

COMMONWEALTH OF PENNSYLVANIA
HOUSE OF REPRESENTATIVES

CONSUMER AFFAIRS
COMMITTEE HEARING

MAIN CAPITOL
ROOM 140
MAJORITY CAUCUS ROOM
HARRISBURG, PENNSYLVANIA

WEDNESDAY, NOVEMBER 17, 2010
9:30 A.M.

PRESENTATION ON
MUNICIPAL AGGREGATION

BEFORE :

HONORABLE JOSEPH PRESTON JR., MAJORITY CHAIRMAN
HONORABLE HARRY READSHAW
HONORABLE BRYAN BARBIN
HONORABLE ANGEL CRUZ
HONORABLE GARY HALUSKA
HONORABLE WILLIAM C. KORTZ II
HONORABLE NICK KOTIK
HONORABLE ROBERT F. MATZIE
HONORABLE JOSEPH A. PETRARCA
HONORABLE CHRIS SAINATO
HONORABLE TIMOTHY J. SOLOBAY
HONORABLE ROBERT W. GODSHALL, MINORITY CHAIRMAN
HONORABLE KAREN D. BEYER
HONORABLE SHERYL M. DELOZIER
HONORABLE BRIAN L. ELLIS

KELSEY DUGO REPORTING

71 Willow Mill Park Road * Mechanicsburg, PA 17050
Phone: (704) 996-9514

1 ALSO PRESENT:

2 MAJORITY COMMITTEE STAFF

3 MARCI SANTORO
4 COMMITTEE and LEGISLATIVE ASSISTANT

5 BETH ROSENTEL
6 RESEARCH ANALYST

7 MINORITY COMMITTEE STAFF

8 AMANDA RUMSEY
9 COUNSEL

10 KELSEY J. DUGO,
11 COURT REPORTER
12 NOTARY PUBLIC

13

14

15

16

17

18

19

20

21

22

23

24

25

1		I N D E X	
2		TESTIFIERS	
3			
4	<u>NAME</u>		<u>PAGE</u>
5	JOSEPH PRESTON JR. Chairman		5
6	WILLIAM JARET GIBBONS Director Government Affairs		8
7			
8	BRIAN D. CROWE Vice President Energy Acquisition		11
9	TONY C. BANKS Vice President Product & Market Development		34
10			
11	GENE ALESSANDRINI Senior Vice President Marketing		22
12	DAVID FEIN Vice President Energy Policy-Midwest		28
13			
14	RICHARD J. HUDSON JR. Director Regulatory & Legislative Affairs		51
15	BILL BERG Manager Regional RTO		56
16			
17	MARJI PHILIPS Managing Director		58
18	IRWIN "SONNY" POPOWSKY Consumer Advocate		62
19			
20	WILLIAM LLOYD Small Business Advocate		68
21			
22			
23			
24			
25			

P R O C E E D I N G S

* * *

1
2
3 CHAIRMAN PRESTON: Good morning. I would like to
4 be able to call the Consumer Affairs Committee to order so that
5 we can begin with the public hearing on dealing with the issue
6 of municipal aggregation. If I could, if we could start in the
7 back behind me to my right, or to my audience's left, introduce
8 yourself and the appropriate county.

9 REP SOLOBAY: Jim Soloby, Washington County.

10 CHAIRMAN PRESTON: How are you, Senator?

11 REP SOLOBAY: Were very, sir.

12 REP READSHAW: Good morning. Rep Harry Readshaw,
13 Allegheny County.

14 REP BEYER: Rep Karen Beyer, Lehigh and
15 Northampton.

16 REP KOTIK: Nick Kotik, Allegheny County.

17 REP MATZIE: Rep Rob Matzie, Beaver and Allegheny.

18 REP SAINATO: Chris Sainato, part of Lawrence and
19 part of Beaver County.

20 REP DELOZIER: Sheryl Delozier, 88th District,
21 Cumberland County.

22 REP ELLIS: Brian Ellis, 11th District, Butler
23 County.

24 CHAIRMAN PRESTON: Thank you. Also, before I get
25 started, I would like to be able to especially recognize a

1 member who's always been good and faithful and will be leaving
2 us, Rep Karen Beyer.

3 REP BEYER: Thank you, Mr. Chairman.

4 CHAIRMAN PRESTON: Next, I would also like to
5 address many of you have seen Ms. Gail Davis, who is sitting to
6 my right, for quite a few years. She's retiring and we still
7 have been using her on a limited basis because good expertise
8 is hard to let go. Officially, as of November, over a week
9 ago, Beth Rosentel has become the Executive Director for the
10 Committee, so welcome, Beth.

11 The reason why I wanted to have the hearing and we've
12 had three different meeting when we first started off with the
13 issue of municipal aggregation. And for the members, when
14 we've started off, 50 percent of the members were new.

15 This, in the sense of Pennsylvania, was a new concept.
16 If you remember, to refresh everyone, we have started off with
17 the issue of municipal aggregation before the bill was even in
18 print of asking people to give their thoughts, they're ideas so
19 that we could try to put some things together.

20 And then we've had two other meetings in different
21 parts of the state, urban and rural. Then we've also voted the
22 bill out and we've voted the bill out unanimously. And for
23 some reason, we went from unanimous to still the vote being
24 unanimous, but it seems a lot of the industries had certain
25 problems with it.

1 And I would like to be able to say that I think with
2 Rep Godshall and myself, with this hearing, I have every
3 intention on the day that they give a number to a bill and have
4 the bill introduced. And that those members who are on the
5 Committee, if you could would like to be able to cosponsor,
6 please let the office know. I'll be sending out a memo for
7 cosponsorships.

8 So I wanted to be able to deal with this without really
9 refreshing. What I'm going to ask for those people, you can
10 read the whole testimony or you can give the executive
11 presentation just as well in the issue of timeliness. And I
12 know that there are members and the senator has to leave
13 because they're having their leadership meetings as well.

14 And this is the concept of why I wanted to bring
15 everybody together to make sure to see what they had. Things
16 do change and evolve. And I remember we were concerned about
17 the year 2012, dealing with the issue of default. Well, where
18 we are in now, by the time we should do this, should the
19 legislation pass. That issue will be reviewed. And so some of
20 the things, as you go through time, help eliminate themselves.

21 The other thing is, when we can match for the first
22 time to be able to give consumers and municipalities a chance
23 to not be competitive, but to be able to help residents and be
24 able to work and get people up to an affordable cost. There's
25 a third alternative level for energy consumption. I thought

1 this was an excellent idea and I'm going to encourage us to go
2 further with that.

3 I would also like to be able to thank Rep Godshall
4 because we did work together. There were no hidden
5 conversations between my staff and his staff. We'll always
6 continue to work together. And, also, since we look forward
7 with him being the majority chair in the immediate future, I
8 look forward to being able to work with him, just as we have in
9 the past.

10 Chairman Godshall.

11 CHAIRMAN GODSHALL: I would just like to say thank
12 you to the members and also for -- to my counterpart for his
13 leadership over the last number of years. This has been a very
14 active committee. I think it's done a lot of work in working
15 for consumers in PA. And it was just leadership, dedication
16 and, truthfully, working together with both sides of the isle,
17 not only at our level, but with the member's level of the
18 committee.

19 Most of our votes have been just about unanimous, if
20 not all of them after we hashed things out, worked things out
21 and got together. And that was really Joe's leadership and I
22 want to say thank you and I'm privileged to work with him in
23 the next two years exactly like we have in the past. Thank you
24 very much.

25 CHAIRMAN PRESTON: My pleasure.

1 First, we have William Roland, the Direct of Government
2 Affairs at Duquesne Light and also Brian Crowe, Vice President
3 Energy Acquisition at PECO Energy Company. Please come forward
4 and be able to make the presentation.

5 I would like to stay this relative and because I come
6 from a Duquesne Light territory, I think this was one of my
7 main concerns because we really didn't have a chance to have an
8 open dialogue concerning this. And I wanted to be able to give
9 home territory first representation this time because last
10 time, since we've kind of weren't ready at the table.

11 With that being said, gentleman, you may begin as you
12 so choose.

13 DIRECTOR OF GOVERNMENT AFFAIRS ROLAND: Thank you
14 for giving us that opportunity and we certainly thank the
15 members of the committee for taking time out to hear us out on
16 this issue.

17 As Chairman Preston and Chairman Godshall both
18 mentioned to me and to our CEO, I wanted to apologize that we
19 weren't more communicative to express with our concerns with
20 the bill. I know that a lot of hard work and effort went into
21 this bill. I attended one of the meetings that you had in
22 Johnstown and I certainly, again, apologize that we weren't
23 more effective in our communication strategy and an error that
24 we won't repeat.

25 Duquesne Light has opposed opt-out municipal

1 aggregation for several reasons. We have a testimony that is
2 certainly circulating in the room. I won't bore everyone here
3 by reading it entirely. I just wanted to make a few points.

4 We believe that the opt-out municipal aggregation is
5 contrary to the customer choice model that exists in PA. In
6 short, an individual choice becomes simply a government
7 declaration under the constructs of opt-out municipal
8 aggregation. Additionally, we believe that opt-out municipal
9 aggregation could have and may have unintended sequences of
10 increasing electric costs if the proper customer protections
11 and regulatory guidelines are not in place.

12 For example, Duquesne Light uses the tools provided to
13 us by the legislature. Under such legislation is Act 29, to
14 offer our customers affordable fixed rates on the residential
15 side. We think there's a lot of value to that and we think
16 people, in this day and age where every dollar counts, they
17 appreciate the fact that their electric bill would more or less
18 be the same month to month.

19 We have talked to our customers. We think that they
20 feel very strongly about that and we've offered that type of
21 plan since our rate caps have expired since 2002. We have been
22 operating under the customer choice model for nearly a decade.
23 And Duquesne Light's customer shopping is one of the highest in
24 the nation.

25 If municipality aggregation legislation, such as 2619

1 is approved prior to the expiration of the currently approved
2 plan, which is May 2013, we believe that our plan is
3 irreparably damaged and our contract is in impaired.

4 Further, Duquesne entered into these contracts foremost
5 in the best interest of our customers and under the regulatory
6 and legal framework laid out by the legislature and the PA
7 Public Utility Commission, municipal aggregation opt-out --
8 municipal aggregation fundamentally alters that framework.

9 Duquesne Light believes municipal aggregation may be
10 beneficial to electric customers in PA if proper consumer
11 safeguards, consumer education, appropriate regulations and
12 competitive standards are in place. You'll find some of these
13 suggestions along these lines in our testimony.

14 We believe House Bill 2619 is a start to this process
15 and, again, we understand and appreciate the hard work of
16 Chairman Preston and Chairman Godshall and the Committee at
17 large. Duquesne Light is very pleased to have been asked to
18 participate today and I would be pleased to answer any
19 questions to the best of my ability. If I can't answer them --
20 I'm more or less new to Duquesne -- I certainly will get those
21 answers for you.

22 And, again, Chairman Preston, thank you for the
23 opportunity. And, again, I apologize if our communication
24 strategy lacked. But we certainly will not make that mistake
25 again.

1 Again, thank you for the opportunity and, again, any
2 questions that I can answer, I will do that.

3 VICE PRESIDENT ENERGY ACQUISITION CROWE: Good
4 morning. Chairman Preston, Chairman Godshall, I appreciate
5 this second opportunity to testify on behalf of House Bill
6 2619, introduced by Chairman Preston.

7 I would also like to extend our appreciation for
8 Chairman Preston and the Members of the Committee for extending
9 all of the provisions that we had discussed prior. We commend
10 the Committee for responding to a number of issues, including
11 the least-cost procurement, a competitive bidding process,
12 consumer education, a public process for adopting municipal
13 aggregation, and the associated opt-in and opt-out provision,
14 as well as distribution company cost recovery. We believe
15 these are critical components to a successful municipal
16 aggregation program.

17 PECO believes that the best way -- best opportunity for
18 customers to procure easily, price power is through competitive
19 markets. We're committed to successfully transitioning our
20 customers to the market. And for us, that's in January 2011.

21 We believe that our primary obligation as being to our
22 customers, both in providing them with the tolls and
23 information needed for a smooth transition to competitive
24 markets and making sure that they have the lowest cost options
25 for default energy supply are available to them.

