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May 4, 2018

Rosemary Chiavetta, Esq., Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, Pennsylvania 17120

**Re: Notice of *En Banc* Hearing on Implementation of Supplier Consolidated Billing
Docket No. M-2018-2645254**

Dear Secretary Chiavetta:

Enclosed for filing please find the initial set of comments of the Energy Association of Pennsylvania requested in the Commission's March 27, 2018 Secretarial Letter at the above-referenced docket. As stated in these comments, the Energy Association of Pennsylvania offers to present testimony at the hearing scheduled for June 14, 2018.

Sincerely,

A handwritten signature in blue ink, appearing to read "Donna M. J. Clark", is written over a horizontal line.

Donna M. J. Clark
Vice President and General Counsel

Enclosure

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

En Banc Hearing on Implementation :
Of Supplier Consolidated Billing : M-2018-2645254

**Comments of the Energy Association of Pennsylvania to
Implementation of Supplier Consolidated Billing**

I. Introduction.

On January 31, 2018, the Pennsylvania Public Utility Commission (“PUC” or “Commission”) entered an Opinion and Order¹ dismissing the Petition of NRG Energy, Inc.² (“NRG Petition”) and marking that docket closed. Simultaneously, the Commission directed its Law Bureau and Office of Competitive Market Oversight (“OCMO”) to organize the instant *En Banc* hearing to examine supplier consolidated billing (“SCB”) as both a way to further promote electric retail shopping in Pennsylvania and as a means to enable electric generation suppliers (“EGSs”) to sell “value-added services” to their customers. Opinion and Order at page 62, ordering paragraph 3. Thereafter, on March 27, 2018, the PUC issued a Secretarial Letter

¹ *Opinion and Order Re: Petition of NRG Energy, Inc. for Implementation of Electric Generation Supplier Consolidated Billing*, Docket No. P-2016 -2579249 (January 31, 2018).

² The NRG Petition sought initiation of a proceeding that would result in a mandate requiring electric utilities in Pennsylvania to implement supplier consolidated billing for “qualified” electric generation suppliers who opted to provide such billing services to their customers. *See*, NRG Petition at paragraphs 15, 27, 70 – 75. The NRG Petition further delineated specific steps for the PUC to follow to enable the implementation of supplier consolidated billing by the second quarter of 2018 in contrast to the regulatory process required under Pennsylvania law to either modify existing rules and regulations or to impose new requirements. *See, e.g.*, Comments of the Energy Association of Pennsylvania in Opposition to the Petition of NRG Energy, Inc. (“EAP Comments to NRG Petition”) incorporated herein by reference at pp. 3 and 14 – 15.

scheduling an *En Banc* hearing for June 14 and soliciting input on the “legality and appropriateness” of implementing SCB in Pennsylvania. Secretarial Letter dated March 27, 2018 (“Secretarial Letter”), Docket No. M-2018-2645254 at p.1. The Secretarial Letter identifies three general issues for interested parties to address and further refines those basic inquiries with a series of topics and questions designed to guide the discussion at the hearing set for June 14, 2018.³ The initial set of comments is due on May 4, 2018 along with an indication of whether the commentator is interested in testifying at the June 14 *En Banc* hearing. Reply comments are due on July 27, 2018.

The Energy Association of Pennsylvania (“EAP” or “Association”), a trade organization that represents and promotes the interests of regulated electric and natural gas distribution companies operating in the Commonwealth, respectfully submits these comments on behalf of its electric distribution company (“EDC”) members.⁴ Additionally, EAP is willing and interested in providing testimony at the June 14 *En Banc* hearing on a panel together with a number of its EDC members.

II. General Comments.

In addressing the three main issues identified in the body of the March 27 Secretarial Letter as the purpose of the *En Banc* hearing⁵, EAP believes that resolution of the first question,

³ In an attachment to the Secretarial Letter, the Commission identifies six discussion topics (Legal, Impact on the Market, Mechanisms – How It Would Work, Collections – Terminations, Low Income Customers/Assistance Programs and Possible Alternatives) for the hearing and lists a number of specific questions under each topic heading.

⁴ Citizens’ Electric Company; Duquesne Light Company; Metropolitan Edison Company; PECO Energy Company; Pennsylvania Electric Company; Pennsylvania Power Company; Pike County Light & Power Company; PPL Electric Utilities; UGI Utilities, Inc.-Electric Division; Wellsboro Electric Company; and West Penn Power Company.

