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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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HOUSE BILL

No. 428 Session of  
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INTRODUCED BY READSHAW, STURLA, D. COSTA, KORTZ, CALTAGIRONE,  
HARKINS AND COHEN, JANUARY 30, 2013

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REFERRED TO COMMITTEE ON CONSUMER AFFAIRS, JANUARY 30, 2013

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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 63

10 MUNICIPAL AGGREGATION OF

11 ELECTRIC GENERATION SUPPLY

12 Sec.

13 6301. Legislative purpose.

14 6302. Definitions.

15 6303. Grant of authority.

16 6304. Intergovernmental cooperation.

17 6305. Limitations.

18 § 6301. Legislative purpose.

19 The purpose of this chapter is to grant legislative authority

1 for any municipality to act as a municipal aggregator of  
2 electricity under 66 Pa.C.S. Ch. 28 (relating to restructuring  
3 of electric utility industry) and to provide municipal  
4 aggregation of electric generation supply to consumers of  
5 electricity within its municipal boundaries.

6 § 6302. Definitions.

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

10 "Commission." The Pennsylvania Public Utility Commission.

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

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

15 "Electric generation supplier." As defined in 66 Pa.C.S.  
16 § 2803 (relating to definitions).

17 "Municipal aggregation program." As defined in 66 Pa.C.S.  
18 § 2803 (relating to definitions).

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

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

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

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

27 § 6303. Grant of authority.

28 (a) Authority.--Except as provided under subsection (b) and  
29 notwithstanding any law, a municipality is authorized to:

30 (1) Be a municipal aggregator of electricity and provide

1 opt-in or opt-out municipal aggregation of electric  
2 generation supply.

3 (2) Be licensed by the commission as an electric  
4 generation supplier.

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

8 § 6304. Intergovernmental cooperation.

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

13 § 6305. Limitations.

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

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

19 § 2803. Definitions.

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

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

28 "Bilateral contract." An agreement, as approved by the  
29 commission, reached by two parties, each acting in its own  
30 independent self-interest, as a result of negotiations free of

1 undue influence, duress or favoritism, in which the electric  
2 energy supplier agrees to sell and the electric distribution  
3 company agrees to buy a quantity of electric energy at a  
4 specified price for a specified period of time under terms  
5 agreed to by both parties, and which follows a standard industry  
6 template widely accepted in the industry or variations thereto  
7 accepted by the parties. Standard industry templates may include  
8 the EEI Master Agreement for physical energy purchases and sales  
9 and the ISDA Master Agreement for financial energy purchases and  
10 sales.

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

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

23 "Consumer." A retail electric customer.

24 "Customer." A retail electric customer.

25 "Default service plan." A plan for competitive procurement  
26 of default service supply approved by the commission under  
27 section 2807(e)(3.6) (relating to duties of electric  
28 distribution companies).

29 "Default service provider." An electric distribution company  
30 within its certified service territory or an alternative

1 supplier approved by the commission that provides generation  
2 service to retail electric customers who:

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

6 (2) do not choose an alternative electric generation  
7 supplier.

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

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

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

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

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

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

16 (1) Beginning and ending dates of the contract period.

17 (2) Electric generation rate for the contract period.

18 (3) Opt-out and opt-in contract procedures.

19 (4) Customer complaint processes.

20 (5) Contact information for inquiries related to  
21 municipal aggregation.

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

28 (1) an opt-out program, which shall include every  
29 eligible consumer who does not choose to be excluded from the  
30 program; or

1           (2) an opt-in program, which shall include only those  
2           eligible consumers who choose to participate in the program.  
3           "Municipal aggregator of electricity." A municipality,  
4           licensed by the commission, that acts as a broker or marketer on  
5           behalf of the eligible consumers within the municipality's  
6           geographic boundaries under municipal aggregation.

