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Pennsylvania House Consumer Affairs Committee
Municipal Aggregation Legislation
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Chairman Preston, Chairman Godshall, members of the Committee: Good morning, and thank you for the opportunity to address this Committee on legislation to create opt-out municipal aggregation on a statewide basis for electric generation supply in Pennsylvania – legislation that I believe will promote greater competition and savings for residential and small business customers. I'm Tony Banks, Vice President of FirstEnergy Solutions, which is a wholly owned subsidiary of FirstEnergy Corp. We currently sell competitive electric generation that provides savings to commercial and industrial customers in Pennsylvania and five other states in the region, and we'd very much like to see more residential and small business customers enjoy savings just like larger commercial and industrial customers have been doing for years. So let me assure you that FirstEnergy Solutions will continue to be an active participant in Pennsylvania's competitive market for electricity following FirstEnergy's proposed merger with Allegheny Energy.

We believe Pennsylvania should move forward quickly with a well-crafted opt-out municipal aggregation bill, for three important reasons. First, with rate caps set to expire for Penelec, Met-Ed, West Penn Power and PECO at the end of this year, the time to act is now, not three years from now. The longer we wait, the longer residential and small business customers will pay more for electricity than they need to. Second, by enacting municipal aggregation before the next auction for 2013 electric generation supplies, participating suppliers will have better information on the type of load they are bidding in 2013 – and, as a result, should be able to reduce the risk premiums that they include in their default service bid prices. And third, communities throughout Pennsylvania want the opportunity to bring guaranteed savings to their residents, just like communities in Ohio have been able to do since 2001.

Opt-out municipal aggregation is one of the most effective ways to bring savings to large numbers of small business and residential customers. That's why FirstEnergy Solutions strongly supported H.B. 2619, which was a great compromise to address concerns of all interested parties

and which would have made for an effective rate mitigation tool for communities and customers throughout the Commonwealth. However, we have several key concerns about proposed changes to the bill, which I will discuss shortly.

While some committee members are very familiar with the concept of opt-out municipal aggregation, others may be hearing about it for the first time. So let me provide a brief explanation of what opt-out municipal aggregation is, and what it isn't.

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

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

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

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

One misconception is that it compromises basic protections regarding privacy, and that it would “slam” customers to the provider chosen by the local community. With respect to privacy, opt-out municipal aggregation does not require the utility to provide any customer data other than the information already available on the electric distribution company’s customer eligibility list – information that is already available to any supplier who asks for it. So there is no need to gather additional information from customers or from the utility. Nevertheless, we believe EDCs should be required to keep that information as current as possible, which makes sense in terms of providing more responsive service from both a regulated and competitive standpoint. With regard to slamming, it should be noted that the opt-out process provides frequent opportunities for customers to choose an alternative supplier for their electric generation service. To further support its position as to the validity of opt-out aggregation, FirstEnergy Solutions has filed a petition on November 9, 2010, with the Pennsylvania Public Utility Commission (Docket Number P-2010-2209253) that sets forth in Section III(A) on Pages 21 through 23, FirstEnergy Solutions’ position that opt-out aggregation is not a form of slamming and is consistent with the requirements of the Public Utility Code and the Commission’s regulations, orders and guidelines.

And to further protect consumers, the opt-out process provides consumer education through multiple communications that give consumers general information about municipal aggregation and how it works in their specific situation. For example, multiple readings by the community’s elected officials are held in meetings open to the public before a final ordinance can be passed. In addition, this information is supplemented with advertising, opt-out notices, press coverage, the utility waiting period notice and other information customers receive about the process. As a result, customers are able to make well-informed decisions regarding whether to stay with the community’s selected supplier or shop for another supplier.

Another common misconception we’ve heard in prior testimony and discussion on this matter is that allowing opt-out municipal aggregation prior to 2013 would harm suppliers to current utility default service. Specifically, certain suppliers are claiming that they don’t have adequate shopping risk premiums built into their current default service prices. We could accept this argument if suppliers refunded customers when there is less shopping than was priced into their default service bids, but I don’t know of any supplier who has volunteered to make those refunds to customers. FirstEnergy Solutions supplies energy to every utility in the Commonwealth for

their default service programs, and we don't feel the need for special protection to the detriment of the many customers who are going to experience real rate increases starting January 1, 2011. In considering the timing of this legislation, we think it's more important to balance the real needs of the customer against the perceived negative impact on suppliers. The fact is that enacting municipal aggregation prior to the next round of default service bids will actually lower the shopping risk premium that ultimately is borne by customers, since aggregation that is already in place during default service bidding by suppliers provides greater predictability regarding the anticipated level of customer shopping. Those suppliers claiming some theoretical financial harm due to opt-out municipal aggregation have yet to provide tangible, concrete evidence of such harm. Conversely, it is known and certain that customers will be paying higher prices starting January 1, 2011 – the effect of which is very real.

We are concerned about another potential change to H.B. 2619 that would establish a requirement that communities make their supplier selection based only on lowest-cost bid. We believe municipalities should have the freedom and flexibility to set their own parameters for competitive bids or RFPs – parameters that meet the specific needs of their communities. For example, communities that value energy-related products and services – such as advanced meter solutions, energy efficiency programs or renewable generation – could request that suppliers provide those value-added services along with lower electricity prices as part of their bids. For those communities that simply want the lowest price, without the added value of energy-related services or other innovative offerings, they would be able to pursue that option. But that should be their choice. We believe that a low-bid requirement stifles creativity while creating barriers to greater participation among suppliers.

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

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

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

The Ohio Consumers' Counsel estimates that a residential customer using 850 kilowatt-hours of electricity is saving up to \$110 annually through governmental aggregation. And Ohio's two largest governmental aggregators report that residential and small business customers in their member communities have saved more than \$100 million through these programs.

Governmental aggregation is responsible for about 90 percent of the shopping activity among residential customers, as well as 70 to 80 percent of commercial customers switching to competitive generation suppliers in Ohio.

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

We commend Chairmen Preston and Godshall for their leadership on this issue, and urge timely passage of this legislation so that the benefits of electric competition in Pennsylvania can be more fully realized.

FirstEnergy Solutions will continue to work closely with this Committee, the General Assembly and the Commission to make opt-out municipal aggregation a reality in Pennsylvania.

Thank you again for the opportunity to testify today. I am available to answer any questions you have about this very important issue.