⁵ “The purpose of this hearing is...to inform the Commission on the following issues: (1) whether SCB is legal under the Public Utility Code and Commission regulations; (2) whether SCB is appropriate and in the public interest as a matter of policy; and (3) whether the benefits of implementing SCB outweigh any costs associated with implementation.” See Secretarial Letter dated March 27, 2018, Docket No. M-2018-2645254 at p.1.

i.e. whether SCB can be legally required and implemented under current statute and applicable Commission regulations, should end the instant inquiry and enable the Commission to forego a repetitive re-examination of this request until such time as the statutory framework set forth in the Electricity Generation Customer Choice and Competition Act (“Competition Act”), *as amended*, 66 Pa. C. S. §§ 2801- 2815, is revised. As analyzed in the EAP Comments to the NRG Petition, SCB is not legal under the Public Utility Code and cannot be mandated as a third billing option for customers. EAP Comments to the NRG Petition at pp. 8 – 11. Further, implementing SCB would violate Chapter 14 of the Public Utility Code and contravene numerous existing Commission regulations under Chapter 56 of the Pennsylvania Code. See discussion *infra*. at pp. 10-11.⁶

It is axiomatic and logical to conclude, therefore, that SCB can neither be appropriate nor in the public interest as a matter of policy. Moreover, no cost/benefit analysis undertaken at this point could overcome the clear directives of the Competition Act; namely, that EDCs are to retain certain functions relating to customer service including billing for distribution service and that it is the *customer* who is afforded the choice to either receive a separate bill from her EGS for supply service or to receive a consolidated bill for distribution and supply from her EDC. *See, e.g.*, 66 Pa. C. S. §§ 2807 (c) and (d) which provide, respectively, in subsection (c) that it is the customer who chooses whether to receive dual bill or a consolidated utility bill and in subsection (d) that the EDC “shall continue” to provide customer service functions and that those

⁶ *See also*, PECO Comments and Answer to the NRG Petition, pp. 7-8 and 23-26; First Energy Companies’ Answer to the NRG Petition, pp. 9-13; PPL Comments to the NRG Petition, pp. 11-13 and 15-16; Duquesne Light Comments to the NRG Petition, pp. 20-12; OCA Comments to the NRG Petition, pp. 15-16; TURN, *et al* Comments to the NRG Petition, pp. 5-6; CAUSE-PA Comments to the NRG Petition, pp. 25-26.

functions “shall, at a minimum, be maintained at the same level of quality” as prior to the enactment of the Competition Act.⁷

As emphasized in comments filed to the NRG Petition, the Association and its EDC members maintain that retail electric competition in Pennsylvania is successful and continues to thrive.⁸ EDCs work diligently on their own and in partnership with their communities and the Commission to educate customers about the retail market, training their employees to inform customers on the phone and during community outreach events about electric retail choice and offering information on their websites. EDCs have implemented market enhancements at the Commission’s suggestion and direction, including, *inter alia*, standard offer programs, customer referral programs, account number access mechanisms, seamless moves and instant connects, accelerated switching, and changes to the utility bill to highlight the customer’s supplier and to allow for direct communication from the supplier to its customer.⁹ The Commission has also encouraged and provided guidelines for utilities to offer purchase of receivables programs to suppliers and has promulgated regulations to promote transparency and consistency in communications and contracts between suppliers and their customers.¹⁰

⁷ *Accord, Dauphin County Industrial Development Authority v. Pennsylvania Public Utility Commission*, 123 A. 3d 1124 (Pa. Commw. Ct. 2015).

⁸ See, e.g. EAP Comments to the NRG Petition at pp. 4 – 7 detailing the many accolades of the Pennsylvania competitive electric retail market by industry groups and leaders both inside and outside the Commonwealth, identifying the numerous steps taken by the Commission over the last twenty years to enhance and promote retail choice and concluding that the “actual experience of customers and data available ... undercuts the premise... that the market is need of a further fix....” *Id.* at pp. 6 – 7. See also Comments of PECO to the NRG Petition at pp. 2 – 4; Comments of PPL to the NRG Petition at pp. 8 – 9; Comments of Duquesne Light Co., at pp. 13 – 17.

⁹ See, e.g., *EDC Customer Account Number Access Mechanisms for EGSs*, Docket No. M-2013-2355751 (Final Order entered July 2013); *Final-Omitted Rulemaking Order: Standards for Changing a Customer’s Electricity Generation Supplier*, Docket No. L-2014-2409383 (Final Order entered April 2014); *Investigation of Pennsylvania’s Retail Electricity Market: Joint EDC-EGS Supplier Bill*, Docket No. M-2014-2401345 (Final Order entered May 2014); and *Investigation of Pennsylvania’s Retail Electricity Market*, Dockets No. I-2011-2237952 and L-2014-2409383 (Opinion and Order dated July 2016).

