

COMMONWEALTH OF PENNSYLVANIA



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August 24, 2018

Rosemary Chiavetta, Secretary
PA Public Utility Commission
Commonwealth Keystone Bldg.
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 please find the Office of Consumer Advocate's Reply Comments in the above-referenced proceeding.

If you have any questions, please feel free to contact me.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "H. Breitman".

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

I hereby certify that I have this day served a true copy of the foregoing document, the Office of Consumer Advocate's Reply Comments, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 24th day of August 2018.

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

REPLY COMMENTS
OF THE
OFFICE OF CONSUMER ADVOCATE

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I. INTRODUCTION

On March 27, 2018, the Pennsylvania Public Utility Commission (“PUC” or “Commission”) issued a Notice of En Banc Hearing (“Notice”) seeking comments from all interested parties regarding the legality and appropriateness of implementing electric generation supplier consolidated billing (“SCB”) in Pennsylvania. See, Notice of *En Banc* Hearing on Implementation of Supplier Consolidated Billing, Docket No. M-2018-2645254. The Notice requested Comments by Friday May 4, 2018. Id. Under SCB, customers would receive a single, consolidated bill from their chosen Electric Generation Supplier (“EGS”) that would include both their Electric Distribution Company’s (“EDC”) distribution charges and their EGS’s generation and transmission charges. Id. Specifically, the Commission sought comments in regard to (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. Id.

On May 4, 2018, the OCA filed its Comments on the issues raised in the Notice. Numerous parties submitted comments regarding the questions presented. On June 14, 2018 the Commission held an *en banc* hearing in which the OCA and a group of EGSs participated. On July 12, 2018, the Commission held a second *en banc* hearing in which the EDCs and the EGSs participated.

The OCA does not support the implementation of SCB. SCB is inconsistent with the Public Utility Code, raises significant consumer protection concerns, and is unnecessary to achieve the purposes of increasing competition and lowering the cost of electricity. The potential cost of SCB outweighs the speculative benefits even without considering the myriad of consumer protection issues. The OCA has reviewed the Comments of the other parties, participated in the *en banc*

hearing process, and has not changed its views. In these Reply Comments, the OCA will address some of the key points raised in the comments and at the *en banc* hearings.

II. OCA REPLY COMMENTS

A. SCB is Inconsistent With the Public Utility Code, the Commission’s Regulations, and the Restructuring Act

As noted in the OCA’s comments, the Pennsylvania General Assembly passed the Electricity Generation Customer Choice and Competition Act (“Act” or “Restructuring Act”) in 1996. 66 Pa. C.S. §§ 2801 – 2815. The Act allowed Pennsylvania ratepayers to have direct access to generation with the stated purpose of lowering the price of generation. *Id.* The Commission, when recently considering Chapter 28, concluded as follows:

The purpose was to lower electricity costs, which would directly benefit consumers in the form of lower prices and indirectly benefit the Commonwealth itself by improving its ability to compete for industry and jobs. 66 Pa. C.S. §§ 2802(6) & (7). [Emphasis added.]

Petition of NRG Energy, Inc. for Implementation of Electric Generation Supplier Consolidated Billing, Docket No. P-2016-2579249, Opinion and Order (entered January 18, 2018) at 21 (2016 NRG Order). The OCA submits that for the reasons set for in its Comments, and discussed further herein, SCB is inconsistent with the Public Utility Code, Commission Regulations, and the Restructuring Act, and is not needed to achieve the purpose of the Act.

The EGS Coalition argues that SCB does fit within the Act because it is not explicitly precluded. The EGS Coalition points to Section 2807(c) and argues that, “there is nothing in this passive provision or anywhere else in the Act that makes the EDCs the exclusive providers of these customer service functions.” EGS Coalition Comment at 26. As noted by Energy Association of Pennsylvania (“EAP”) witness Fitzpatrick at the second *en banc* hearing, however, Section 2807

is entitled “Duties of electric distribution companies.” Further Hearing Transcript at 141; 66 Pa C.S. § 2807. As to customer billing, Section 2807(c) 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.

66 Pa. C.S. § 2807(c). The statute goes on to state as follows:

(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.

66 Pa. C.S. § 2807(c)(2). The obligation to bill customers expressly rests with the regulated EDC under Pennsylvania law.¹ The explicit language in the Act requires the EGSs to furnish billing data that is sufficient to enable the EDC to bill customers.

The EGS Coalition, however, relies on Commission decisions from the 1990s to support their position that Section 2807(c) contemplates SCB. For example, the EGS Coalition argues as follows:

Indeed, in 1998, the Commission concluded that while Code Section 2807(c) “expressly provides for an EDC to issue a single bill,” it disagreed “that there is a presumption that it is the EDC who has a duty to issue a single bill” and found that “there is nothing in the Act that would prohibit the supplier single bill options.”

