

106TH CONGRESS
1ST SESSION

H. R. 2734

To allow local government entities to serve as nonprofit aggregators of electricity services on behalf of their citizens.

IN THE HOUSE OF REPRESENTATIVES

AUGUST 5, 1999

Mr. BROWN of Ohio (for himself, Mr. DELAHUNT, Ms. MCCARTHY of Missouri, Mr. KUCINICH, Ms. KAPTUR, Mrs. JONES of Ohio, and Mr. TIERNEY) introduced the following bill; which was referred to the Committee on Commerce

A BILL

To allow local government entities to serve as nonprofit aggregators of electricity services on behalf of their citizens.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Community Choice for
5 Electricity Act of 1999”.

6 **SEC. 2. DEFINITIONS.**

7 As used in this Act:

1 (1) The term “aggregation” means the pur-
2 chase or acquisition of retail electricity on behalf of
3 two or more consumers.

4 (2) The term “electric utility franchise” means
5 rights granted to a utility company by a local gov-
6 ernment which provide conditions under which the
7 utility conducts its operations and services within
8 the boundaries of the local government.

9 (3) The term “municipal electric utility” means
10 a city, county, irrigation district, drainage district,
11 public utility district, or other political subdivision or
12 agency of a State competent under the laws thereof
13 to carry on the business of a retail electricity dis-
14 tributor and/or a retail electricity supplier.

15 (4) The term “opt-out aggregation plan” means
16 aggregation in which all customers within the juris-
17 diction of a local government unit are automatically
18 included unless they affirmatively choose a supplier
19 other than the supplier designated by the local gov-
20 ernment unit.

21 (5) The term “retail electric consumer” means
22 any person who purchases or offers to purchase any
23 retail electric supply.

24 (6) The term “rural electric cooperative” means
25 an enterprise or organization owned by and operated

1 for the benefit of those receiving retail electricity
2 (usually distribution and supply) and other services
3 from the cooperative.

4 (7) The term “State” means a State, the Dis-
5 trict of Columbia, the Commonwealth of Puerto
6 Rico, the Virgin Islands, Guam, American Samoa,
7 the Commonwealth of the Northern Mariana Is-
8 lands, and Indian tribes as defined in section 102(2)
9 of the Federally Recognized Indian Tribe List Act of
10 1994 (25 U.S.C. 479a(2)).

11 (8) The term “State regulatory authority”
12 means any State agency which has ratemaking au-
13 thority with respect to the provision of local electric
14 energy distribution services by any local distribution
15 company.

16 (9) The term “supplier” means any person who
17 produces, generates, manufactures, aggregates, mar-
18 kets, brokers, sells, or otherwise supplies electric en-
19 ergy.

20 **SEC. 3. FINDINGS.**

21 Congress finds the following:

22 (1) Many States are deregulating retail sales of
23 electricity.

1 (2) Deregulation of retail sales of electricity
2 must benefit all customers, including residential and
3 small business customers.

4 (3) In States that have deregulated retail sales
5 of electricity, large industrial and commercial cus-
6 tomers are winning the best deals, and few choices
7 are yet available to residential and small business
8 consumers.

9 (4) It is likely that most residential customers
10 will not actively choose a new electricity supplier and
11 instead will remain customers of their current elec-
12 tricity supplier for years to come;

13 (5) All customers, especially residential and
14 small business customers, will often find it difficult
15 and frustrating to find the time and sufficient infor-
16 mation to fully evaluate competing offers from elec-
17 tricity suppliers.

18 (6) Aggregation into larger buying groups will
19 enable consumers to achieve greater leverage and
20 thus better prices and services in electricity markets.

21 (7) Community choice is a particular type of
22 aggregation in which a local government negotiates
23 a contract for electric energy on behalf of all citizens
24 within its boundaries. Residents or businesses in the

1 community who prefer to choose their own electricity
2 suppliers would be free to “opt out”.

3 (8) All consumers taking part in community
4 choice aggregation can benefit, including large cus-
5 tomers, who can still receive price differentiation
6 based on their larger usage.

7 (9) Local governments are experienced in work-
8 ing with technical consultants to negotiate contracts
9 and deliver services to their citizens.

10 (10) Local governments are accountable to their
11 constituents through elections, open meetings laws,
12 fair bidding laws, and conflict of interest laws.

13 (11) Because local governments exercising com-
14 munity choice must include all electricity customers
15 within the jurisdiction who want to participate, all
16 citizens and businesses who so choose can benefit,
17 while other types of retail electricity suppliers will
18 seek to serve the more profitable customers or spe-
19 cific types of customers.

20 (12) Local governments can provide an electric
21 load that has diversity and may be attractive to elec-
22 tricity suppliers.

23 (13) In States that have deregulated retail sales
24 of electricity, citizens should be able to use tradi-
25 tional public processes to determine whether their

1 local governments should act as nonprofit
2 aggregators for their communities.

3 (14) In States in which they hold franchise
4 powers for electricity, local governments should be
5 able to use their franchise to exercise community
6 choice.

7 **SEC. 4. AGGREGATION.**

8 Notwithstanding any other provision of Federal or
9 State law, and subject to legitimate and nondiscriminatory
10 State requirements imposed on retail electric suppliers, a
11 group of customers or any entity, including a unit of State
12 or local government, acting on behalf of such group may
13 acquire retail electric energy on an aggregate basis if the
14 group of customers is served by one or more local distribu-
15 tion companies that are subject to retail competition.

