BEFORE THE PENNSYLVANIA HOUSE CONSUMER AFFAIRS COMMITTEE

Testimony of

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Regarding
Municipal Aggregation

House Bill 2619

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Chairman Preston, Chairman Godshall
and Members of the House Consumer Affairs Committee

My name is Sonny Popowsky. I have served as the Consumer Advocate of Pennsylvania since 1990, and I have worked at the Office of Consumer Advocate since 1979. Thank you for inviting me to testify before this Committee on the issue on municipal aggregation and House Bill 2619.

I previously testified before this Committee at a hearing in Harrisburg on March 3, 2010, regarding a draft version of this legislation. As I did at that hearing, I would again like to commend Chairman Preston, Chairman Godshall and the members and staff of this Committee for the proactive and careful approach that you have taken on this issue.

As the members of this Committee are well aware, by the end of this year, the last of the generation rate caps that have protected Pennsylvania electric consumers for the past decade will have expired. Through Act 129 of 2008, however, I believe that the General Assembly has established a strong framework that, if properly implemented, will continue to protect electric consumers from unwarranted generation rate increases in the future through a combination of regulation of utility default service suppliers and competition from unregulated generation marketers. Specifically, under Act 129, electric consumers are free to switch to alternative competitive generation suppliers (and more than 30% of PPL residential customers have in fact already made such a switch since PPL's rate cap expired at the end of 2009); but at the same time, our regulated electric distribution companies are required to purchase a mix of generation resources in the competitive wholesale markets that are designed to provide non-shopping customers with adequate and reliable generation service at "the least cost to customers over time."

Municipal aggregation would in essence create a third path for residential and small commercial customers to receive their generation service. That is, customers would not be required to shop as individuals for an alternative to their utility default service, but they might be able to benefit from a form of shopping that is done on their behalf by their elected municipal officials. The theory behind municipal aggregation is that by aggregating the buying power of a large number of small customers, a non-profit municipal entity can get a better deal for those customers than if each of those customers goes out and shops for electricity on an individual basis. In addition, many customers may have neither sufficient interest nor sufficient understanding to choose their own supplier of a product that they have never had to shop for. To the extent that municipalities can aggregate their customers as a way of achieving electric rate savings for customers within those municipalities, then I believe that this option should be available. At the same time, however, I believe that municipal aggregation should be established in a manner that complements the existing choices for electric customers under Act 129 and does not increase costs for the customers who do not participate in municipal aggregation programs.

At this point, it is important to distinguish between two different types of aggregation programs, both of which are authorized under House Bill 2619. Under the first type of program – "opt-in" aggregation – individual customers voluntarily and affirmatively choose to have their municipality purchase generation on their behalf. Under the second type of program – "opt-out" aggregation – customers are automatically included in the municipal aggregation program unless they affirmatively choose to be removed from the program.

In my opinion, the opt-in provisions of House Bill 2619 could be implemented fairly easily and would not have any negative impact on Pennsylvania's existing customer choice and default service programs. Opt-in municipal aggregation is similar to the type of "buying groups"

that are already being formed on a voluntary basis by many local and county business groups and agencies. I see no objection to a municipality providing this type of aggregation service to its residential and small business customers who do not want to get involved in the potentially complex process of shopping for electricity on an individual basis, but who would like to have a (hopefully less costly) alternative to the standard utility default service. I also think that opt-in municipal aggregation is consistent with the current default service framework under Act 129 of 2008. The electric distribution company – through its mix of competitively procured wholesale generation contracts – will continue to serve all customers **except those customers who voluntarily and affirmatively choose** to be served by an alternative provider. Other retail marketers may continue to compete for individual customers who choose to shop, and may also seek to compete to provide service on an aggregated basis to customers who would be part of a municipal aggregation program.