¹⁰ For POR programs see, 52 Pa. Code § 69.1815 as well as comparable natural gas distribution company POR language at 52 Pa. Code § 62.224; for marketing communication regulations, see 52 Pa. Code § 111.

EAP contends that the success of the retail choice market and whether or not the legislative objectives of the Competition Act have been achieved cannot be determined solely by counting the number of customers who have switched from their utility default service or between suppliers at any one point in time.¹¹ Likewise, adding one more EGS requested enhancement, such as SCB, to the collection of tools available to coax the customer to purchase supply from an entity other than her electric utility will not in itself enhance shopping. As the Commission's most recent study on the retail market underscored, it is, in large part, price that drives consumer choice.¹² Thus, even if SCB were a legal option under the Competition Act and could be implemented without compromising the consumer protections embodied in Chapter 14 and applicable Commission regulations, EAP disputes the assumption that it would either markedly improve shopping numbers, i.e. cause consumers to switch and buy supply from entities other than their incumbent EDC, OR finally bring the often-touted "innovative products and services" into the Pennsylvania marketplace. To the contrary, EAP believes that once SCB was in place, suppliers would be promoting a new "silver bullet" and asking the Commission to mandate yet another enhancement to be paid for by the retail customer class.¹³

¹¹ The Competition Act brought numerous benefits to the wholesale market including a reduction in the average annual wholesale price of energy, an increase in capacity, improved generator operational efficiencies, a diversified fuel mix and emissions reductions. *See, A Case Study of Electric Competition Results in Pennsylvania*. Christina Simeone and John Hanger. The Kleinman Center. October 28, 2016. p. 2-3. Accessed via: <https://kleinmanenergy.upenn.edu/paper/electricity-competition>.

¹² *See, PUC PA PowerSwitch Attitudes and Usage Report*, October 2016.

¹³ *See, e.g., Maryland PSC Takes Comments on New Retailer Rules*, Power Markets Today (April 23, 2018) discussing a new market enhancement tool promoted by RESA in Maryland named "enroll with your wallet". Maryland PSC received comments on new retailer rules including, *inter alia*, seamless moves and instant connects which RESA generally supported but looked to enhance with their new proposal to allow consumers to enroll with information often found in a consumer wallet rather than the customer account number. Note that while the Exelon utilities (Baltimore Gas & Electric, Delmarva Power and Pepco) generally supported the new rules, they did question whether it was worth spending money on instant connects and seamless moves. Instant connects seemed redundant in light of existing rules that required utilities to process a switch in three days AND, based on Exelon's experience in its PECO territory, it is rare for customers to use the seamless move function: just 0.4% of customers in Philadelphia have used that tool.

Such concerns are not wholly speculative. While EDCs have implemented, at the direction of the Commission, various costly programs and market enhancements as a means to promote shopping, suppliers have not responded with the introduction of innovative products and services. A recent study conducted by the Kleinman Center at the University of Pennsylvania supports this observation. The 2016 case study of Pennsylvania’s retail electric marketplace notes that:

“Restructuring has provided residential customers in each Pennsylvania distribution company territory examined with new options about rates and rate plans, including between 57 and 138 competitive offerings per area. Most of these new plans were fixed or variable rate plans. In addition, restructuring has opened the possibility for innovative rate and product offerings to be made available to the residential sector. By far, renewable energy plans have been the most widely offered innovative product available to residential customers. There have been far fewer innovative rate and product offerings available related to unlimited usage flat bill, discounts and incentives, and net metering plans. Many innovations that were expected (e.g. time of use, energy efficiency and conservation) are either not available or not listed on the PA PUC’s www.PaPowerSwitch.com shopping website.”¹⁴

EDCs can attest that not all suppliers are availing themselves of the very market enhancements already mandated in Pennsylvania to enable EGSs to both “acquire” customers and to develop and/or strengthen relationships with those same customers.¹⁵

Further, despite seeking implementation of SCB, suppliers have yet to clearly delineate precisely how SCB leads to innovative product and service offerings that benefit customers as

¹⁴ [A Case Study of Electric Competition Results in Pennsylvania](https://kleinmanenergy.upenn.edu/paper/electricity-competition). Christina Simeone and John Hanger. The Kleinman Center. October 28, 2016. p. 4 Accessed via: <https://kleinmanenergy.upenn.edu/paper/electricity-competition>.

