

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2619 Session of 2010

INTRODUCED BY PRESTON, BROOKS, CALTAGIRONE, ELLIS, GIBBONS,
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SIPTROTH, STEVENSON AND BARBIN, JUNE 29, 2010

AS REPORTED FROM COMMITTEE ON CONSUMER AFFAIRS, HOUSE OF
REPRESENTATIVES, AS AMENDED, SEPTEMBER 14, 2010

AN ACT

1 Amending Titles 53 (Municipalities Generally) and 66 (Public
2 Utilities) of the Pennsylvania Consolidated Statutes,
3 providing for municipal aggregation of electric generation
4 supply.

5 The General Assembly of the Commonwealth of Pennsylvania
6 hereby enacts as follows:

7 Section 1. Part V of Title 53 of the Pennsylvania
8 Consolidated Statutes is amended by adding a chapter to read:

9 CHAPTER 61

10 MUNICIPAL AGGREGATION OF

11 ELECTRIC GENERATION SUPPLY

12 Sec.

13 6101. Legislative purpose.

14 6102. Definitions.

15 6103. Grant of authority.

16 6104. Intergovernmental cooperation.

17 6105. Limitations.

1 § 6101. Legislative purpose.

2 The purpose of this chapter is to grant legislative authority
3 for any municipality to act as a municipal aggregator of
4 electricity under 66 Pa.C.S. Ch. 28 (relating to restructuring
5 of electric utility industry) and to provide municipal
6 aggregation of electric generation supply to consumers of
7 electricity within its municipal boundaries.

8 § 6102. Definitions.

9 The following words and phrases when used in this chapter
10 shall have the meanings given to them in this section unless the
11 context clearly indicates otherwise:

12 "Consumer." As defined in 66 Pa.C.S. § 2803 (relating to
13 definitions).

14 "Commission." The Pennsylvania Public Utility Commission.

15 "Default service plan." As defined in 66 Pa.C.S. § 2803
16 (relating to definitions).

17 "Electric generation supplier." As defined in 66 Pa.C.S.
18 § 2803 (relating to definitions).

19 "Municipal aggregation program." As defined in 66 Pa.C.S.
20 § 2803 (relating to definitions).

21 "Municipal aggregator of electricity." As defined in 66
22 Pa.C.S. § 2803 (relating to definitions).

23 "Municipality." As defined in 66 Pa.C.S. § 2803 (relating to
24 definitions).

25 "Price-to-compare." As defined in 66 Pa.C.S. § 2803
26 (relating to definitions).

27 "Small commercial customer." As defined in 66 Pa.C.S. § 2803
28 (relating to definitions).

29 § 6103. Grant of authority.

30 (a) Authority.--Except as provided under subsection (b) and

1 notwithstanding any law, a municipality is authorized to:

2 (1) Be a municipal aggregator of electricity and provide
3 opt-in or opt-out municipal aggregation of electric
4 generation supply.

5 (2) Be licensed by the commission as an electric
6 generation supplier.

7 (b) Exception.--A municipality may only act as a municipal
8 aggregator of electricity on behalf of consumers within its
9 geographic boundaries.

10 § 6104. Intergovernmental cooperation.

11 Any two or more municipalities may cooperate and exercise the
12 authority to jointly act as a municipal aggregator of electric
13 generation supply in accordance with Subpart D of Part III
14 (relating to area government and intergovernmental cooperation).

15 § 6105. Limitations.

16 The authority granted to municipalities under this chapter
17 shall be limited by 66 Pa.C.S. § 2806.3 (relating to municipal
18 aggregation of electric generation supply) and any regulations
19 promulgated under 66 Pa.C.S. § 2806.3 by the commission.

20 Section 2. Section 2803 of Title 66 is amended to read:

21 § 2803. Definitions.

22 The following words and phrases when used in this chapter
23 shall have the meanings given to them in this section unless the
24 context clearly indicates otherwise:

25 "Aggregator" or "market aggregator." An entity, licensed by
26 the commission, that purchases electric energy and takes title
27 to electric energy as an intermediary for sale to retail
28 customers. The term shall not include a municipal aggregator of
29 electricity.

30 "Bilateral contract." An agreement, as approved by the

1 commission, reached by two parties, each acting in its own
2 independent self-interest, as a result of negotiations free of
3 undue influence, duress or favoritism, in which the electric
4 energy supplier agrees to sell and the electric distribution
5 company agrees to buy a quantity of electric energy at a
6 specified price for a specified period of time under terms
7 agreed to by both parties, and which follows a standard industry
8 template widely accepted in the industry or variations thereto
9 accepted by the parties. Standard industry templates may include
10 the EEI Master Agreement for physical energy purchases and sales
11 and the ISDA Master Agreement for financial energy purchases and
12 sales.

