



VIA EFILE

May 4, 2018

Secretary Rosemary Chiavetta
Pennsylvania Public Utility Commission
Commonwealth Keystone Building, Second Floor
400 North Street
Harrisburg, PA 17120

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

Dear Secretary Chiavetta,

Enclosed for filing, please find the *Joint Comments of the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA) and The Tenant Union Representative Network and Action Alliance of Senior Citizens of Greater Philadelphia (TURN et al.)* (collectively, the Low Income Advocates).

Please do not hesitate to contact me with any questions.

Respectfully,

A handwritten signature in blue ink, appearing to read "Elizabeth Marx".

Elizabeth Marx

Counsel for CAUSE-PA

Enclosures

CC:

Dan Mumford, Director of the Office of Competitive Market Oversight, dmumford@pa.gov
Parties to the NRG Petition at Docket P-2016-2579249, via email

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

En Banc Hearing on Implementation of
Supplier Consolidated Billing

:
:
:
:

Docket No. M-2018-2645254

**JOINT COMMENTS OF
THE COALITION FOR AFFORDABLE UTILITY SERVICES AND ENERGY
EFFICIENCY IN PENNSYLVANIA (CAUSE-PA)**

AND

**THE TENANT UNION REPRESENTATIVE NETWORK AND ACTION ALLIANCE OF
SENIOR CITIZENS OF GREATER PHILADELPHIA (TURN *ET AL.*)**

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I. INTRODUCTION

The Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA), together with the Tenant Union Representative Network and Action Alliance of Senior Citizens of Greater Philadelphia (TURN *et al.*) (collectively referred to herein as the Low Income Advocates), file these Comments in response to the Public Utility Commission's (Commission) March 27, 2018 Secretarial Letter. The Low Income Advocates have substantial concerns about the impact of Supplier Consolidated Billing (SCB) on the ability of households to access critical energy services on reasonable terms and conditions and consistent with the laws and regulations of the Commonwealth of Pennsylvania. We appreciate the opportunity to share these concerns with the Commission. The Low Income Advocates submit that the current paradigm of utility-consolidated billing (UCB) with a purchase of receivables program is effective, and levels the playing field for access to the competitive market. We urge the Commission to resist the call to radically depart from the statutorily prescribed billing, collection, and termination standards for essential utility services in Pennsylvania.

CAUSE-PA is a statewide unincorporated association of low-income individuals which advocates on behalf of its members to enable consumers of limited economic means to connect to and maintain affordable water, electric, heating and telecommunication services. CAUSE-PA membership is open to moderate- and low-income individuals residing in the Commonwealth of Pennsylvania who are committed to the goal of helping low-income families maintain affordable access to utility services and achieve economic independence and family well-being.

The Tenant Union Representative Network (TURN) is a not-for-profit corporation with many low and lower income members. TURN's mission is to advance and defend the rights and interests of tenants and homeless people. TURN's goal is to guarantee that all Philadelphians have

equal access to safe, decent, accessible, and affordable housing. Action Alliance of Senior Citizens of Greater Philadelphia (Action Alliance) is a not-for-profit corporation and membership organization whose mission is to advocate on behalf of senior citizens on a wide range of consumer matters vital to seniors, including utility service. As part of advancing the respective interests of tenants and seniors, TURN and Action Alliance advocate on behalf of low and moderate income residential customers of public utilities in Philadelphia in proceedings before the PUC.

On behalf of our clients, we are requesting the opportunity to testify before the Commission *En Banc* at the June 14, 2018 hearing. CAUSE-PA and TURN *et al.* are well-known and respected advocates for Pennsylvania’s low income utility consumers, and have first-hand knowledge, experience, and expertise with the intricacies of Chapters 14 and 56; the mandates of the Electricity Generation Customer Choice and Competition Act (Choice Act); and the Universal Service program design in each utility service territory across the state. SCB crosses each of these critical topics, as discussed in further detail below. The Low Income Advocates not only have expertise on this area of law, we also have substantial experience with the impact of these laws, policies, and procedures on low income populations, as well as the ability of the competitive market to serve their unique needs.

II. BACKGROUND

On March 27, 2018, the Commission issued a Secretarial Letter, notifying interested parties that the Commission would hold an *en banc* hearing on Thursday, June 14, 2018 at 1:00 pm, and inviting interested parties to submit comments by May 4, 2018. The stated purpose of the hearing was to address three 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.”¹

The Secretarial Letter was issued following the Joint Motion of Chairman Gladys M. Brown and Commissioner Norman J. Kennard to Deny the Petition of NRG Energy, Inc. for Implementation of Electric Generation Supplier Consolidated Billing (SCB). NRG’s petition failed because it “lack[ed] sufficient detail to substantiate a definitive determination on both the policy prudence and legality of numerous pivotal issues,” but the Commission nonetheless expressed a desire to better understand the prudence and legality of SCB.²

The Joint Motion recognized that the Commission “has a long history of deliberating SCB,” but noted that the Commission had not squarely addressed the legality³ Indeed, prior to the NRG proceeding, the Commission assessed and rejected SCB as part of its comprehensive Retail Market Investigation, and instead opted to implement revisions to the Utility Consolidated Bill (UCB) to more prominently feature the supplier’s information.⁴ In doing so, the Commission explained:

We believe that [the joint bill] approach offers several advantages over creating an SCB environment at this time. As we have noted, we fully expect that this approach will require fewer resources than would be required to implement an SCB environment. In addition, this approach does not raise the consumer protections concerns expressed by OCA, PULP, PCADV and others, since we are not changing the entity that is billing and collecting from the consumers.⁵

¹ En Banc Hearing on Implementation of Supplier Consolidated Billing, Secretarial Letter, Docket M-2018-2645254 (March 27, 2018).

² Petition of NRG Energy, Inc. for Implementation of Electric Generation Supplier Consolidated Billing, Joint Motion of Chairman Gladys M. Brown and Commissioner Norman J. Kennard, Docket No. P-2016-2579249 (Jan. 18, 2018).

³ Id.

⁴ Investigation of Pennsylvania’s Retail Electricity Market: End State of Default Service, Final Order, Docket No. I-2011-2237952, at 68 (Feb. 14, 2013).

⁵ Id.

Ultimately, changes to the UCB were ordered in May 2014, just four years ago.⁶ To the Low Income Advocates' knowledge, the impact of the changes to UCB have not been evaluated to assess whether the efforts were successful or whether additional, incremental changes may be warranted.

The Low Income Advocates were active in the NRG proceeding, as well as the Commission's Retail Market Investigation and the subsequent Joint Bill proceeding.⁷ We were then, and remain now, strongly opposed the introduction of SCB in Pennsylvania. As we explain at length below, SCB is legally unsound, dangerous for consumers, and unjustifiably costly.

III. COMMENTS

A. Supplier Consolidated Billing is not permitted under the Public Utility Code.

SCB is not authorized by law and directly conflicts with a number of statutory provisions. Significant legislative changes to multiple chapters within the Pennsylvania Public Utility Code would be necessary to allow SCB to proceed in Pennsylvania. These legal barriers pose an insurmountable hurdle for the Commission to act without legislative change. Nevertheless, as discussed in later sections, the Commission should reject SCB notwithstanding the lack of statutory authority, as it is not in the public interest.

⁶ Investigation of Pennsylvania's Retail Electricity Market: Joint Electric Distribution Company – Electric Generation Supplier Bill, Final Order, Docket No. M-2014-2401345 (May 23, 2014).

⁷ See Petition of NRG Energy, Inc. for Implementation of Electric Generation Supplier Consolidated Billing, Petition to Intervene and Answer of CAUSE-PA, Comments of CAUSE-PA, and Reply Comments of CAUSE-PA, Docket No. P-2016-2579249 (filed Jan. 27, 2017, Jan. 23, 2017, and Feb. 22, 2017, respectfully); Petition of NRG Energy, Inc. for Implementation of Electric Generation Supplier Consolidated Billing, Comments of TURN et al. and Reply Comments of TURN et al., Docket No. P-2016-2579249 (Jan. 23, 2017 and Feb. 22, 2017, respectfully).

- i. Supplier Consolidated Billing is inconsistent with the mandates of the Electric Generation Customer Choice Act contained in Chapter 28 of the Public Utility Code.*⁸

SCB directly conflicts with explicit provisions of the Electric Generation Customer Choice Act (Choice Act), which requires electric distribution companies (EDCs) to continue performing essential consumer service functions, including billing services. Moreover, SCB would undercut the Commission’s obligation under the Choice Act to ensure that universal service programming is cost-effective, available, and adequately funded to ensure that all consumers, regardless of income, are able to access affordable utility services.⁹ Approval of SCB would, thus, violate multiple provisions of the Choice Act.

