

Prepared Testimony of

James H. Cawley

Chairman

Pennsylvania Public Utility Commission

before the

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Consumer Affairs Committee**

**Hearing on Municipal Aggregation of
Electric Generation Supply
House Bill 2619, Printer's No. 4012**

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**Pennsylvania Public Utility Commission
P. O. Box 3265
Harrisburg, PA 17105-3265
Telephone (717) 783-1740
Internet Home Page <http://www.puc.state.pa.us>**

Chairman Preston, Chairman Godshall, and members of the Committee, thank you for this opportunity to testify today on House Bill 2619, Printer's No. 4012, that amends Titles 53 and 66 of the Pennsylvania Consolidated Statutes to grant legislative authority for municipalities to act as a municipal aggregator under Chapter 28 of the Public Utility Code and to provide opt-in and opt-out municipal aggregation of electric generation supply to consumers of electricity within a municipality's boundaries. I appear today on behalf of myself and my colleagues to support the bill and to comment on its provisions.

My colleagues and I compliment the sponsors of the bill for including within its provisions many improvements upon the discussion draft that preceded it. The evolutionary process leading to the bill has been a wise and useful one. We note that the bill includes (with one minor exception that can be addressed in implementing Commission regulations) every amendment suggested by the Commission in my March 3, 2010, testimony on the discussion draft. This is much better legislation because of the transparency of the drafting process and, obviously, because of painstaking and diligent work.

By way of introduction, let us keep in mind what the Legislature intended by passage of the Electricity Generation Customer Choice and Competition Act in 1996—lower electricity prices (or at least lower prices than would occur without electricity generation choice) and more innovative and customer-specific product choices than customers were then receiving from their “one size fits all” electric monopoly utility serving pursuant to generally applicable tariffs approved by the

Public Utility Commission. And it's working. We not only have lower electricity prices than we otherwise would have if electric choice had not been enacted, but cash sign-up bonuses; "green" energy offerings; discounts to senior citizens, veterans, and current military personnel; fixed and variable pricing; contract terms of one to three years; time of use rates; discounts from promotional rates being phased out; contributions to local charities with each sign-up; and even airline miles bonuses.

Having transitioned over more than a dozen years to the day when these benefits can finally be realized by all Pennsylvanians, any legislation bearing on the subject should avoid creating a barrier to the fulfillment of these goals.

In short, municipal aggregation must be designed to enhance customer choice. If it doesn't do that, it should not be adopted.

No Switching Restrictions, No Early Termination Fees

Speaking at least for myself, I would promote the chief goal of customer choice (and simplify the bill) by providing that no municipal aggregation program may contain any customer switching restrictions or early termination fees. As I said in my March 3 testimony:

Customers may be locked into a price that is higher than market prices with no opportunity to switch to a lower-priced offering until the end of the term. The municipality's contract with its supplier should provide for customer switching during the term, either by payment of no early termination fee or a very low one. ... After all, the EGS has acquired a large number of customers at low cost by the aggregation program and should be able to absorb migrations of customers, or be

given the opportunity in its contract with the municipality to modify its price during the term to promote retention of customers.

But isn't a captive block of customers the chief inducement for an electric generation supplier (EGS) to enter into a contract with a municipality at a fixed price for a specific term? That certainly may be in the EGS's best interest, but it is not in the customers' best interest. In fact, a more than adequate inducement for a supplier is the very substantial savings in customer acquisition costs, even if some of those customers later choose to switch ("migrate") to another supplier during the term of the contract with the municipality. Apathy works both ways; once customers are included in a program, they tend to be "sticky." They stay if only because it requires an affirmative action to leave (which caused them to lose out on savings and innovative products absent the aggregation program).

To be clear, I propose that customers included in an aggregation program be able to come and go as they please without penalty. The supplier should be able to renegotiate its contract with the municipality to lower (but not raise) its price or to add features to induce citizens to stay in the program (with adequate notice to customers of the change in contract terms). Now, that is putting the customers first, and fulfilling the legislative intention to give customers beneficial choices.

Term of Contract

The bill places no limits on the duration of contracts with an electric generation supplier. Should there be term limit of one or more years?

As I noted last March, there is a danger of locking customers into a price that is significantly above market prices (assuming customers are not permitted to switch to another supplier during the term of the contract, or, if they do switch, they must pay a substantial early termination fee). For that reason alone, a limit of no more than two years should be imposed.