13 "Broker" or "marketer." An entity, licensed by the
14 commission, that acts as an agent or intermediary in the sale
15 and purchase of electric energy but that does not take title to
16 electric energy. The term shall include a municipal aggregator
17 of electricity.

18 "Competitive transition charge." A nonbypassable charge
19 applied to the bill of every customer accessing the transmission
20 or distribution network which (charge) is designed to recover an
21 electric utility's transition or stranded costs as determined by
22 the commission under sections 2804 (relating to standards for
23 restructuring of electric industry) and 2808 (relating to
24 competitive transition charge).

25 "Consumer." A retail electric customer.

26 "Customer." A retail electric customer.

27 "Default service plan." A plan for competitive procurement
28 of default service supply approved by the commission under 66
29 Pa.C.S. § 2807(e)(3.6) (relating to duties of electric
30 distribution companies).

1 "Default service provider." An electric distribution company
2 within its certified service territory or an alternative
3 supplier approved by the commission that provides generation
4 service to retail electric customers who:

5 (1) contract for electric power, including energy and
6 capacity, and the chosen electric generation supplier does
7 not supply the service; or

8 (2) do not choose an alternative electric generation
9 supplier.

10 "Direct access." The right of electric generation suppliers
11 and end-use customers to utilize and interconnect with the
12 electric transmission and distribution system on a
13 nondiscriminatory basis at rates, terms and conditions of
14 service comparable to the transmission and distribution
15 companies' own use of the system to transport electricity from
16 any generator of electricity to any end-use customer.

17 "Electric distribution company." The public utility
18 providing facilities for the jurisdictional transmission and
19 distribution of electricity to retail customers, except building
20 or facility owners/operators that manage the internal
21 distribution system serving such building or facility and that
22 supply electric power and other related electric power services
23 to occupants of the building or facility.

24 "Electric generation supplier" or "electricity supplier." A
25 person or corporation, including municipal corporations which
26 choose to provide service outside their municipal limits except
27 to the extent provided prior to the effective date of this
28 chapter, brokers and marketers, aggregators, municipal
29 aggregators of electricity implementing municipal aggregation
30 programs or any other entities, that sells to end-use customers

1 electricity or related services utilizing the jurisdictional
2 transmission or distribution facilities of an electric
3 distribution company or that purchases, brokers, arranges or
4 markets electricity or related services for sale to end-use
5 customers utilizing the jurisdictional transmission and
6 distribution facilities of an electric distribution company. The
7 term excludes building or facility owner/operators that manage
8 the internal distribution system serving such building or
9 facility and that supply electric power and other related power
10 services to occupants of the building or facility. The term
11 excludes electric cooperative corporations except as provided in
12 15 Pa.C.S. Ch. 74 (relating to generation choice for customers
13 of electric cooperatives).

14 "End-use customer." A retail electric customer.

15 "Municipal aggregation contract." A written agreement
16 between a municipal aggregator of electricity and an electric
17 generation supplier that includes:

- 18 (1) Beginning and end dates of the contract period.
19 (2) Electric generation rate for the contract period.
20 (3) Opt-out and opt-in contract procedures.
21 (4) Customer complaint processes.
22 (5) Contact information for inquiries related to
23 municipal aggregation.

24 "Municipal aggregation program." A program providing for a
25 municipality acting as a broker or marketer on behalf of the
26 eligible consumers within the municipality's geographic
27 boundaries not excluded by section 2806.3 (relating to municipal
28 aggregation of electric generation supply). A program may be
29 either:

- 30 (1) an opt-out program, which shall include every

1 eligible consumer who does not choose to be excluded from the
2 program; or

3 (2) an opt-in program, which shall include only those
4 eligible consumers who choose to participate in the program.

5 "Municipal aggregator of electricity." A municipality,
6 licensed by the commission, that acts as a broker or marketer on
7 behalf of the eligible consumers within the municipality's
8 geographic boundaries under municipal aggregation.

9 "Municipality." A county, city, township, town or borough.
10 The term shall include a municipality subject to the former act
11 of April 13, 1972 (P.L.184, No.62), known as the Home Rule
12 Charter and Optional Plans Law.

