pennsylvania where a well-developed and successful Default Service framework is already in place.

### **COMMENTS ON HB 2619**

HB 2619 to a large extent presents a “solution” in search of a problem. For a long time, Pennsylvania has been viewed around the country as a leader in developing sound energy policies. Most recently, Pennsylvania has been widely complimented on how it has managed the transition from an environment with below market rate caps to one that appropriately relies upon the power of competition. Those efforts have led to robust wholesale competition to serve the Default Service supply requirements of the electric utilities for those customers who choose not to or otherwise do not take service from EGSs. Additionally, the competitive retail market is working well in those service territories that have come out from under rate caps. The PUC identifies that, in PPL Electric Utilities Corporation’s service territory alone, almost 400,000 residential customers (or over 32% of its residential customer load) are being served by competitive EGSs; and almost 85% of commercial and industrial load in its service territory is being served by EGSs. With the continuing efforts of the PUC to remove barriers to retail competition, it is expected that retail competition will take hold in the PECO Energy Company, West Penn Power Company d/b/a Allegheny Power, Metropolitan Edison Company and Pennsylvania

Electric Company service territories as well, as rate caps expire throughout the Commonwealth.

With all of the success to date and the continuing ongoing work of the PUC to bring the benefits of competition to customers of all sizes, Constellation wonders whether consideration of Municipal Aggregation programs of the type contemplated under HB 2619 should be held in abeyance in order to allow sufficient time for these nascent markets to develop. This question bears further weight, in particular, when the potential *risks* of such programs are carefully considered, including the detrimental effects that they may have on utilities' existing, well-developed and successful Default Service Plans, and their customers that remain on Default Service.

To explain, under HB 2619, two types of Municipal Aggregation are addressed – ‘Opt-In’ and ‘Opt-Out.’ With respect to Opt-Out Municipal Aggregation, all residential and small commercial customers in a particular municipality within a utility’s territory are bundled together and are required to take their service from an EGS chosen by the municipality. However, even where Municipal Opt-Out Aggregation is in place, the utility would still be required to provide some form of Default Service to customers in a Municipal Opt-Out Aggregation program, either for customers who opt-out of the program or in the event such a program fails or ends. As a result, while the Municipal Opt-Out Aggregation program essentially becomes the “default” product for such customers, the utility’s Default Service *remains* their “last resort” service.

As a result, the creation of Municipal Opt-Out Aggregation programs under current, well-established Default Service structures in place in the Commonwealth will impose significant risks to existing, successful Default Service structures – risks that will be borne by

Default Service suppliers, utilities *and* customers, likely in the form of increased rates for those customers who remain on Default Service. Therefore, Constellation recommends herein that the Commonwealth at this time should refrain from adopting Municipal Opt-Out Aggregation policies and allow competitive markets time to develop after the expiration of rate caps, such that customers have the opportunity to consider their options and exercise their ability to choose (or not to choose) themselves. However, if the General Assembly nevertheless adopts legislation to allow for the creation of Municipal Opt-Out Aggregation programs, such new policies *should not* alter existing Commission-approved Default Service Plans, and *should* honor any and all wholesale supply contracts that have been entered into pursuant to such Plans. Furthermore, to the extent that a Municipal Opt-Out Aggregation program is created, the operations of any such program should be considered in the context of any future Default Service Plans.

***Municipal Opt-Out Aggregation Substantially Alters the Commonwealth's Default Service Framework and Presents Significant Risks, Including the Risk of Increased Rates for Customers who Remain on Default Service***

Municipal Opt-Out Aggregation substantially changes the nature of each utility's Default Service. For instance, problems arise in the scenario in which a utility uses a Commission-approved Default Service Plan that relies on full requirements procurements – as is the case for *almost all* of the Commonwealth's utilities – under which the utility holds competitive procurements for wholesale suppliers to serve a 'load-following' percentage of the utility's Default Service supply requirements. Wholesale suppliers bidding to serve a utility's Default Service supply requirements under such a Default Service Plan understand, accept and account for the fact that the utility's load will change as customers *at their own*

*election* choose to *leave* Default Service for competitive retail supply from an FGS, and that such individual customers may at some point in time *return* to Default Service.

Municipal Opt-Out Aggregation, however, fundamentally changes the patterns and ways in which customers both leave and return to Default Service. If the General Assembly establishes Municipal Opt-Out Aggregation policies (or if it seems that such policies are likely to be implemented in the near term), bidders in procurements under Default Service Plans already approved by the Commission will recognize and account for the significant load variability differences that Municipal Opt-Out Aggregation programs present with respect to serving a portion of a utility's Default Service supply requirements. In order to address such differences, wholesale suppliers may either limit their participation in Default Service procurements or else account for the increased risk of large-scale declining and returning load under Municipal Opt-Out Aggregation through additional premiums in their bids. Reduced participation and/or additional premiums will lead only to *less* competitive Default Service procurements with *less* competitive Default Service bids, to the *detriment* of utilities' Default Service consumers. Higher Default Service prices will be paid by *all* customers who remain on Default Service, even though all municipalities may not have implemented or do not plan to implement Municipal Opt-Out Aggregation programs.