Practically speaking, it may be a significant disincentive for municipal officials to enter into contracts any longer than that for fear that market prices will drop, stranding their citizens at the higher contract price and making them unhappy at the next municipal election. So why adopt an aggregation program in the first place? Better to play it safe and do nothing, even if customers can save money.

Of course, the opposite could occur—market prices may jump significantly higher than the contract price, and the municipal officials would be regarded as heroes for locking in the lower price for a substantial term. Experience has demonstrated, however, that no one's crystal ball works beyond two or three years. Consequently, most (if not all) responsible electricity suppliers are unwilling to risk offering a fixed price beyond that time without adding a risk premium to the offered price because of the uncertainties of fuel cost caused by severe weather and untoward national and international events.

Opt-In As Well As Opt-Out?

The bill provides for both opt-in as well as opt-out aggregation programs. Opt-out programs, with suitable protections, are much more effective at overcoming customer apathy and dispelling distrust than opt-in aggregation programs. Electric generation choice in Pennsylvania is an opt-in program—customers must affirmatively choose to leave more expensive default service from their electric distribution company in favor of cheaper electricity from an alternative supplier. For instance, we have seen in the PPL Electric Utilities service territory that more than one-third of the customers have made that affirmative choice. Remarkable as this switching has been by national standards, it is unlikely that another opt-in program will induce another one-third or more customers to take affirmative action.

Faith in the good judgment of municipal officials will certainly induce many citizens to opt into an offered program, but that same faith will save a lot more money for customers if no action is required by them to receive the benefits.

A final note on this point: Providing the dual option to municipal leaders may cause them to offer a program where they might not otherwise do so, but the bill is overly complicated by accommodating two types of programs. Why, for instance, on page 17, line 27, are the exclusions applicable only to opt-out programs when the same exclusions should apply to opt-in programs?

Coordination with EDC Default Supply Procurement Programs

Should municipal aggregation programs be coordinated with electric distribution companies' default supply procurement programs? That is, should the beginnings and endings of aggregation programs coincide with the (mostly) advance purchases by EDCs to supply customers who do not switch to an alternative supplier?

The question is important because such procurements rely on a fairly certain number of default customers remaining with the EDC and not switching to an alternative supplier. If too many customers “migrate,” the supplier may be stuck with excess wholesale generation that cannot be resold profitably. As is, a certain risk premium is added for customer migration, but municipal aggregation holds the promise for significantly more customer migration (and thus even higher risk premiums added to default supply bids).

The Commission has already seen this effect in the context of retail choice. Energy bids in EDC RFPs to serve small and medium non-residential customers have tended to be slightly higher than bids for residential customers because non-residential customers are more likely to exercise their retail choice option. Suppliers submit a slightly higher bid to serve non-residential customers to account for the risk of having to find new buyers.

Prior to participating in an EDC's RFP for “full requirements” energy contracts (as opposed to contracts with an EDC that engages in “active portfolio management,” buying specific quantities of energy—known as “blocks”—instead

of contracting with a wholesale supplier or suppliers to provide all of its needs, whatever that may be), a wholesale supplier would probably want to know how many aggregators there were in the EDC's territory, which ones had already entered into contracts, and which ones were likely to enter into contracts during the time the supplier was proposing to provide energy, etc. The Commission could assist by coordinating the sharing of this information among EDCs, municipalities, and suppliers.

EDCs who utilize an actively managed portfolio approach would need to know the same information as those who use the full requirements approach. The Commission could require them to verify and monitor the level of aggregation in their territory as a condition of approving their default service procurement plan.

It may not be possible to fully integrate aggregation into default service plans without limiting the times at which municipal aggregators can negotiate contracts with suppliers. The Commission might establish "aggregation windows" in which a municipal aggregator would have the right to negotiate aggregation contracts. These windows would be a time limited period that would expire before the commencement of default service procurements for the next plan period. In this approach, suppliers and EDCs would know with some certainty the number of customers that had been aggregated, and could adjust their procurement plans and strategies accordingly.

Again, the Commission supports House Bill 2619 and feels it will go a long way to achieving the goals of electric choice. We would be happy to continue to work with this Committee as the bill moves through the legislative process.

Thank you again for your invitation to testify before you today, and I look forward to any questions that you may have.