1 PECO and other EDCs are also aggressively implementing
2 PA's Act 129 programs to provide customers with tools to save
3 money through energy efficiency and demand response programs as
4 part of the transition to market-based prices.

5 We've worked together with the General Assembly and the
6 PUC and asked that the same approach we applied to municipal
7 aggregation policies.

8 From our perspective, we're looking for an environment
9 with regulatory certainty and market stability in order to
10 reduce the costs and the risks associated with the default
11 service supply. So we need to have coordination between the
12 existing distribution company, the default service programs and
13 the procurement that we have already made, in which the prices
14 are locked in and avoid adding any addition risk into the
15 wholesale bidding process. Changing the rules of the game part
16 way through that adds instability and adds some risk that will
17 manifest itself in future bidding.

18 We continue to have two concerns with House Bill 2619
19 that I would like to discuss. First is the integration of
20 municipal aggregation plans with utility default service and
21 second is just assurance that the commission has the
22 appropriate authority over consumer protection licensing and
23 the opt-out rules.

24 PECO believes that it's essential for House Bill 2619
25 to include explicit language that requires any municipal

1 aggregation programs that are implemented to be coordinated
2 with the current and the future default service programs try to
3 synchronize those and perhaps have them offered at the same
4 period.

5 The opt-out aggregation creates a potential for large
6 blocks of power to be moved. Allowing that to happen does add
7 uncertainty to the process in terms of the wholesale market and
8 the folks who bid into are wholesale procurements.

9 The unique nature and opt-out program has the potential
10 to move the larger blocks more abruptly than individual
11 switching that occurs in a competitive market. So we believe
12 that municipal aggregation, if adopted, we believe that the
13 Commission should be authorized to develop rules to create an
14 orderly process for municipalities to inform the EDCs that they
15 will be pursuing these municipal opt-out programs and that --
16 to try to synchronize those -- the PUC try to synchronize those
17 with the EDC default service procurements.

18 As I noted earlier, there are a number of improvements
19 were made and we appreciate that from the last time that we
20 were before the Committee. Those include, the least-cost
21 procurement requirements, competitive bidding requirements,
22 consumer ed, education and the public processes.

23 We believe, in summary, that a well-structured
24 municipal aggregation program in PA can provide a complementary
25 option for consumers as we complete the transition to full

1 competition. We believe the key is really to protect the
2 consumers and they're consistent -- at the same time to make
3 sure they're consistent with the competitive market.

4 Electric distribution companies, such as PECO, we don't
5 financially benefit from default service. We pass our costs on
6 for procuring that power to our customers. But we want to get
7 the best price available for customers. So we avoid -- we seek
8 to avoid the risks and any risk premiums that come with that
9 and we just make sure the rules that are associated with
10 putting that market forward have been fully coordinated with
11 the existing requirements.

12 We have seen in PA very strong shopping numbers for
13 those who have come out of the transition. Customers are
14 finding options from competitive alternative suppliers through
15 pulling arrangements and other offers that are allowing them to
16 save money from default service rates. And just believe that
17 it's critical to coordinate, with this going forward, as we
18 introduce any kind of new mechanism to make sure that success
19 continues.

20 So we hope that you'll consider these issues as you
21 move forward. And, again, thank you for your time and I
22 appreciate the opportunity to come back again today and speak
23 to these issues.

24 CHAIRMAN PRESTON: Thank you very much for your
25 testimony and your insight. First, I will make this

1 commitment, because if you remember even at the last minute, we
2 were trying to make sure what we thought was handling the
3 default issue, will be handled and it will be. And we will all
4 work together on that in the next coming weeks.

5 The other thing we were doing before we wrote the bill,
6 there were some people who are for opt-out and there are some
7 people who are for opt-in. So in the height of democracy, I
8 thought, why not have opt-in and opt-out. I just wanted to
9 explain that to you and I understand that because you're going
10 to hear from people who want the opt-out and opt-in issue. And
11 think even there's been one town already that wanted the
12 opt-in. I think it was in Carlisle. Counselman, who is also
13 on my staff, is from Carlisle. They did an opt-in issue down
14 there in Carlisle, for example. Chairman Godshall.

15 CHAIRMAN GODSHALL: I hear what you're saying
16 about the default, contracts in place and so forth. But as
17 long as we have the default system in place, won't that same
18 thing -- that's going to be here forever because isn't it the
19 same?

20 You're going to have even in 2012, 2013, you're going
21 to still obligations for your default customers that you're
22 going to have to buy electricity for. That's not only today,
23 but it's in the future. I guess I don't understand what the
24 difference is now or what the differences will be in 2013 or
25 whatever.

1 VICE PRESIDENT CROWE: Under the current plans
2 that are filed and in place, we have procured the power already
3 --

4 CHAIRMAN GODSHALL: I understand that.

5 VICE PRESIDENT CROWE: So the risks, there are the
6 folks who are already locked in at certain prices to us. With
7 a future plan, if large customer blocks can be taken out of
8 that pool on an opt-out basis, and that generally would occur
9 when prices fall.

10 Those wholesale suppliers are going to have to price
11 that risk when they bid the next time around and that's what
12 we're trying to address. That risk premium that they have to
13 build in there for that potential will translate into higher
14 prices for the customers who remain on the default service.
15 And that's really the concern that we're looking at again.
16 Trying to minimize the cost for all those who remain on default
17 service, at the same time, getting customers the broadest range
18 of options to switch to the service that meets their needs the
19 best.

20 CHAIRMAN GODSHALL: So you're saying in the next
21 level approach it says that you would take into consideration
22 the possibility and of those losses and in making those
23 purchases, which will cost you more money in essence to do it
24 and --

25 VICE PRESIDENT CROWE: If those plans generally go

1 two to three years in length and if a large group moves out
2 from that plan and has the ability to move out from that plan,
3 that's a risk that will be addressed in the pricing we receive
4 that, again, gets passed on to the end-use customer.

5 CHAIRMAN GODSHALL: And that wasn't addressed in
6 the present contract?

7 VICE PRESIDENT CROWE: No. This wasn't
8 anticipated in the current contract. So those companies that
9 bid into us when we have contracts for in 2011 and 2012, they
10 weren't anticipating this, but they have locked in prices with
11 us and we'll honor those prices. But they do have that risk
12 now in the current plan.

13 CHAIRMAN GODSHALL: Thank you, Mr. Chairman.

14 CHAIRMAN PRESTON: Rep Kortz.

15 REP KORTZ: Thank you, Mr. Chairman. You really
16 cover what I wanted to get into about the opt-in program. I
17 appreciate you gentlemen for coming here today and providing
18 this information about the opt-in, the caption, the 50 percent,
19 I understand. And I appreciate your testimony. Thank you.

20 CHAIRMAN PRESTON: Rep Barbin. And for everybody
21 else, I need to let you know, please keep your phones on buzz
22 and also this is being recorded for PCN so that they'll be able
23 to make you copies just as well. Thank you very much. Rep
24 Barbin.

25 REP BARBIN: Thank you, Mr. Chairman and thank you

1 for your testimony today. The question that I have is, your
2 objection to municipal aggregation, it seems to be that there
3 is some additional risk that is not being taken care of that
4 needs to be factored into the price and electricity for 2013;
5 is that a fair statement?

6 VICE PRESIDENT CROWE: Correct. The default
7 service plan, which begins for us in the middle of 2013.

8 CHAIRMAN PRESTON: Rep Barbin, that's one of the
9 conversations that we're trying to have and we try to come up
10 with what we thought was -- and it's still in question -- to
11 give it a little extra protection for them where the PUC would
12 have authorization to be able to make sure that they will not
13 be hurt. That's something that I'm committed to make sure that
14 that language be clarified.

15 REP BARBIN: Thank you, Mr. Chairman. I do
16 appreciate your bill and I reviewed it closely and we've tried
17 to work and include all of those issues in the current
18 municipal aggregation bill.

19 But my question is this, if we have a municipal
20 aggregation bill and that will provide some benefit to
21 residents and small businesses throughout the state, why isn't
22 it a better way to handle the problem to have the PUC allow
23 short-term contracts now, you know, additional purchases of
24 short-term contracts because the cost of electricity is now
25 lower? So why isn't that enough to take care of any additional

1 risk that you might have in 2013?

2 VICE PRESIDENT CROWE: The plan that we have
3 covers through 2013. It has some short-term purchases and some
4 longer term. So some of ours are 12-month purchases, some go
5 as long as 29 months. We have some block products, residential
6 customers that go 60 months. The shorter you make them, the
7 more volatility is when prices go up or prices go down.

8 So in recent years, we've seen prices go down in the
9 last, let's say, 24 months. And I think we've seen that in the
10 PPL territory from the first procurement to their second
11 procurement.

12 I think when we look at it, you have to design it in
13 such a way that it works in periods of declining prices, but
14 also in periods of rising prices. So the model really has to
15 work because -- under both of those scenarios because,
16 eventually, both of them happen over time.

17 REP BARBIN: Right now, we're dealing with a
18 recession and we've just taken half of the state and we have
19 released the rate caps, which has increased electricity. There
20 was a lot less than we have expected. Maybe around 15 percent.

21 But why shouldn't our answer be allow the
22 municipalities to have aggregation and make sure that more
23 short-term contracts are purchased now, at least until we're
24 out of this recession 24 months from now? Why shouldn't that
25 be the answer to this additional risk?

1 VICE PRESIDENT CROWE: Well, the current risk of
2 the plan, those contracts for 2011 into 2012, we've procured
3 the power. So, at PECO, we've procured the power for 2011 and
4 we have staggered purchases through the remainder of the plan,
5 which was designed and then approved by the Commission.

6 So we have obligations to those suppliers at the prices
7 that they've bid at. Some are shorter term products, some are
8 longer term products. Again, it's designed to take the
9 volatility out to allow the market prices to be reflected.

10 At this point in time, prices have fallen. There are
11 some opportunities for people to shop and save money. We've
12 seen that in PA. But if you go to all shorter term protects,
13 the volatility will be introduced. It works on the way down,
14 but when it goes back up, you're going to see higher increases
15 over a period of time if you don't have somewhat of a staggered
16 view of the purchases.

17 DIRECTOR GOVERNMENT AFFAIRS ROLAND: I would just
18 add on Duquesne Light's perspective, we've been out of the rate
19 caps since '02. So we have been dealing with these types of
20 issues for quite some time. And our situation is slightly
21 different, as we sold all of our generation assets. We don't
22 have a sort of a dog in that fight. But our prices went down
23 and they've been basically pretty flat since '02.

24 CHAIRMAN PRESTON: Again, just in case the
25 residents from Allegheny County, there's quite a few members

1 from Western PA, would you please repeat that again?

2 DIRECTOR GOVERNMENT AFFAIRS ROLAND: Sure. Our
3 rates have been flat and we believe reasonable and we provide,
4 again, fixed prices. We don't -- certainly, there are
5 different ways to do this. We certainly -- we go through a
6 strenuous regulatory process at the PUC. So we feel that
7 there's a lot of advantage to fixed prices. We find ourselves
8 to be in a position of being a true utility. And we feel that
9 we use a varied portfolio of short-term, long-term spot market.
10 And we feel that we do a nice job of that.

11 Now, fundamentally, municipal aggregation in an opt-out
12 capacity may change the way that we do that. If this comes
13 into effect in 2013, we may have to take that into account and
14 do things differently. But if we know going in what the rules
15 of the game are, we'll live up to it and give our customers the
16 best rate that we can.

17 REP BARBIN: Thank you, Mr. Chairman.

18 CHAIRMAN PRESTON: Well, I want to thank you
19 gentleman. Like I said, we will be in touch with you in the
20 couple of weeks and we appreciate your testimony and we will
21 make sure that some of those things are in there.

22 VICE PRESIDENT CROWE: Thank you for the
23 opportunity.

24 CHAIRMAN PRESTON: Next panel is Gene
25 Alessandrini, Senior Vice President of Marketing for PPL

1 EnergyPlus and David Fein, Vice President of Energy Policy for
2 the Midwest, Constellation Energy Group, Incorporated. Thank
3 you very much, gentlemen, for coming. We appreciate your
4 comments as we go further to offer the residents of PA.

5 Before I get to that, we've also been joined by a few
6 other members. Would you care to introduce yourself and the
7 county that you represent. Ms. Delozier.