¹⁵ The information supplied to the Commission during its 2015 promulgation of regulations related to a customer account number access mechanism for natural gas suppliers demonstrated that, at that time and based on information supplied by EDCs, while many EGSs registered to use the tool across the state only a handful (seven by reported count of PECO and First Energy) have actually *used* the tool. Neither Duquesne nor UGI had any EGS access account information by way of this mechanism. Not a single EGS in the Duquesne service territory registered to use this tool despite the fact that Duquesne spent nearly \$100,000 to build the mechanism. *See* EAP Comments to Tentative Order Re: *Natural Gas Distribution Company Customer Account Number Access Mechanism for Natural Gas Suppliers*, Docket No. M-2015-2468991, p. 6; Tentative Order, pp. 9-10; OCA noted in its Comments to the NRG Petition that, in 1998, the Commission and stakeholders went to considerable effort to development protocols for SCB, however “no supplier sought to use supplier consolidated billing for its customers.” p. 4.

compared to other market enhancements already in place or how SCB can uniquely encourage shopping among non-shopping customers or switching for those customers who have affirmatively chosen default supply. There can be no credible suggestion that SCB will foster lower price levels or that somehow SCB would improve customer satisfaction as compared to receiving the statutory option of a utility consolidated bill. SCB is not necessarily designed to encourage customers to shop, but rather is a means by which suppliers can establish a more direct relationship with a customer *who has already switched*. This kind of direct relationship, however, can be fostered through the statutorily available dual billing option in Pennsylvania, without the additional costs or impacts that would occur with SCB. There is nothing unduly or inherently prohibitive or complicated about dual billing that hinders EGSs' ability to market and bill for other products and services. Use of dual bills would also arguably provide a pathway for suppliers to strengthen relationships with their customers similar to the existing utility consolidated bill, which in Pennsylvania has been "enhanced" to provide for placement of the supplier logo or for a monthly supplier message.¹⁶

Notably, neither the Commission nor any independent third party hired by the Commission has conducted a review of the market enhancements completed to date in Pennsylvania that evaluates how well they are working, if the benefits have outweighed the costs¹⁷, or if customers have found value overall. Recognizing that price drives the consumer

¹⁶ The experience in the telecommunications industry provides confirmation that receipt of multiple bills will not dampen consumer enthusiasm where third party suppliers offer innovative products and services. Currently, individual customers may receive multiple bills for telephone service each from a different entity: a bill for wireless service and a separate bill from a different carrier to maintain landline service. With respect to the landline service, it is possible that the service is provided as an ancillary service to receipt of cable and/or internet service OR that the individual receives a separate bill for local telephone service and one for long distance. Receipt of multiple bills does not seem to have thwarted these suppliers' opportunities to acquire new customers.

¹⁷ In its comments to the NRG Petition, Duquesne Light Company indicated it has already spent \$24 million on these mechanisms; PECO Energy estimated their company has spent over \$31.5 million on only the information technology costs to implement the various measures, not accounting for the additional costs to train employees and

choice, reviews by other states with a comparable retail market construct are informative. These studies show there is still work to be done in ensuring that the value of the promised market benefits of retail choice actually exceed the costs to ratepayers. These reviews have indicated that not all customers are saving money by switching to suppliers as opposed to staying on the default service of their incumbent utility.¹⁸

Given the lack of legal authority for SCB in Pennsylvania, EAP suggests that it is neither necessary nor efficient to repeatedly or periodically engage in reiterating the purported benefits or potential impacts of SCB to the Pennsylvania retail electric market.¹⁹ The results of such an exercise are conjectural and do not inform either the Commission or the General Assembly concerning the success or failure of the existing retail electric market in Pennsylvania. EAP respectfully suggests that this inquiry into SCB should definitively end at the conclusion of this proceeding.

III. Supplier Consolidated Billing is Not Authorized under Chapter 28 of the Public Utility Code and is Contrary to Chapter 14 as well as Numerous Commission Regulations promulgated to Protect Customers including Those Found in Chapter 56 of the Pennsylvania Code.

educate customers. *See*, Duquesne Light Answer and Comments to the NRG Petition, p. 16 and fn.30; PECO Comments to the NRG Petition, p. 4 and fn. 11.

¹⁸ *See e.g.*, [Are Consumers Benefiting from Competition? An Analysis of the Individual Residential Electric Supply Market in Massachusetts](https://www.mass.gov/doc/comp-supply-report-final). Massachusetts Attorney General's Office, Commonwealth of Massachusetts, March 2018. Accessed via <https://www.mass.gov/doc/comp-supply-report-final>;

[Connecticut Public Utility Regulatory Authority Review of the Billing of All Components of Electric Service by Electric Suppliers](http://www.ct.gov/occ/lib/occ/10_19_15_Press_Release_OCC_Consumer_Alert.pdf). PURA Docket No. 13-08-15. *See, related*:

http://www.ct.gov/occ/lib/occ/10_19_15_Press_Release_OCC_Consumer_Alert.pdf. and

http://www.ct.gov/occ/lib/occ/Fact_sheet_electric_supplier_market_August_2015.pdf; *Department of Public Service, Staff Redacted Initial Brief*, State of New York Public Service Commission, Case 15-M-0127, dated March 30, 2018, pp.1-2. Accessed via:

<http://documents.dps.ny.gov/public/MatterManagement/CaseMaster.aspx?MatterCaseNo=15-M-0127&submit=Search>.