First, section 2807(c) speaks directly to the respective billing obligations of EDCs, compared to those of suppliers. While the provision allows for separate (dual) billing, wherein a consumer could choose to receive a bill from both their supplier and their EDC, it otherwise allows EDCs to provide UCB when a consumer does not otherwise elect to receive a dual bill:

Customer billing. – Subject to the right of an end-use customer to choose to receive separate bills from its electric generation supplier, the electric distribution company may be responsible for billing customer for all electric services, consistent with the regulations of the commission, regardless of the identity of the provider of those services.¹⁰

Importantly, use of the term “may” in this section *does not* grant implicit authority for suppliers to also perform consolidated billing functions. Indeed, the section only contemplates two forms of billing: dual billing or UCB. If the legislature intended to allow suppliers to bill for EDC services,

⁸ 66 Pa. C.S. §§ 2801 et seq.

⁹ See 66 Pa. C.S. §§ 2802, 2804, 2807(c)-(d)

¹⁰ 66 Pa. C.S. § 2807(c). In addition, the subsections that follow this mandate set forth other required attributions of customer billing, including mandatory unbundling of all charges: “Customer bills shall contain unbundled charges sufficient to enable the customer to determine the basis for those charges.” 66 Pa. C.S. § 2807(c)(1). As discussed below in subsections A.ii and A.iii, Chapter 14 only applies to “public utilities” – which includes EDCs, but excludes suppliers. Thus, if SCB were to proceed, the Commission would be without authority or oversight to regulate consumer billing to ensure that rates and charges are not bundled.

it could have done so. It did not. Instead, the legislature set forth additional requirements for UCB, including a requirement that if services are provided by an entity other than the EDC, that entity “shall furnish to the electric distribution company billing data sufficient to enable the electric distribution company to bill customers.”¹¹ Again, if the legislature intended to facilitate or otherwise authorize SCB, it could have done so by imposing the same requirement on the EDC to provide billing data to suppliers. The absence of such authority indicates the legislature neither contemplated nor authorized SCB.

The very next provision of the Choice Act – section 2807(d) – further eliminates any doubt about whether SCB may be implicitly authorized under section 2807(c). Indeed, all consumer service functions – which necessarily includes billing, collections, and termination functions – are expressly delegated to EDCs in Section 2807(d):

Consumer protections and customer service. – **The electric distribution company shall continue to provide customer service functions consistent with the regulations of the commission, including meter reading, complaint resolution and collections. Customer services shall, at a minimum, be maintained at the same level of quality under retail competition.**

- (1) The commission shall establish regulations to ensure that an electric 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) The commission shall establish regulations to require each electric distribution company, electricity supplier, marketer, aggregator and broker to provide adequate and informed choices regarding the purchase of all electricity services offered by that provider. Information shall be provided to consumers in an understandable format that enables consumers to compare prices and services on a uniform basis.
- (3) Prior to the implementation of any restructuring plan under section 2806 (relating to implementation, pilot programs and performance-based rates), each electric distribution company, in conjunction with the commission, shall implement a consumer education program informing

¹¹ 66 Pa. C.S. § 2807(c)(2).

customers of the changes in the electric utility industry. The program shall provide consumers with information necessary to help them make appropriate choices as to their electric service. The education program shall be subject to the approval by the commission.¹²

These detailed legislative provisions impose a host of very specific obligations on EDCs for billing, education, and other responsibilities to ensure that customers are well informed about the competitive market, but they are silent about similar obligations of suppliers. This silence is telling: EDCs must continue to perform the consumer functions inherent to the billing entity, and the legislature did not contemplate a paradigm which would authorize suppliers to conduct the sensitive functions of billing, collections, and terminations.

Furthermore, section 2807(f) imposes a host of “consumer service functions” of the EDC that are not readily severable from billing functions from the “consumer service functions” otherwise contemplated to remain with the EDC. Consumers naturally contact the billing agent with a broad range of problems, including service quality, charges, collections efforts, privacy concerns, meter issues, termination, and other critical questions or issues a consumer may experience with regard to their utility service. If an EDC were to continue performing all “consumer service functions” – without also fulfilling the billing function – consumers would experience a great deal of confusion, having to overcome significant and frustrating obstacles to reach a resolution of their issues. For example, if a consumer received a termination notice from their EDC, and first contacted their supplier because it is the company who bills them for service, the consumer would be told they must contact the EDC to address the termination issue – adding significant time and frustration to the consumer seeking resolution of a potentially life-threatening termination of utility service.¹³ Such a result would appear to directly violate section

¹² 66 Pa. C.S. § 2807(d) (emphasis added).

¹³ Of course, suppliers are not required to report on or comply with call and response times or dispute handling functions, so their initial call to the supplier could be quite long and protracted.

2807(f), which requires that all consumer service functions “be maintained at the same level of quality under retail competition.”¹⁴

As a matter of statutory construction, the language of the Choice Act is clear and unambiguous, and must be implemented in accordance with this plain meaning.¹⁵ That said, were an ambiguity to arise, the legislative history affirms the General Assembly’s intention that traditional utility customer service functions – including billing - continue to be exercised exclusively by the EDC. When the Choice Act was initially passed, the discussion on the House floor clearly evidenced an intent to require that EDCs – not suppliers – perform all consumer service functions, including billing:

Mr. THOMAS. Thank you. Now, if we can turn to that section on consumer protections, section 2807. You had mentioned earlier that this bill provides the same myriad of protections that exist in the current law. This section seems to imply that there are changes being made to the traditional obligation which existed between utility companies and the customer. Is that correct, or am I interpreting this wrong?

Mrs. DURHAM. The same protections are still in the bill; that is correct.

Mr. THOMAS. So I should not give any credence to this language which says that the traditional obligations are being changed?

Mrs. DURHAM. Mr. Speaker, could you give me specifically the line and page you are referring to?

Mr. THOMAS. Well, I am reading from, I guess, the analysis or out of the pre-session report, and it says that section 2807 changes the traditional obligation-to-serve requirement to an obligation to deliver for the electric distribution companies, and it talks about a modified obligation.

Mrs. DURHAM. Mr. Speaker, the difference is, you are going to have generation and you are going to have transmission and distribution. The consumer will be dealing directly with the transmission and distribution, and that stays the same, and that is also still regulated. And the duty to serve is still there.

Mr. THOMAS. Thank you.¹⁶

¹⁴ 66 Pa. C.S. § 2807(d).

¹⁵ 1 Pa. C.S §1921(b).

¹⁶ Pa. House Journal, at 2566 (November 25, 1996).

This legislative history demonstrates the intention of the General Assembly to maintain the paradigm wherein the consumer deals “directly” with the EDC, and the EDC continues to uphold its obligations to perform all consumer services functions, including billing.

Finally, as explored more thoroughly below in section B.ii., SCB is inconsistent with the universal service requirements of the Choice Act, and would erode the stability, effectiveness, availability, and cost-effectiveness of universal service programs. The Choice Act, in relevant part, explicitly provides:

Electric service is essential to the health and well-being of residents, to public safety and to orderly economic development, and electric service should be available to all customers on reasonable terms and conditions.¹⁷

The Commonwealth must, at a minimum, continue the protections, policies and services that now assist customers who are low-income to afford electric service.¹⁸

There are certain public purpose costs, including programs for low-income assistance ... which have been implemented and supported by public utilities’ bundled rates. **The public purpose is to be promoted by continuing universal service and energy conservation policies, protections and services,** and full recovery of such costs is to be permitted through a nonbypassable rate mechanism.¹⁹

Programs under this paragraph shall be subject to the administrative oversight of the commission which will ensure that the programs are operated in a cost-effective manner.²⁰

SCB is incompatible with federal and utility universal service programs, and the Commission’s regulations and policies which implement these programs to assist low income households. As addressed in full below, since SCB would erode the accessibility, cost-effectiveness, and funding

¹⁷ 66 Pa. C.S. § 2802(9).

¹⁸ 66 Pa. C.S. § 2802(10) (emphasis added).

¹⁹ 66 Pa. C.S. § 2802(17) (emphasis added).

²⁰ 66 Pa. C.S. § 2804(9).

for universal services and other low-income energy assistance programs, it directly contradicts the provisions of the Choice Act outlined above.

As discussed in further detail in subsection A.iii, the Commission may not delegate the EDC's explicit duties under the Choice Act to a supplier. Doing so would be outside of the Commission's express authority to implement the requirements of the Choice Act, and such an interpretation would not be subject to deference by the Commonwealth Court.

ii. Suppliers are not subject to the critical billing, collections, and termination standards contained in Chapter 14 of the Public Utility Code and Chapter 56 of the Commission's regulations.