8 REP DELOZIER: Sheryl Delozier, Cumberland County.

9 REP BARBIN: Rep Bryan Barbin from Cambria County.

10 CHAIRMAN PRESTON: Thank you. Gentlemen, you may
11 begin.

12 SENIOR VICE PRESIDENT ALESSANDRINI: Thank you.
13 Chairman Preston, Chairman Godshall and Members of the
14 Committee, my name is Gene Alessandrini. I am Senior vice
15 President of Marketing for PPL EnergyPlus.

16 PPL EnergyPlus is a competitive wholesale and retail
17 supplier of electricity and natural gas in PA. PPL EnergyPlus
18 is not the same company as PPL Electric Utilities, the
19 regulated public utility that provides electric delivery
20 service in 29 counties of northeastern and central PA.

21 My testimony today, however, reflects the common
22 positions of both PPL EnergyPlus and PPL Electric Utilities on
23 the issue of municipal aggregation. The PPL companies support
24 the concept of municipal aggregation. It would provide another
25 option for consumers to benefit from PA's growing competitive

1 electricity market.

2 There is strong evidence to show that electric choice
3 has opened new opportunities and product innovations for PA
4 consumers. According to the Public Utility Commission website,
5 papowerswitch.com, more than 650,000 consumers and businesses
6 have chosen alternative electricity suppliers. With
7 long-standing generation caps about to expire for PECO, Met-Ed,
8 Penelec and Allegheny Power, PA can expect to see far greater
9 numbers of consumers shopping for electricity supply in the
10 very near future.

11 In the territory served by PPL Electric Utilities,
12 490,000 customers had shopped for electricity supply as of
13 November 1st. And 70 percent of the electricity currently
14 delivered by PPL Electric Utilities is from an alternative
15 supplier. Still, however, about 68 of its residential
16 customers and 61 percent of its small business customers are --
17 68 percent to 61 percent are receiving default supply service
18 from the utility, missing an opportunity to save money by
19 shopping.

20 Legislation that authorizes municipal aggregation would
21 extend the benefits of competition to many more in the
22 Commonwealth who, for whatever reason, have chosen not to shop
23 for electricity supply. It would enable competitive
24 electricity suppliers to work with municipalities to overcome
25 consumer inertia. It would support a robust competitive market

1 by reducing customer acquisition costs, which might otherwise
2 present an obstacle for suppliers to enter the market.

3 House Bill 2619 was introduced earlier this year to
4 allow municipalities to negotiate on behalf of residents and
5 businesses for electricity supply. As drafted, the bill would
6 have opened the benefits of electric choice to many more
7 Pennsylvanians. As amended, however, the legislative dictates
8 and mandates in the bill would have significantly limited the
9 potential benefits to electricity consumers.

10 The PPL companies encourage this committee and the
11 legislature to reconsider a properly structured municipal
12 aggregation bill in the 2011 session. The key elements to be
13 addressed in a properly structured municipal aggregation bill
14 are: Solicitation and procurement, requirements for contract
15 terms, eligible customers, opt-in or opt-out, and coordination
16 with existing or new default service plans.

17 First, I would like to address the position of the PPL
18 companies with regard to solicitation and procurement. The
19 goal of municipal aggregation should be to get the best
20 possible combination of price and service for consumers. The
21 procurements process must be completely transparent and
22 competitive, with PUC oversight rather than legislative
23 mandates, which do not necessarily, provide the flexibility to
24 adapt to future outcomes and market uncertainties.

25 The PPL companies do not believe the legislation should

1 require municipalities to award contracts based solely on
2 price. Yet, all awards showed be transparent and public.

3 Suppliers have many ways to assist municipalities,
4 including energy efficiency, demand response, emergency
5 generation, and street lighting, for examples. These services
6 have the potential to provide added value that could be lost in
7 a strict low-bid procurement process.

8 The second issue is requirements for contract terms.
9 While we do acknowledge concerns about the potential effects of
10 long-term municipal aggregation contracts, ultimately we
11 believe municipal officials are best qualified to make such
12 decisions on behalf of their constituents.

13 Also, our system of government provides a built-in
14 check on the actions of municipal officials. Voters, with
15 their vote, speak on their view and opinion of an official's
16 performance. That is an effective control than legislation or
17 regulation.

18 The third key element is eligible customers. House
19 Bill 2619 would have limited business participation in
20 municipal aggregation to companies with a maximum peak demand
21 of 50 kilowatts or less. PPL companies believe that limit is
22 too low because it would deny the benefits of electric choice
23 to a number of small and mid-size businesses, including
24 restaurants, dry cleaners, auto repair shops and retail stores
25 that might otherwise be able to reduce their business costs

1 through a municipal aggregation offer.

2 Our recommendation is to set the limit for
3 participation in a municipal aggregation program at a level
4 that optimizes business participation in retail choice. More
5 than 60 percent of the small commercial and industrial
6 customers of PPL Electric Utilities remain on default service.
7 Opening a municipal aggregation option to more of those
8 businesses would help them reduce costs, improving the overall
9 business climate in the Commonwealth.

10 The fourth key issue is whether municipal aggregation
11 programs should be opt-in or opt-out. While opt-in provides
12 for affirmative consent by consumers, it would also
13 significantly limit participation in programs. The PPL
14 companies favor an opt-out approach subject to the PUC
15 oversight as such oversight and regulations exist today.
16 Today's regulation is working well and should be consistent in
17 this program.

18 The final issue is coordination with existing or new
19 default service plans. This was a major sticking point on
20 House Bill 2619. To avoid interfering with default service
21 plans, House Bill 2619 would not have allowed municipal
22 aggregation options during the terms of any existing default
23 service plan. That provision of the bill would have created a
24 transition period, delaying municipal aggregation for several
25 years.

1 The main concern that some parties have expressed
2 regarding this issue is the potential impact on future POLR
3 prices, and the competitiveness of POLR procurements, if
4 suppliers believe that there is greater risk that municipal
5 aggregation will significantly reduce POLR loads.

6 The PPL companies oppose a transition period. We
7 believe it is more important to make money-saving options
8 available to consumers sooner, rather than later. In addition,
9 there is a possibility that there will be no savings in 2013,
10 although, are savings today, approximately ten percent of
11 residential customers and 20 percent of businesses. In fact,
12 because Electric Distribution Companies are obtaining POLR
13 supply on an ongoing process, there would be no clear or easily
14 definable break point for establishing a transition period.

15 PPL EnergyPlus, in addition to being a participant in
16 the retail electricity market in PA, also is very active in the
17 wholesale market and has participated in the POLR procurement
18 process conducted by Electric Distribution Companies.

19 Protecting POLR suppliers from a migration risk that
20 they already understand would only serve to delay the benefits
21 for consumers from a municipal aggregation option. In fact,
22 supplier knowledge of the potential risk has had no appreciable
23 effect on the competitiveness of POLR procurements either in
24 PA, New Jersey, or other states that we participate in.

25 Government policies should encourage shopping by giving

1 consumers the options and incentives for choosing alternative
2 suppliers. The PPL companies believe municipal aggregation is
3 an option that will provide the benefits of the competitive
4 electricity markets to far greater numbers of Pennsylvanians.

5 We appreciate the opportunity to provide our
6 perspective on this issue. We are available at any time to
7 provide input or answer questions that the Committee may have.
8 Thank you.

9 CHAIRMAN PRESTON: Mr. Fein, go ahead.

10 VICE PRESIDENT FEIN: Thank you, Chairman Preston,
11 Chairman Godshall and Members of the Committee. My name is
12 David Fein and I work for Constellation Energy. Constellation
13 Energy is both a retail and wholesale supplier here around the
14 Commonwealth and around the country.

15 The perspectives that I'm going to give today are just
16 from that, an active participant in the POLR and default
17 service procurements conducted by the PA Utilities and as an
18 active participant in the marketplace here.

19 As the Committee is aware, we have previously submitted
20 testimony, both oral and written at two of the previous
21 hearings that the committee has had. And we really believe
22 that at this time the consideration of municipal aggregation
23 opt-out or opt-in is really something that's a solution in
24 search of a problem right now.

25 We have come to that conclusion for two reasons. One,

1 that the procurements today that have been conducted, as
2 previous witnesses have said, have been very competitive. And
3 consumers who either choose to remain with the utility are
4 getting some of those benefits of the competitive wholesale
5 procurement that's robust. But, second, you're starting to see
6 the development of retail competition, which is what was
7 envisioned under the Customer Choice Act and under the default
8 service rules.

9 My colleague from PPL outlined some of the success that
10 they have seen in their service territory. There's certainly
11 more that can be done. But when you have the rate caps
12 expiring at the end of this year and those four other service
13 territories, we really don't know how those service territories
14 are going to develop and we should give them some time to
15 develop and see what happens there.

16 A prior witness, I think it was Mr. Crowe, talked about
17 changing the rules midstream and some of the risks that are
18 born. You know, that is exactly what would occur to existing
19 wholesale suppliers and I think you'll hear from other
20 witnesses later that will talk about that. There is no way to
21 protect those companies that enter into a contract to provide
22 electricity under a certain set of assumption. Those
23 assumptions that are dealing with risk and attrition, but they
24 didn't deal with the prospect for municipal aggregation because
25 that wasn't something that was on the table when they decided

1 to participate and provide electricity to the utilities.

2 Everyday we're reading stories in the trade press or in
3 the local media about new companies investing in this state and
4 announcing plans to provide service to customers in PA,
5 including residential. And not a day goes by where you see
6 some new entrant announcing plans so provide service. So I
7 think we're well on our way to really providing those options
8 to customers that are seeking those competitive opportunities
9 in the marketplace.

10 I would like to turn to some of the improvements that
11 we saw in the most recent iterations of the legislation and
12 there have been improvements made to earlier drafts from our
13 perspective. And we believe that many of those changes have
14 addressed some of the concerns that we have previously
15 articulated, as have others.

16 Most significantly would be the language that was
17 inserted, providing the Public Utility Commission with some
18 oversight of these programs and the ability to promulgate rules
19 to address this. It's a general and broad grant of authority.
20 We would have some recommendation for maybe some additional
21 specificity there, including some language that specifically
22 articulates that the adoption of municipal aggregation would
23 not occur -- I should say that any programs for municipal
24 aggregation would not occur until after the expiration of
25 existing approved default service plans. That sort of gets at

1 the risk of existing plans.

2 And I think then, if the legislature so chooses, going
3 forward, if the rules of the game are known by participants
4 before any of these procurements are conducted for future
5 plans, that gives more certainty and knowledge of what the
6 rules of the game are. In that fame, wholesale suppliers will
7 do their best to address that risk that they perceive in this.

8 If they do perceive a risk of large-scale movements of
9 customers either on or off service, that is going to be priced
10 into the price of power that is paid. That will be reflected
11 in bids that suppliers put forward. That's a natural
12 inclination that they're going to somehow come up with the
13 value for what they perceive that risk to be.

14 Other areas of improvement that we think can be done
15 would, you know, ensuring that some language about how will you
16 handle the situation under which a large block of customers
17 come back to default service if they were on municipality
18 aggregation. They should be some clarity on how that would be
19 handled.

20 If you want to take out the risk from bidding, one way
21 to do that would be to not allow those customers to go back to
22 the fixed price default service that is being offered by EDCs
23 and put them on more of an hourly type priced service. That's
24 the way it's handled for larger customers and that's the way to
25 get that risk premiums out of your bids.

1 Another issue would be ensuring that there's some
2 greater clarity to protect customers who may not have wanted to
3 be included -- should not have been included in the list of
4 eligible customers for the municipal opt-out aggregation
5 program. While there's some language regarding customers under
6 contract with an electric generation supplier should not be
7 included in that risk -- in that list.

8 Our experience in other states that have this and
9 others in that intention, those lists are not always accurate.
10 There's a lag time between people getting on that list and
11 maybe entering into a contract with the supplier. And you have
12 situations where customers are inadvertently moved from their
13 existing supplier to the supplier to the municipal aggregation.
14 And it takes a lot of time and effort to unwind those
15 situations and allow those customers to get the benefit of what
16 they chose to do.

17 So some additional language that clarifies that issue
18 provides the Commission with some authority to specifically
19 address those types of mechanics is really important, whether
20 it's in a general rule-making scenario, whether it's part of
21 our future default service plan. Those are really key issues
22 in our view that need to be addressed.