¹⁹ EAP recalls the numerous and lengthy comments filed in opposition to the NRG Petition by EDCs, statutory advocates, low income advocates and by EAP itself, noting that many of the questions posed in the Attachment to the Secretarial Letter are discussed and answered in those comments. EAP asks the Commission to take “judicial note” of comments filed to the prior docket, particularly those of PECO Energy and the First Energy Companies, when determining the outcome of the instant proceeding.

An examination of the Competition Act supports a conclusion that SCB is not identified as a billing option and that the statute does not empower the Commission to mandate implementation of SCB. Initially, the statutory language at 66 Pa. C. S. §§ 2807 (c) and (d) establishes that the General Assembly intended for the EDC to retain certain functions relating to customer service including billing for distribution service, meter reading, collections and complaint resolution. This legislative intent is strengthened when sections 2807 (c) and (d) are read together with the declaration of policy at sections 2802 (16) and (17).

In section 2802 (16), the General Assembly stated that transmission and distribution service would continue to be regulated and that the availability of universal electric service in the Commonwealth would not be altered regardless of the entity acting as the provider of last resort. In section 2802 (17), the General Assembly confirmed that “certain public purpose costs, including programs for low-income assistance, energy conservation and others” provided by public utilities should continue with “full recovery of such costs...permitted through a nonbypassable rate mechanism.” These sections support a statutory interpretation that the General Assembly intended the EDC to retain a billing role, providing a bill for transmission/distribution services plus other “public purpose costs” even as customers were enabled to shop for generation services.²⁰

Additionally, the language at section 2807 (c) does not contemplate SCB. The legislature did not create a parallel mandate for the EDC to furnish billing data to the supplier of generation services so as to enable SCB. *See*, 66 Pa. C. S. § 2807 (c) (2). Section 2807 (c) provides that “[s]ubject to the right of the end-use customer to choose to receive separate bills from its

²⁰ The basic tenets of statutory construction support this conclusion. *See*, Statutory Construction Act at 1 Pa. C. S. §§ 1901 -1991. *See also*, *Consulting Engineers v. Licensure Bd.*, 522 Pa. 204, 560 A.2d 1375 (Pa. 1989) (providing that individual provisions of a statute are to be interpreted, whenever possible, in a manner that gives effect to the entire statute).

electric generation supplier, the electric distribution company may be responsible for billing customers for all electric service, consistent with the regulations of the commission, regardless of the identity of the provider of those services.” (Emphasis added.) Section 2807 (c) (2) then details the process for consolidated billing where the customer receives a single bill, stating the “[i]f services are provided by an entity other than the electric distribution company, *the entity that provides those services shall furnish to the electric distribution company* billing data sufficient to enable the electric distribution company to bill customers.” (Emphasis added.)

Thus, if the customer does not choose dual billing, the clear intent of the General Assembly as evidenced by the language of the statute provides that the EDC may bill for all electric service (i.e., generation, transmission, distribution and other public purpose costs) and that an entity providing generation service is obligated to provide the EDC with the information necessary to bill the end-use customer. The law affords the customer the choice to receive separate bills or a single bill from the EDC and, where the customer opts for a single bill, authorizes the EDC to provide a consolidated bill and allows for the recovery of the necessary costs of providing that bill. The language ensures that the generation supplier will provide the EDC with the billing data necessary to charge for generation services so as to effectuate the choice of the customer. The General Assembly clearly intended for the customer to make the choice of how to be billed. It did not provide that discretion to the EGS.

The requirement that the EGS *shall furnish* sufficient billing data to the EDC confirms not only that it is the customer’s choice to determine how to be billed but that the General Assembly intended that a regulated entity would be responsible for consolidated billing. *Id.* Section 2807 (d) further reinforces this interpretation stating, in part, that “[t]he electric distribution company shall continue to provide customer service functions consistent with the

regulations of the commission, including meter reading, complaint resolution and collections.”²¹

Read together, sections 2807 (c) and (d) provide that the EDC is to retain a billing relationship with its customers regardless of whether the customer chooses to switch to an EGS.

