

**BEFORE THE PENNSYLVANIA HOUSE  
CONSUMER AFFAIRS COMMITTEE**

**Testimony of**

**SONNY POPOWSKY  
CONSUMER ADVOCATE**

**Regarding**

**Municipal Electricity Aggregation**

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

My name is Sonny Popowsky. I have served as the Consumer Advocate of Pennsylvania since 1990, and I have worked at the Office of Consumer Advocate since 1979. Thank you for the opportunity to testify here today on the issue of municipal aggregation of electricity customers.

First, I would like to commend Chairman Preston, Chairman Godshall and the members of this Committee for your continued proactive approach to issues surrounding the generation service provided to Pennsylvania electric consumers, particularly as the last of our electric generation rate caps expire at the end of this year. I would also commend FirstEnergy Corporation for bringing the issue of municipal aggregation to my attention once again in light of that Company's positive experience with this approach in its Northern Ohio service territory.

I have reviewed the draft legislation that would allow Pennsylvania municipalities to serve as "opt-out" aggregators of generation service for residential and small business customers within their municipal boundaries. My general response to the draft legislation is that I think it provides a potentially valuable additional option that could benefit many Pennsylvania consumers. At the same time, however, I would offer several caveats that I think must be considered in light of the recent history and the current status of electric restructuring in Pennsylvania under our existing statutory and regulatory framework.

In a nutshell, this legislation would permit individual municipalities or groups of municipalities to acquire generation supplies and to provide generation service to residential and small business customers within their municipalities on an "opt-out" basis. This last point is important, because it means that individual customers would not affirmatively choose to receive

this “aggregation” service from their municipalities, but instead would have to take affirmative steps to choose **not** to receive this service. Under current Pennsylvania law, consumers who do not voluntarily choose an alternative competitive retail supplier continue to receive their “default” or “provider of last resort” generation service from the same electric utility that provides them with their regulated monopoly electric distribution service. Under the recent amendments contained in Act 129 of 2008, the electric distribution companies are required to procure a mix of long-term, short-term and spot market generation products that are designed to provide their non-shopping customers with the least cost service over time. To the extent that customers can find an alternative retail generation service that is cheaper or that provides some other benefit such as greater price stability or “green” renewable energy, customers are free to switch their service to these wholly unregulated competitive suppliers. Customers, however, must affirmatively choose to switch to an alternative supplier; otherwise, their “default” generation service provider remains their own regulated electric distribution company.

The theory behind municipal aggregation is that by aggregating the buying power of a large number of small customers, a non-profit municipal entity can get a better deal for those customers than if those customers each go out and shop for electricity on an individual basis. In addition, many customers may have neither sufficient interest nor sufficient understanding to choose their own supplier of a product that they have never had to shop for. The theory behind providing such aggregation service on an opt-out basis, I believe, is just human nature – that is, customers are much more likely to utilize this service if it is provided to them on a default basis, and much less likely to use the service if they must affirmatively go out and select it.

To my knowledge, at least two other states, Ohio and Massachusetts, implemented wide-scale opt-out municipal aggregation programs at the time they restructured their electric utility

industries. In Massachusetts, 21 towns with about 200,000 customers on Cape Cod and Martha's Vineyard, joined together to form the Cape Light Compact which has provided a broad array of power supply and energy efficiency services since 2001. Most recently, Cape Light entered into a contract with Con Ed Solutions to provide basic generation service to residential customers for the first half of 2010 at a rate of 8.79 cents per kilowatt hour, which is a reasonably competitive rate in that part of New England.

In Ohio, 126 communities formed the Northeast Ohio Public Energy Council (NOPEC) in 2000. NOPEC now provides generation service, including renewable energy, to approximately 500,000 customers in a nine-county region that generally falls within the distribution service area of FirstEnergy Corporation. NOPEC recently entered into a nine-year contract with FirstEnergy Solutions, the unregulated generation affiliate of FirstEnergy Corporation, to provide generation at a six percent discount for residential customers and a four percent discount for small business customers below the "price to compare" that is charged for default generation service by the local electric distribution utility. FirstEnergy Solutions also agreed to make a one-time \$12 million grant to be administered by NOPEC for energy-related programs in their communities.

Recognizing the benefits that have been provided to municipal aggregation customers in Massachusetts and Ohio, the question is whether we can expect similar or greater consumer benefits through the addition of such a program in Pennsylvania.

My first concern would be to ensure that the addition of such a program would complement, and not undermine, the ability of our existing electric distribution companies to provide service at the least cost over time to customers who do not shop and whose municipalities do not participate in an aggregation program. As I noted earlier, the Pennsylvania

restructuring law was recently amended by Act 129 of 2008, to require our utilities to acquire a mix of resources to provide default service at “the least cost to customers over time.” That task might be complicated, to say the least, if the electric distribution company does not know whether or not some or all of the largest municipalities in its service territory will be effectively pulling out of its generation service program en masse after the company had secured generation to serve them. This concern might be ameliorated if the timing of municipal aggregation programs could be coordinated in some way with the acquisition schedules of the electric distribution companies.

Another concern at the other end of the spectrum is the impact of such a program on companies that have already seen substantial retail competition in their service territory. In preparation for this hearing, I requested the latest retail shopping statistics from PPL and I learned that nearly 300,000, almost one quarter, of PPL’s residential customers, have switched to a competitive retail supplier, in response to the end of the generation rate cap that expired just two months ago. My Office maintains an Electric Shopping Guide on our Website, which currently includes more than 20 offers to residential customers from seven different competitive suppliers, and I have to assume that the nearly 300,000 shoppers come from many different municipalities across the PPL service territory. The question arises as to how to overlay an opt-out aggregation program in a municipality where a large percentage of the customers are already actively participating in the competitive retail market. The draft legislation before the Committee would appear to exclude from the municipal aggregation program customers who currently have contracts with alternative generation suppliers, but that group changes rapidly over time as customers enter and leave the competitive market.

Another group of customers that would require special treatment under an aggregation program is low-income, payment-troubled customers whose rates are based on a percentage of their income, not on the utility's general distribution and default service rates. Those customers are clearly better off staying in these utility Customer Assistance Programs (CAPs), rather than moving to a municipal aggregation program that offers only a modest discount off of the utility default rates. The draft legislation before the Committee acknowledges this concern by excluding CAP customers from the aggregation program, but again I would note that low income customers may come and go from these programs over time and it is not clear how this would be addressed on an ongoing basis.

Finally, I would respectfully disagree with two provisions of the draft legislation, both of which are contained on page 17 of the draft. First, on lines 17-20, the bill requires that any costs incurred by an electric distribution company in implementing a municipal aggregation program would be charged to **all** of the company's residential and small commercial customers. I would submit that any costs incurred by a utility to implement this program should be paid solely by the municipalities and customers who benefit from the program. Second, on lines 21-23 of page 17, the bill imposes a duty on the Public Utility Commission to "encourage and promote large-scale opt-out municipal aggregation in this Commonwealth." I would submit that the role of the Commission should be to develop regulations to ensure that these types of programs are available throughout the Commonwealth and to help educate consumers and municipal officials regarding the costs and benefits of such programs. It is not the job of the Commission, in my view, to pick winners in the choice among municipal aggregators, competitive retail suppliers, and utility default service providers.

I wish to thank the Committee once again for holding this hearing and inviting me to testify. I believe that this is exactly the type of proactive development that should be carefully considered and debated in order to ensure that we are doing everything we can to provide cost-effective options to Pennsylvania utility consumers.

I would be happy to answer any questions you may have and I will certainly work with the members and staff of this Committee as you consider the merits of this legislation.

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