23 Finally, we would like to see some additional language
24 that would prohibit electric generation suppliers or anyone
25 seeking to provide service underneath the municipal aggregation

1 program to be prevented from providing any sort of financial
2 inducements or other types of inducements in order to be
3 awarded that contract. And I think that can be an enhancement
4 to the bill. Again, I think --

5 CHAIRMAN PRESTON: That's an interesting way of
6 saying that, but I appreciate that.

7 VICE PRESIDENT FEIN: I think that the whole
8 concept of municipal aggregation should be considered as part
9 of the overall energy policy of the state and to ensure that
10 it's within the framework of the existing rules that the Public
11 Utility Commission has, whether those be default service solely
12 or whether those implicate other provisions.

13 I think that's an important consideration to make sure
14 that all participants have a clear understanding of how this
15 will operate under that construct and we certainly welcome the
16 opportunity to testify here today, offer our suggestions, and
17 we look forward to working with this Committee and all of the
18 stakeholders to work on this matter. Thank you.

19 CHAIRMAN PRESTON: Thank you. We're being joined
20 now also by Tony Banks, who is the Vice President of product
21 and market development for FirstEnergy Solutions.

22 About at six o'clock this morning, I noticed on the
23 weather reports that it was very windy and especially somewhat
24 in the Midwest and we're glad that you're here and we want to
25 give you a little time to relax and stretch the legs a little

1 while. And we appreciate you coming in. You have been to all
2 of our hearings that we've had in the past and with that being
3 said, you may begin.

4 VICE PRESIDENT BANKS: Chairman Preston, Chairman
5 Godshall, Members of the Committee, good morning and thank you
6 for the opportunity to address this Committee on legislation to
7 create opt -- out municipal aggregation on a statewide basis
8 for electric generation supply in PA, legislation that I
9 believe will promote greater competition and savings for
10 residential and business customers.

11 I'm Tony Banks, Vice President of FirstEnergy
12 Solutions, which is a wholly owned subsidiary of First Energy
13 Corp. We currently sell competitive electric generation that
14 provides savings to commercial and industrial customers in PA
15 and five other states in the region, and we'd very much like to
16 see more residential and small business customers enjoy savings
17 just like larger commercial and industrial customers have been
18 doing for years. So let me assure you that FirstEnergy
19 Solutions will continue to be an active participant in PA's
20 competitive market for electricity following FirstEnergy's
21 proposed merger with Allegheny Energy.

22 We believe PA should move forward quickly with a
23 well-crafted opt-out municipal aggregation bill, for three
24 important reasons. First, with rate caps set to expire for
25 Penelec, Met-Ed, West Penn Power and PECO at the end of this

1 year, the time to act is now, not three years from now, as
2 others have stated in their testimony. The longer we wait, the
3 longer residential and small business customers will pay more
4 for electricity than they need to.

5 Second, by enacting municipal aggregation before the
6 next auction for 2013 electric generation supplies,
7 participating suppliers will have better information on the
8 type of load they are bidding in 2013, and, as a result, should
9 be able to reduce the risk premiums that they include in their
10 default service bid prices. And, third, communities throughout
11 PA want the opportunity to bring guaranteed savings to their
12 residents, just like communities in Ohio have been doing since
13 2001.

14 Opt-out municipal aggregation is one of the most
15 effective ways to bring savings to large numbers of small
16 business and residential customers. That's why FirstEnergy
17 Solutions strongly supported House Bill 2619, which, we
18 thought, was a great compromise to address concerns of all
19 interested parties and which would have made for an effective
20 rate mitigation tool for communities and customers throughout
21 the Commonwealth. However, we have several concerns about
22 proposed changes to the bill, which I will discuss shortly.

23 While some committee members are very familiar with the
24 concept of opt-out municipal aggregation process, others may be
25 hearing about it for the first time. So let me provide a brief

1 explanation of what opt-out municipal aggregation is, and what
2 it isn't.

3 Opt-out municipal aggregation is a way for local
4 communities to combine their residents and small businesses
5 into a single, large buying group. The larger buying group
6 will attract participation from more electric generation
7 suppliers, thereby promoting greater competition in the retail
8 electric marketplace. The concept is straightforward: Rather
9 than compete fro individual customers -- which drives up
10 marketing and administrative costs -- electric generation
11 suppliers would compete to serve the larger buying groups
12 established by the local municipalities on behalf of their
13 citizens. And the lower cost to enroll these customers allows
14 the supplier to pass the savings on to customers in the form of
15 lower prices.

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

1 Simply put, by being part of a municipal aggregation
2 buying group that will be able to negotiate a better deal than
3 the individual customer could get on a stand-alone basis, those
4 customers will save money on their electric bill even if they
5 do nothing at all.

6 Now I'd like to specifically address several
7 misconceptions regarding opt-out municipal aggregation.

8 One misconception is that it compromises basic
9 protections regarding privacy, and that it would "slam"
10 customers to the provider chosen by the local community. So,
11 first, with respect to privacy, opt-out municipal aggregation
12 does not require the utility to provide any customer data other
13 than the information already available on the electric
14 distribution company's customer eligibility list. That
15 information is already available to any supplier who asks for
16 it today. So there is no need to gather additional information
17 from customers or from the utility.

18 Nevertheless, we believe EDCs should be required to
19 keep that information as current as possible, which makes sense
20 in terms of providing more responsive service from both a
21 regulated and competitive standpoint. With regard to slamming,
22 it should be noted that the opt-out process provides frequent
23 opportunities for customers to choose an alternative supplier
24 for their electric generation service.

25 To further support its position as to the validity of

1 opt-out aggregation, FirstEnergy Solutions has filed a petition
2 on November 9, 2010, with the PA Public Utility Commission that
3 sets forth in Section III(A) on Pages 21 through 23,
4 FirstEnergy Solutions' position that opt-out aggregation is not
5 a form of slamming and is consistent with the requirements of
6 the Public Utility Code and the Commission's regulations,
7 orders and guidelines.

8 And to further protect consumers, the opt-out process
9 provides consumer education through multiple communications
10 that give consumers general information about municipal
11 aggregation and how it works in their specific situation. For
12 example, multiple readings by the community's elected officials
13 are held in meetings open to the public before a final
14 ordinance can be passed.

15 In addition, this information is supplemented with
16 advertising, opt-out notices, press coverage, the utility
17 waiting period notice and other information customers receive
18 about the process. As a result, customers are able to make
19 well-informed decisions regarding whether to stay with the
20 community's selected supplier or shop for another supplier.

21 Another common misconception we've heard in prior
22 testimony and discussion on this matter is that allowing
23 opt-out municipal aggregation prior to 2013 would harm
24 suppliers to current utility default service. Specifically,
25 certain suppliers are claiming that they don't have adequate

1 shopping risk premiums built into their current default service
2 prices. We could accept this argument if suppliers refunded
3 customers when there is less shopping than was priced into
4 their default service bids, but I don't know of any supplier
5 who has volunteered to make those refunds to customers.
6 FirstEnergy Solutions supplies energy to every utility in the
7 Commonwealth for their default service programs, and we don't
8 feel the need for special protection to the detriment of the
9 many customers who are going to experience real rate increases
10 starting January 1, 2011.

11 In considering the timing of this legislation, we think
12 it's more important to balance the real needs of the customer
13 against the perceived negative impact on suppliers. The fact
14 is that enacting municipal aggregation prior to the next round
15 of default service bids will actually lower the shopping risk
16 premium that ultimately is borne by customers, since
17 aggregation that is already in place during default service
18 bidding by suppliers provides greater predictability regarding
19 the anticipated level of customer shopping.

20 Those suppliers claiming some theoretical financial
21 harm due to opt-out municipal aggregation have yet to provide
22 tangible, concrete evidence of such harm. Conversely, it is
23 known and certain that customers will be paying higher prices
24 starting January 1, 2011, the effect of which is very real.

25 We are concerned about another potential change to

1 House Bill 2619 that would establish a requirement that
2 communities make their supplier selection based only on
3 lowest-cost bid. We believe municipalities should have the
4 freedom and flexibility to set their own parameters for
5 competitive bids or RFPs, parameters that meet the specific
6 needs of their communities.

7 For example, communities that value energy-related
8 products and services -- such as advanced meter solutions,
9 energy efficiency programs or renewable generation -- could
10 request that suppliers provide those value-added services along
11 with lower price, without the added value of energy-related be
12 their choice. We believe that a low-bid requirement stifles
13 creativity while creating barriers to greater participation
14 among suppliers.

15 Another of our concerns is that we believe
16 municipalities should not have to face licensing requirements
17 and other obligations, such as posting collateral. These
18 obligations are completely unnecessary, since suppliers will
19 have a contract directly with the customer and those suppliers
20 already provide financial assurances to the Commission. The
21 communities are merely facilitators with no supplier
22 obligation. More importantly, such licensing would only act as
23 a barrier, preventing many communities from making a proven
24 rate-mitigation tool available to their residents.

25 Finally, we dont believe that it's necessary to

1 significantly increase the size limitation for commercial
2 customers that would be served through opt-out municipal
3 aggregation. Most larger commercial and industrial businesses
4 already benefit from savings offered by competitive providers.
5 Through opt-out municipal aggregation, we can extend the same
6 buying power to smaller businesses and residential customers
7 that otherwise would be ignored by competitive suppliers who
8 aren't interested in serving lower-use customers at a higher
9 cost of acquisition.

10 To summarize, I am convinced that, with the right
11 modifications, House Bill 2619 will provide long-term energy
12 savings to residential and small business customers here in the
13 Commonwealth. In fact, we're already seeing those benefits in
14 Ohio, where opt-out municipal aggregation -- called
15 "governmental aggregation" in Ohio -- is helping more than 300
16 counties, cities, villages and townships offer significant
17 savings to more than one million customers.

18 The Ohio Consumers' Counsel estimates that a
19 residential customer using 850 kilowatt-hours of electricity is
20 saving up to \$110 annually through governmental aggregation.
21 And Ohio's two largest governmental aggregators report that
22 residential and small business customers in their member
23 communities have saved more than \$100 million through these
24 programs. Governmental aggregation is responsible for about 90
25 percent of the shopping activity among residential customers,

1 as well as 70 to 80 percent of commercial customers switching
2 to competitive generation suppliers in Ohio.

3 So, finally, let me reiterate the very important fact
4 that the proposed legislation would simply give local officials
5 the option, not the obligation, to decide whether municipal
6 aggregation is the right choice for their community. Nothing
7 in the bill would mandate that municipalities pursue
8 aggregation.

9 FirstEnergy Solutions will continue to work closely
10 with the Committee, the General Assembly and the Commonwealth
11 and the Commission to make opt-out municipal aggregation a
12 reality in PA.

13 Thank you again for the opportunity to testify today.
14 I am available to answer any questions you might have.

15 CHAIRMAN PRESTON: I want to thank each and every
16 one of you for your testimony and I think that the members get
17 a chance to refresh their thoughts between the first and this
18 panel. Also, I want to be able to thank the members and also
19 to elected officials or township and borough people who may be
20 watching this on PCN.

21 As you start having the local town community meetings
22 and town hearings, this is going to be an issue that is going
23 to seriously come up before you. And that's why I'm
24 encouraging you to start getting more familiar with some of the
25 nomenclature, some of the terms that we're using in dealing

1 with this because it's going to be the local officials who are
2 going to be making the ultimate decision, but the people
3 themselves are going to have to go through because an ordinance
4 rule needs to be passed.

5 And I think that Chairman Godshall, since we've tried
6 to put as many stop caps to be able to protect the consumer in
7 this, but to also to make the responsibility also, not per se
8 for us, but per se, you might say the local elected official
9 when they pass that ordinance and then they still have to get
10 that license to be able to pass that ordinance through the
11 Public Utility Commission.

12 When you start raising these issues, I think, and as
13 the people have started to raise these issues, we need to look
14 at this because there are some towns already going through this
15 process. I have the privilege of representing two boroughs in
16 my legislative district. One with 3,000 people, that being the
17 Borough of Aspinwall and also Wilkinsburg, which is 19,000 or
18 20,000 people. But, yet, also I represent the City of
19 Pittsburgh.

20 But, I remember when Rep Petrarca, when we were first
21 -- before we wrote the legislation, his questions were, does
22 this mean that a town in my district that only has 300 or 400
23 people in it will be able to participate. And one of the
24 things that we garnered from this was the concept offers the
25 big and the little to get together.

