



**Testimony of David I. Fein
Vice President and Director of Retail Energy Policy
On Behalf of Constellation NewEnergy, Inc. and
Constellation Energy Commodities Group, Inc.
Before the House Consumer Affairs Committee
Public Hearing on Municipal Opt-Out Aggregation
November 17, 2010**

INTRODUCTION

Good morning Chairman Preston, Chairman Godshall and esteemed Members of this Committee. My name is David I. Fein, and I am Vice President and Director of Retail Energy Policy for Constellation Energy. Thank you for the opportunity to appear today on behalf of Constellation NewEnergy, Inc. and Constellation Energy Commodities Group, Inc. (collectively, “Constellation”). As this Committee is aware, Constellation has presented testimony previously on the topic of Municipal Aggregation on September 9, 2010 and filed comments with the Committee on the subject on March 3, 2010. Constellation’s testimony and comments have dealt primarily with HB 2619’s provisions regarding Municipal *Opt-Out* Aggregation.

We believe that consideration of Municipal Opt-Out Aggregation at this time might be premature and really a “solution” in search of a problem. First, the Commonwealth has already seen robust wholesale competition to serve the Default Service supply requirements of the electric utilities for those customers who choose not to or otherwise do not take service from electric generation suppliers (“EGSs”). Second, the competitive retail electric market has developed well in those service territories that have come out from under rate

caps, and the rate caps are only now expiring in remaining service territories at the end of this year. Finally, consideration of such a major change to the regulatory structure of the market at this time is disruptive and should be considered in the context of broader policy discussions about Default Service structures.

TESTIMONY ON MUNICIPAL AGGREGATION AND REVISED HB 2619

Constellation appreciates the improvements that have been made in the latest iteration of HB 2619, which address several of the concerns that we have previously raised. These improvements include increased oversight authority for the Pennsylvania Public Utility Commission (“Commission”) and provisions which provide for more appropriate integration of Municipal Aggregation within the Commonwealth’s current regulatory framework. While Constellation recognizes that significant progress has been made to mitigate certain of the risks inherent in the implementation of Municipal Opt-Out Aggregation, we still are concerned that there remain significant risks to existing Default Service structures – risks that will be borne by Default Service suppliers, utilities *and* customers, likely in the form of increased rates for all customers who remain on Default Service. Moreover, the revisions to HB 2619 fail to fully address the fact that Municipal Opt-Out Aggregation runs the risk of creating potentially wide and growing disparities between customers, *including* between entire municipalities in the same utility’s territory, a result that would be harmful to the Commonwealth’s energy future.

If Municipal Opt-Out Aggregation is implemented despite the inherent risks, HB 2619 or any enabling policies based on its language should be further revised and enhanced to require that:

1. Customers under a Municipal Opt-Out Aggregation program that return to Default Service *for any reason* may not return to fixed-price service with the electric utility, and should instead default to some hourly or day-ahead pricing;
2. Any Municipal Opt-Out Aggregation program must utilize a PUC-*approved* and -*supervised* competitive procurement process for EGSs seeking to serve the program, through which an EGS offer is chosen to serve the municipality;
3. In addition to customers under contract with an EGS being excluded from the list of eligible customers, there must be processes developed to prevent unintended consequences – for instance, there must be measures to protect from inadvertent enrollment in a Municipal Aggregation program of a customer already under contract with an EGS; these measures must ensure seamless service with the customer’s EGS under such circumstances; and
4. EGSs are prohibited from providing financial inducements to municipalities utilizing Municipal Opt-Out Aggregation programs.

With respect to the first of these recommendations, it is important to point out that the revised HB 2619 recognizes the risk presented by the migration of customers that are included in a Municipal Aggregation program *back* to the utility’s Default Service in the event that the program’s EGS defaults on its obligations, and addresses such risk appropriately through provisions requiring that returning load in such circumstances be served only through spot market purchases. However, it is unclear why the revised language does not also include *all other* migration of customers back to Default Service from a Municipal Aggregation program. Absent similar provisions that require that *any* customer load that returns to Default Service must be served through spot market purchases, HB 2619 as revised still does not eliminate wholesale suppliers’ perceived risk of large volumes of returning load from a Municipal Aggregation program *back* to Default Service. Accordingly, without additional revisions, HB 2619 remains likely to drive up costs of Default Service as wholesale suppliers will either limit their participation in Default Service procurements or else account for the increased risk of returning load under Municipal Aggregation through

additional premiums in their bids, both of which will lead only to *less* competitive Default Service procurements with *less* competitive Default Service bids, thereby *increasing* the costs of Default Service to the *detriment* of utilities' consumers.

With respect to our final three recommendations, Constellation again commends parties and the Bill's sponsors for making appropriate revisions to provide additional explicit oversight by the Commission for implementation of Municipal Aggregation and its integration into the Commonwealth's existing regulatory framework. However, further steps must be taken to ensure that the Commission is granted appropriately broad development and oversight authority over any such programs. The Commission has been a commendable steward of consumer protection and the development of competitive markets that provide benefits to the Commonwealth's citizens. The Commission in the same way will provide the most effective oversight for Municipal Opt-Out Aggregation, by assuring that local governments that make electric choice decisions for their constituents are making appropriate choices through approved processes, and that those communities that are not subject to Municipal Opt-Out Aggregation programs continue to receive safe, reliable electricity through competitively-priced and -procured Default Service that is unharmed by other localities programs.

In order to make clear that the Commission has the broad discretion to continue to do so with respect specifically to Municipal Aggregation, HB 2619 or any similar legislation or policies should make clear that the Commission has authority to promulgate rules regarding the structure of municipalities' competitive procurement processes, including rules that (a) require a municipality to obtain Commission approval of the specific structure and documents supporting such structure prior to running a procurement and contracting for

supply from an EGS, (b) protect consumers from improper enrollment thereby ensuring uninterrupted service with the EGS of their choosing, and (c) protect consumers from inappropriate activities such as financial inducements that have no direct relationship to the electric commodity service provided by an EGS.

CONCLUSION

To conclude, Municipal Opt-Out Aggregation such as that contemplated in HB 2619 presents a “solution” in search of a problem. The Commonwealth would be right to instead allow competitive markets time to grow, once rate caps have expired. While HB 2619 as revised includes new provisions which mitigate some of the risks, if the General Assembly adopts legislation to allow Municipal Opt-Out Aggregation, additional enhancements must be made to both limit the harm caused to whole communities and particular customers that remain on Default Service, and to ensure that the Commission maintains broad oversight authority over development *and* implementation of each and every Municipal Opt-Out Aggregation program, allowing for proper integration into the Commonwealth’s existing electric regulatory framework, and protecting consumers from risks inherent with such programs’ presence.

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