13 "Price-to-compare." A line item that appears on a retail
14 customer's monthly bill for default service. The price-to-
15 compare is equal to the sum of all unbundled generation and
16 transmission related charges to a default service customer for
17 that month of service. THE PRICE-TO-COMPARE IS A CUSTOMER-
18 SPECIFIC PRICE FOR A GIVEN MONTH OF SERVICE REFLECTING ALL COST
19 COMPONENTS THAT THE CUSTOMER AVOIDS WHEN CHOOSING TO TAKE
20 ELECTRIC GENERATION SERVICE FROM AN ELECTRIC GENERATION
21 SUPPLIER.

22 "Reliability." Includes adequacy and security. As used in
23 this definition, "adequacy" means the provision of sufficient
24 generation, transmission and distribution capacity so as to
25 supply the aggregate electric power and energy requirements of
26 consumers, taking into account scheduled and unscheduled outages
27 of system facilities; and "security" means designing,
28 maintaining and operating a system so that it can handle
29 emergencies safely while continuing to operate.

30 "Renewable resource." Includes technologies such as solar

1 photovoltaic energy, solar thermal energy, wind power, low-head
2 hydropower, geothermal energy, landfill and mine-based methane
3 gas, energy from waste and sustainable biomass energy.

4 "Retail customer." A retail electric customer.

5 "Retail electric customer." A direct purchaser of electric
6 power. The term excludes an occupant of a building or facility
7 where the owners/operators manage the internal distribution
8 system serving such building or facility and supply electric
9 power and other related power services to occupants of the
10 building or facility; where such owners/operators are direct
11 purchasers of electric power; and where the occupants are not
12 direct purchasers.

13 "Small commercial customer." A retail electric customer that
14 receives electric service under a small commercial, small
15 industrial or small business rate classification, and whose
16 maximum registered peak load was less than 25 50 kW within the
17 last 12 months.

←

18 "Transition or stranded costs." An electric utility's known
19 and measurable net electric generation-related costs, determined
20 on a net present value basis over the life of the asset or
21 liability as part of its restructuring plan, which traditionally
22 would be recoverable under a regulated environment but which may
23 not be recoverable in a competitive electric generation market
24 and which the commission determines will remain following
25 mitigation by the electric utility. This term includes:

26 (1) Regulatory assets and other deferred charges
27 typically recoverable under current regulatory practice, the
28 unfunded portion of the utility's projected nuclear
29 generating plant decommissioning costs and cost obligations
30 under contracts with nonutility generating projects which

1 have received a commission order, the recoverability of which
2 shall be determined under section 2808(c)(1) (relating to
3 competitive transition charge).

4 (2) Prudently incurred costs related to cancellation,
5 buyout, buydown or renegotiation of nonutility generating
6 projects consistent with section 527 (relating to
7 cogeneration rules and regulations), the recoverability of
8 which shall be determined pursuant to section 2808(c)(2).

9 (3) The following costs, the recoverability of which
10 shall be determined pursuant to section 2808(c)(3):

11 (i) Net plant investments and costs attributable to
12 the utility's existing generation plants and facilities.

13 (ii) The utility's disposal of spent nuclear fuel.

14 (iii) The utility's long-term purchase power
15 commitments other than the costs defined in paragraphs
16 (1) and (2).

17 (iv) Retirement costs attributable to the utility's
18 existing generating plants other than the costs defined
19 in paragraph (1).

20 (v) Other transition costs of the utility, including
21 costs of employee severance, retraining, early
22 retirement, outplacement and related expenses, at
23 reasonable levels, for employees who are affected by
24 changes that occur as a result of the restructuring of
25 the electric industry occasioned by this chapter.

26 The term includes any costs attributable to physical plants no
27 longer used and useful because of the transition to retail
28 competition. The term excludes any amounts previously disallowed
29 by the commission as imprudently incurred. To the extent that
30 the recoverability of amounts that are sought to be included as

1 transition or stranded costs are subject to appellate review as
2 of the time of the commission determination, any determination
3 to include such costs shall be reversed to the extent required
4 by the results of that appellate review.

5 "Transmission and distribution costs." All costs directly or
6 indirectly incurred to provide transmission and distribution
7 services to retail electric customers. This includes the return
8 of and return on facilities and other capital investments
9 necessary to provide transmission and distribution services and
10 associated operating expenses, including applicable taxes.

11 "Universal service and energy conservation." Policies,
12 protections and services that help low-income customers to
13 maintain electric service. The term includes customer assistance
14 programs, termination of service protection and policies and
15 services that help low-income customers to reduce or manage
16 energy consumption in a cost-effective manner, such as the low-
17 income usage reduction programs, application of renewable
18 resources and consumer education.

19 Section 3. Title 66 is amended by adding a section to read:
20 § 2806.3. Municipal aggregation of electric generation supply.