Not only does SCB directly conflict with the Choice Act, it also conflicts with critical billing, collections, and termination standards contained in Chapter 14 of the Public Utility Code and Chapter 56 of the Commission's regulations. Under current law, suppliers are not subject to the requirements contained in Chapters 14 and 56. Importantly, as discussed in subsection A.iii below, the Commission cannot cure these legal defects by waiving or otherwise delegating those requirements to suppliers to allow for SCB.

Chapter 14 of the Public Utility Code and Chapter 56 of the Commission's regulations apply only and explicitly to public utilities, not suppliers.²¹ Chapter 14 defines a public utility as:

“Public utility.” Any electric distribution utility, natural gas distribution utility, small natural gas distribution utility, steam heat utility, wastewater utility or water distribution utility in the Commonwealth that is within the jurisdiction of the Pennsylvania Public Utility Commission.²²

Chapter 56 defines a public utility as: “An electric distribution utility, natural gas distribution utility or water distribution utility in this Commonwealth that is within the jurisdiction of the

²¹ 66 Pa. C.S. § 1401 (“This chapter relates to protecting responsible customers of **public utilities.**” (emphasis added)).

²² 66 Pa. C.S. § 1403.

Commission.”²³ The definition contemplates two criteria: (1) that the public utility is a distribution utility, and (2) that a public utility fall within the jurisdiction of the PUC. Suppliers meet neither of those provisions.

Every crucial provision of Chapter 14, and consequently of Chapter 56, is expressly applied to **public utilities**, including:

- Cash Deposits²⁴
- Payment Arrangements²⁵
- Termination of Service²⁶
- Winter Protections²⁷
- Medical Protections²⁸
- Reconnection of Service²⁹
- Surcharge Prohibitions³⁰
- Late Payment Fee Rules³¹
- Consumer Complaint Procedures³²
- Universal Service Referrals³³
- Automatic Meter Reading³⁴
- Reporting Requirements³⁵
- Protections for Victims of Domestic Violence³⁶

These provisions each describe, in detail, the duties, prohibitions, responsibilities, and requirements which apply explicitly – by name – to “public utilities,” not suppliers.

Important to this analysis is the fact that Chapter 14 makes reference to suppliers.³⁷ Thus, the legislature clearly contemplated the competitive market – and suppliers’ role in that market –

²³ 52 Pa. Code § 56.2.

²⁴ 66 Pa. C.S. §§ 1404, 1404(a.1).

²⁵ 66 Pa. C.S. § 1405.

²⁶ 66 Pa. C.S. § 1406.

²⁷ 66 Pa. C.S. § 1406(e).

²⁸ 66 Pa. C.S. § 1406(f).

²⁹ 66 Pa. C.S. 1407(a)-(b).

³⁰ 66 Pa. C.S. § 1408.

³¹ 66 Pa. C.S. § 1409.

³² 66 Pa. C.S. § 1410.

³³ 66 Pa. C.S. § 1410.1.

³⁴ 66 Pa. C.S. § 1411.

³⁵ 66 Pa. C.S. § 1415.

³⁶ 66 Pa. C.S. § 1417; see also 56 Pa. Code Ch. 56, Subchapters L-V.

³⁷ See, e.g., 66 Pa. C.S. § 1403.

in passing Chapter 14, and understood that it could assign the duties therein to suppliers, but nevertheless declined to extend the Chapter to either allow or require suppliers to conduct the sensitive and high-stakes operations of billing, collections, and termination of residential utility consumers.³⁸ As explained in subsection A.iii, this fact is instructive, and prevents the Commission from delegating to suppliers the express duties of the public utilities mandated by Chapter 14.

It would not be appropriate for suppliers to simply refer consumers to call their public utility to address matters covered in Chapter 14. Billing is not a stand-alone consumer function, and cannot be excised from the billing, collections, and termination standards in Chapter 14.

Take, for example, a consumer who is experiencing difficulty making full payment on a SCB. That consumer would naturally call the supplier first in an attempt to work out a resolution because the supplier is the entity listed on their bill. Suppliers' call centers are unregulated, and are not subject to the Commission's quality of service benchmarks and standards or other quality control provisions.³⁹ In fact, there is nothing to prohibit suppliers from taking actions directly contrary to the Commission's standards, failing to appropriately track and survey customer contacts or utilizing the call center to market ancillary goods or services, or otherwise impede in resolution of customer concerns. Under current law, public utilities are required to offer reasonable payment terms to a customer and to refer economically vulnerable customers to universal service programs.⁴⁰ Suppliers have no such obligation. Thus, after facing inadequate and/or inconsistent

³⁸ 66 Pa. C.S. § 1403.

³⁹ See 52 Pa. Code §§ 54-151-.156; see also Pa. PUC, BCS, 2016 Customer Service Performance Report (Aug. 2017), http://www.puc.state.pa.us/General/publications_reports/pdf/Customer_Service_Perform_Rpt2016.pdf. Section 54.151 specifically provides that the purpose of the regulations is to “develop uniform measurement and reporting **to assure that the customer services of the EDCs are maintained, at a minimum, at the same level of quality under retail competition.**” 52 Pa. Code § 54.151 (emphasis added).

⁴⁰ 66 Pa C.S. § 1401.1

customer service, as well as potentially lengthy call wait times, the financially vulnerable consumer may or may not be told to contact the public utility or appropriately advised regarding the availability of dispute procedures under the Commission's regulations. Ultimately, such customer may or may not find an appropriate resolution of their issue with a supplier, and may never be effectively directed under Commission regulations.

Ultimately, if the consumer is not appropriately referred, the public utility would be unable to fulfill its Chapter 14 duties, which include the duty to refer payment troubled consumers to universal service programs and to attempt to collect on debt.⁴¹ Similarly, a customer with grounds for a dispute or complaint may never receive notification of their rights from a supplier.⁴² Under SCB, who would bear the responsibility if a consumer's service is unjustly terminated? If a consumer is never referred to the public utility, would the public utility nonetheless be responsible for failure to fulfill Chapter 14 requirements, such as the winter moratorium and the protections for victims of domestic violence and medically vulnerable households? Absent a statutory scheme imposing clear legal responsibility on suppliers, and vesting the Commission with adequate enforcement authority, SCB creates a clear risk that consumers would suffer irreparable losses, without notice and opportunity to avoid the risks. Even if the consumer were properly referred to the public utility, their added time, energy, and potential expenditures to address their payment issue represent unavoidable harms resulting from SCB. Time away from work during business hours can be especially challenging for low wage and hourly employees, who are often prohibited or constrained from making calls during work hours. Low income consumers, who are far more

⁴¹ See id.

⁴² Cf. 52 Pa. Code §56.97(b)(1) (requiring notice of dispute rights and complaint procedures to be provided by public utilities).

likely to experience payment issues,⁴³ frequently lack access to stable telecommunications services, making multiple calls and potentially long wait times of particular concern. Indeed, under an SCB paradigm, by the time a consumer reaches the public utility to address their payment issue, the consumer's service may be subject to termination.

Policy considerations, such as the broader impact of SCB on low income and vulnerable Pennsylvanians, are discussed in greater detail in Section B. Suffice to say, the implementation of SCB in Pennsylvania would weaken the ability of public utilities to comply with Chapter 14 and would undermine the effectiveness of consumer protections contained therein, causing significant and substantial harm to consumers.

Chapter 14 – which governs the billing, collections, and termination standards, does not extend to suppliers. As such, absent clear legislative authorization and specific Commission enforcement authority, SCB must fail. As discussed in further detail in subsection iii, the Commission may not delegate the explicit duties of public utilities to a supplier. Doing so would contravene the Commission's express obligations to implement the requirements of Chapter 14.

iii. The Commission is obligated to ensure that the requirements contained in the Public Utility Code are fulfilled by public utilities, which it cannot do by delegating those requirements to suppliers.

As discussed at length above, Chapters 28 and 14 of the Public Utility Code impose unambiguous duties, obligations, and requirements directly on public utilities. Implementation of SCB would interrupt and/or usurp those obligations for reasons unsupported by sound utility

⁴³ **Approximately 57% of payment-troubled residential electric consumers and 75% of payment-troubled natural gas customers are classified as “confirmed low income” (verified income which does not exceed 150% of the Federal Poverty Level).** See Pa. PUC, BCS, 2016 Report on Universal Service Programs & Collections Performance, at 8-9 (Oct. 2017). These percentages are likely much higher, given the significant disparity between the estimated low income population and the confirmed low income population. *Id.* at 6-8. Utilities generally require a household to have recently submitted verified income documentation to be classified as “confirmed low income.”

policy. Indeed, the obligations imposed in Chapters 28 and 14 are not waivable – nor are they discretionary.