EGS Coalition Comments at 25 *citing Application of Pennsylvania Power & Light Company for Approval of Restructuring Plan under Section 2806*, Docket No. R-00973954 (Order entered June 15, 1998), 1998 Pa. PUC LEXIS 131, *174. The cited case, when read in its full context, states as follows:

¹ The OCA would also note that placing the billing and collection responsibilities with the EDC is consistent with other provisions of the Public Utility Code, particularly Section 1301. Section 1301 permits a public utility to charge or demand rates that are just and reasonable. 66 Pa.C.S. Section 1301.

While the Act expressly provides for an EDC to issue a single bill, we disagree that there is a presumption that it is the EDC who has a duty to issue the bill. As we have stated in a prior order, "...there is nothing in the Act that would prohibit [*175] the supplier single bill option." *Final Order re: Guidelines for Maintaining Customer Services at the Same Level of Quality Pursuant to 66 Pa. C.S. § 2807(D), and Assuring Conformance with 52 Pa. Code Chapter 56 Pursuant to 66 Pa. C.S. § 2809(E) and (F)*, Docket No. M-00960890F0011 (July 11, 1997), p. 29. **However, we decline to provide for that option in this case based upon the record before us. We intend to examine this issue at a later time in the context of a rulemaking and encourage the EGSs to participate in that proceeding.**

Application of Pennsylvania Power & Light Company for Approval of Restructuring Plan under Section 2806, Docket No. R-00973954 (Order entered June 15, 1998), 1998 Pa. PUC LEXIS 131, *174-175 (emphasis added). In other words, the Commission declined to provide for the option of SCB and did not conclude its review of the issue.

The EGS Coalition also cites to a 1997 case to argue that the Commission concluded that a supplier single bill option is permitted under the Act. EGS Coalition Comments at 27 citing Final Order Re: Guidelines for Maintaining Customer Services at the Same Level of Quality, Docket No. M-00960890, (Order entered July 11, 1997), 1997 Pa. PUC LEXIS 119 at *23 ("Customer Services Order"). The Commission, however, concluded as follows:

At this juncture, we believe small consumers will be more [*69] likely to benefit sooner from competitive markets for the provision of electric services by retaining further consideration of the option of supplier single billing set forth in this guideline. While this deliberate approach may not be satisfactory to the parties who believe this option should be available immediately to customers, **we believe an approach that initially focuses on implementation of the two billing options explicitly set forth at § 2807(C) is necessary to maintain customer services functions at current levels of quality as required at § 2807(D).**

Customer Services Order at 68-69 (emphasis added). Again, the Commission recognized the importance of UCB and dual billing to maintain quality of service and had not completed its review. As the OCA pointed out in its Comments, since these orders were entered, new statutes and case law have been adopted that call into question any preliminary statements from the 1990s.

Of particular note, in 2015, the Commonwealth Court issued its decision in Dauphin Cty. Indus. Dev. Auth. v. Pa. PUC, 123 A.3d 1124 (Pa. Commw. Ct. 2015) (“DCIDA”) interpreting provisions of Section 2807(f). DCIDA involved the obligation of the EDC serving as the default service provider to offer a time of use rate plan. The Development Authority successfully argued that EDCs serving as the default service provider were not authorized to pass along the obligation to offer time-of-use rates to EGSs when the statute made this an obligation of the default service provider. DCIDA at 1134-1135. The Commonwealth Court stated as follows:

The legislature's unqualified use of the words "shall offer" in Section 2807(f)(5) places the burden on the default [**26] 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. Simply, Section 2807(f)(5) does not authorize a default service provider to pass along this obligation to an Electric Generation Supplier.

DCIDA at 1134.

Of critical importance to this discussion, Chapter 14 was enacted in 2004 and amended in 2014, while Chapter 28 was enacted in 1996. Chapter 14 is later in time and it is assumed that the General Assembly was fully aware of Chapter 28 and all of its provisions when it passed Chapter 14 decades later. “Whenever the provisions of two or more statutes enacted finally by different General Assemblies are irreconcilable, the statute latest in date of final enactment shall prevail.” 1 Pa. C.S. § 1936. Chapter 14 clearly places the responsibility for consumer protections in the billing context upon the EDCs. Under the reasoning of DCIDA, if the General Assembly placed the obligations for consumer protections related to billing on EDCs, then this obligation cannot be passed on to an EGS.

