

Borough of Portage

PORTAGE, PENNSYLVANIA

ORDINANCE 7-2010

AN ORDINANCE SUPPLEMENTING THE CODE OF THE HOME RULE BOROUGH OF PORTAGE, BY ESTABLISHING A "MUNICIPAL ENERGY AGGREGATION" WHICH AUTHORIZES ALL ACTIONS NECESSARY TO EFFECT A MUNICIPAL ENERGY AGGREGATION PROGRAM WITH OPT-OUT PROVISIONS FOR THE MUNICIPAL AGGREGATION OF ELECTRIC GENERATION SUPPLY TO CERTAIN CONSUMERS OF ELECTRICITY WITHIN THE BORDERS OF THE HOME RULE BOROUGH OF PORTAGE.

WHEREAS, the Borough of Portage is governed by the Home Rule Charter and Optional Plans Law, 53 Pa C.S. §2901-3171, and the Home Rule Borough of Portage Charter, which provides that the Home Rule Borough of Portage has, and may exercise, any power, and may perform any function not denied by the Constitution of Pennsylvania, by the Charter or by the General Assembly and where the powers of the Home Rule Borough of Portage shall be construed broadly in favor of the Home Rule Borough of Portage; and

WHEREAS, Municipal Energy Aggregation Programs provide an opportunity for certain residential and small commercial consumers to participate collectively in the benefits of electricity deregulation through lower electricity rates which may not otherwise be available to those electricity consumers individually; and

WHEREAS, the Home Rule Borough of Portage has negotiated a contract with FirstEnergy Solutions Corp. to supply electricity through the Home Rule Borough of Portage Municipal Energy Aggregation Program for the period of 1/1/11 through 1/1/12 for certain residential and small commercial consumers; and

WHEREAS, certain residential and small commercial electric consumers within the Home Rule Borough of Portage stand to receive savings as a result of the adoption of the Municipal Energy Aggregation Plan; and

WHEREAS, the adoption of the Municipal Energy Aggregation Program by the Home Rule Borough of Portage is not prohibited by Commonwealth statute or the Constitution of the Commonwealth of Pennsylvania; and

WHEREAS, the adoption of the Municipal Energy Aggregation Program by the Home Rule Borough of Portage will not mandate participation in the Municipal Energy Aggregation Program, but will be provided on an opt-out basis.

NOW THEREFORE, The Home Rule Borough of Portage hereby ordains:

Section 1. **Title.** Municipal Energy Aggregation Ordinance of the Home Rule Borough of Portage.

Section 2. **Definitions:**

The following definitions shall be used in reference to the provisions of this section:

(a) “Contracted Electric Generation Supplier” means the entity with which the Home Rule Borough of Portage has contracted through the Municipal Energy Aggregation Program to provide a supply of electricity.

(b) “Excluded Consumers” means electricity consumers (1) that have opted out of the Municipal Aggregation Program pursuant to the provisions of section 5, below; (2) that have a special contract or agreement with an electric distribution company; (3) other than residential consumers who are classified as retail electric consumers or small commercial consumers which are under a small commercial, small industrial or small business rate classification, and whose maximum registered peak load was less than 25 kW within the last twelve (12) months; (4) that are enrolled in an electric distribution company’s customer assistance program that does not include any electric generation supplier charges in the calculation of the customer assistance program benefit; or (5) that are end-use consumers served or authorized to be served by an electric cooperative.

(c) “Municipal Energy Aggregation” means the aggregation of residential consumers who are classified as retail electric consumers within the Home Rule Borough of Portage and small commercial consumers within the Home Rule Borough of Portage which are under a small commercial, small industrial or small business rate classification, and whose maximum registered peak load was less than 25 kW within the last twelve (12) months.

(d) “Municipal Energy Aggregation Program” means the Program negotiated with the Contracted Electric Generation Supplier which provides a supply of electricity to certain residential and small commercial electricity consumers within the Home Rule Borough of Portage on an Opt-Out basis.

(e) “Non-Excluded Consumer” means an electricity consumer within the Home Rule Borough of Portage which or who is not an Excluded Consumer.

(f) Other terms defined in this section are so defined in this article by reference.

Section 3. **Administration.**

All Non-Excluded Consumers shall be supplied with electric generation supply pursuant to the Municipal Energy Aggregation Program.

Section 4. Municipal Energy Aggregation Program.

(a) The Borough Manager of the Home Rule Borough of Portage is authorized to enter into an agreement with an Electric Generation Supplier for the provision of electric generation supply services to Non-Excluded Consumers within the Home Rule Borough of Portage on an opt-out basis.