1 We were in Cambria County, for example, we met
2 privately and separately with the local officials so we could
3 hear their opinions on the legislation. And they were
4 surprised to find out that if they wanted to, they could
5 participate with Johnstown or they could form their own group,
6 or, if they wanted to, even though most of them said no, they
7 didn't want to deal with the whole county to be able to deal
8 with this concept, but it's possible.

9 One of the things that was raised during your
10 testimony, and I'll raise it. When I was in Bethlehem and we
11 had the hearing, in the legislation, it was 50 kilowatts. At
12 the time, I mentioned about having it raised to 500 kilowatts.
13 The concern that we kind of developed in that is that if you
14 have a town with 450 people or maybe 300 people, maybe 150
15 households that haven't an opt out cause per se. And let's say
16 that there's a large supermarket, large manufacturer or a car
17 dealership who falls within that range that I was raising it
18 to, it has a direct effect on the whole poll. And so that was
19 one of the reasons why I didn't put that per se in -- put it in
20 the legislature and, after, I thought it would be a little bit
21 more competitive. I wanted to explain that.

22 Also, the staff has informed me that if someone under
23 the opt-out program decides to opt out and try to go back,
24 they're not guaranteed in this legislation now -- it's already
25 there -- to get the same rate if they go back to their original

1 supplier. It's not guaranteed there, so they have to be able
2 to think about this.

3 So as we wake up the consumers, and I say this to the
4 members, as you become a little bit more familiar with this,
5 this is going to be something that we're all going to be
6 dealing with all of the towns. There are a lot of members
7 here. Some only represent 50 or 200 different separate
8 municipalities. And I represent, one of my municipalities --
9 both of them have different counsels of governments. One with
10 21 and I think the other one with 60 municipalities. So they
11 have been talking about this. And if we can pass this
12 legislation, they're more interested in trying to work with
13 this because they already have a working relationship.

14 With that being said, are there any questions?
15 Chairman Godshall.

16 CHAIRMAN GODSHALL: I would just like to find out
17 how you can evaluate, say if you're a municipal official a six
18 cents maybe a kilowatt for your constituents or if it's six and
19 a half cents plus a ball field or one of these ad-ons, we --
20 the gentleman from ConEdison said we look at supporting the
21 balance needs for consumers and so forth and the flexibility,
22 setting up parameters and this and that and we have to look at
23 financial inducements. And I've seen financial inducements in
24 the communications field. I've seen financial inducements in
25 other fields.

1 If you go with a low bid, how do you know that your
2 constituents are getting the best deal? If somebody comes
3 along a little bit higher and they're throwing in the ball
4 field, it's a hidden tax because municipal officials don't want
5 to tax for that ball field. But a higher electric rate is the
6 same. It's the tax that was added on to gain something, which
7 really wasn't the electric rate that the residents were paying.
8 How can you evaluate those kinds of things if you don't go with
9 a low bid?

10 SENIOR VICE PRESIDENT ALESSANDRINI: I'll speak to
11 it first. I think my reference to that issue was more towards
12 energy efficiency. Another type of energy investments that
13 allow the consumers or the municipalities use less energy over
14 time. My intention wasn't from the ball field. But I
15 understand the question. I think the question is relevant. I
16 would hope that as part of our proposals to anything here would
17 be more energy related. The case where they may be capital
18 constrained, you have the opportunity to invest the capital and
19 provide them savings and payback over time, which could either
20 be done independently through its own payment calculation
21 energy savings or it could be rolled up into an energy price.
22 I mean, I think I would want to use the same objective.
23 Regardless, I think it needs to be transparent so that way
24 people can understand how that decision was made and then
25 people get to decide based on their participation and the

1 municipality and the officials.

2 VICE PRESIDENT BANKS: I would agree with those
3 comments. I think I was the one who referenced the -- making
4 sure that -- financial inducements because that is the way some
5 of those aggregation programs that are spoken so highly of in
6 Ohio. That was part of some of those awards. There were fire
7 trucks donated and there were fire departments and it wasn't a
8 competitive process or a transparent process and it wasn't
9 solely based on price or even energy related services. So
10 that's what the comment was referring to.

11 If, truly, we're interested in having it being
12 competitive options to customers and having municipal
13 aggregation as some sort of additional choice for consumers,
14 then it should be specifically focussed on electricity or
15 electricity related products and services like both of the
16 speakers mentioned.

17 VICE PRESIDENT BANKS: And I have a comment being
18 that -- I guess you can call them financial inducements, but
19 they're grants in Ohio that become pretty common. We don't
20 propose and tell communities what's important to them at the
21 end of the day. If they value energy efficiency, that's what
22 they should ask for.

23 We do believe that it should be an open process where
24 everyone understands the rules, everyone is living under the
25 same conditions. And I would propose that there's probably a

1 lot more value and energy related products. That's why I think
2 Advance Energy Solutions are the kind of things that
3 communities will start to ask for, a renewable component to
4 their energy.

5 But, again, I think it needs to be the community's
6 choices, what they think adds more value to them and their
7 constituents as opposed to something in legislation that
8 prevents communities to thinking outside the box.

9 CHAIRMAN GODSHALL: Okay. I'm still not convinced
10 on how you're going to put a contract out that is totally
11 opened to everybody that says we're going to charge so much for
12 electric and then we're going to ask you to add a fire truck or
13 a ball field on the deal.

14 I don't know the residents in that municipality, if it
15 would -- if we go to that level of transparency, would the
16 residents revolt on something like that? Maybe the municipal
17 officials are one thing, but the residents are another thing.

18 I just look at that one element and there's two
19 different opinions here and I still have a concern. If we're
20 going to go through with this, it should totally be
21 transparent. It really should.

22 CHAIRMAN PRESTON: Chairman Godshall, within the
23 legislation, it was the issue about transparency. And if there
24 are any potential negotiating inducements, don't forget, the
25 local elected officials, the past ordinances, it's all public

1 record, but all of that would have to be defined and explained.
2 And then the ordinance is also going to be on the local
3 officials, as well as the public, whether or not they are
4 willing to accept that. So it's not that they can have this
5 contract. The contract will still have to be approved by an
6 ordinance.

7 And I wanted to make sure that if there's Christmas
8 lights, if so, or it should -- maybe nothing at all. But
9 that's up to the -- I was making sure that the public
10 themselves would be able to see the agreement, contract and the
11 ordinance. And, to my knowledge, I don't think that any local
12 municipality in our state passes an ordinance without public
13 comment and public notification within there and, in some
14 cases, a lot of the ordinances have to be heard twice in most
15 cases that I've seen.

16 So this is one of the concerns that I've had just as
17 well. So everything has to be totally apparent and that's also
18 why I wanted to make sure that the Public Utility Commission
19 was somewhat involved in granting the license to the local
20 municipality so that even the municipality knows that there's
21 someone else who can be able to say, well, maybe you're just
22 disingenuous, something else showed up that wasn't in the
23 original contract. Rep Barbin.

24 REP BARBIN: Thank you, Mr. Chairman and I believe
25 we have adequately dealt with that in the bill as it is

1 proposed. I also think you've had a couple of years to see how
2 it works in Ohio. And I'm opposed to have different obstacles
3 put into a bill that would eliminate the chance for residents
4 in cities to have their elected officials to determine whether
5 that's a good idea or bad idea.

6 For instance, in Johnstown, I don't know what a local
7 official is going to do, but he's going to have to come before
8 City Council, he's going to have to come before a hearing and
9 explain that. But if they decide that they want to have a Jeep
10 to carry a canine dog and that additional inducement is part of
11 the contract, then so be it.

12 The bottom line is, there is an amount of money that a
13 public utility company would have to pay to market to all the
14 residents of that city. And even if that amount is only five
15 dollars a person, if it's 20,000 people in a city, that's
16 \$100,000. So if the City Council decides that they would like
17 to have municipal aggregation in order to avoid the additional
18 wasted cost of mailing, that the additional inducements are a
19 police vehicle for a canine dog and his officer, then I think
20 that's appropriate, but I think that's up to them. We
21 shouldn't be dictating to local municipalities what they should
22 or should not do and we shouldn't be moving this bill forward
23 right now because people's electric bills are going up.

24 CHAIRMAN PRESTON: Thank you very much. Any
25 other? (No audible response.) Gentlemen, we appreciate it and

1 we'll talk to you after the hearing and have a safe trip back.

2 Next, we have Richard Hudson, who is the Director of
3 Regulatory and Legislative Affairs for ConEdison Solutions and
4 I guess there was a quote that was addressed, so when you get a
5 chance, you can address those. We were fortunate that it was
6 raised before you even spoke.

7 DIRECTOR HUDSON: Sure. Good morning, Chairman
8 Preston, Chairman Godshall and Members of the Committee. My
9 name is Ritchie Hudson. I am the Director of Regulatory and
10 Legislative Affairs for ConEdison Solutions, which is a retail
11 provider of electricity and energy related services to
12 consumers here in the Commonwealth and in other states that
13 have enacted retail choice. I am also the PA Chairman of a
14 group called the Retail Energy Supply Association, which is a
15 broad and diverse group of competitive electricity suppliers
16 that support the advancement of competition for the benefit of
17 all types of consumers. My testimony today is on behalf of
18 both of these entities.

19 As you know, we have been involved in this legislative
20 debate over municipal aggregation throughout this year. As I
21 have previously testified, we do support the concept of opt-out
22 municipal aggregation as a way to stimulate the development of
23 retail competition in certain underdeveloped markets. But, we
24 do believe it is important that such programs, particularly
25 opt-out municipal aggregation programs, be properly structured

1 so that customers can continue to enjoy the full benefits of
2 retail choice, just as they do today if they're served by the
3 utility under what is known as default service.

4 We commend this Committee for pursuing a very thorough,
5 inclusive and deliberative process on reviewing this issue. We
6 believe that the current version of 2619 represents a
7 substantial and significant improvement over the initial draft
8 version that was discussed in March. For example, in prior
9 committee hearings, I have testified about the importance of
10 ensuring that customers are not locked into a long-term opt-out
11 municipal aggregation program with onerous switching fees or
12 other restrictions, but would prohibit customers from
13 exercising their right to choose a competitive provider.

14 We are very pleased that the current version of 2619
15 does include language that would prohibit such fees in
16 switching restrictions. We think that this is a crucial
17 improvement to the bill and it's one that we fully support.

18 Today, for the remainder of my testimony, I'll focus on
19 a couple of additional concerns that we have with 2619 as it's
20 currently drafted.

21 But before I get into those issues, I wanted to respond
22 a little bit to some of the testimony that occurred earlier on
23 the issue of default service and how opt-out municipal
24 aggregation impacts defaults service in PA. I think this
25 discussion highlighted what is ultimately a fundamental tension

1 that exists here in PA between two important policy objectives.
2 One of those policy objectives is to enable customers with the
3 right to choose a competitive electricity provider. And
4 another important objective is to ensure that customers have
5 the lowest possible price for the electricity service that they
6 do receive.

7 There was discussion earlier about how opt-out
8 aggregation, the increased customer migration risk associated
9 with those programs may financially harm suppliers and how that
10 added migration risk may impact the future of prices under a
11 default service plan. We agree with some of the testimony
12 that's been given earlier that this is an important issue that
13 needs to be addressed and we think there are some appropriate
14 protections in the current version of 2619 to do this.

15 But the point that I wanted to make is this discussion
16 about migration risk really does shine a light on some very
17 difficult public policy questions that the whole concept of
18 default service poses. During the debate over Act 129, there
19 was a lot of discussion about what default service should look
20 like in PA and there was testimony about the risks of relying
21 heavily on a utility provided default service in an attempt to
22 provide least cost service to customers through the procurement
23 of long-term contracts.

24 And the discussion that's taking place today highlights
25 some of the problems associated with relying on long-term

1 contracts for default service. Those contracts can, in a
2 declining price environment, stand in the way of policy
3 objectives, such as implementing municipality aggregation in a
4 way that would provide customers access to lower energy prices
5 that exist in the marketplace today. Ultimately, we don't have
6 a golden solution to these issues, but I did want to take a
7 moment to highlight some of those public policy issues. And I
8 hope, as we go into 2011, we can have an additional legislative
9 debate over the issue of default service and how it should be
10 structured.