The more difficult questions arise under opt-out aggregation. First of all, it must be recognized that under opt-out aggregation, customers are switched to an alternative supplier without their prior affirmative consent. That is why, I believe, House Bill 2619 (PN 4012) at page 23, lines 28-30, exempts municipal aggregators from the "anti-slamming" provision of the 1996 electric competition law. Under Section 2807(d)(1) of the original 1996 Act, the General Assembly stated that consumers could not be switched by an electric distribution company to an alternative supplier "without direct oral confirmation from the customer of record or written evidence of the customer's consent to a change of supplier." Under opt-out aggregation, customer consent is not required. Instead, the customer must affirmatively take action to withdraw from the aggregation pool.

The advantage of opt-out aggregation, of course, is that the pool of participating customers will undoubtedly be much larger than if customers have to opt in to the pool on a voluntary basis. The theory behind providing such aggregation service on an opt-out basis, I believe, is just human nature – that is, customers are much more likely to utilize this service if it is provided to them on a default basis, and much less likely to use the service if they must affirmatively go out and select it. With a larger opt-out customer pool, it is possible that the municipality may be able to get a better deal for those customers who do participate, and the benefits of the program will reach a greater percentage of customers, including those customers who are least likely to shop for electricity in the first place. Because municipal aggregation is provided on customers' behalf by their elected public officials, and assuming that these elected officials would only enter into contracts that would benefit their constituents through lower prices or some other direct benefit, the General Assembly may well conclude that this exception to the general anti-slamming rule in the original electric choice law is justified.

My own primary concern with opt-out aggregation, however, is an issue that I raised in my testimony on the draft legislation at the hearing of March 3, 2010. That is, it is important to ensure that the establishment and timing of such a program does not undermine the ability of our existing electric distribution companies to provide least cost service to those customers whose municipalities do **not** participate in an aggregation program. As I noted earlier, the Pennsylvania restructuring law was recently amended by Act 129 of 2008, to require our utilities to acquire a mix of generation resources to provide default service at "the least cost to customers over time." That task will be complicated, however, if the electric distribution company does not know whether or not some or all of the largest municipalities in its service territory will be effectively pulling out of its generation service program en masse through an opt-out aggregation program

after the company had secured generation to serve them. The fact is that after an extensive litigation and negotiation process before the Commission, we now have in place approved default service procurement plans for every major electric distribution company in Pennsylvania for the period from January 2011 to June 2013. Our utilities and their wholesale suppliers are already in the process of entering into contracts for generation service to be provided during that period. While our current default service plans were all litigated and negotiated with the understanding that retail customers are free to shop and voluntarily switch away from default service at any time, there was nothing in the Pennsylvania law at that time that suggested that entire municipalities full of customers could be removed from the customer base without individual customer consent. My concern is that this change in the rules in the middle of the game could impose additional costs on the utilities and the wholesale default service suppliers and that these costs would in turn be passed on to the utility's remaining default service customers now and in the future.

A possible partial solution to this problem would be to amend House Bill 2619 to go forward with **opt-in** aggregation immediately, but to defer the commencement of any **opt-out** aggregation programs until June 2013, when the previously approved default service plans of all of our major electric distribution companies are scheduled to be reopened. After that time, opt-out municipal aggregation programs could be timed in a way that they would not interfere with or undermine our utilities' default service procurement plans for the rest of their customers. Alternatively, the General Assembly could limit the legislation to opt-in aggregation at this time and revisit the opt-out provisions at a later date.

Finally, I would respectfully suggest one further amendment to House Bill 2619, which I had also proposed in my prior testimony with respect to the draft legislation at that time. On

page 23, lines 5-12, the bill requires that any costs incurred by an electric distribution company in implementing a municipal aggregation program be charged to **all** of the company's residential and small commercial customers through a non-bypassable automatic adjustment clause. I would submit that the costs incurred by a utility to implement this type of program should be borne by those municipalities and customers who directly participate in the aggregation program.

Thank you again for the opportunity to testify at this hearing and for continuing to seek consumer input on this legislation. I would be happy to answer any questions you may have and I will certainly continue to work with the members and staff of this Committee as you consider the merits of this legislation.

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