To be sure, under the only other structure which Pennsylvania's utilities have utilized – i.e., a managed portfolio process such as that utilized by Wellsboro Electric Company – a utility's Default Service customers will also see a potentially dramatic rise in Default Service electricity prices as a result of any Municipal Opt-Out Aggregation program. As a utility under a managed portfolio approach must enter into contracts – often for fixed quantities of supply, over fixed terms – the utility, and any of its customers that remain on or return to

Default Service, are left 'holding the bag' for any supply purchased by the utility to meet its supply obligations. To illustrate, if a utility under a managed portfolio approach appropriately hedges and plans for meeting 100% of its Default Service obligations, and a Municipal Opt-Out Aggregation program subsequently results in 25% of the utility's customers leaving Default Service to be served by the program's competitive EGS, then the remaining 75% of the utility's Default Service customers would have to pay for the full 100% of hedges and plans that the utility has entered into prior to the Municipal Opt-Out Aggregation program's implementation. This is what is often referred to as the creation of a 'stranded cost.'

In summary, the implementation of Municipal Opt-Out Aggregation represents a new "default" product for *certain* municipalities' customers that will *increase* the costs of utilities' statutorily-mandated Default Service product for *all* customers. Potentially wide and growing disparities between customers, *including* between municipalities, that may result from Municipal Opt-Out Aggregation would be harmful to the Commonwealth's energy future. For all of these reasons, Constellation urges the Commonwealth to carefully consider the risks associated with Municipal Opt-Out Aggregation, and address them appropriately if such policies are approved.

***HB 2619 Should Be Amended To Properly Address the Risks Inherent With  
Municipal Opt-out Aggregation***

If Municipal Opt-out Aggregation is implemented, the Commonwealth should take steps to ensure that the timing of any newly-created Municipal Opt-Out Aggregation program will not affect existing Commission-approved Default Service Plans and/or already-executed contracts under Commission-approved Default Service Plans.

Additionally, the existence of any Municipal Opt-Out Aggregation program must work within the framework, timing, and aspects any future Default Service Plan. For instance, specifically with respect to such future Plans, the General Assembly should enact measures that allow for the exclusion of any customer load included in a Municipal Opt-Out Aggregation program from any Default Service procurements and supply for all other customer load within a utility's territory.

In addition, it is key and necessary that HB 2619 include amendments such that:

- Any Municipal Opt-out Aggregation Procurements and enrollments must occur prior to any procurements under Default Service Plans;
- The PUC is provided with explicit authority to enact administrative rules to govern the operation of any Municipal Aggregation programs to ensure consistency with Default Service Rules;
- Customers under a Municipal Opt-Out Aggregation program that return to Default Service may not return to fixed-price service with the electric utility. Instead, they should default to some hourly or day-ahead pricing;
- Any Municipal Opt-Out Aggregation program must utilize a competitive procurement process, overseen by the PUC, for EGSs seeking to serve the program, through which an EGS offer is chosen to serve the municipality;
- EGSs are prohibited from providing financial inducements to municipalities utilizing Municipal Opt-Out Aggregation programs; and
- Customers served by an EGS are excluded from any Municipal Opt-Out Aggregation programs.

## CONCLUSION

To conclude, HB 2619 presents a “solution” in search of a problem. The Commonwealth would be right to allow competitive markets time to grow, once rate caps have expired, rather than instituting Municipal Opt-Out Aggregation. PPI Electric’s markets provide strong evidence as to the opportunities for success of retail electric choice. If the General Assembly nevertheless adopts HB 2619 it should be amended such that its policies *do not* alter existing Commission-approved Default Service Plans, and honor any and all wholesale supply contracts that have been entered into pursuant to such Plans. Finally, to the extent that a Municipal Opt-Out Aggregation program is created, the operations of any such program should be considered in the context of any future Default Service Plans.

Constellation looks forward to working with the General Assembly, the Commission, the Commonwealth’s utilities, customer representatives, and EGSs to address these complicated and challenging issues in order to ensure that Pennsylvania remains a leader in competitive market development which inures to the benefit of *all* Pennsylvanians.

Respectfully Submitted,



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*On Behalf of Constellation NewEnergy, Inc. and  
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