16 **SEC. 5. COMMUNITY CHOICE AGGREGATION.**

17 Title VI of the Public Utility Regulatory Policies Act
18 of 1978 is amended by adding the following new section
19 at the end thereof:

20 **“SEC. 609. COMMUNITY CHOICE AGGREGATION.**

21 “(a) **COMMUNITY CHOICE AGGREGATION OF ELEC-**
22 **TRIC LOAD.**—Any State that permits any group of retail
23 electric consumers to choose among competing suppliers
24 of electric energy shall permit any general purpose local
25 government unit for any political subdivision of the State,

1 or group of such general purpose units of local government
2 acting together, to offer to act as an agent for all pur-
3 chasers that are within such group of retail electric con-
4 sumers and that are located within the boundaries of such
5 political subdivision for the purpose of purchasing electric
6 energy on an aggregate basis if such local government, or
7 group of local governments, comply with the requirements
8 of subsection (b).

9 “(b) REQUIREMENTS.—

10 “(1) APPROVAL BY VOTE.—A local government
11 shall be covered by the provisions of subsection (a)
12 only if such government has approved the aggrega-
13 tion of electric energy purchases by a vote of its
14 elected governing body or by a vote of its citizens.
15 Two or more local governments shall be covered by
16 the provisions of subsection (a) only if such govern-
17 ments have approved the aggregation of electric en-
18 ergy purchases by a vote of the elected governing
19 body or by a vote of the citizens of each local gov-
20 ernment.

21 “(2) PARTICIPATION NOT MANDATORY.—A local
22 government shall be covered by the provisions of
23 subsection (a) only if all retail electric consumers
24 permitted to choose among competing suppliers of
25 electric energy that are located within the bound-

1 aries of such political subdivision are offered the op-
2 portunity to participate in the aggregation of pur-
3 chases and any such consumer choosing not to par-
4 ticipate is permitted to opt out and purchase electric
5 energy from another agent acting as an aggregator
6 or directly from any supplier or other person.

7 “(3) STATE REGULATORY AUTHORITIES.—Each
8 State regulatory authority for a State that permits
9 any group of retail electric consumers to choose
10 among competing suppliers of electric energy shall
11 cooperate with local governments for the purpose of
12 compliance with this subsection. Each such State
13 regulatory authority shall establish guidelines for
14 local governments acting as community choice elec-
15 tricity aggregators. No State regulatory authority
16 may interfere with a local government’s existing
17 powers to procure competitive energy services under
18 existing Federal and State law, city charter provi-
19 sions, or local procurement practices.

20 “(4) FUNDS FOR RENEWABLE ENERGY OR EN-
21 ERGY EFFICIENCY.—Each State that permits any
22 group of retail electric consumers to choose among
23 competing suppliers and that also authorizes or
24 mandates the collection of funds for renewable en-
25 ergy or energy efficiency programs shall permit local

1 governments that serve as community choice
2 aggregators of electric energy purchases to collect
3 and expend such funds in the case of consumers
4 within the aggregated jurisdiction if the local gov-
5 ernment has prepared and approved a plan for such
6 collection and expenditure at the local level and
7 State regulators have reviewed and approved said
8 plan as consistent with State energy goals and as
9 providing an appropriate contribution to any state-
10 wide or regional renewable energy or energy effi-
11 ciency fund that benefits the aggregated jurisdiction.

12 “(c) FEDERAL POWER ACT JURISDICTION.—No local
13 government that aggregates electric load as described in
14 subsection (a) shall be considered a utility engaging in the
15 wholesale purchase and resale of electricity for purposes
16 of the Federal Power Act. Providing electricity to aggre-
17 gated customers within the boundaries of a local govern-
18 ment as described in subsection (a) shall not be considered
19 a wholesale transaction subject to the jurisdiction of the
20 Federal Energy Regulatory Commission under the Fed-
21 eral Power Act.

22 “(d) ENFORCEMENT.—The Federal Energy Regu-
23 latory Commission may bring an action in the appropriate
24 United States District Court against any State to require
25 compliance with the provisions of subsection (a).

1 “(e) SAVINGS PROVISION.—Nothing in this section
2 shall be construed to prohibit the aggregation of electric
3 load by local government units in a different manner
4 under other authority of law.”.

5 **SEC. 6. FRANCHISES.**

6 Any State that has deregulated retail sales of elec-
7 tricity shall permit local governments to exercise local
8 franchise powers. A local government that has granted a
9 franchise to a utility at a prior time may offer such fran-
10 chise for competitive bidding and contract award, provided
11 such measures are authorized by consumers in a public
12 process.

13 **SEC. 7. EXCLUSIONS.**

14 (a) UTILITIES NOT PARTICIPATING.—For municipal
15 electric utilities and rural electric cooperatives that are not
16 participating in retail electric competition, sections 4, 5,
17 and 6 of this Act shall not apply.

18 (b) AGGREGATION.—For States that have adopted
19 retail competition by law or regulation prior to the date
20 of enactment of this Act, sections 4, 5, and 6 of this Act
21 shall not apply to the provisions of a State law or regula-
22 tion, and any subsequent regulation implementing such
23 State law or regulation as such law or regulation may per-
24 tain to an opt-out aggregation plan as it may be under-
25 taken by any general purpose local government unit for

1 any political subdivision of the State including a municipal
2 corporation, county government or township.

3 **SEC. 8. SEPARABILITY.**

4 If any provision of this Act (or the application of that
5 provision to particular persons or circumstances) is held
6 invalid, the remainder of this Act (or the application of
7 that provision to other persons or circumstances) shall not
8 be affected.

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