(b) The contract shall, at a minimum, clearly indicate the price that the Contracted Electric Generation Supplier will charge Non-Excluded Consumers for electric generation supply as well as the term of the contract. If the price is a fixed rate, the price shall be expressed in cents per kilowatt hour. If the contract provides for a percentage-off of the default service rate, or any other type of pricing arrangement, an understandable description of the amount of the percentage discount, or other pricing arrangement, and how the rate may change shall be provided. If the Contracted Electric Generation Supplier will charge different rates to different rate classes within the Home Rule Borough of Portage, the applicable rate(s) to Non-Excluded Consumers within each rate class shall be described.

(c) No Non-Excluded Consumer shall be bound by a contract until at least thirty (30) days following the mailing of the opt-out notices required by Section 5 below, and the expiration of any waiting period for a consumer to cancel the pending change to the electric generation supplier following written confirmation by Contracted Electric Generation Supplier.

(d) The Contracted Electric Generation Supplier may not impose any terms, conditions, fees, or charges on any consumer served by a Municipal Aggregation Program that is materially different from the particular term, condition, fee, or charge which was included within the contract between the Home Rule Borough of Portage and the Contracted Electric Generation Supplier or the notices provided pursuant to this section.

(e) The Contracted Electric Generation Supplier shall provide appropriate consumer education materials to inform consumers about the existence of the Municipal Aggregation Program and the highlights of the program at no cost to the Home Rule Borough of Portage.

Section 5. Opt-Out Program

(a) The Municipal Energy Aggregation Program shall be offered on an opt-out basis.

(b) After the Home Rule Borough of Portage executes a contract for electric generation services with the Contracted Electric Generation Supplier, but prior to including a consumer's electric account or accounts in the Municipal Aggregation Program, the Contracted Electric Generation Supplier shall provide each consumer with written notice that the consumer's account(s) will be automatically included in the Municipal Aggregation Program unless the consumer affirmatively opts-out of the

Municipal Aggregation Program. The notice, written in plain language, shall, at a minimum, include:

- (i) Disclosure of the price that the contracted electric generation supplier will charge Non-Excluded Consumers for electric generation service.
- (ii) An itemized list and explanation of all fees and charges that are not incorporated into the rates charged for electric generation service that the Contracted Electric Generation Supplier will charge to the Non-Excluded Consumer for participating in the Municipal Aggregation Program, including any early termination penalties and any surcharges, or portions thereof, that may be assessed.
- (iii) Disclosure of the estimated service commencement date and notice that the Non-Excluded Consumer may opt out of the Municipal Aggregation Program at the end of the term of the contract with the Contracted Electric General Supplier and prior to the commencement of any subsequent municipal aggregation contract.
- (iv) A statement informing consumers that if they choose to opt out of the Municipal Aggregation Program they will be served by the default service provider until the consumer chooses an alternative electric generation supplier.
- (v) A statement informing Non-Excluded 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 Non-Excluded Consumers within the Municipal Aggregation Program.
- (vi) Disclosure of any credit, collection and/or deposit policies and requirements.
- (vii) Disclosure of any limitations or conditions on consumer acceptance into the Municipal Aggregation Program, including the date by which the consumer must affirmatively opt-out of the program. The date shall not be less than thirty (30) days following the mailing of the opt-out notice.
- (viii) A description of the process and associated time period for consumers to opt out of the Municipal Aggregation Program.
- (ix) A local or toll free telephone number, with the available calling hours, that consumers may call with questions regarding the formation or operation of the Contracted Electric Generation Supplier.

Section 6. Savings Clause

If any provision of this Ordinance or the application thereof to any Person or circumstances is held invalid, such holding shall not affect the other provisions or applications of this Ordinance, which shall be given effect without the invalid provisions

or applications, and to this end, the provisions of this Chapter are declared severable. All Ordinances or parts of Ordinances which are inconsistent herewith are hereby repealed to the extent of such inconsistency.

Section 7. Repealer Clause.

Borough Council may repeal any part of this Ordinance. Any part of this Ordinance found to be inconsistent with law may be repealed without nullifying the entire Ordinance.

Section 8. Effective Date.

That this Ordinance shall be effective thirty days after enactment.

ORDAINED AND ENACTED this 1ST day of November, 2010

BOROUGH OF PORTAGE

By: Sharon M. McCarthy
Sharon M. McCarthy
President

Attest: Michelle Claar
Michelle Claar
Borough Secretary