Proponents of SCB may nonetheless argue that the Commission may authorize a supplier to act in some expanded capacity as the party responsible for directly billing EDC service, so long as it ensures that **someone** satisfies the requirements imposed on EDCs through these enactments. The hypothetical argument that suppliers could be substituted for an EDC for purpose of meeting the statutory obligations imposed by the Public Utility Code is without merit and is inconsistent with closely analogous recent precedent from the Commonwealth Court.

In Section 4 of Act 201 of 2014 (the legislative Act which promulgated Chapter 14), the legislature explicitly declared that Chapter 14 supersedes inconsistent laws: “The addition of 66 Pa.C.S. Ch. 14 **supersedes any inconsistent requirements imposed by law** on public utilities.”⁴⁴ Section 6 then sets forth the parameters of Commission authority to implement the rigorous requirements of Chapter 14:

Section 6. The Pennsylvania Public Utility Commission shall amend the provisions of 52 Pa. Code Ch. 56 to comply with the provisions of 66 Pa. C.S. Ch. 14 and may promulgate other regulations to administer and enforce 66 Pa. C.S. Ch. 14, **but the promulgation of any such regulation shall not act to delay the implementation or effectiveness of this chapter.**⁴⁵

As established above, SCB is inconsistent with the requirements of Chapter 14 of the Public Utility Code and Chapter 56 of the Commission’s regulations, and would diminish the effectiveness of the provisions contained therein – in direct violation of the authorizing and implementation language in Sections 4 and 6 of Act 201 of 2004.

⁴⁴ Act 201 of 2004, PL 1578, Section 4(1), <http://www.legis.state.pa.us/cfdocs/legis/li/uconsCheck.cfm?yr=2004&sessInd=0&act=201>.

⁴⁵ Act 201 of 2004, PL 1578, Section 6, <http://www.legis.state.pa.us/cfdocs/legis/li/uconsCheck.cfm?yr=2004&sessInd=0&act=201>.

First, to the extent an EGS contract for SCB would require a customer to agree to allow a supplier to fulfill the requirements of Chapter 14, and effectively waive the imposition of those requirements on the public utility, such waiver would be void. It is well established that “a statutory right conferred on a private party, but affecting the public interest, may not be waived or released if such waiver or release contravenes the statutory policy.”⁴⁶ As discussed in greater detail throughout these Comments, waiver of a consumer’s statutory rights would directly contravene the express goals of Chapter 14 (i.e., to impose equitable rules for consumer billing, collection, and termination procedures) by allowing suppliers to impose inconsistent and/or impermissible rules and standards without any accountability.⁴⁷ Without continued and full effectiveness of the consumer protections contained in Chapter 14, individual consumers, their families, and the surrounding community would experience substantial harm. Such a result would contradict the Commission’s regulatory authority set forth in Chapter 14, which constrains the Commission to implement and effectuate the requirements of Chapter 14.⁴⁸

Similarly, there is no authority on which the Commission could rely to permit the delegation of the requirements of Chapter 14 from public utilities (here, EDCs) to suppliers. The Commonwealth Court recently examined an analogous proposal, which proposed to delegate the statutory obligation of a public utility to offer Time of Use rates, pursuant to the Choice Act, to a supplier.⁴⁹ Weighing this proposal against the clear statutory language of the Choice Act, the Commonwealth Court struck down a proposal that would effectively substitute an EGS for an EDC for purposes of fulfilling the provisions Time of Use provisions of the Choice Act. In *Dauphin*

⁴⁶ See *Brooklyn Sav. Bank v. O’Neil*, 324 U.S. 697, 704 (1945).

⁴⁷ 66 Pa. C.S. § 1402 (Declaration of Policy.)

⁴⁸ *Id.*

⁴⁹ *Dauphin County Indust. Dev. Auth. v. Pa. PUC*, 123 A.3d 1124, 1134-35 (Pa. Commw. Ct. 2015), *appeal denied* 140 A.3d 13 (Pa. 2016).

County Industrial Development Authority v. Pa. PUC, the Commonwealth Court held that the Commission is not entitled to “substitute” an unregulated entity for a regulated entity. The statutory requirement imposed on the regulated entity is non-transferrable:

The Commission’s interpretation of Section 2807(f) is not entitled to deference. Unlike the statute at issue in *Popowsky*, there is no ambiguity in the Competition Act’s mandate. ... Our rules of statutory construction require that words and phrases be read according to their common and approved usages. 1 Pa. C.S. §1903(a). The legislature’s unqualified use of the words “shall offer” in Section 2807(f)(5) places the burden on the default service provider, in this case PPL, to offer Time-of-Use rates to customer-generators. **The legislature knows the difference between a default service provider and an Electric Generation Supplier. Its decision to place the onus on default service providers was neither accidental nor arbitrary.**⁵⁰

Here, there is likewise no ambiguity with regard to which entity bears the responsibilities of compliance with Chapter 14: Each provision explicitly and unambiguously applies to “public utilities,” not suppliers. The same is true for Chapter 28, which imposes on EDCs the duty to “provide customer service functions consistent with the regulations of the commission.”⁵¹ As in *Dauphin County Industrial Development Authority*, the legislature’s “decision to place the onus” on public utilities “was neither accidental nor arbitrary,”⁵² and any action by the Commission to delegate those duties to suppliers – voluntarily or otherwise – is not entitled to deference.

It would also be unworkable to approve SCB based on a suppliers’ assertion of voluntary compliance with the requirements of Chapters 14. While certain suppliers may willingly offer to voluntarily comply with these rules in exchange for the Commission’s blessing to implement SCB, voluntary compliance would present a thorny issue if a supplier’s compliance was called into question in a complaint by a consumer or the Commission’s Bureau of Investigation and Enforcement. It is a dubious conclusion that the Commission would have authority to fully enforce

⁵⁰ Id.

⁵¹ 66 Pa. C.S. § 2807(d).

⁵² Id.

these provisions against a group of suppliers who volunteer to follow the rules, but are not governed by the applicable statute.

Chapter 14 was most recently updated, amended, and reauthorized less than four years ago, in December 2014. If the legislature had intended to allow suppliers to conduct billing, collections, and/or termination functions, it certainly could have amended Chapter 14 to do so. It did not. The Commission may not now – just over three years after the legislature reauthorized Chapter 14 – implement regulatory approval measures which would substitute suppliers for public utilities where such substitution is without any legal basis under Chapters 14 and 28. Under the current legislative paradigm contained in Chapters 14 and 28 of the Public Utility Code, SCB simply does not conform. The Commission may not use its power to otherwise delegate the responsibilities of EDCs to unregulated suppliers, nor may it in any way authorize the substitution of an unregulated party for a regulated party for purposes of satisfying statutory mandates. As such, the Commission must reject SCB.

B. Supplier Consolidated Billing is not in the public interest.

As argued above, SCB is not permissible under Pennsylvania law. That said, even if it were permissible, SCB is not in the public interest because it would be harmful to low and moderate income families in Pennsylvania who already struggle to keep service connected under the current paradigm of public utility billing, collection, and termination standards, and would further impede efforts to implement effective universal service programming capable of ensuring energy affordability. Moreover, if authorized, SCB would blur the demarcation of responsibility between public utilities and suppliers, leading to significant confusion and potentially wide-spread

abuses. Ultimately, SCB would harm the competitive market and consumers alike – at a great cost to all ratepayers⁵³ – and should not be authorized in Pennsylvania.

i. Supplier Consolidated Billing harms competition.

As the Commission noted in its End State Final Order, “[i]t is unclear how many suppliers would be willing to forgo the ease and convenience of utility consolidated billing under POR, where they have no bad debt risk, to opt to an SCB model where they assume the full burden of billing, collections and bad debt.”⁵⁴ Indeed, smaller suppliers likely do not have the internal capacity to offer SCB, and have raised concerns that SCB would harm competition.⁵⁵

Proponents of SCB may seek to fundamentally change how charges to customers are presented in bills and other notices, obscuring important information about the price of service customers are charged. For example, NRG made this concern clear in its 2016 Petition, seeking permission for a number of anti-competitive conventions.⁵⁶ In its Petition, NRG requested to consolidate EDC charges in its bill presentment, thereby obscuring the price to compare by charging a single, undesignated cost for distribution and generation costs.⁵⁷ This would complicate the ability for a consumer to freely choose a new supplier, and obfuscates the ability of the consumer to compare supplier’s terms against the price to compare or other offers in the competitive market. Similarly, in an attempt to ease specific concerns about the continued ability for consumers to access reasonable payment arrangements, as required by Chapter 14, NRG proposed that suppliers offering SCB be allowed to implement a blocking mechanism, which

⁵³ The many and varied costs associated with SCB is discussed in Section C.

⁵⁴ Investigation of Pennsylvania’s Retail Electricity Market: End State of Default Service, Final Order, Docket No. I-2011-2237952, at 67-68 (Feb. 14, 2013) (hereinafter End State Final Order).