Under Chapter 14 of the Public Utility Code initially enacted in 2004, the General Assembly affirmed its directive that EDCs are to continue to provide customer service functions by placing a myriad of non-delegable duties on “public utilities” defined to include EDCs but not EGSs. *See*, 66 Pa. C. S. § 1403. These duties included, *inter alia*, provisions for security deposits and determining creditworthiness, providing payment arrangements to payment troubled customers, detailing the manner in which service could be terminated and subsequently restored by the EDC (including the types of customer notice required from the EDC), and mandating the cessation of termination procedures when proof of a customer’s medical emergency was provided to the EDC, as well as dictating the specifics of how EDCs are to handle consumer complaints, and what information concerning consumer services is to be reported to the Commission by the EDC. The language of Chapter 14 mandates action by public utilities (EDCs as well as natural gas distribution companies) and imposes the obligation by the use of the word “shall” repeatedly throughout the statute. *See, e.g.*, 66 Pa. C. S. §§ 1406(b)(1), 1406(f), 1407(c)(1), 1410 and 1410.1. EAP submits that neither an EDC nor the Commission can delegate these duties to an EGS²², rendering SCB impractical as well as unauthorized under the Public Utility Code.

²¹ 66 Pa. C. S. § 2807 (d). The use of the work “may” at section 2807 (c) of the Competition Act allows for the EDC to provide a consolidated bill and cannot be interpreted as proof that the General Assembly intended that the EDC “shall” forego responsibility to bill customers if EGSs choose to offer a supplier consolidated bill. *Accord*, 66 Pa. C. S. §§ 2802 (9), (10) and (16).

²² *Dauphin County Industrial Development Authority v. Pennsylvania Public Utility Commission*, 123 A. 3d 1124 (Pa. Commw. Ct. 2015), *appeal denied*, 140 A.3d 14 (Pa. 2016) holding that the unqualified use of the word “shall” by the legislature is not ambiguous and imposed obligations that cannot be shifted or delegated to a third party.

EAP submits that SCB is not permitted as a billing option under Chapter 28 and would violate various sections of Chapter 14. Accordingly, it is not legal under the Public Utility Code and there is no need to determine its impact on the competitive retail market or whether SCB might facilitate the EGS introduction of innovative products and services to retail customers. EAP respectfully suggests that devoting time and resources to the mechanics of SCB and how it would affect the many consumer protections established under Chapter 14 and the Commission regulations at Chapter 56 of the Pennsylvania Code OR determining how it might work with existing programs established to assist low-income customers (LIHEAP, CAP and weatherization programs such as LIURP and the Act 129 low-income direct install measures) would not be fruitful in light of the fact that SCB is not authorized under the existing statutory construct. Finally, EAP asserts that under the Competition Act the General Assembly clearly indicated its position that customer service functions remain with the regulated public utility rather than an unregulated energy supplier; implementation of SCB would upend that paradigm.

IV. Implementation of Supplier Consolidated Billing Would Overturn Many of the Processes in Place Today that Benefit Consumers Placing the Obligation for Enforcement of Consumer Protections and the Delivery of Customer Assistance Programs on Unregulated Entities.

Assuming *arguendo* that SCB is permitted under current Pennsylvania law, EAP contends that the logistics and impact of implementing SCB will overturn and upend the long-standing processes and programs now in place that insure consumer protections and provide assistance to low-income customers. Any isolated benefits (innovative products, services or rate structures) that might be gained must be weighed against the costs and operational changes that would occur as Commission regulations and policies along with utility procedures and programs are revamped to provide EGSs the option to use a SCB with its customers. EAP maintains that the additional costs, the likely customer confusion, and the changes in the way that numerous

customer service functions are provided including, *inter alia*, terminations, restorations, medical certificates, consumer complaints, payment arrangements, CAP and LIHEAP all mitigate against implementing SCB without clear direction from the General Assembly.²³

Costs. The costs incurred by EDCs to implement SCB would be substantial, and would come in addition to millions of dollars already spent (borne by all ratepayers, regardless of income level or ultimate interest in switching suppliers) on “market enhancements.” Monies spent by EDCs to the benefit of EGSs also come at a cost of investing that capital to update technologies such as customer billing, outage management, and other infrastructure improvements that benefit all customers. The Commission itself would also likely incur additional costs as oversight of SCB compliance given the hundreds of licensed EGSs in the Commonwealth would require an increase in staff time and therefore increased costs. *See discussion supra.* at fn. 17.

