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August 24, 2018

Rosemary Chiavetta, Esq., Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, Pennsylvania 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 reply comments of the Energy Association of Pennsylvania at the above-referenced docket.

Sincerely,

A handwritten signature in black ink, appearing to read "Donna M. J. Clark", with a long horizontal flourish extending to the right.

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

**Reply 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 and simultaneously initiated this proceeding to examine supplier consolidated billing (“SCB”) as 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. On March 27, 2018, the PUC issued a Secretarial Letter scheduling an *En Banc* hearing for June 14, 2018 and soliciting written comments by May 4, 2018 on the “legality and appropriateness” of implementing SCB in Pennsylvania. The

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.

Commission later scheduled a second *En Banc* hearing for July 12, 2018 and solicited reply comments to be filed by August 24, 2018.³

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 reply comments on behalf of its electric distribution company (“EDC”) members.⁴ EAP earlier submitted written comments on May 4, 2018 and provided testimony at the July 12, 2018 *En Banc* hearing.

In both the March 27 and May 14, 2018 Secretarial Letters referred to above, the Commission stated that this proceeding involves 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?
- (3) Whether the benefits of SCB outweigh any costs associated with implementation?

As explained in its earlier comments and testimony, and again in these reply comments, EAP suggests that the answer to each of these questions is “no.”

II. Supplier Consolidated Billing is Inconsistent with Chapters 28 and 14 of the Public Utility Code.

Whether the Commission is authorized to direct implementation of supplier consolidated billing involves an interpretation of the Electricity Generation Customer Choice and Competition Act (“Competition Act”), Chapter 28 of the Public Utility Code.⁵ Broadly speaking, the Competition Act restructured the electric industry in Pennsylvania, set out the duties of the new

³ Secretarial Letter dated May 14, 2018 at this docket.

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 66 Pa. C. S. §§ 2801—2812.

legal entities providing different aspects of electric service—electric distribution companies (EDCs) and electric generation suppliers (EGSs), and for the first time provided customers with the ability to choose their retail supplier of electricity.⁶ The Act specifically addresses the billing of customers in section 2807, 66 Pa. C. S. § 2807, which is entitled “Duties of electric distribution companies.” Subsection (c) of section 2807 is entitled “Customer billing.” This subsection provides:

(c) 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 customers for all electric services, consistent with the regulations of the commission, regardless of the identity of the provider of those services.

- (1) Customer bills shall contain unbundled charges sufficient to enable the customer to determine the basis for those charges.
- (2) If 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.
- (3) The electric distribution company shall not be required to forward payment to entities providing services to customers, and on whose behalf the electric distribution company is billing those customers, before the electric distribution company has received payment for those services from customers.

66 Pa. C. S. § 2807 (c).

It is beyond dispute from both the headings and the substance of 66 Pa.C.S. § 2807 (c) that “customer billing” is a “duty” of EDCs. The scope of that billing responsibility plainly includes the services the EDC provides and “may” include billing for “all electric services,” which means billing for other entities such as EGSs. The subsection goes on to establish specific standards such as requiring other entities

⁶ *Id.*

providing electric services (such as EGSs) to provide billing data to EDCs in the event EDCs are billing for all services.

Neither the term nor the concept of “supplier consolidated billing” can be found anywhere in the Competition Act. Section 2809 of the Act, 66 Pa.C.S. § 2809 is entitled “Requirements for electric generation suppliers.” In contrast to section 2807, section 2809 does not contain any language establishing a “duty” for EGSs to provide “customer billing.” At most it requires EGSs to comply with the Commission’s billing regulations at 52 Pa. Code Ch. 56, but that is consistent with the language of section 2807 (c) that customers may choose to receive a separate bill (i.e., separate from the EDC’s bill) from their EGS: the Chapter 56 regulations would apply to that separate bill. The reference to the Chapter 56 regulations in section 2809 does not expressly or impliedly authorize EGSs to bill for any services other than their own.