11 Now, going back to the issue of municipal aggregation.
12 There are two specific issues that I wanted do address. One is
13 the current version of 2619 includes the definition of the
14 price to compare that a utility uses. And as the name implies,
15 the price compare describes the rate that the utility charges a
16 customer for default service.

17 The current version of 2619 defines this price to
18 compare as a class-average price. And we believe that that
19 language should be changed to a customer-specific price. The
20 whole point of the price to compare is to tell a customer what
21 they would pay if they stay with a utility provided default
22 service. And to give a customer a class-average price, we
23 would present them with misleading and confusing information.

24 To highlight this, if you look at the default service
25 structure in the PECO service territory, there's a rate class

1 knows as GS, which is small and medium-sized businesses.
2 Everything from a pizza shop to a large chain store. And a GS
3 customer in PECO could have a customer-specific rate that
4 ranges anywhere from 6 cents per kilowatt hour to 12 cents per
5 kilowatt hour. But the class-average rate is 9.47 cents for
6 the first quarter in 2011. So, obviously, there, it would be
7 very misleading that actually has a customer-specific rate of 6
8 cents, that their price to compare is actually 9.47 cents.
9 That could lead to uneconomic purchase decisions by that
10 customer. So we think that that issue should be addressed.

11 Secondly -- and this has been touched on already
12 today -- municipalities should be free to consider other
13 environmental attributes or other value added energy services
14 when they do pursue a supplier selection under an opt-out
15 municipal aggregation program. We agree with some of the
16 concerns that have been discussed about financial inducements.
17 But, ultimately, we believe that energy service -- energy
18 products and services should be up to the municipality to
19 consider what types of value added products that they want to
20 include in their competitive RSP.

21 Finally, as you may be aware, RESA has recently filed a
22 Petition for Declaratory Order with the PA Public Utility
23 Commission on the issue of opt-out municipal aggregation. And
24 in that Petition, we asked the Commission to clarify some legal
25 issues surrounding the modality of opt-out aggregation under

1 the current PA law. And I wanted to take a minute to explain
2 why we took that action.

3 We've been involved extensively in this very thorough
4 legislative process and we feel that we've made significant
5 process in addressing some of our concerns. And, ultimately,
6 we believe it would be premature for a supplier to pursue
7 opt-out aggregation until these issues are fully addressed
8 through the passage of state-wide enabling legislation. And
9 that's why we did take this action at the PUC.

10 So, with that, I would like to thank you for the
11 opportunity and I'll be happy to answer any questions that you
12 may have.

13 CHAIRMAN PRESTON: Well, thank you. And we look
14 forward to working with you.

15 DIRECTOR HUDSON: Thank you.

16 CHAIRMAN PRESTON: Next is Bill Berg, Manager
17 Regional RTO PJM for Exelon Generation and Marji Philips, who
18 is the Managing Director of PSEG Energy Resources and Trade
19 LLC. Thank you very much. We appreciate you coming and you
20 can start whenever you so chose.

21 MANAGER BERG: Chairman Preston, Chairman Godshall
22 and Members of the Committee, thank you for this opportunity to
23 testify on behalf of Exelon Generation Company regarding this
24 important municipal aggregation legislation.

25 Headquartered in Kennett Square, Chester County, Exelon

1 Generation employs nearly 4,000 Pennsylvanians. We have one of
2 the largest wholesale power trading organizations in the
3 country and own or control approximately 31,000 megawatts of
4 electric generation. Exelon Generation is also the parent
5 company to Exelon Energy, an active, competitive retail
6 supplier in PA, Illinois, Michigan and Ohio. Exelon Generation
7 is a vocal and staunch advocate of competitive electricity
8 markets, both at wholesale and retail levels.

9 In the last year, PA has made tremendous strides
10 towards facilitating the development of a competitive retail
11 electricity market. These efforts are benefiting customers
12 today. Exelon Generation believes that a properly structured
13 municipal aggregation framework can further expand the options
14 available to customers to take advantage of the competitive
15 market that exists today.

16 Exelon Generation believes that it is essential,
17 however, for any municipal aggregation legislation to include
18 language that would coordinate existing Default Service Plans
19 with the implementation of municipal aggregation programs.
20 Opt-out aggregation in particular creates the potential for
21 movement of large-scale blocks of customers. This migration
22 would occur well after an electric distribution company has
23 secured its supplies under a commission-approved Default
24 Service Plan that was executed well before municipal
25 aggregation was contemplated by the Legislature or the PA PUC.

1 This situation creates significant and unexpected switching
2 risk for wholesale suppliers of default service customers.
3 Simply stated, these risks that could not have been reasonably
4 anticipated when the Default Service Plans commitments were
5 made.

6 Synchronizing the initiation of municipal aggregation
7 programs with existing DSP plans substantially reduces these
8 risks and their potential impact on consumers who remain in
9 DSP. Importantly, it signals to the market that PA will
10 continue its pro-market evolution in an orderly and thoughtful
11 manner. That's why it is our position that the legislation
12 should be clear that no aggregation programs should be
13 permitted to begin until new default service plans are approved
14 by the Commission.

15 I hope that the Committee and the members will consider
16 these issues and we are certainly here to work with you.

17 Thank you for your time.

18 MANAGING DIRECTOR PHILIPS: Hi. I'm Marji
19 Philips. As you've noted, I'm from PSEG Energy Resources and
20 Trade. And similar to Exelon and some of the other companies
21 that you've heard, we have a portfolio of nuclear, coal, gas
22 facilities, some of which are located in PA. And we, too, try
23 and maximize the value of our assets and engage in the kinds of
24 trading activity and participation in PA POLR programs, as well
25 as New Jersey basic generation service. And I'm going to take

1 advantage and address some of the questions raised since you
2 have my testimony.

3 I think one issue that has been wrongly characterized
4 is migration, the issue's contract sanctity and regulatory
5 stability. And I believe that in crafting this bill, you
6 recognized the need to give that kind of assurance. Our
7 concern is that there is more explicit language in the analysis
8 of the bill that would be better -- we would prefer to see
9 incorporated in the bill itself -- as Bill just testified --
10 which would have the transition to this program occur after the
11 termination of existing contracts.

12 And, as everybody has noticed, my company is a
13 participant in these proceedings. And, yes, migration hurts us
14 and it's very good for you in the short term and it would be
15 good for those municipalities that want to get out. Our
16 concern is if you want to plan for the long term because what
17 will happen if you should not have a transition period is that
18 players, like myself, will say, gosh, we don't have the kind of
19 contract sanctity and regulatory stability that I have
20 somewhere else in another state. And, frankly, our credit is
21 limited and we choose where we participate in these kinds of
22 procurements based on, is it attractive, is it stable.

23 If PA suddenly starts undermining the premises under
24 which we executed our POLR contracts, we may not play here
25 again. We would rather play in a more stable arena where the

1 legislators and the Public Utility Commissioners respect the
2 sanctity of contracts and I think you all understand that
3 because what happens in the end is, if I don't play here, you
4 will have PPL and FirstEnergy still playing and probably Exelon
5 because there is their home state. But the other 10, 12
6 participants who also bid into the POLR auctions will not be
7 here.

8 So it's a question of whether you want a short-term
9 game or you want to keep the process competitive long term.
10 And I think that the bill does strike that correct balance, but
11 we would like it to be more precise if you will as it is set
12 out in the analysis of it. Thank you.

13 CHAIRMAN PRESTON: Very well said. And I will
14 say, as you've seen from the beginning, whether it was opt in
15 or opt out, some people didn't want it, some people wanted it.
16 I wanted to make sure that everybody gets a little bit of
17 everything.

18 Part of the things that we've looked when you try to do
19 legislation, a perfect bill is something that everybody gets a
20 long or we have a bill that I thought was just as perfect,
21 somewhat, because there were two or three percent all the way
22 around that people didn't like, but, at the same time, it
23 wasn't the same group of people that didn't like. So
24 everybody, I think, 80 or 90 percent of people got what they
25 needed and only two, three, four, five percent that people

1 weren't happy with, but can we work to try to live with it and
2 try to improve the language where it's clear where we would
3 eliminate some of the fogginess that people aren't able to deal
4 with because the last thing that I want to do is get a lot of
5 attorneys involved and court cases. I know that there are some
6 members that may be attorneys, but I'm not a big fan of
7 billable hours.

8 And that being said, are there any questions? (No
9 audible response.)

10 Thank you very much. I really appreciate everything.
11 We're really going to try to work this out. So if you have
12 additional comments with what was said, please call back here.

13 MANAGING DIRECTOR PHILIPS: We'll be glad to
14 submit them.

15 CHAIRMAN PRESTON: Thank you. Next, we have Irwin
16 "Sonny" Popowsky, the Consumer Advocate for the PA Office of
17 Consumer Advocate. And also William Lloyd, the Small Business
18 Advocate for the Office of Small Business Advocate and also a
19 formal member. Gentlemen, we appreciate you coming. Your
20 comments are welcomed. You have been participating in this
21 process in the beginning. We were so close before. I would
22 like to be able to knock the door down as we're going into the
23 next term, so your comments are welcome.

24 CONSUMER ADVOCATE POPOWSKY: Thank you, Chairman
25 Preston, Chairman Godshall and Members of the Consumer Affairs

1 Committee my name is Sonny Popowsky. I have served as the
2 Consumer Advocate of PA since 1990, and I have worked at the
3 Office of Consumer Advocate since 1979. I've previously
4 testified before this committee on this legislation at a
5 hearing in Bethlehem in September and also on a draft version
6 of the legislation at a hearing in Harrisburg in March. As I
7 did at those prior hearings, I really want to sincerely commend
8 you, Chairman Preston, Chairman Godshall and the members and
9 staff of this committee for the way that this bill has
10 progress. I think it's been done in an open manner and in a
11 proactive, coordinated manner where I think, at least I feel,
12 that my comments have been sincerely listened to and considered
13 and, to some extent, reflected in the amendments that have
14 already occurred on this legislation and I sincerely thank you
15 for that and I look forward to working with the Members of the
16 Committee in the upcoming session as this goes forward.

17 I will say that, as it's been indicated already by a
18 couple of prior witnesses, this issue has taken on a greater
19 sense of urgency in the last few months because we have
20 actually already seen one marketer, FirstEnergy Solutions, has
21 already begun to offer municipal aggregation services in some
22 communities in the western part of the state. And on the
23 theory that it is permissible for Home Rule municipalities to
24 go forward with this type of aggregation even in the absence of
25 legislation. I respectfully disagree with that position. I

1 will be filing in the -- my office will be filing comments at
2 the PUC in the petitions that were addressed by Mr. Hudson and
3 Mr. Banks. I feel that legislation is needed if you want to go
4 forward without opt-out aggregation. And I feel particular
5 with the kind of protections that were included in House Bill
6 2619, as it progressed through the House are essential for an
7 orderly process if municipal aggregation is going to go
8 forward.

9 First of all -- as the Committee has already recognized
10 in the existing version of House Bill 2619 -- there's a
11 specific provision that amends a public utility code to allow
12 customers to be switched without their prior consent. House
13 Bill 2619 at page 24 -- I'm sorry, PN number 4406, at page 24,
14 includes a specific exemption from municipal aggregators to
15 exempt them from what are called the "anti-slamming" provisions
16 of the Public Utility Code. Basically, customers under the
17 Public Utility Code -- the law that was passed in 1996 -- are
18 not supposed to be switched without their consent. What you've
19 done and said in this bill, when municipal officials, acting on
20 behalf of their constituents, make a decision that it is in the
21 best interest to go forward with this type of aggregation,
22 you've created an exception to that rule. But, under current
23 law, there is not such exemption. And I would argue that
24 without this change in the law, this type of municipal
25 aggregation should not go forward.

1 Also, under the amendments and under House Bill 2619,
2 as you've -- as it's come through the House so far, you require
3 that municipal aggregation must use a competitive procurement
4 process to make sure that the municipalities are getting the
5 best deal for their constituents. You require in House Bill
6 2619 that there be a consumer education plan. You also require
7 that customers be able switch out at any time from the
8 municipal aggregation plan --

9 CHAIRMAN PRESTON: Which was a bigger change from
10 the original --

11 CONSUMER ADVOCATE POPOWSKY: Absolutely.

12 CHAIRMAN PRESTON: And brought up by several
13 different people.

14 CONSUMER ADVOCATE POPOWSKY: Absolutely. And you
15 specifically say that people should be able to switch out
16 without penalty, cancellation fees or other restrictions.