Furthermore, under a construct that allows individual customers to choose the entity from which to receive their joint bill (assuming their supplier offers to provide a consolidated bill), the customer will in effect be paying for the maintenance of duplicative billing systems. In the only state that has implemented SCB, the billing function was wholly removed from the distribution utility so as to avoid such duplicative customer costs. As the First Energy companies previously outlined in their comments/answer opposing the NRG Petition:

“... Texas employs a radically different market model from the one the Pennsylvania legislature adopted in the Competition Act. Under the Texas model, SCB is not... merely an ‘option’ along with utility consolidated billing and dual billing. Rather, in Texas, distribution and transmission companies (i.e., ‘wires’ companies) are relieved of responsibility for billing, accounting, collection, and customer care functions, and those duties are placed on the Retail Electric Provider. Consequently, there is no need for redundant (EDC and EGS) billing,

²³ *See*, EAP Comments to the NRG Petition as well as the comments filed by the First Energy Companies Appendix B, p. 4; CAUSE-PA Answer pp.16,27-28, 32-33 & Comments, p.2; OCA Comments, p.19; PECO Comments, pp. 16, 23-24; PPL Comments, pp. 16-17; TURN *et al.* Comments, pp.6-8.

accounting, collection, and customer care infrastructure. Nor are the Texas equivalents of EDCs required to backstop Retail Electricity Providers in providing those functions.”²⁴

Pennsylvania EDCs would need to maintain their current billing systems to service those customers who remain on default service, for those EGSs unable or unwilling to perform SCB, and for any EGS that decides it no longer wants to offer SCB or serve customers in their territories. As Duquesne Light pointed out, “[a]llowing EGSs to choose whether to provide SCB or rely on EDC consolidated billing will [also] create variability of EDC cost recovery if unbundling of billing costs is required.”²⁵ The Office of Consumer Advocate pointed out that these suppliers also charge fees for most routine services handled as a part of distribution service costs today. One such supplier charges \$5.95 to process payment by telephone; \$5 for a copy of a bill; \$15 for the ability to pay on the account five or more times a month; and \$5 for each call necessary to remind the customer of past due amounts.²⁶ Costs would also be incurred to re-educate consumers about basic issues relative to the provision of electric service under this model, as confusion about a myriad of issues is outlined below.

Customer confusion. Customer confusion could arise as the entity responsible for service restoration and/or universal service programs no longer have the billing function. Customers might end up calling their EGS instead of their EDC if the power is out, creating not only confusion and frustration on the part of all parties, but perhaps creating safety issues as customers erroneously call the wrong entity to report emergency situations (e.g., downed power lines). Customers might also be confused as to who to call when they want to switch suppliers, start, move, or end service, or participate in customer assistance programs.

²⁴ Answer of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company to the NRG Petition at p. 6.

²⁵ Duquesne Light Answer and Comments to the NRG Petition, p. 20.

²⁶ OCA Comments to the NRG Petition, p. 14 fn.10.

Customers would also likely lose the benefit of a neutral point of contact in their EDC when it comes to navigating the retail marketplace. EDC representatives are currently required²⁷ to inform customers who call with questions about retail choice about available options (e.g., direct them to the PUC’s shopping website) such as the Standard Offer Program. If a customer’s main point of contact in the marketplace is now an EGS, one of the neutral means by which customers currently gather information to facilitate education, shopping, and switching will have been lost.

Collections and termination. If the termination function is to remain with the EDC as provided in statute,²⁸ the legality of a termination would be suspect if the customer owes money only to the EGS; that is, there is no cause for the EDC to terminate a customer if it is not owed any money from that customer. Furthermore, current Commission regulations do not allow for termination of non-payment of charges for non-basic service.²⁹ What is to happen if, under SCB or otherwise, a customer refuses to pay the portion of the bill related to charges for non-utility service? Neither the EDC nor the EGS would be able to lawfully terminate.

A similar situation arises with the notion of a “reverse” purchase-of-receivables (“POR”) program. Under the current elective EDC POR program, once the EDC purchases the EGS’s receivable for generation service, payment for that service is then owed to the EDC just as it would be for generation charges of default service. This purchase by the EDC then makes the failure to pay the receivable subject to termination for nonpayment, as the money is now owed to the EDC. In reverse, if an EGS were to purchase an EDC’s receivable, the customer does not owe any money to the EDC and therefore an EDC has no basis to terminate for non-payment.

²⁷ 52 Pa Code § 122 (9) See also, 52 Pa Code § 111.14 (c).

²⁸ 66 Pa. C.S. § 1406 and Pa Code § 56.321.

²⁹ 66 Pa. C.S. § 1406 (a)(1-4) and (c)(1)(i-v).