21 (a) Licensing.--The commission, in accordance with its
22 regulations, within 30 days following receipt of an application,
23 may issue a license to a municipality as an electric generation
24 supplier to act as a municipal aggregator of electric generation
25 supply service for eligible consumers within the municipality's
26 geographic boundaries. A municipal aggregator of electricity
27 under this section shall not be considered a public utility or a
28 utility engaging in the wholesale purchase and resale of
29 electricity, and the provision of municipal aggregation shall
30 not be considered a wholesale utility transaction.

1 (b) Ordinance required.--Prior to applying for an electric
2 generation supplier license with the commission, the governing
3 body of the municipality shall adopt an ordinance authorizing
4 the municipality to apply for an electric generation supplier
5 license to serve as a municipal aggregator of electricity,
6 indicate whether the municipal aggregation shall be an opt-in or
7 opt-out program and shall identify municipal officials by either
8 title of office or name, or their duly appointed designees,
9 authorized to execute documents with the commission on behalf of
10 the municipality. A municipal aggregator of electricity shall
11 provide reasonable public notice of municipal consideration of
12 any ordinance authorizing a municipal aggregation program, which
13 shall include newspaper publication on a monthly basis beginning
14 at least 90 days prior to the adoption of an ordinance
15 authorizing an opt-out program.

16 (c) Municipal aggregation contracts.--

17 (1) A municipal aggregator of electricity may negotiate
18 and enter into a contract for electric generation supply
19 services with an electric generation supplier. A municipal
20 aggregator of electricity shall use a competitive procurement
21 or request-for proposal process to select the electric
22 generation supplier, regardless of the generation fuel type,
23 location, technology or new or existing status of the
24 generation that the electric generation supplier will use to
25 supply the municipal aggregation. An executed municipal
26 aggregation contract shall not go into effect prior to filing
27 with the commission, and a copy of the filed contract shall
28 be provided to the electric distribution company whose
29 service territory includes the municipal aggregator. Each
30 contract shall include:

1 (i) provisions for the timing of the distribution of
2 customer lists by the electric distribution company and
3 customer notices consistent with this section;

4 (ii) a consumer education plan with appropriate
5 consumer education materials to inform consumers about
6 the existence of the municipal aggregation and the
7 highlights of the program, which shall be deployed
8 concurrently with the distribution of opt-in or opt-out
9 notices, as applicable; and

10 (iii) a copy of the sample opt-in or opt-out notice
11 to be sent to consumers, which shall provide the
12 identification of the selected electric generation
13 supplier.

14 (2) Any contract between a municipality and an electric
15 generation supplier executed under this section shall clearly
16 indicate whether it is for an opt-in or opt-out municipal
17 aggregation and the price that the contracted electric
18 generation supplier will charge customers for electric
19 generation supply, as well as the time period of the
20 contract. A CONTRACT EXECUTED UNDER THIS SECTION MAY NOT
21 EXCEED THREE YEARS. If the price is a fixed rate, the price
22 shall be expressed in cents per kilowatt hour. If the
23 contract provides for a percentage off of the default service
24 rate or any other type of pricing arrangement, an
25 understandable description of the amount of the percentage
26 discount or other pricing arrangement and how the rate may
27 change shall be provided. If the electric generation supplier
28 will charge different rates to different rate classes within
29 the municipality, the applicable rate to consumers within
30 each rate class shall be described.



1 (d) Opt-out programs; notice and opt-out procedures.--

2 (1) No consumer may be bound by a contract between a
3 municipal aggregator of electricity and an electric
4 generation supplier in opt-out municipal aggregation until ←
5 not less than 30 days following the mailing of the opt out
6 notices required under this subsection and the expiration of
7 any waiting period for a consumer to cancel the pending
8 change to the electric generation supplier following written
9 confirmation by the electric distribution company as
10 prescribed by regulation.. CUSTOMERS RECEIVING ELECTRIC ←
11 GENERATION SERVICE UNDER AN OPT-OUT MUNICIPAL AGGREGATION
12 PROGRAM MAY SWITCH TO AN ELECTRIC GENERATION SUPPLIER OTHER
13 THAN THE SUPPLIER TO THE MUNICIPAL AGGREGATION PROGRAM AT ANY
14 TIME WITHOUT PENALTY, CANCELLATION FEES OR OTHER
15 RESTRICTIONS, PROVIDED THAT THE SWITCH SHALL TAKE PLACE
16 PURSUANT TO COMMISSION-APPROVED SWITCHING PROCEDURES.