It is clear, then, from the plain language of the sections in the Competition Act setting out the duties of EDCs and EGSs that the General Assembly intended to authorize EDCs alone to provide a bill to customers for “all electric services”—i.e., a “consolidated” bill. Furthermore, Commonwealth Court has ruled that where the Public Utility Code (of which the Competition Act is a part) assigns a responsibility to EDCs, the responsibility may not be reassigned to EGSs.⁷

Despite the specific, clear statutory language authorizing EDCs alone to bill customers for all electric services, EGSs argue that the Commission may authorize supplier consolidated billing based on the theory that providing a consolidated bill is a “service” subject to the Commission’s authority to order “unbundling.” The source of

⁷ *Dauphin County Industrial Development Authority v. Pa. PUC*, 123 A.3d 1124 (Pa. Cmwlth. 2015), *appeal denied*, 140 A.3d 14 (Pa. 2016) (EDC duty as default supplier to offer time-of-use rates cannot be passed along to EGSs).

this alleged authority is in subsection (3) of section 2804 of the Competition Act, 66 Pa. C. S. § 2804, entitled “Standards for restructuring of electric industry.” This subsection provides:

The commission shall require the unbundling of electric utility services, tariffs and customer bills to separate the charges for generation, transmission and distribution. The commission may require the unbundling of other services.

66 Pa. C. S. § 2804 (3). To provide context, section 2804 contains a total of sixteen subsections covering a wide range of topics including rate caps (subsection 4), universal service programs (subsection 9), and recovery of state tax expenses (subsection 16). The language EGSs rely upon for the Commission’s alleged authority to direct supplier consolidated billing consists of nine words in the second sentence of subsection (3).

The unbundling language of section 2804 (3) may allow the Commission to unbundle certain aspects of service, such as metering, that were viewed historically as part and parcel of the service offered by electric utilities. However, it is not consistent with principles of statutory interpretation to construe these nine general words as empowering the Commission to overturn the detailed, specific language in the very same Act establishing customer billing as a “duty” of EDCs.

The EGS argument essentially would authorize the Commission to read section 2807 (c) out of the Act, contrary to the principle of statutory construction that all provisions of an Act should be given meaning.⁸ In addition, the EGS interpretation violates the principle that specific language takes precedence over general language if the two are in conflict.⁹ Finally, the EGS argument violates the principle of interpretation *expressio unius est exclusio alterius* (the express mention of a specific matter implies the

⁸ 1 Pa.C.S. § 1922 (2) (The General Assembly “intends the entire statute to be effective and certain.”).

⁹ 1 Pa.C.S. § 1933 (“Particular controls general”).

exclusion of others not mentioned) because the General Assembly's express authorization for EDCs to bill for all electric services implies that other entities, such as EGSs, are not authorized to do so.¹⁰

The conclusion that EDCs alone are authorized to provide a single bill to customers for all electric services is reinforced by other provisions of Chapters 28 and 14 of the Public Utility Code that make EDCs alone responsible for customer service functions that accompany billing. For example, section 2807 (d), 66 Pa.C.S. § 2807(d), states 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.” Chapter 14, which was first enacted eight years after the Competition Act, contains a myriad of provisions imposing duties regarding customer service on “public utilities,” a term that includes EDCs but does not include EGSs.¹¹ Referring again to the principle of *expressio unius est exclusio alterius*, the legislature's imposition of these duties on public utilities alone implies that these duties do not apply to, and may not be reassigned to, other entities such as EGSs.

It is true that the Commission in the past approved settlements of restructuring cases which provided for supplier consolidate billing, and that the Commission opined in the Retail Market Investigation that it could authorize such billing.¹² However, those conclusions were not tested in the appellate courts, and the Commission is not bound to follow its past decisions if it believes them to be erroneous.¹³

¹⁰ See, *West Penn Allegheny Health System v. Medical Care Availability and Reduction of Error Fund*, 11 A.3d 598, 605-606 (Pa. Cmwlth. 2010); *Atcovitz v. Gulph Mills Tennis Club, Inc.*, 812 A.2d 1218, 1223 (Pa. 2002).