Furthermore, default service charges can include trackers, riders, or other charges (e.g., Act 129 energy efficiency programs, universal service program charges, distribution system improvement charges) that are complex, having annual or semi-annual reconciliation mechanisms. These billing components further complicate implementation of SCB options. Additional collection information issues – such as the timeliness and accuracy of payments, use of payment arrangements, or medical certificates exchanged between the EGS and the EDC during the termination process – create increased risk for customers, either in the form of inadvertent service termination or delays in service restoration.³⁰

Complaint resolution. Given the complexities outlined above, the resulting consumer confusion would likely result in unique challenges for customers to report and resolve grievances. EDC call center staff are trained in detailed bill explanation (explanation of rates and changes thereto, payment history, impacts from appliances or seasonal weather changes, budget plans, etc.); this may be lost in a SCB paradigm where the “whole picture” of a customer’s usage and bill component data is spread across multiple entities, resulting in risk of increased consumer complaints and dissatisfaction.

The Commission’s staff currently works closely with EDCs to ensure all appropriate protections for customers are in place and that their (both EDC and internal Commission) call centers are appropriately staffed and trained. Should EGSs be permitted to wade into essential EDC customer functions, even a small number would overwhelm Commission staff with double or even triple the amount of work dependent on how many suppliers or customers elect SCB.

The most sensitive customer data is currently held by a handful of well-regulated utilities.

³⁰ Furthermore, a 2009 petition affirmed the Commission lacks authority to require an EDC to purchase the accounts receivable of an EGS. See, *Petition of PPL Elec. Util. Corp. Requesting Approval of a Voluntary Purchase of Receivables Program and Merchant Function Charge*, Docket No. P-2009-2129502, 2009 WL 4087051 (Pa. PUC, Nov. 19, 2009).

In a SCB framework, the potential for dozens of entities to end up with a single customer's information is not unlikely and creates increased opportunity for security vulnerabilities or attacks to occur. The Commission does not have the level of regulatory authority over EGSs as it does over EDCs to ensure continued work toward increased cybersecurity. Furthermore, current Commission regulations require EDCs to give customers advance notice and opportunity to restrict the release of their information, such as telephone number and/or historic billing data.³¹ How would an EGSs respond to billing inquiries if the customer restricted the release of her historical billing data? How would the confidentiality of such data be maintained as customers switch between multiple EGSs?

Many of these unresolved issues illustrate the serious customer service and customer protection issues implicated by SCB or an alternative. EAP does not believe increased shopping numbers on their face are enough of a market benefit to outweigh the costs that would be incurred in such a seismic shift of the current electricity billing paradigm. As stated previously, raw shopping numbers themselves are not wholly indicative of the health of the Pennsylvania retail electric market. Even assuming customer benefit of some sort, a majority of the advantage inherent in SCB would accrue to larger suppliers at the expense of smaller suppliers; only those suppliers large enough to already have in place complex billing, accounting, and customer service infrastructure (or the capital to do so) would be able to participate in SCB, disadvantaging smaller EGSs and therefore harming the existing robust competitive Pennsylvania marketplace.

Likewise, the "possible alternatives" outlined in the Attachment to the Secretarial Letter are similarly flawed. Dual billing or utility consolidated billing is not currently keeping

³¹ 54 Pa. Code § 54.8(1).

suppliers from making customer offers related to “smart meter services” or time of use rates.

EAP strongly opposes the notion of opening access to EDC billing systems to EGSs or any other party given the inherent privacy, proprietary, and security concerns raised. Furthermore, the idea of creating a “third party billing agent” does not resolve or mitigate the issues raised above regarding the statutory mandates that the EDC retain certain customer service functions under both Chapter 14 and Chapter 28 of the Public Utility Code OR the costs, customer confusion and loss of consumer protections and low-income assistance programs associated with the changes necessary to make SCB work. EAP maintains that the only legal alternatives are the two laid out in the Competition Act, namely dual billing or utility consolidated billing.

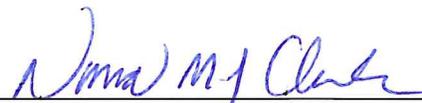
V. Conclusion.

The majority of the questions posited by the Commission regarding the logistics of implementation of supplier consolidated billing are akin to putting the “cart before the horse”. Pennsylvania law and Commission regulations do not presently allow for SCB nor do they allow for the delegation of statutorily mandated customer service functions from EDCs to suppliers as would be necessary to implement SCB. EAP appreciates the Commission’s continued willingness to thoroughly vet all ideas and suggestions so as to maintain a robust retail electric marketplace but faced with the lack of legal authority, EAP does not believe that a continued investigation into the alleged benefits or detriments of SCB is valuable and respectfully asks the Commission to end its consideration of this particular market enhancement.

Respectfully submitted,



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