17 (2) Any contract between a municipality and an electric
18 generation supplier executed under this section shall contain
19 procedures for addressing consumer disputes and complaints
20 related to supply services received pursuant to a municipal
21 aggregation program. The procedures shall be made available
22 to consumers, at least annually, in a clear and easily
23 understandable format. After a municipality executes a
24 contract for electric generation services, but prior to
25 including a consumer's electric account or accounts in an
26 opt-out municipal aggregation, a municipal aggregator of
27 electricity shall provide each eligible consumer with written
28 notice that the consumer's account will be automatically
29 included in the municipal aggregation unless the customer
30 affirmatively opts out of the municipal aggregation. The

1 notice, written in plain language, shall include all of the
2 following:

3 ~~(i) The date by which the customer must~~ ←
4 ~~affirmatively opt out of the program. The date shall not~~
5 ~~be less than 30 days following the mailing of the opt out~~
6 ~~notice.~~

7 ~~(ii) (I) A description of the ordinance adopted by~~ ←
8 ~~the municipality authorizing it to apply for a license~~
9 ~~from the commission, the competitive procurement process~~
10 ~~under which offers for electric generation supply were~~
11 ~~solicited, and a location where, during regular business~~
12 ~~hours, consumers may view the ordinance and executed~~
13 ~~contract free of charge or obtain a copy for a reasonable~~
14 ~~fee.~~

15 ~~(iii) (II) Disclosure of the price that the~~ ←
16 ~~contracted electric generation supplier will charge~~
17 ~~customers for electric generation service. If the price~~
18 ~~is a fixed rate, the municipal aggregator of electricity~~
19 ~~shall express the price in cents per kilowatt hour and~~
20 ~~list the most recent applicable price-to-compare of the~~
21 ~~default service provider in whose service territory the~~
22 ~~municipality is located. If the contract provides for a~~
23 ~~percentage off of the default service rate or any other~~
24 ~~type of pricing arrangement, an understandable~~
25 ~~description of the amount of the percentage discount or~~
26 ~~other pricing arrangement and how the rate may change~~
27 ~~shall be provided. If the electric generation supplier~~
28 ~~charges different rates to different rate classes within~~
29 ~~the municipality, the municipal aggregator of electricity~~
30 ~~shall describe the applicable rate to consumers within~~

each rate class and the associated price-to-compare.

~~(iv)~~ (III) An itemized list and explanation of all fees and charges that are not incorporated into the rates charged for electric generation service that the electric generation supplier will charge to the consumer for participating in the municipal aggregation, including any early termination penalties and any surcharges that may be assessed. Early termination penalties shall not apply to a consumer that moves outside the municipal aggregator of electricity's geographic boundaries or that becomes eligible for and remains in an electric distribution company customer assistance program at the time of termination.

~~(v)~~ (IV) Disclosure of the estimated service commencement date and notice that the consumer may opt out of the municipal aggregation program at the end of the term of the municipal aggregation contract and prior to the commencement of any subsequent municipal aggregation contract ANY TIME.

~~(vi)~~ (V) A statement informing consumers that if they choose to opt out of the municipal aggregation they will be served by the default service offer established under section 2807(e) (relating to duties of electric distribution companies) until the consumer chooses an alternative electric generation supplier or chooses to participate in a subsequent municipal aggregation.

~~(vii)~~ (VI) A statement informing consumers that if they switch back to the default service provider they may not be served under the same rates, terms and conditions that apply to other customers within the municipal

1 aggregation.

2 ~~(viii)~~ (VII) Disclosure of any credit, collection ←
3 and deposit policies and requirements.

4 ~~(ix)~~ (VIII) Disclosure of any limitations or ←
5 conditions on customer acceptance into the municipal
6 aggregation.

7 ~~(x)~~ (IX) A description of the process and associated ←
8 time period for consumers to opt out of the municipal
9 aggregation. The process shall include provisions for
10 consumers to return a postcard or similar notice to the
11 municipal aggregator of electricity or its agent. The
12 process may include other opt-out methods, such as
13 telephonic or Internet notice, if these alternative
14 methods allow for verification of a consumer's election
15 to opt out of the municipal aggregation. The time period ←
16 for a customer to choose to opt out of the municipal
17 aggregation shall be not less than 30 days from the date
18 of the mailing of the written notice. If a consumer's
19 return postcard or notice is postmarked before the opt-
20 out deadline has elapsed, the consumer shall be deemed to
21 have opted out of the municipal aggregation.

22 ~~(xi)~~ (X) A local or toll-free telephone number, with ←
23 the available calling hours, that consumers may call with
24 questions regarding the formation or operation of the
25 municipal aggregation.

