

**PENNSYLVANIA PUBLIC UTILITY COMMISSION
HARRISBURG, PENNSYLVANIA 17120**

**RETAIL ENERGY SUPPLY
ASSOCIATION, DOMINION
RETAIL INC. and FIRSTENERGY
SOLUTIONS CORP.**

**Public Meeting March 17, 2011
2207062-LAW
Docket Nos. P-2010-2207062,
P-2010-2207953, P-2010-2209253**

**STATEMENT OF
CHAIRMAN ROBERT F. POWELSON**

Before the Commission for disposition are three Petitions for Declaratory Order requesting that the Commission provide guidance on whether opt-out municipal aggregation programs can be implemented in home rule municipalities throughout the Commonwealth without specific enabling legislation. Simply put, it is my strong opinion that it cannot.

At the genesis of this issue are FirstEnergy Solutions' (FES) efforts to contract with various home-rule municipalities in Pennsylvania to provide electric generation service to those municipalities' citizens. As set forth in FES's Petition for Declaratory Order, both FES and the affected municipalities believe that municipal aggregation programs fall outside the scope of the Commission's jurisdiction.¹ As is more specifically set forth in the Commission's Opinion and Order on this matter, this belief is clearly wrong.

I do not have any expectation that the municipalities involved would possess an expertise in public utility law, an often complex and nuanced area of the law. I do, however, expect that the entities that the Commission regulates and interacts with on a regular basis be well-versed in our Regulations and controlling statutes. Consequently, I am troubled that FES believed that opt-out aggregation programs involving switching customers from their default electricity providers fall outside of this Commission's jurisdiction. Even assuming *arguendo* that such programs fall within a grey area of the laws and regulations regarding slamming, which I do not believe is the case at all, at a minimum, FES should have recognized that the Commission's jurisdiction *could* be implicated. The Public Utility Code required the Commission to enact regulations "to ensure that an electric distribution company does not change a customer's electricity supplier without direct oral confirmation from the customer of record or written evidence of the customer's consent to a change of supplier."² Municipal aggregation clearly involves changing a customer's supplier without direct confirmation, oral or otherwise.

Simply put, FES should have sought guidance from the Commission *before* commencing discussions with any municipalities about municipal aggregation programs, not *after* such efforts were well under way. Had they done so, significant time, effort and use of resources could have been avoided.

¹ *Petition of FirstEnergy Solutions Corp. for Approval to Participate in Opt-Out Municipal Aggregation Energy Programs of the Option Third-Class Charter City of Meadville, the Home-Rule Borough of Edinboro, the Home-Rule City of Warren and the Home-Rule City of Farrell*, Docket No. P-2010-2209253 at 3.

² 66 Pa. C.S. § 2807(d)(1).

As for the future of municipal aggregation in Pennsylvania, I note that the Commission has historically been generally supportive of the concept. As I continue to study the issue and its impact on competitive markets further, however, my views are maturing. At a minimum, I am becoming less convinced that municipal aggregation is a benefit to a well-functioning and fully competitive retail electricity market and increasingly concerned that such programs may actually hinder competition by allowing a single supplier to lock in large groups of customers at a single point in time, thereby acting as little more than a surrogate default service provider. I fear that the widespread enactment of municipal aggregation will prevent suppliers from making offers, thereby stifling innovation and competition and deterring the development of a robust retail market.

As a result, I believe that legislative efforts to implement municipal aggregation should be tabled during the pendency of the Commission's statewide investigation into retail electricity markets to allow further time to study the consequences, both intended and unintended, of municipal aggregation.

ROBERT F. POWELSON
CHAIRMAN

DATE: March 17, 2011