⁵⁵ See Petition of NRG Energy, Inc. for Implementation of Electric Generation Supplier Consolidated Billing, Answer and Comments of Calpine Energy Solutions, LLC, Docket No. P-2016-2579249 (filed Jan. 23, 2017).

⁵⁶ See Petition of NRG Energy, Inc. for Implementation of Electric Generation Supplier Consolidated Billing, at paras. 31, 37, 48-50, Docket No. P-2016-2579249 (filed Dec. 8, 2016).

⁵⁷ See id. at para. 48

would prevent those with a supplier-provided payment arrangement from switching to a new supplier until the terms of the payment arrangement are fulfilled.⁵⁸ Such a move would hold the consumer captive at a potentially unaffordable rate. Calpine Energy Solutions, LLC – a prominent Pennsylvania supplier – noted in response to NRG’s proposal to implement a blocking mechanism that “[h]olding a retail customer hostage until the customer has paid his or her past due bill in full circumvents and ignores existing market structures, shifts the risk to Pennsylvania consumers, and is the antithesis of competition.”⁵⁹

The Commission is currently engaged in a rulemaking to tighten supplier marketing regulations, and allow consumers to conduct a true rate comparison – including all applicable fees and service costs.⁶⁰ These efforts have become increasingly necessary to allow consumers to reasonably assess competitive offers in light of widespread and well-documented pricing abuses, which have led to undeniable confusion and dissatisfaction with the marketplace.⁶¹ Authorizing SCB would enlarge those abusive practices, allowing suppliers to obfuscate their prices, hide the price-to-compare, and otherwise make it difficult for consumers to assess offers.

⁵⁸ See *id.* at para. 37(e).

⁵⁹ Petition of NRG Energy, Inc. for Implementation of Electric Generation Supplier Consolidated Billing, Answer and Comments of Calpine Energy Solutions, LLC, Docket No. P-2016-2579249, at 7 (filed Jan. 23, 2017).

⁶⁰ See Rulemaking Regarding Electricity Generation Customer Choice, 52 Pa. Code Chapter 54, Notice of Proposed Rulemaking Order, Docket No. L-2017-2628991 (order entered Dec. 7, 2017).

⁶¹ A recent Public Input Hearing, held as part of the First Energy Companies’ current Default Service Proceeding, is instructive of the widespread negative shopping experiences. In that proceeding, about 350 consumers attended the hearing, 66 of whom testified under oath. All of the testifiers expressed outrage at a proposal to add a fee to default service to coerce customers to shop, and most shared personal stories about their negative experiences in the market. See Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company for Approval of their Default Service Programs, Docket Nos. P-2017-2637855 *et al.*, Public Input Hearing Tr. pp. 63-306. Of course, several recent lawsuits against a number of competitive suppliers over marketing abuses are also instructive. See Alex Wolf, Law 360, Respond Power Pays \$5.2M to Settle Pa. Price Spike Suits (Aug. 11, 2016), <https://www.law360.com/articles/827574/respond-power-pays-5-2m-to-settle-pa-price-spike-suits>; Emily Field, Law 360, HIKO Energy Paying \$1.6M to End Pa. Price Spike Suit (May 4, 2015), <https://www.law360.com/articles/651172/hiko-energy-paying-1-6m-to-end-pa-price-spike-suit>; Emily Field, Law 360, Pa. Utility to Pay \$2.3M to End Price Spike Suit (March 25, 2015), <https://www.law360.com/articles/635486/pa-utility-to-pay-2-3m-to-end-price-spike-suit>.

In the past, suppliers have argued that they would like SCB in order to bill and market so called “value added” services to the bills of utility customers. While there may be a segment of the population who wish to be billed for unrelated products on their utility bill,⁶² this in and of itself is **not** a reason for the Commission to authorize SCB.

The stated purpose of the Choice Act is “to create direct access by retail customers to the competitive market for the *generation of electricity*.”⁶³ Indeed, the primary legislative purpose was to permit competitive forces to effectively control “*the cost of generating electricity*,” for the benefit of all customer classes, while ensuring that such service (essential to the health and well-being of residents) remains available to all customers on reasonable terms and conditions.⁶⁴ On the other hand, there is no mention of “value added” services anywhere in the Choice Act.

The non-commodity products and services often referenced by those who support SCB are not related to the generation of electricity, and are therefore not a part of the competitive market for retail electric supply authorized by the Choice Act. These charges drive up the cost of utility service, and – as discussed in section B.ii – work to diminish the effectiveness of critical universal service programming. Any concern about the ability to bill for these services on a consumer’s consolidated bill is without legislative foundation in the Choice Act and has no bearing on electric generation choice and competition. The goal of the Choice Act is to drive financial savings for electric service – not to facilitate the sale of unrelated products and services, such as thermostats, security systems, and HVAC systems.

⁶² It should be noted that, prior to proceeding with consideration of SCB, the Commission should determine whether there is sufficient interest from consumers to justify the substantial costs. See below, section C, regarding the costs associated with SCB, and section D, which discusses the need to fully investigate and assess those costs.

⁶³ 66 Pa. C.S. § 2802(12).

⁶⁴ 66 Pa. C.S. § 2802(5), (9), (10), (12).

ii. Supplier Consolidated Billing is incompatible with critical utility assistance programming for low income households.

The structure of SCB is incompatible with critical universal service programming, and directly contradicts the obligations of public utilities and the Commission to ensure that such programming is cost-effective, available, and adequately funded to ensure that all Pennsylvanians can afford basic utility services. Adding yet another intermediary between the needy household and available assistance programs would delay or otherwise deter enrollment, leading to deeper affordability issues across the state. Importantly, it would be insufficient to merely carve out low income populations, using proxies such as confirmed low income status or existing enrollment in a utility assistance program. Indeed, SCB must be rejected to avoid significant and compounded harm to low income populations.

1) The Low Income Home Energy Assistance Program

SCB is incompatible with the federal Low Income Home Energy Assistance Program (LIHEAP), which provides millions of dollars each year in emergency grant assistance to help vulnerable low income households to afford heat in the winter. The Pennsylvania Department of Human Services (DHS), which administers LIHEAP, explicitly prohibits suppliers from receiving LIHEAP grants.⁶⁵ The decision of DHS to exclude suppliers from receiving a grant is not merely

⁶⁵ LIHEAP is a federally funded block grant program administered on the Federal level by the United States Department of Health and Human Services Administration for Children and Families. In Pennsylvania, the block grant allocation is administered by the Pennsylvania Department of Human Services (DHS) pursuant to a State Plan that is submitted each year to HHS. The 2017-2018 LIHEAP State Plan submitted by DHS provides that LIHEAP grants will be paid directly to either the LIHEAP recipient's primary or secondary heating provider, so long as the provider is a licensed LIHEAP vendor. See Commonwealth of Pennsylvania, Low-Income Home Energy Assistance Program, Fiscal Year 2018 Final State Plan, (hereinafter 2018 LIHEAP State Plan), *available at* http://www.dhs.pa.gov/cs/groups/webcontent/documents/document/c_266106.pdf.

The 2018 LIHEAP State Plan defines "vendor" as:

An agent or company that directly distributes home-heating energy or service in exchange for payment. **The term does not include landlords, housing authorities, hotel managers or proprietors, rental agents, energy suppliers or generators,** or other parties who are not direct distributors of home-heating energy or service.

an oversight – it is an explicit expression of policy, which recognizes that *in light of restructuring*, and because EDCs “remain regulated” and subject to the winter moratorium, “[t]he interests of the Commonwealth’s low-income customers are best served and protected by sending the LIHEAP payment to the distribution companies.”⁶⁶ Given that suppliers are not regulated, and are not subject to the requirements of Chapter 14, it is not in the interest of the Commonwealth’s low income consumers to change these LIHEAP rules. As such, the implementation of SCB would complicate the ability of vulnerable low income households to receive assistance from LIHEAP to help afford essential utility service.

2) Customer Assistance Programs

SCB would diminish the cost-effectiveness, accessibility, and affordability of Customer Assistance Programs (CAPs). CAPs provide vulnerable low income consumers with a bill discount or credit and arrearage forgiveness, are paid for by residential consumers through a non-bypassable rate, and are structured and administered by EDCs subject to Commission oversight.⁶⁷ Each CAP is unique, with different calculations of benefits and different terms and conditions for enrollment. However, the same general statutory and regulatory mandates apply across the board. In short, Chapter 28 requires the Commission to ensure that universal services are accessible, cost-effective, and adequately funded to deliver affordable utility services to all

Under the restructuring statutes (66 Pa. C.S. § 2807, 66 Pa. C.S. § 2207), the distribution companies are the suppliers of last resort; they remain regulated, and must comply with the state’s winter termination rules in accordance with 66 Pa. C.S. § 1406(e). **The interests of the Commonwealth’s low-income customers are best served and protected by sending the LIHEAP payment to the distribution companies.**

Id. at Attachment B-3, § 601.3 (Definitions).