26 (e) Opt-in programs; notice and opt-in procedures.--

27 (1) No consumer may be bound by a contract between a
28 municipal aggregator and an electric generation supplier in
29 opt-in municipal aggregation until the consumer has been
30 provided an opt-in notice required under this subsection and

1 the expiration of any waiting period for a consumer to cancel
2 the pending change to the electric generation supplier
3 following written confirmation by the electric distribution
4 company as prescribed by regulation. CUSTOMERS RECEIVING ←
5 ELECTRIC GENERATION SERVICE UNDER AN OPT-IN MUNICIPAL
6 AGGREGATION PROGRAM MAY SWITCH TO AN ELECTRIC GENERATION
7 SUPPLIER OTHER THAN THE SUPPLIER TO THE MUNICIPAL AGGREGATION
8 PROGRAM AT ANY TIME WITHOUT PENALTY, CANCELLATION FEES OR
9 OTHER RESTRICTIONS, PROVIDED THAT THE SWITCH SHALL TAKE PLACE
10 PURSUANT TO COMMISSION-APPROVED SWITCHING PROCEDURES.

11 (2) After a municipality executes a contract for
12 electric generation services, but prior to including a
13 consumer's electric account or accounts in an opt-in
14 municipal aggregation, a municipal aggregator of electricity
15 shall provide each eligible consumer with written notice that
16 the customer may participate in the municipal aggregation.
17 The notice, written in plain language, shall include all of
18 the information required under subsection ~~(d) (2) (ii), (iii),~~ ←
19 ~~(iv), (vi), (vii), (viii), (x) and (xi)~~ (D) (2) (I), (II), ←
20 (III), (V), (VI), (VII), (IX) AND (X) and the following
21 information:

22 (i) A statement informing consumers that if they do
23 not choose to opt in to the municipal aggregation they
24 will be served by the default service offer established
25 under section 2807(e) until the consumer chooses an
26 alternative electric generation supplier or chooses to
27 participate in a subsequent municipal aggregation.

28 (ii) A description of the process ~~and associated~~ ←
29 ~~time period~~ for consumers to opt in to the municipal
30 aggregation. The process shall include provisions for

1 consumers to return a postcard or similar notice to the
2 municipal aggregator of electricity or its agent. The
3 process may include other opt-in methods, such as
4 telephonic or Internet notice, if these alternative
5 methods allow for verification of a consumer's election
6 to opt in to the municipal aggregation. The time period
7 for a customer to choose to opt in to the municipal
8 aggregation shall be at least 30 days from the date of
9 the mailing of the written notice. If a consumer's return
10 postcard or notice is postmarked before the opt-in
11 deadline has elapsed, the consumer shall be deemed to
12 have opted in to the municipal aggregation.

13 (f) Additional requirements; provision of customer
14 information.--

15 (1) The following consumers shall be excluded from
16 enrollment in a municipal aggregation:

17 (i) For opt-out municipal aggregation only, a
18 consumer that has opted out of the municipal aggregation
19 under subsection (d) or that has a special contract or
20 agreement with an electric distribution company or a
21 consumer under an existing contract with a licensed
22 electric generation supplier other than a consumer under
23 a municipal aggregation contract with the current
24 electric generation supplier of the municipal
25 aggregation.

26 (ii) A consumer that is not located within the
27 geographic boundaries of the municipal aggregator of
28 electricity.

29 (iii) A consumer other than a residential or small
30 commercial customer.

1 (iv) A consumer that is enrolled in an electric
2 distribution company's customer assistance program that
3 does not include any electric generation supplier charges
4 in the calculation of the customer assistance program
5 benefit.

6 (v) End-use consumers served or authorized to be
7 served by an electric cooperative or loads served by a
8 municipality that owns and operates its own electric
9 distribution system.

10 (2) No earlier than three months and no later than 30
11 days prior to the end of the term of a municipal aggregation
12 contract and commencement of a new municipal aggregation
13 contract or contract renewal term, a municipal aggregator of
14 electricity or the electric generation supplier to the
15 municipal aggregation shall provide notice to all consumers
16 served by the municipal aggregation or who opted out of the
17 municipal aggregation of their right to opt out of the
18 subsequent municipal aggregation and take service pursuant to
19 the default service provider's default service offer or with
20 another electric generation supplier without fee or penalty.
21 The notice shall also explicitly inform customers who may
22 have opted out of any previous municipal aggregation
23 contracts that they may be eligible to participate in the
24 upcoming municipal aggregation contract, pursuant to the
25 eligibility requirements defined in this subsection. The
26 notice shall follow the procedures established for the
27 initial opt-out or opt-in notice set forth in subsection (d)
28 or (e), as applicable, and shall prominently disclose to
29 customers all changes to the terms and conditions associated
30 with the municipal aggregation. The municipal aggregator of

1 electricity may not send an opt-out notice to the same
2 customer account for the period covered by the municipal
3 aggregation contract where the customer account has
4 previously opted out.