17 Also, under House Bill 2619, as it came through the
18 House during this past session, is to specifically require the
19 Public Utility Commission to promulgate regulations and take
20 any other actions that are "necessary to coordinate the
21 implementation of municipal aggregation programs with
22 Commission approval of electric distribution company default
23 supply procurement plans." And to the extent that a municipal
24 aggregation plan -- municipal aggregator does want to go
25 forward during the current plan -- during the current plans

1 that go from 2011 to 2013, under 2619, you require that they
2 get specific Commission approval in advance before doing that.

3 Now, as you may recall, when I testified and several
4 other people have testified in Bethlehem, one of the things
5 that I suggested was that perhaps we should defer any opt-out
6 aggregation until 2013 when the aggregation plans that are
7 currently in effect expire.

8 As a compromise, what the Committee put forward, was --
9 well, we allowed them to go forward, but only with explicit
10 commission approval in advance. I personally thought that that
11 was a reasonable compromise, but I also think that that's the
12 kind of protection that is necessary and one of the reasons
13 that I'm concerned that this type contract not be entered into
14 until the General Assembly has had an opportunity to act and
15 address those issues.

16 The fact is, we did have extensive litigation on each
17 of the company's default service plans. They have entered into
18 contracts with many of the competitive generation suppliers
19 that have been here today. And my concern is not so much -- my
20 concern, obviously, is not with the profits of the suppliers.
21 My concern is that, to the extent, we change the rules in the
22 middle of the game without Commission coordination, that those
23 costs would inevitably flow through to customers in higher
24 default service rates because we would be increasing the risks
25 to those contracts as we go forward without giving them the

1 opportunity to adjust to that.

2 And, Chairman Godshall, you asked earlier on, why would
3 things be different in 2013 than they would be now. Well, in
4 2013 when we do the new plans, to the extent that the
5 Commission knows that municipal aggregation is possible to the
6 extent that they have already approved some of these plans on a
7 specific authorization basis. They may have approved different
8 types of plans. They may give the Utility more flexibility.
9 They may not approve the same types of contracts that create as
10 much risk in a municipal aggregation scenario as would occur in
11 different types of contracts.

12 So I think, as I said, I'm willing to and happy to live
13 with the compromise that the Committee came up with, putting
14 this with the Commission. But I do believe that legislation is
15 necessary and that we shouldn't go forward with the municipal
16 aggregation protections that you've included in 2619.

17 As the Committee is well aware, the last of the rate
18 cap expirations are coming upon us, I'm anxious to see
19 customers have options. One of those options, which I believe
20 that the General Assembly has intended, is the option of
21 customers to do nothing. The option to be left alone, to say,
22 my utility will still go out and buy default service from me at
23 the lowest cost over time and customers can accept that service
24 and be confident that they will be protected.

25 In addition, customers should have the option to shop,

1 as over one-third of the customers here in the PPL territory
2 have done. And the third option, which I think maybe helpful
3 in the future is the type of municipal opt-out aggregation
4 we've talked about. It's a third option that's obviously
5 popular in Ohio and may provide some benefits here, but only if
6 it is done right and only if it is done through the type of
7 process that this committee has engaged in over the last
8 several months and will continue. Thank you.

9 CHAIRMAN PRESTON: Hold on a second. Chairman
10 Godshall.

11 CHAIRMAN GODSHALL: Senator, are there any
12 states -- it's a shame that this default under our system that
13 we have is absolutely necessary. Are there any states, say
14 default doesn't exist where you have to make a choice?

15 CONSUMER ADVOCATE POPOWSKY: The closest to that
16 is Texas where, at the very beginning of the process, most
17 customers were sort of put up for grabs in the Texas model. I
18 think the Texas model is not a good model. I think that the --
19 every other state has filed a PA-type of approach, particularly
20 for residential and small business customers where customers
21 get to stay with their utility unless they affirmatively choose
22 to switch. And, like I said, in Ohio, Massachusetts, they do
23 have this municipal aggregation as an option. I think I will
24 fight to the death to maintain our default service, the ability
25 of customers to be left alone, to stay with their utility and

1 to get least-cost service from their utility under some --

2 CHAIRMAN GODSHALL: I was just wondering if there
3 were any states, with these regulations, with everything else,
4 it's totally open.

5 CONSUMER ADVOCATE POPOWSKY: The closest is Texas
6 and there is a reason that no other states follow the Texas
7 model, which, I think, it is pretty chaotic and I would argue
8 that it's not been adopted by any other state for very good
9 reason.

10 CHAIRMAN GODSHALL: Thank you.

11 SMALL BUSINESS ADVOCATE LLOYD: Chairman Preston
12 and Members of the Committee, thank you for the opportunity to
13 comment on possible changes in House Bill 2619 before its
14 introduction in the next legislative session. In the interest
15 of time, I'll concentrate on some of the high points and also
16 try to respond to some of the things that we've already heard
17 this morning.

18 To a large extent, the business customers covered by HB
19 2619 are the type of restaurants and retail establishments that
20 -- at least when I was in the legislature -- we used to call
21 the "Mom and Pop" businesses.

22 The premise underlying the legislation is the "Mom and
23 Pop" businesses would benefit from "shopping", but that it is
24 too costly for EGSs to market to those customers on an
25 individual basis. It's important to recognize, however, that

1 without the legislation, the "Mom and Pop" businesses are
2 likely to have at least some shopping opportunities. First,
3 local chambers of commerce are already aggregating their
4 members on a voluntary basis in the hope of getting better
5 generation rates. Second, some chain fast food restaurants and
6 gas station/convenience stores -- I can think of Sheetz, I can
7 think of probably Burger King, McDonalds, those types of
8 establishments that would be covered by HB 2619 -- will
9 probably be buying or at least have the opportunity to shop as
10 part of their chain.

11 I know, for example that Sheetz has testified in cases
12 before the Commission that it tries to aggregate its load in
13 states where it has that option and then go out and buy for all
14 of the stores. You don't need this legislation to take care of
15 them, you don't need this legislation to take care of those
16 businesses that are participating with their local chamber of
17 commerce.

18 We've heard a lot about whether it should be opt in or
19 opt out and I appreciate the fact that the legislation provides
20 the alternative and puts the decision in the hands of the
21 municipality. However, as the practical matter, I think
22 municipalities are likely to select opt out because EGSs are
23 likely to offer better rates under opt out rather than under
24 opt in. So, as a practical matter, I think putting that in the
25 legislation isn't going to change anything. I think we have to

1 evaluate this legislation from the standpoint of do we think
2 that opt-out aggregation is a good idea or do we not.

3 We've reached the conclusion that opt-out aggregation
4 will destroy the default service model the General Assembly and
5 the Commission have spent years to create. And if I could
6 emphasis one thing and one thing only this morning, that would
7 be this committee in particular and the General Assembly, as a
8 whole, spent a lot of time to craft Act 129. As one of the
9 prior witnesses said, this legislation really puts a light on
10 that whole underlying default service design. And I think we
11 are at risk of throwing out the benefits of Act 129 before we
12 have even given it the opportunity to see whether it succeeds
13 or fails. Why do I think that? Because I know that that is
14 going to be pejorative statement to some.

15 First, the EGSs supporting municipal aggregation are
16 going to say, how can you be against this because we are going
17 to give you a discount off the default service rate. How can
18 -- that sounds enticing. How can anybody be against a
19 discount? The problem is that the discount is going to be from
20 an inflated default service rate. So, as a result, it's
21 entirely possible that customers in the municipal aggregation
22 program, even though they get a discount from the default
23 service rate, are not going to get a discount from they would
24 have paid if there never would have been municipal aggregation.
25 Why would that be true?

1 You've heard the discussion this morning about
2 switching the risk. Having to build into your bid when you are
3 a wholesale supplier, having to build into your bid, some
4 estimate of how many customers you think are going to shop and
5 how many customers you think might come back during the period
6 of time for which you are responsible.

7 Now, you've heard discussion about long-term and
8 short-term contracts. The fact of the matter is, they're all
9 the major EDCs for the default service period. Ending May 31,
10 2013, to serve my plants, the small seeing customers, are doing
11 to physically through full requirements, low-following
12 contracts. So the wholesale suppliers who win those contracts
13 are obligated to serve whatever the low turns out to be. So
14 they have no choice but to build into the estimate of what
15 they're going to charge, some notion of how much shopping
16 there's going to be and whether that shopping is going to be
17 sustained throughout the entire length of the contract. They
18 do that by adding -- including into their bid what would be
19 referred to as an adder or a risk premium.

20 Now, if you're going to do an opt-out aggregation, it's
21 critical that before they submit their bid, they know whether a
22 municipality is in or out. And if you're going to go forward
23 with this, that seems to me to be a sensible way to try give --
24 to try to have it both ways. If you want municipal
25 aggregation, fine, have municipality aggregation, but require

1 the municipality to make the decision before the bidding for
2 default service occurs so that this risk premium does not go up
3 because of the prospect that gobs of customers are going to
4 move into shopping through municipal aggregation.

5 The reason why some marketers are pushing municipal
6 aggregation is certainly, from their standpoint, a sensible
7 one. It costs them a lot of money to go out and try to get
8 businesses signed up as customers one by one, by one, by one.
9 And if they can get the local elective officials to essentially
10 bring in everybody in an opt-out bases, yes, sure, there will
11 be some people who will opt out, but, inertia, being what it is
12 and this subject being as confusing as it is, and small
13 businesses -- and, remember, we're talking about "Mom and Pops"
14 -- the notion that they're going to take -- most of them are
15 going to take the time and make the effort and have the
16 understanding to evaluate which place they would be better off
17 is just not realistic.

18 If there is a risk premium built in, because you have
19 not adequately coordinated the bidding on default service
20 contracts with the decision as to whether or not to exercise
21 municipal aggregation, that's going to reflect all of the rest
22 of the customers who are in municipalities where there is no
23 municipal aggregation.

24 So, for example, if the City of Johnstown decides it
25 wants to have it and the Borough of Somerset decides it doesn't

1 and the procurement is not coordinated, the default service
2 rates for the people in Somerset are going to go up and maybe
3 the people in Johnstown will get a break, but it's essentially
4 an affect thy neighbor policy. That can be avoided if you do
5 two things. Number one, don't put municipal aggregation into
6 effect until the next default service period, or, at a very
7 minimum, require before the next bids -- whenever those are --
8 that municipality be in or out and then it can't make that
9 decision again that would be in effect during the time of that
10 default service period.

11 In addition, you've heard the discussion of -- from the
12 witness for PSEG. If there's not stability, we will not play.
13 And if they are fewer bidders that default service because it's
14 perceived that default service -- we thought that we knew what
15 the rules were -- the Commission, since 2004, has been having
16 -- started with round tables and then it had proposed rule
17 making and then it had an advance notice of final rule making
18 and then the legislature came in and made changes to Act 129.
19 We thought we had now had a stable -- we knew what the next two
20 and a half years were going to look like. If that's going to
21 change, then you're going to have fewer people bidding in those
22 default service options or RFPs. And the result is going to
23 be, if there are fewer bidders, then it's very likely that the
24 winning bids are going to be higher and so we're going to pay
25 more money.

1 And so once again, sure, I can get a discount off that
2 higher rate, but ask yourself, if everybody is going to get a
3 discount, doesn't that tell you that the price was originally
4 too high? If you're a supplier of electricity, how can you
5 stay in business if the market price is here and you're
6 consistently changing below that? You can't. And the only way
7 that that makes any sense is that the market price is not --
8 the market price is what you're charging but the default
9 service rate is above the market price.

10 Another issue -- which has not been mentioned this
11 morning, but is a critical importance to small business
12 customers -- when I came before this Committee when you were
13 considering House Bill 2200, I talked about the importance of
14 avoiding interclass subsidization. One of the most important
15 decisions -- which the Commission made in the field of default
16 service -- was to have acquisition by rate class, so that we
17 would avoid all of those regulatory fights that we have when it
18 comes to who pays the cost of the wires and that there used to
19 be over who pays for the cost of the new power plants and let
20 the market, rather than the regulators decide what's the cost
21 of serving residential customers, what's the cost of serving
22 small business customers, what's the cost of serving larger
23 commercial and industrial customers. And bidding by rate class
24 establishes that.