⁶⁶ Id.

⁶⁷ 66 Pa. C.S. §§ 2802(17), 2804(9); see also Retail Energy Supply Ass’n v. Pa. PUC, No. 230 C.D. 2017, at 24-25 (Pa. Commw. Ct. May 2, 2018).

those in need of assistance.⁶⁸ The Commission has an affirmative, statutory obligation to ensure that the level of assistance available to those in need is not diminished from levels available at the time of restructuring.⁶⁹

SCB would undermine the level of affordability produced by CAP because CAP calculations tend to use the Price to Compare to calculate CAP discounts or credits in an attempt to achieve an appropriate energy burden for the program participant, consistent with the Commission's CAP Policy Statement. This is logical as, unlike unregulated EGS-supply, default service is statutorily mandated to be provided at the least cost over time.⁷⁰ Substantial, long-term data in recent proceedings,⁷¹ as well recent research by the University of Pennsylvania,⁷² has shown that charges for competitive residential electric service most often exceed the Price to Compare – especially for low income consumers.⁷³ Those most in need of CAP to receive affordable bills are the same customers most likely to be harmed by higher prices for electricity in the competitive market. As the data bears out over a 52-month period, confirmed low income Pennsylvanians in the First Energy service territory alone were charged tens of millions of

⁶⁸ See *id.*

⁶⁹ 66 Pa. C.S. § 2802(10).

⁷⁰ 66 Pa. C.S. § 2807(e).

⁷¹ Retail Energy Supply Ass'n v. Pa. PUC, No. 230 C.D. 2017, at 36 (Pa. Commw. Ct. May 2, 2018) (“On the issue of harm, the evidence presented showed that between January 2012 and October 31, 2015, on average, nearly 10,000 CAP customers each month were paying above the PTC. These customers, together, were paying each month, on average, \$298,406 more than had they simply paid the PTC. Even when these overpaying CAP customers were considered together with those CAP customers who were paying below the PTC, the CAP was still more costly than the PUT, in an amount of \$228,656 each month, or more than \$2.7 million a year. This evidence was ‘unrefuted’. This data did not focus ‘on a simple point in time’[;] rather this data spanned 46 months. There is substantial evidence to support PUC’s finding this data demonstrated a pattern of a significant number of CAP customers overpaying for electricity.” (internal citations omitted)).

⁷² Christine Simeone & John Hanger, Kleinman Ctr. for Energy Policy, U. Penn, A Case Study of Electricity Competition Results in Pennsylvania (Oct. 28, 2016) (“During full implementation of restructuring (from 2011 to 2014), statewide average annual retail electricity rates to residential shopping customers were higher than utility default service rates.”).

⁷³ In the four First Energy service territories, over the course of 58 months, the net cost of CAP shopping was \$18,336,440 – paid by PCAP customers and other residential ratepayers who pay for the program. See Joint Petition of Metropolitan Edison Co., Pennsylvania Electric Co., Pennsylvania Power Co., and West Penn Power Co. for Approval of their Default Service Programs, Main Brief of CAUSE-PA, Docket Nos. P-2017-2637855, P-201702637857, P-2017-2637858, P-2017-2637866, at 29 (filed May 1, 2018).

dollars more than the price to compare.⁷⁴ SCB creates a pathway to enlarge this problem, not rectify it. As discussed above, SCB proponents may seek to mask the higher charges from EGSs by failing to provide contemporaneous and clear disclosure of the price-to-compare, and may attempt to re-bundle charges – making it difficult for consumers to compare. This essentially undermines the core universal service requirements of Chapter 28: That universal service programs, including CAP, be appropriately funded, cost-effective, and available in each electric distribution service territory.⁷⁵

Moreover, SCB would frustrate access to CAP because it would add yet another intermediary who is: unfamiliar with CAP; not required to make referrals to CAP; and not knowledgeable about the nuances of CAP programs. Adding an intermediary would also interfere with the core universal service requirements of Chapter 28, which demand that universal service programming not be diminished. As noted above, in section A.i, Chapter 14 contains explicit obligations on public utilities to refer payment troubled consumers to available universal service programs. Even if suppliers were to voluntarily agree to provide appropriate referrals, the Commission lacks the enforcement/oversight authority to ensure that supplier

⁷⁴ In First Energy’s service territory, shopping data showed that over a 52-month period, confirmed low income customers paid \$35.8 million more than they would have paid if they remained on default service. See Joint Petition of Metropolitan Edison Co., Pennsylvania Electric Co., Pennsylvania Power Co., and West Penn Power Co. for Approval of their Default Service Programs, CAUSE-PA St. 1, Docket Nos. P-2017-2637855, P-201702637857, P-2017-2637858, P-2017-2637866, at 26 n.41 (filed Feb. 22, 2018).

It bears noting that these confirmed low income customers are, themselves, not making out much better in the competitive market than the Companies’ PCAP customers. In response to discovery requests, the Companies provided a chart showing the net impact of shopping for all confirmed low income customers for the same period In sum, the information shows that over a substantially similar period of time (52 months from August 2013 through December 2017 as compared to the 55 months from June 2013 through December 2014 information for PCAP customers), **the Companies’ confirmed low income customers who shopped – on net – paid \$35,824,007 more than they would have paid had they remained on default service.** This amounts to \$8.2 million annually. While this also accounts for PCAP shopping over this period, it nonetheless shows the stark reality that the Companies’ low income customers are not making out very well in the competitive electric market.

Id. (emphasis in original).

⁷⁵ 66 Pa. C.S. § 2804(9) (Standards for restructuring of electric industry).

screening and referrals meet the needs of this vulnerable population. There are ten separate CAP structures run by the EDCs and NGDCs in Pennsylvania, each with vastly different rules for eligibility, enrollment, and benefit structures. An untold number of suppliers would have to learn the nuances of each program, and make appropriate referrals. Indeed, SCB would undoubtedly erode the effectiveness of the referral requirements in Chapter 14 that connect eligible consumers with available assistance. Such a result is contrary to the requirements in Chapter 28, which mandates that universal service programs remain accessible, cost-effective, and adequately funded to serve all those in need.

Proponents of SCB often argue that SCB is necessary to allow suppliers to offer non-energy products and services. As discussed above in section B.i, the ability to bill for non-energy products is not a goal or requirement of the Choice Act, and is in fact contrary to the purpose of the Choice Act to reduce the cost of electric generation services in Pennsylvania. But in addition to this concern, the costs associated with non-energy services are particularly harmful to low income households, and should not be allowed to appear on a consolidated bill from either a supplier or the utility. Indeed, this “value added” argument is inconsistent with the Commission’s universal service requirements, particularly the Commission’s stated policy regarding Customer Assistance Programs. Allowing suppliers to offer other products and services, for which they directly bill customers through SCB, would harm vulnerable low income consumers, and may disrupt their eligibility for CAP. CAP bills are paid, in part, by other ratepayers and Commission policy prohibits those ratepayers who pay for CAP to subsidize nonessential products and services which have been shown to increase the commodity price for basic service. The Commission’s CAP Policy Statement explicitly prohibits CAP participants from subscribing to “nonbasic services that would cause an increase in monthly billing and

would not contribute to bill reduction.”⁷⁶ While the policy statement provides that nonbasic services may be allowed if the service *reduces* the customer’s bills, the statement unequivocally concludes by explaining that, even still, “CAP credits should not be used to pay for nonbasic services.”⁷⁷

In addition to contradicting codified Commission policy, the “value added” argument also runs afoul of the universal service provisions of the Choice Act, which require the Commission to administer universal service programs like CAP in a manner that is “cost-effective for CAP participants and non-CAP participants who share the financial consequences of the CAP participants’ EGS choice.”⁷⁸ In fact, in a decision issued just this week, on May 2, 2018, the Commonwealth Court explained that charging CAP customers for value added services “appear[s] to be inconsistent with the Choice Act.”⁷⁹

In short, the structure and implications of SCB are wholly incompatible with the statutory and regulatory requirements of CAP, and – thus – SCB should be rejected.

3) Hardship Fund Programs

In addition to undermining the effectiveness and availability of LIHEAP and CAP, SCB would also erode the Hardship Fund program, which provides emergency grant assistance to those

⁷⁶ 52 Pa. Code § 69.265(3)(ii).

⁷⁷ Id.

⁷⁸ Coalition for Affordable Util. Servs. & Energy Efficiency in Pa, et al. v. Pa. Pub. Util. Comm’n, 120 A.3d 1087, 1103 (Pa. Commw. Ct. 2015), appeal denied, 2016 WL 1383864 (Pa. Apr. 5, 2016) (hereinafter CAUSE-PA et al.).