5 (3) No municipal aggregator of electricity or electric
6 generation supplier serving a municipal aggregation may
7 impose any term, condition, fee or charge on a consumer
8 served by a municipal aggregation that is materially
9 different from the particular term, condition, fee or charge
10 which was included within the contract between the municipal
11 aggregator of electricity and the electric generation
12 supplier or the notices provided under subsection (d) or (e).

13 (4) The following shall apply to provisions for the list
14 of eligible municipal aggregation consumers:

15 (i) After the issuance of a license to a municipal
16 aggregator of electricity and upon request of the
17 municipal aggregator of electricity or an electric
18 generation supplier designated by the municipal
19 aggregator, an electric distribution company shall use
20 reasonable efforts to provide the following information
21 to the extent it is maintained by the electric
22 distribution company for all consumers residing within
23 the municipal aggregator of electricity's geographic
24 boundaries to the municipal aggregator of electricity or
25 the electric generation supplier within 30 calendar days
26 of the request:

27 (A) An updated list of names, addresses, account
28 numbers, rate codes, indication of whether a consumer
29 is enrolled in a customer assistance program or
30 budget billing, load data and other related consumer

1 information, consistent with the information that is
2 provided to other electric generation suppliers.

3 (B) An identification of consumers who are
4 currently under contract with an electric generation
5 supplier or in a special arrangement with the
6 electric distribution company.

7 (ii) The municipal aggregator of electricity or the
8 electric generation supplier to the municipal aggregation
9 may only use the consumer information from the list of
10 eligible municipal aggregation consumers for the purpose
11 of forming and operating its municipal aggregation and
12 may not disclose the consumer information unless the
13 release is pursuant to a court order or a commission
14 regulation or order.

15 (iii) Upon completion of the mailing of opt-out
16 notices and expiration of any associated waiting period
17 under subsection (d)(1), a municipal aggregator of
18 electricity or the electric generation supplier to a
19 municipal aggregation may request updated consumer
20 information required under this subsection, and the
21 electric distribution company shall use reasonable
22 efforts to provide such information within ten days of
23 the request.

24 (5) The following shall apply to the notice of municipal
25 aggregation and opt-out notice:

26 (i) Each municipal aggregator of electricity shall
27 ensure that only eligible consumers are included in its
28 municipal aggregation.

29 (ii) If accounts of ineligible consumers or
30 consumers who have not opted in or who have opted out of

1 the municipal aggregation, as applicable, are switched to
2 the electric generation supplier to the municipal
3 aggregation, the municipal aggregator of electricity
4 shall promptly inform the consumer and take all necessary
5 actions to have the consumer switched back to the
6 consumer's original electric generation supplier or
7 default service provider at no cost to the consumer and
8 reimburse the consumer for any amount paid under the
9 municipal aggregation that is greater than the amount
10 otherwise due for its original generation service. The
11 original electric generation supplier or default service
12 provider shall not be liable for any costs, fees,
13 penalties or damages, including any imposed by the
14 regional transmission organization in which the municipal
15 aggregator of electricity is located, arising from the
16 improper transfer. Consistent with due process, the
17 commission may require the electric generation supplier
18 to the municipal aggregator of electricity to pay any
19 such amounts incurred by the original electric generation
20 supplier or default service provider, plus any amounts
21 the original electric generation supplier would have
22 received from the consumer for electric generation
23 service from the time of the improper transfer until the
24 consumer is returned to electric generation service
25 provided by the original electric generation supplier.

26 ~~(g) Return to default service. In the event that a~~ ←

27 ~~(G) COORDINATION WITH DEFAULT SERVICE.--~~ ←

28 (1) THE IMPLEMENTATION OF A MUNICIPAL AGGREGATION
29 PROGRAM SHALL BE COORDINATED WITH THE DEFAULT SERVICE SUPPLY
30 PROCUREMENT PLANS OF THE ELECTRIC DISTRIBUTION COMPANY WHOSE

1 SERVICE TERRITORY ENCOMPASSES THE BOUNDARIES OF THE
2 MUNICIPALITY PARTICIPATING IN THE PROGRAM.

3 (2) UNLESS OTHERWISE AUTHORIZED BY THE COMMISSION, NO
4 MUNICIPAL AGGREGATOR MAY ENTER INTO A CONTRACT FOR ELECTRIC
5 GENERATION SERVICES DURING THE TERM OF THE DEFAULT SERVICE
6 SUPPLY PROCUREMENT PLAN, APPROVED BY THE COMMISSION ON THE
7 EFFECTIVE DATE OF THIS SECTION, OF THE ELECTRIC DISTRIBUTION
8 COMPANY WHOSE SERVICE TERRITORY ENCOMPASSES THE BOUNDARIES OF
9 THE MUNICIPAL AGGREGATOR.