25 In Act 129, you included language, which specifically

1 says, "all default service rates shall be reviewed by the
2 Commission to ensure that the costs of providing service to
3 each customer class are not subsidized by any other class."
4 Unfortunately, under House Bill 2619, the municipality would
5 get to decide whether the rates would be different for
6 residential customers as opposed to small-seeing eye customers.
7 And there's no requirement that that decision be based on cost
8 of service. I would expect, generally speaking, that it would
9 cost a little more to serve a small-seeing eye customer than it
10 would a residential customer. But it's entirely possible for
11 the municipality to decide that there should be a 10 or 15
12 percent gap. And it's not hard to understand why that would
13 happen. Generally speaking, they're usually residential
14 customers. They're not business customers. And that, in my
15 view, would destroy one of the most important accomplishments
16 of the Commission's default service process and one of the most
17 important reforms that you included in Act 129.

18 In conclusion, I don't see any reason to make a major
19 change in default service at this time. Over the next several
20 years, the Commission will be able to gather data about whether
21 one approach to competitive procurement produces consistently
22 lower default service rates than another and about the level of
23 shopping among customers with different low profiles. With
24 that data, the Commission and the General Assembly would be
25 better able to recess the need for further changes in the

1 design of default service. Let Act 129 have a chance. But if
2 you decide to go forward, at least make opt-out aggregation
3 effect the -- only with the next default service period, that
4 is, June 1, 2013.

5 Thank you for the opportunity to testify. I'll be
6 happy to answer any questions that you may have.

7 CHAIRMAN PRESTON: Rep Barbin.

8 REP BARBIN: Thank you, Mr. Chairman. Thank you,
9 Mr. Lloyd and thank you, Mr. Popowsky for your testimony. I
10 have heard you on prior occasions. Mr. Lloyd, I don't share
11 your same opinion about what -- whether we should wait or not.
12 And the reason that I don't is, you've stated that all of those
13 factors were known or the factors that were known when the
14 default service plans came into effect were all crystal clear.
15 But it wasn't crystal clear with 81 percent of PPNL's customers
16 would decide to go to a different generation supplier. Because
17 of that -- let me finish -- because of that, what you're really
18 suggesting is, is that based upon what you think might happen
19 in the abstract, Somerset might plan a little higher cost than
20 Johnstown if Johnstown enters into a municipal aggregation
21 plan.

22 I believe that PUC is there to do their job. And the
23 job that they're supposed to do is to take all -- any of those
24 factors or deal with one of them with municipal aggregation.
25 We're talking about distribution. We're talking about

1 transmission. We're talking about generation. One little
2 factor that could help the residents and small business
3 customers today can be fixed by the PUC in the next rate filing
4 of any EDC.

5 So I, respectfully -- I recognize your economic theory
6 and practice. I don't think there is a clear-cut solution to
7 know whether the default plan that was in place by Act 129
8 would be impacted at all by your theoretical approach to this
9 problem. I believe we need help right now and I believe that
10 type of help, if it is a problem, can be fixed by the PUC.

11 SMALL BUSINESS ADVOCATE LLOYD: Let me respond to
12 the several points that you've made. First, I think what will
13 happen if you pass municipal opt-out aggregation is that the
14 pressure on local elected officials to get in so they can get
15 their discount as well would be almost impossible to resist. I
16 think that's why it's so wide spread in Ohio. And that's a
17 totally different model. And if the legislature decides that
18 it doesn't like the default service model that it has now and
19 it wants to have municipalities buy electricity, that's a
20 defensible point of view. Then you have to talk about the
21 kinds of protections that are going to be in there, one of
22 which would hopefully would be some anti-subsidization
23 provision so that we don't go back to the old days in which
24 small business customers were subsidizing residential and, in
25 some cases, large-seeing eye customers.

1 The second point with regard to PPL. First place, PPL
2 was approved prior to Act 129, but PPL was, frankly, the result
3 of collective procuring by most parties, including my office,
4 that buying early was a good idea and that we should stagger
5 the procurements over three years so, that come 2010, you
6 wouldn't be hit with the vagaries of which direction is the
7 market going at that particular point in time. That seemed
8 like a good idea because it followed hard on the heels of the
9 experience in Pike County, where Pike County had bought all of
10 its power right after Hurricane Katrina and that hugely
11 increases in rates.

12 And so the Commission approved -- PPL proposed that and
13 the Commission approved that. And what happened was, the first
14 couple of years, the price was 10 plus cents, which was what
15 the market was. And in the summer of 2008 before the economic
16 downturn, everybody thought, oh, my goodness, when the rate
17 caps come off, the world is going to end. But, in fact, we
18 have a recession. Whether you call it a recession now or you
19 don't, it's still a very bad time. And the price of
20 electricity has declined significantly.

21 And so, by the third year of procurements, PPL got
22 much, much better prices. But everybody knew that when they
23 looked at the price that the default service rate would be,
24 that it was divorced from the current market price of
25 electricity. If marketers can't compete in the PPL service

1 territory, they're not likely to be able to compete anywhere.
2 And so we saw a significant amount of shopping. Was that known
3 at the time that the people bid? Not, it was not.

4 REP BARBIN: But we're in a recession right now.

5 SMALL BUSINESS ADVOCATE LLOYD: That's correct.

6 REP BARBIN: We'll be in a recession for 24 more
7 months. How is it any different than the PPL's discussion?

8 SMALL BUSINESS ADVOCATE LLOYD: Because if people
9 had known when PPL was buying power in 2007 and 2008 that the
10 market was going to go down, the suppliers wouldn't have bid
11 the high prices that they bid and you didn't have that big gap.

12 REP BARBIN: So if --

13 CHAIRMAN PRESTON: Mr. Barbin, please give the
14 gentleman a chance to answer.

15 SMALL BUSINESS ADVOCATE LLOYD: It was not known
16 that the market was going to turn. And I'll confess, we've
17 supported that plan. And it turned out that you can't -- and
18 that's part of my disagreement with Mr. Popowsky about how you
19 buy electricity -- I don't think that you should try to time
20 the market. I think you should come up with the plan, this is
21 what we're going to buy and you buy. Over time, I think that
22 sometimes you're going to get lucky and sometimes you're not,
23 but it will balance out over time.

24 The point is that, right now, if you were going to
25 introduce municipal aggregation during the current default

1 service period, there will be a risk premium added that,
2 otherwise, would not. I suggested some ways that you can avoid
3 that. The easiest way to avoid that is to put opt-out
4 municipal aggregation into effect on June 1, 2013.

5 The second choice is, while at least, we find out what
6 the schedules for purchasing are for the various EDCs and prior
7 to those auctions or RFPs, require the municipalities in that
8 service territory to say, we're either in municipal aggregation
9 or we're not. So then you would mitigate the whispering. You
10 reduce the risk that we have unpredictability about the load
11 that's going to be served. That would seem to me to be not
12 that hard to do and that, kind of what you do with municipal
13 aggregation, what you want. If I were convinced that somehow
14 this was going to save money over time, I would be right there
15 with you, but I'm not. I'm convinced over time this is -- at
16 best, we're going to be roughly the same place that we would
17 have been had we touched this at all.

18 But let me come back to the final point that you made,
19 which was about the Public Utility Commission having oversight.
20 Under this legislation once the municipal aggregation is
21 implemented, the Commission does have oversight. It does not
22 have the ability to come in and say, this price is out of
23 whack. Now, if you want to put that in the legislation, I
24 think that probably destroys opt-out municipal aggregation, but
25 it doesn't even have -- under Act 129, the default service

1 rates are not only set competitively, but they're set in
2 accordance with a plan that has Commission approval. And then
3 the Commission looks at the bid results and says, gee, is there
4 something out of whack with these bid results. Under municipal
5 aggregation, that would not happen. So even if you have
6 competitive procurement, there's no review by the Commission of
7 the process and there's no review by the Commission of the
8 results.

9 Now, could all of those things happen? Yes. HB 2619
10 allows regulations. I guess, as a practical matter, as the
11 Chairman indicated, because this legislation didn't pass in
12 this session, by the time that it does pass and then by the
13 time the Commission works through the regulations, it's going
14 to be about the time for the companies to file their next
15 default service plans. So I don't see that what those of us
16 who are advocating that this should go into effect for the
17 default service period beginning June 1, 2013 doesn't seem to
18 me that we're out of whack with what the reality is probably
19 going to be.

20 REP BARBIN: Thank you for your testimony. I just
21 say this one thing, we can disagree about what the effect of
22 what municipal aggregation would be. But the bottom line is,
23 there's nothing wrong with assuming that municipal aggregation
24 could be a benefit like Act 129. And there's nothing wrong
25 with asking the legislature to move this forward quickly since

1 we are in a recession and we expect to continue to be in one
2 for the next 24 months.

3 SMALL BUSINESS ADVOCATE LLOYD: I agree that
4 there's certainly nothing wrong with pushing this legislation.
5 I agree that opt-in municipal aggregation could be a benefit.
6 I think that opt-out municipal aggregation will raise prices
7 for customers who are not in the municipal aggregation
8 communities during the recession and I don't see that as a good
9 thing. So we just disagree. Thank you.

10 CHAIRMAN PRESTON: It's always interesting because
11 in America, we're supposed to be able to deal with it and
12 that's exactly why there's opt in and opt out within this piece
13 of legislature.

14 I want to thank both of you gentleman for coming
15 relative to this. Also, I would like to add for the record,
16 which has been submitted, a memo from Mary Ann Nau, the
17 Assistant City Manager for the City of Warren on House Bill
18 2619, where she is supporting it. She also makes sure to let
19 us know that even though she is in Warren, Ohio, she went to
20 Slippery Rock and has a master's degree from Penn State
21 University.

22 Also, Buckeye Energy Brokers from Twinsburg, Ohio --
23 for those of you don't know, that's the exit where you get off
24 going to Sea World -- they have also submitted testimony in
25 support of that. And I wanted to read one of the things that

1 they had reservations about. The only provision that we feel
2 should be eliminated is the three-year contact limitation on
3 page 12, line 22. This will be submitted by in contact Thomas
4 Bellish.

5 And I'll say this for the Members of the Committee and
6 for the public that will be watching this and to local elected
7 officials, there was consideration when we were putting this
8 legislation together and the many hearings that we've had,
9 maybe five years or six years, but the reason why I personally
10 felt that we should keep it at three years, it puts
11 accountability on the local elected officials who have to
12 approve this and face the public. And if we did it for
13 anything longer than, that means that some of them will be able
14 to pass a contract and not have to vote on it again or be
15 accountable for it by the time the contract would expire. So
16 this way it still puts them within their -- if it's a four-year
17 term, one way or another, that they're going to still face
18 this. And that doesn't mean that they cannot include potential
19 options that would have to also be publically addressed. And
20 that is one of the reasons why that I thought we should keep it
21 in that way because it makes the local elected officials have
22 to answer to the public as they're making decision.

23 And I'll say to this, relative, whether it's the opt-in
24 or whether it's to the opt-out issues, is, again, it's for the
25 public and for the people. In Ohio, a lot of their things that

1 we're talking about, that some of the companies said that they
2 don't want to see here in dealing with, as far as value-added
3 assets. But a lot of those, people have voted on those things
4 by referendum. So it's a little bit different way than what
5 we're trying to deal with here. And that's why I wanted to
6 make sure that clear transparency really exists in these
7 contracts as we deal with the consumer advocates, whether for
8 business. And I think that you're right that we have an awful
9 lot of classes and that's going to be have maybe looked at to
10 be tweaked just as well. And whether or not the Public Utility
11 Commission -- and, remember, Public Utility Commissions are
12 almost different in each and every state and we have to look at
13 what we're going to be able to do here so that we can have as
14 much oversight as possible. Any other questions or
15 discussions? (No audible response.) With that being said,
16 thank you very much for coming. Have a good prosperous new
17 year coming and, remember, we're all in this together. We are
18 adjourned.

19 (The hearing concluded at 11:43 a.m.)

20

21

22

23

24

25

1 I hereby certify that the proceedings and evidence
2 are contained fully and accurately in the notes taken by me on
3 the within proceedings and that this is a correct transcript of
4 the same.

5

6

7

8

Kelsey J. Dugo
Notary Public

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25