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

11           "Price-to-compare." A line item that appears on a retail  
12           customer's monthly bill for default service. The price-to-  
13           compare is equal to the sum of all unbundled generation-related  
14           and transmission-related charges to a default service customer  
15           for that month of service. The price-to-compare is a customer-  
16           specific price for a given month of service reflecting all cost  
17           components that the customer avoids when choosing to take  
18           electric generation service from an electric generation  
19           supplier.

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

28           "Renewable resource." Includes technologies such as solar  
29           photovoltaic energy, solar thermal energy, wind power, low-head  
30           hydropower, geothermal energy, landfill and mine-based methane

1 gas, energy from waste and sustainable biomass energy.

2 "Retail customer." A retail electric customer.

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

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

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

24 (1) Regulatory assets and other deferred charges  
25 typically recoverable under current regulatory practice, the  
26 unfunded portion of the utility's projected nuclear  
27 generating plant decommissioning costs and cost obligations  
28 under contracts with nonutility generating projects which  
29 have received a commission order, the recoverability of which  
30 shall be determined under section 2808(c)(1) (relating to

1 competitive transition charge).

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

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

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

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

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

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

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

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

1 to include such costs shall be reversed to the extent required  
2 by the results of that appellate review.

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

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

17 Section 3. Title 66 is amended by adding a section to read:  
18 § 2806.3. Municipal aggregation of electric generation supply.

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

29 (b) Ordinance required.--Prior to applying for an electric  
30 generation supplier license with the commission, the governing

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

14 (c) Municipal aggregation contracts.--

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

30 (i) provisions for the timing of the distribution of

1 customer lists by the electric distribution company and  
2 customer notices consistent with this section;

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

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

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

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

1           (1) No consumer may be bound by a contract between a  
2 municipal aggregator of electricity and an electric  
3 generation supplier in opt-out municipal aggregation.  
4 Customers receiving electric generation service under an opt-  
5 out municipal aggregation program may switch to an electric  
6 generation supplier other than the supplier to the municipal  
7 aggregation program at any time without penalty, cancellation  
8 fees or other restrictions, provided that the switch shall  
9 take place pursuant to commission-approved switching  
10 procedures.

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

27           (i) A description of the ordinance adopted by the  
28 municipality authorizing it to apply for a license from  
29 the commission, the competitive procurement process under  
30 which offers for electric generation supply were

1 solicited and a location where, during regular business  
2 hours, consumers may view the ordinance and executed  
3 contract free of charge or obtain a copy for a reasonable  
4 fee.

5 (ii) Disclosure of the price that the contracted  
6 electric generation supplier will charge customers for  
7 electric generation service. If the price is a fixed  
8 rate, the municipal aggregator of electricity shall  
9 express the price in cents per kilowatt hour and list the  
10 most recent applicable price-to-compare of the default  
11 service provider in whose service territory the  
12 municipality is located. If the contract provides for a  
13 percentage off of the default service rate or any other  
14 type of pricing arrangement, an understandable  
15 description of the amount of the percentage discount or  
16 other pricing arrangement and how the rate may change  
17 shall be provided. If the electric generation supplier  
18 charges different rates to different rate classes within  
19 the municipality, the municipal aggregator of electricity  
20 shall describe the applicable rate to consumers within  
21 each rate class and the associated price-to-compare.

22 (iii) An itemized list and explanation of all fees  
23 and charges that are not incorporated into the rates  
24 charged for electric generation service that the electric  
25 generation supplier will charge to the consumer for  
26 participating in the municipal aggregation, including any  
27 surcharges that may be assessed.

28 (iv) Disclosure of the estimated service  
29 commencement date and notice that the consumer may opt  
30 out of the municipal aggregation program at any time.

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

8           (vi) A statement informing consumers that if they  
9           switch back to the default service provider they may not  
10           be served under the same rates, terms and conditions that  
11           apply to other customers within the municipal  
12           aggregation.

13           (vii) Disclosure of any credit, collection and  
14           deposit policies and requirements.

15           (viii) Disclosure of any limitations or conditions  
16           on customer acceptance into the municipal aggregation.