10 (3) IF A municipal aggregator of electricity ceases to
11 provide municipal aggregation services during the current
12 term of the municipal aggregation contract filed with the
13 commission and the customers of the municipal aggregator of
14 electricity are returned to default service, the default
15 service rate for such customers shall be the market price for
16 generation service, including all charges for spot market
17 purchases of energy, capacity, transmission, ancillary
18 services, compliance with the act of November 30, 2004
19 (P.L.1672, No.213), known as the Alternative Energy Portfolio
20 Standards Act, and all other costs incurred by the default
21 service provider in the provision of generation service to
22 such customers, for the remainder of the default service
23 provider's current default service plan.

24 (h) Duties of electric distribution companies and cost
25 recovery.--

26 (1) Each electric distribution company shall provide
27 reasonable cooperation with municipal aggregators of
28 electricity or the electric generation supplier to the
29 municipal aggregation to facilitate the proper formation and
30 functioning of opt-out or opt-in municipal aggregation, as

1 applicable, including coordinating with municipal aggregators
2 of electricity and electric generation suppliers to promote
3 nondiscriminatory access to electric services and to process
4 enrollment requests from municipal aggregators of electricity
5 or their designated electric generation supplier in
6 accordance with the same processes applicable to other
7 licensed electric generation suppliers providing service to
8 retail electric customers.

9 (2) An electric distribution company shall recover on a
10 full and current basis all costs incurred to support and that
11 are related to municipal aggregation through a nonbypassable
12 reconcilable automatic adjustment charge under section 1307
13 (relating to sliding scale of rates; adjustments) from all
14 residential and small commercial consumers accessing the
15 electric distribution company's transmission and distribution
16 system.

17 (i) Duties of commission.--The commission shall promulgate

18 SHALL:

19 (1) PROMULGATE regulations necessary to implement the
20 provisions of this section, including, but not limited to,
21 developing OPT-IN AND opt-out notices for use by municipal
22 aggregators of electricity in this Commonwealth.

23 (2) PROMULGATE REGULATIONS AND TAKE ANY OTHER ACTION
24 NECESSARY TO COORDINATE THE IMPLEMENTATION OF MUNICIPAL
25 AGGREGATION PROGRAMS WITH COMMISSION APPROVAL OF ELECTRIC
26 DISTRIBUTION COMPANY DEFAULT SUPPLY PROCUREMENT PLANS.

27 Section 4. Sections 2807(d)(1) and 2809(a) of Title 66 are
28 amended to read:

29 § 2807. Duties of electric distribution companies.

30 * * *

1 (d) Consumer protections and customer service.--The electric
2 distribution company shall continue to provide customer service
3 functions consistent with the regulations of the commission,
4 including meter reading, complaint resolution and collections.
5 Customer services shall, at a minimum, be maintained at the same
6 level of quality under retail competition.

7 (1) [The] Except as provided under section 2806.3
8 (relating to municipal aggregation of electric generation
9 supply), the commission shall establish regulations to ensure
10 that an electric distribution company does not change a
11 customer's electricity supplier without direct oral
12 confirmation from the customer of record or written evidence
13 of the customer's consent to a change of supplier.

14 * * *

15 § 2809. Requirements for electric generation suppliers.

16 (a) License requirement.--No person or corporation,
17 including municipal corporations which choose to provide service
18 outside their municipal limits except to the extent provided
19 prior to the effective date of this chapter, brokers and
20 marketers, aggregators, municipal aggregators of electricity
21 implementing municipal aggregation programs and other entities,
22 shall engage in the business of an electric generation supplier
23 in this Commonwealth unless the person or corporation holds a
24 license issued by the commission. The commission may waive
25 certain licensing requirements in its regulations for municipal
26 aggregators of electricity implementing municipal aggregation
27 programs. Consistent with 15 Pa.C.S. Ch. 74 (relating to
28 generation choice for customers of electric cooperatives),
29 electric cooperative corporations must possess a certificate for
30 service to supply generation services beyond their territorial

1 limits.

2 * * *

3 Section 5. This act shall take effect in 60 days.