¹¹ 66 Pa. C. S. § 1403.

¹² See e.g., *Application of PECO Energy Co. for Approval of its Restructuring Plan*, Docket No. R-00973953 (Opinion and Order entered May 14, 1998); *Investigation of Pennsylvania's Retail Electricity Market*, Docket No. I-2011-2237952 (Opinion and Order entered November 8, 2012).

¹³ *Elite Industries, Inc. v. Pa. PUC*, 832 A.2d 428, 431-432 (Pa. 2003).

In summary, for the reasons explained above as well as those previously articulated by the Association in its opposition to the NRG Petition and in its comments filed on May 4, 2018¹⁴, it is clear that supplier consolidated billing is inconsistent with Chapters 28 and 14 of the Public Utility Code.

III. As a Matter of Policy, Supplier Consolidated Billing Should not be Implemented Because Its Speculative Benefits do not Justify Its Costs.

Implementing SCB would entail significant costs for EDCs and for the Commission. Two EDCs have estimated costs of \$4.6 million and \$4 million, respectively, to change their systems to provide SCB.¹⁵ SCB would also result in a wasteful duplication of costs as EDCs would have to maintain their customer service systems and processes for customers on default service and for customers purchasing supplies from EGSs since these customers may choose to return to default service and EDCs have a duty to serve them.

The Commission would also incur significant costs in time and resources to implement and oversee SCB. The EGS Coalition for SCB itself proposes a fourteen step process that would take place even before issuance of an implementation order and review of EDC compliance plans.¹⁶ And after implementation, the Commission would be required to oversee an uncertain, but potentially large, number of EGSs providing important customer service functions, as opposed to regulating a handful of EDCs today.

The benefits of SCB to customers are speculative. As with previous market enhancements, some EGSs cite the potential that innovative new products will now be offered by

¹⁴ See, EAP Comments to the NRG Petition at PP. 8 – 11 and Comments of EAP to Implementation of Supplier Consolidated Billing filed on May 4, 2018 at pp. 9 – 12.

¹⁵ See, comments filed in this proceeding by PECO Energy Co. (p. 11) and PPL Electric Utilities, Inc. (p. 10), May 4, 2018.

¹⁶ Comments filed in this proceeding on May 4, 2018 by the EGS Coalition for SCB at pp. 32-33.

EGSs, but there is no certainty of that and it is unclear whether, on balance, customers would be better off considering the costs.

Finally, in light of the history of market enhancements, the Commission should not require SCB or any new enhancements without evaluating “lessons learned” from previous enhancements. The costs of these enhancements to customers and EDC shareholders (but not to EGSs) have run at least in the tens, if not hundreds, of millions of dollars¹⁷ and the benefits to the market are unclear. This evaluation is particularly appropriate in light of a growing body of information from other states—most recently Illinois¹⁸—indicating that customers served by competitive suppliers pay much more on average than customers on default service.

In summary, even if the Commission finds that it has authority to direct implementation of supplier consolidated billing, it should decline to do so because the speculative benefits of this form of billing do not justify its costs.

Respectfully submitted,


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¹⁷ As EAP reported in its May 4, 2018 comments at this docket (pp. 7-8), PECO and Duquesne provided information in response to NRG’s SCB petition that they spent, respectively, \$31.5 million and \$24 million to implement previous market enhancements.

¹⁸ See, Annual Report of the Office of Retail Market Development, Illinois Commerce Commission, June 2018, available at www.icc.illinois.gov/reports. According to the Report (p. 7), customers in two utility service territories paid over \$190 million more per year by purchasing from competitive suppliers instead of purchasing default service from their utility. See also, Comments of EAP to Implementation of Supplier Consolidated Billing at p. 8, fn. 14 referencing similar evaluations by other states.