⁷⁹ Retail Energy Supply Ass’n v. Pa. PUC, No. 230 C.D. 2017, at 26 fn. 29 (Pa. Commw. Ct. May 2, 2018).

RESA’s advocacy in favor of unregulated competition so that CAP customers can choose an EGS for reasons “[b]eyond lower pricing” arguably undercuts the Choice Act’s concern for accessible, affordable, and cost-effective electrical service for all Pennsylvanians. RESA would have CAP customers “leverage the power of the competitive market” so that they might obtain “loyalty discounts, reward points and gift cards offered through some EGS programs.” However, that leverage of power comes at a cost to non-CAP customers who would be paying even more in subsidies, were there no shopping restrictions, so that CAP customers might earn more reward points to use at a retailer or restaurant. The use of the CAP in this manner would appear to be inconsistent with the Choice Act.

Id.

facing financial hardships, such as job loss, domestic violence, divorce, death or serious illness, and other acute personal hardships. Hardship Fund grants are generally available to households with income up to 200% of the Federal Poverty Level, which helps to fill the gaps for families who are just over the line for eligibility in LIHEAP and CAP. Hardship Fund programs are financed through voluntary donations on customer bills, which are generally matched by the public utility's shareholder dollars.⁸⁰ In the 2015-2016 program year, EDCs collected over \$1.1 million in voluntary contributions, which was matched by \$1.6 million in shareholder contributions. These donations are then administered and distributed to those in need. Under SCB, donations to the Hardship Fund programs would necessarily diminish because it would remove SCB customers from the pool of voluntary contributors and eliminate the possibility of public utility shareholder matching contributions with respect to such customers.

4) The Low Income Usage Reduction Program

Enrollment in the Low Income Usage Reduction Program (LIURP) is also likely to be constrained. The EDC's ability to track and determine high users across its service territory would be difficult under an SCB paradigm, thereby impeding the ability for utilities to target appropriate households for usage remediation. Moreover, participation in LIURP is frequently linked to CAP participation, which - as discussed above - is impeded by SCB. Additionally, low income consumers are often hesitant to participate in LIURP because they do not fully understand the programming. The EDCs serve a vital role in educating customers about the benefits of LIURP, which is essential to the ability to deliver the necessary service provided by these EDC-administered programs. If there is a disconnect between the billing entity and the administrator of

⁸⁰ See Pa. PUC, BCS, 2016 Customer Service Performance Report, at 63 (Aug. 2017), http://www.puc.state.pa.us/General/publications_reports/pdf/Customer_Service_Perform_Rpt2016.pdf.

LIURP, this information gap is likely to grow, deterring vulnerable, high-use and low income consumers from receiving the critical benefits provided through the program.

5) The Customer Assistance Referral and Evaluation Program (CARES)

The primary purpose of the Customer Assistance Referral and Evaluation Program (CARES) “is to provide a cost-effective service that helps payment troubled customers maximize their ability to pay utility bills and maintain safe and adequate utility service.”⁸¹ CARES is administered by staff within the public utility to connect consumers with resources within their community that can help address financial instability:

A utility CARES representative performs the task of strengthening and maintaining a network of community organizations and government agencies that can provide services to the program clients. CARES staff conduct outreach and make referrals to programs that provide energy assistance grants, such as LIHEAP, hardship finds, and to other agencies that provide cash assistance. LIHEAP outreach and networking are vital pieces of CARES, especially when addressing important health and safety concerns relating to utility service.⁸²

Unlike public utilities, which have longstanding relationships with the community built over decades of service, suppliers often operate from out of state, and do not have the knowledge or relationships with the community to perform this critical function, which matches vulnerable consumers with available assistance in their community. If SCB were allowed to be implemented in Pennsylvania, it would further impede the ability of consumers facing unique and difficult hardships to address financial instability.

⁸¹ Id. at 61.

⁸² Id.

- 6) An exemption for universal service participants would be insufficient to ameliorate the potential harm to low income households which will likely be caused by Supplier Consolidated Billing.

It would be insufficient to merely exempt universal service participants from participating in SCB. Households often move in and out of eligibility for universal service programming, based on any number of personal circumstances. Consumers may experience periods of unemployment, unexpected medical expenses, death or illness of a wage earner, domestic violence, and other hardships which can disrupt the household's financial stability. If a consumer faces such a hardship, it is critically important that they be promptly referred to available assistance programs to stabilize the household's finances and avoid further accrual of uncollectible expenses. But as discussed above, SCB would diminish the effectiveness of low-income assistance programs, jeopardize affordability, and undermine referral obligations. Under the current paradigm, subject to rigorous oversight, CAP and LIHEAP reach only a fraction of the eligible population.⁸³ SCB would further obscure access to these programs, further diminishing universal service program enrollment. Such a result is contrary to the explicit requirements of the Chapter 28 and the goals of universal service programming to provide affordable utility service to all Pennsylvanians.

iii. Supplier Consolidated Billing would harm vulnerable residential ratepayers.

In addition to lacking necessary legal authorization for implementation pursuant to Public Utility Code Chapters 14 and 28, discussed in Section A above, SCB is also incompatible with the intent and purpose of the consumer protection provisions contained therein. SCB would not only cause customer confusion, particularly for low income households who more likely to experience payment trouble and threatened loss of service, it would also create an enforcement nightmare.

⁸³ Id. at 50. In 2016, CAP participation rate for electric customers as a percentage of confirmed low income customers, was approximately 47%. That number is much lower when looking at the estimated eligible population, which is based on census data – rather than on whether a customer recently verified their income with the utility by submitting income information. See id. at 7.

Expansion of Commission oversight to include oversight of supplier billing functions would either significantly increase rates⁸⁴ or vastly undermine enforcement of consumer protections. These results are unacceptable, and contrary to the public interest.

In a recent review of SCB, the Connecticut Public Utilities Regulatory Authority (PURA) concluded that shifting the billing responsibilities from EDCs to suppliers would “very likely increase customer confusion and decrease customer satisfaction.”⁸⁵ That same concern applies here, and is an especially salient concern for low income consumers. As explained above, low income consumers are more likely to experience payment troubles, and are thus more likely to contact their utility for assistance. This is the same population that is less able to contact their utility during business hours to address issues as they arise, either because they lack flexibility to make personal calls during work or they lack access to stable telecommunications service.

As it stands, the Commission expends a significant amount of resources (financed by the Commonwealth’s ratepayers) to ensure that the regulated public utilities in Pennsylvania are fully compliant with the standards in Chapters 14 and 56.⁸⁶ But there are hundreds of suppliers operating in Pennsylvania. The resources necessary to effectively oversee each supplier’s separate billing operations would require significantly more resources with no material benefit. This means means that enforcement would either be inadequate or significant increased costs would be generated, which would inevitably increase customer rates. Neither result would be just or reasonable.

⁸⁴ The costs associated with SCB are discussed in further detail in Section C. A significant factor in assessing the total costs of SCB is the cost of expanded oversight of suppliers, including assessments for both the Commission and the statutory advocates.

⁸⁵ Decision in the Matter of PURA Review of Billing of All Components of Electric Service by Electric Suppliers, PURA Docket No. 13-08-15, at 6 (Aug. 6, 2014).

⁸⁶ In 2017, the Bureau of Consumer Services fielded 12,509 complaints, received 46,124 requests for payment arrangements, and 25,095 inquiries from residential consumers. Pa. PUC, BCS, Quarterly Update to UCARE Report, January – December 2017, at 4 (2018),

http://www.puc.state.pa.us/General/publications_reports/pdf/UCARE_2017-4Q.pdf.

Full and proper implementation and enforcement of the consumer protections contained in Chapters 14 and 56 is an ongoing and labor-intensive process, which requires training and retraining of utility staff, and constant course correction through the investigation of complaints fielded by the Commission's Bureau of Consumer Services and adjudication before the Commission's Administrative Law Judges.

In the Commission's End State of Default Service Investigation in 2012, and again in response to the NRG's Petition for Implementation of Electric Generation Supplier Consolidated Billing, the Pennsylvania Coalition Against Domestic Violence highlighted the severity of significant additional oversight obligations, and the likely impact on vulnerable populations and the service providers who assist those most in need:

As a practical matter, as noted in our prior comments, full implementation of the domestic violence protections in Chapter 14 and 56 has been difficult across the seven regulated electric utilities in Pennsylvania.

PCADV and its member programs have had difficulty in getting the incumbent EDCs to become familiar with the fact that Chapter 56 has a different set of rules for victims of domestic violence with a protection order. This educational gap has caused for many local domestic violence programs to expend a tremendous amount of staff time and resources to advocate on behalf of victims of domestic violence to obtain the protections to which they are statutorily entitled.