17           (ix) A description of the process for consumers to  
18           opt out of the municipal aggregation. The process shall  
19           include provisions for consumers to return a postcard or  
20           similar notice to the municipal aggregator of electricity  
21           or its agent. The process may include other opt-out  
22           methods, such as telephonic or Internet notice, if these  
23           alternative methods allow for verification of a  
24           consumer's election to opt out of the municipal  
25           aggregation.

26           (x) A local or toll-free telephone number, with the  
27           available calling hours, that consumers may call with  
28           questions regarding the formation or operation of the  
29           municipal aggregation.

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

1           (1) No consumer may be bound by a contract between a  
2 municipal aggregator and an electric generation supplier in  
3 opt-in municipal aggregation until the consumer has been  
4 provided an opt-in notice required under this subsection and  
5 the expiration of any waiting period for a consumer to cancel  
6 the pending change to the electric generation supplier  
7 following written confirmation by the electric distribution  
8 company as prescribed by regulation. Customers receiving  
9 electric generation service under an opt-in municipal  
10 aggregation program may switch to an electric generation  
11 supplier other than the supplier to the municipal aggregation  
12 program at any time without penalty, cancellation fees or  
13 other restrictions, provided that the switch shall take place  
14 pursuant to commission-approved switching procedures.

15           (2) After a municipality executes a contract for  
16 electric generation services, but prior to including a  
17 consumer's electric account or accounts in an opt-in  
18 municipal aggregation, a municipal aggregator of electricity  
19 shall provide each eligible consumer with written notice that  
20 the customer may participate in the municipal aggregation.  
21 The notice, written in plain language, shall include all of  
22 the information required under subsection (d)(2)(i), (ii),  
23 (iii), (v), (vi), (vii), (ix) and (x) and the following  
24 information:

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

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

16 (f) Additional requirements; provision of customer  
17 information.--

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

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

29           (ii) A consumer that is not located within the  
30 geographic boundaries of the municipal aggregator of

1       electricity.

2           (iii) A consumer other than a residential or small  
3       commercial customer.

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

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

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

1 or (e), as applicable, and shall prominently disclose to  
2 customers all changes to the terms and conditions associated  
3 with the municipal aggregation. The municipal aggregator of  
4 electricity may not send an opt-out notice to the same  
5 customer account for the period covered by the municipal  
6 aggregation contract where the customer account has  
7 previously opted out.

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

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

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

30 (A) An updated list of names, addresses, account

1 numbers, rate codes, indication of whether a consumer  
2 is enrolled in a customer assistance program or  
3 budget billing, load data and other related consumer  
4 information, consistent with the information that is  
5 provided to other electric generation suppliers.

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

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

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

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

29 (i) Each municipal aggregator of electricity shall  
30 ensure that only eligible consumers are included in its

1 municipal aggregation.

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

29 (g) Coordination with default service.--

30 (1) The implementation of a municipal aggregation

1 program shall be coordinated with the default service supply  
2 procurement plans of the electric distribution company whose  
3 service territory encompasses the boundaries of the  
4 municipality participating in the program.

5 (2) Unless otherwise authorized by the commission, no  
6 municipal aggregator may enter into a contract for electric  
7 generation services during the term of the default service  
8 supply procurement plan, approved by the commission on the  
9 effective date of this section, of the electric distribution  
10 company whose service territory encompasses the boundaries of  
11 the municipal aggregator.

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

26 (h) Duties of electric distribution companies and cost  
27 recovery.--

28 (1) Each electric distribution company shall provide  
29 reasonable cooperation with municipal aggregators of  
30 electricity or the electric generation supplier to the

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

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

19 (i) Duties of commission.--The commission shall:

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

24 (2) Promulgate regulations and take any other action  
25 necessary to coordinate the implementation of municipal  
26 aggregation programs with commission approval of electric  
27 distribution company default supply procurement plans.

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

30 § 2807. Duties of electric distribution companies.

1 \* \* \*

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

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

15 \* \* \*

16 § 2809. Requirements for electric generation suppliers.

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

1 service to supply generation services beyond their territorial  
2 limits.

3 \* \* \*

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