As we explained before: 'If it is hard to get seven EDCs who are closely regulated by the Commission to recognize these realities, getting the hundred plus licensed suppliers to comply with the provisions in Chapter 56, including those provisions that are applicable to survivors of domestic violence, will be nearly impossible.'⁸⁷

Impediments to enforcement of the critical consumer protections against the loss of utility services is not only harmful to the individuals, it is also harmful to the community as a whole. Households that cannot easily access assistance to pay their bill often suffer health consequences,

⁸⁷ Petition of NRG Energy, Inc. for Implementation of Electric Generation Supplier Consolidated Billing, Comments of the Pennsylvania Coalition Against Domestic Violence, Docket No. P-2016-2579249 (Jan. 23, 2017).

forgoing food, medicine, and other basic necessities to come up with the money to pay full tariff rates for service. This comes at great cost to the individual and their household, and can reverberate through the entire community – raising the cost of healthcare, draining scarce resources, and undermining the vibrancy and health of the local community.⁸⁸ Without utility services, households often turn to unsafe and/or costly alternatives for basic life essentials, including heating, cooking, refrigeration, and bathing. Extension cords are run from sympathetic neighbors, ovens or kerosene heaters are used to provide warmth, candles burn into the night, and gas-powered generators are fired up dangerously close to the home. Child development is often impacted, affecting a child’s performance in school. Of course, evictions and eventual homelessness are also a direct result from the loss of service, which in turn creates strain on community safety net programs and emergency shelters. Indeed, eroding consumer service by involving suppliers in the core billing, dispute, and assistance functions performed by EDCs would exacerbate these social ills, impacting the community at large.

SCB is not in the public interest, as it would cause significant confusion for consumers, particularly those who are payment troubled or are facing the loss of critical utility services. At the same time, SCB undermines enforcement efforts to ensure that critical consumer protections are upheld. This is not only detrimental to individual households, but has a ripple effect through our surrounding communities. The Low Income Advocates submit that there is no policy justification for SCB, and urge the Commission to reject SCB.

⁸⁸ For a deeper look at the impact of the loss of utility services on low income Pennsylvanians, and the communities in which they live and work, see Review of Universal Service and Energy Conservation Programs, Joint Comments of CAUSE-PA and TURN et al., Docket No. M-2017-2596907, at 9-19 (filed Aug. 8, 2017).

C. Supplier Consolidated Billing is cost prohibitive.

As the Commission concluded just five years ago, “the extensive work and expense [to implement SCB] could result in a feature that will not be utilized sufficiently to justify the costs at this time.”⁸⁹ The Low Income Advocates agree: The costs associated with SCB are prohibitive, and substantially outweigh any potential benefit.

The likely costs associated with SCB include, but are not limited to:

- The sunk costs for each utility’s billing system, including those costs which have already been recovered and those costs which will still be recovered regardless of whether some consumers choose to be billed through their supplier;
- The cost to the EGS to develop a fully compliant billing system, including a full assessment of the likely impact to the cost for competitive service;
- The cost of Commission oversight, including increased work flow for the Bureau of Consumer Services, the Office of Administrative Law Judge, the Office of Special Assistants, the Law Bureau, the Bureau of Investigation and Enforcement, and the Bureau of Technical Utility Services;
- The increased cost for the statutory advocates, including the Office of Consumer Advocate and the Office of Small Business Advocate;
- The increased cost of staff training and systems development for EDCs to enable a transition of billing services for a segment of its customers;
- The increased cost of consumer education and outreach for the Commission, EDCs, EGSs, statutory advocates, and other consumer advocates;
- The cost to families who experience the loss or are threatened with the loss of critical electric service without access to critical consumer protections;
- The cost to social service providers that assist consumers facing the loss of electric service or who cannot afford to pay for service.

Unfortunately, any way you slice it, consumers are the ones who will pay for all of these costs – even if, on paper, the costs are allocated to the utility or the EGS. If passed on to an EGS, consumers pay through increased supplier pricing, which can be passed on to the consumer through fees or complicated pricing models designed to mask the higher costs. If passed on to the EDC, consumers will pay through increased base rates. But ratepayers have already paid and continue

⁸⁹ Investigation of Pennsylvania’s Retail Electricity Market: End State of Default Service, Final Order, Docket No. I-2011-2237952, at 67-68 (Feb. 14, 2013) (hereinafter End State Final Order).

to pay hundreds of millions of dollars through the base rate to develop sophisticated information technology infrastructure capable of producing bills which are fully compliant with the laws of the Commonwealth. Indeed, if the Commission allows SCB, consumers will pay a second time, with the inevitable result that customers will assume new risks associated with a billing structure that provides no discernible benefit in price or quality of service.

The claimed benefits of SCB do not outweigh these significant and substantial costs. Suppliers often argue that SCB is necessary to forge relationships with consumers, and reject alternatives as incomparable to the bond created through a direct and consolidated billing relationship. There are a plethora of other ways – apart from SCB – that companies can forge and nurture direct relationships with their customers: community events, giveaways, direct mailing, social media campaigns, team sponsorship, charitable donations, and most importantly by providing a reasonable rate for electric service. None of these common business strategies to forge long-term customer relationships would negatively impact the consumer rights and protections.

Connecticut's Public Utilities Regulatory Authority (PURA) recently reached the same conclusion. PURA explained:

The Authority disagrees with SCB supporters who imply that the only way to address Supplier concerns with UCB is by offering SCB for the following reasons.... Suppliers always have the opportunity to interface with their customers and market their products and services through numerous means. Suppliers could improve customer education and communication from the time the customer begins purchasing Service.⁹⁰

⁹⁰ Decision in the Matter of PURA of the Billing of All Components of Electric Service by Electric Suppliers, CT PURA Docket No. 13-08-15 (Aug. 6, 2014).

Arguments that SCB would allow suppliers to offer products and services not available in the market today fail to justify the risks of SCB. If suppliers wish to offer additional products and services, they may do so under the currently approved dual billing option. As PURA explained:

If the products, pricing and services are limited by the current UCB, the Supplier has the option to bill its customers directly under a dual billing option. This dual billing option is a tool for Suppliers to perform customized billing and rate structures. Potential customers could weigh the service under a single UCB bill versus those billed under the dual billing option.⁹¹

For those pricing structures which are not as conducive to dual billing, such time varying rates, additional changes to UCB are likely far less costly than a radical disruption of the current billing paradigm.

It is manifestly unjust and unreasonable to charge consumers duplicative costs for basic, necessary services, such as billing – especially where viable and less costly alternatives exist. Just five years ago, in February 2013, the Commission rejected SCB, and instead approved a number of changes to UCB.⁹² Those changes were enacted pursuant to the Commission’s May 23, 2015 Final Order (Joint Bill Order), and have not been afforded an opportunity to take shape or evolve, much less an opportunity to be evaluated for success.⁹³ However, the strength of the market today is a good indication that these changes were successful in driving market adoption rates. The shopping rates across the state continue to steadily grow, in spite of the fact that supplier rates are proving to impose significantly higher net costs than default service.⁹⁴

⁹¹ Id. at 6.

⁹² Investigation of Pennsylvania’s Retail Electricity Market: End State of Default Service, Final Order, Docket No. I-2011-2237952, at 67-68 (Feb. 14, 2013).

⁹³ Investigation of Pennsylvania’s Retail Electricity Market: Joint Electric Distribution Company – Electric Generation Supplier Bill, Final Order, Docket No. M-2014-2401345 (May 23, 2014) (Joint Bill Order).

⁹⁴ See Retail Energy Supply Ass’n v. Pa. PUC, No. 230 C.D. 2017, at 36 (Pa. Commw. Ct. May 2, 2018); See Joint Petition of Metropolitan Edison Co., Pennsylvania Electric Co., Pennsylvania Power Co., and West Penn Power Co. for Approval of their Default Service Programs, CAUSE-PA St. 1, Docket Nos. P-2017-2637855, P-201702637857, P-2017-2637858, P-2017-2637866, at 26 n.41 (filed Feb. 22, 2018).

Rather than expend significant amounts of ratepayer dollars to implement SCB, the Commission should instead investigate the cost and effectiveness of the recent billing changes, and identify whether there are additional bill presentment changes to the UCB which could be reasonably made. Upending the current billing model to make sweeping and radical changes to implement SCB is not necessary, cost effective, or beneficial to consumers. Thus, SCB must fail.

IV. CONCLUSION

For all of the reasons stated above, the Low Income Advocates respectfully request that the Commission reject calls to implement SCB in Pennsylvania. We further request that the Commission grant our request to testify at the *En Banc* hearing on June 14, 2018, so that we may fully share with the Commission our substantial concerns about implementation of the billing convention in Pennsylvania, and answer any questions the Commission may have.

Respectfully Submitted,

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