In regard to Chapter 14, the Commission recently stated as follows:

The Chapter 14 provisions regarding cash deposits to initiate service, payment arrangements to avoid termination of service, lawful grounds for termination of

service, and standards for reconnection of service are applicable specifically to “public utilities.” 66 Pa. C.S. §§ 1404, 1405, 1406 and 1407. These requirements are binding on public utilities, which includes EDCs, but not EGSs.

2016 NRG Order at 33. Furthermore, the Commission stated that “each of the key provisions in Chapter 14 regarding the connection, termination, and reconnection of service are obligations placed on public utilities.” 2016 NRG Order at 34. Placing this obligation on public utilities in Chapter 14 is of significance. See, DCIDA. The General Assembly clearly sought to retain these key functions with the regulated public utility and not with a competitive, unregulated entity.

Further, as Vice Chairman Place so aptly noted at the second *en banc* hearing, even the structure of the protections in Chapter 14 would be unlikely, if not impossible, for EGSs to meet. See, Further Hearing Transcript at 252-255. For example, a payment arrangement for a low-income customer is 60 months, or five years. This is a far longer period of time than any EGS offers or contracts. Under the EGS proposal that customers be blocked from switching suppliers until an arrearage is paid, a low-income customer could be trapped into long term, unfavorable pricing for an extended period of time, making the financial situation even worse.

Moreover, while it has been established that pursuant to Section 2809(e), the Commission may impose requirements on EGSs to maintain quality of service, the boundaries of the Commission’s authority have not been fully tested, particularly in the billing and collection context. See, 66 Pa. C.S. § 2809(e) and Delmarva Power & Light Co. v. Pa. PUC, 870 A.2d 901, 909-10 (Pa. 2005) (“Delmarva”). The EGS Coalition suggests that, to address this concern, EGSs could voluntarily submit to the Commission’s authority in the billing and collection context, perhaps as a condition of receiving a license that authorizes SCB. This suggestion, however, does not resolve the issue. Simply requiring an EGS to accept PUC authority as part of the licensing process does not suffice. In promulgating regulations pursuant to Section 2809, the Commission

specifically attempted this approach by including a licensing provision requiring EGSs to pay regulatory assessments. See, 52 Pa. Code § 54.38. The Commission first issued a Tentative Order and draft licensing application for interim licensing of EGSs pending the promulgation of regulations. Licensing Requirements for Electricity Generation Suppliers, Docket No. M-00960890 F0004 (Jan. 16, 1997). In that Tentative Order, the Commission sought to require EGSs to pay assessments. The Tentative Order stated:

The licensee will be required to pay assessment which will be used to defray regulatory costs. 66 Pa. C.S. § 510. Assessments will be based upon the costs incurred by the Commission related to generation suppliers. These costs include, but are not necessarily limited to: processing license applications pursuant to Section 2809, maintaining records related to licensees, administering other provisions of the Public Utility Code related to licensee compliance with applicable requirements including maintenance of adequate reserve margin, compliance with residential billing and collections regulations, and fulfilling consumer information and education obligations.

As a condition of maintaining a license to supply electricity or electric generation, yearly assessments must be paid by the licensee within 30 days of receipt of notice of the amount lawfully charged against it. 66 Pa. C.S. § 510(c). Consistent with due process consideration, failure to pay the assessment may result in the revocation of the license.

Licensing Requirements for Electricity Generation Suppliers, Docket No. M-00960890 F0004 (Jan. 16, 1997) at 4. The Commission issued a final order on February 13, 1997 which adopted interim licensing procedures and a license application. Ultimately, the EGSs challenged the Commission's authority to require EGSs to pay assessments even though EGSs had agreed to pay the assessments as a condition of receiving a license in Pennsylvania. The EGSs prevailed in Commonwealth Court.² See, Delmarva. As we learned in Delmarva, trying to establish jurisdiction through a licensing condition does not work if the PUC is otherwise without jurisdiction to require compliance.

² There are currently no assessments paid by EGSs for work performed by the OCA and the OSBA. A subsequent statute was enacted requiring EGSs to pay a form of assessment to the PUC.

To also suggest that EGSs would simply promise to adhere to the Commission's jurisdiction is also inadequate, especially in light of the hundreds of licensed entities with very different business models and interests. Indeed, in a petition for reconsideration that was filed as this investigation is pending, an EGS argued that the PUC does not have jurisdiction over EGSs as they do over EDCs as follows:

36. Code Section 501 confers on the Commission "general administrative power and authority to supervise and regulate all public utilities doing business within the Commonwealth." EGSs are clearly not public utilities for purposes of Code Section 501. Therefore, any reliance on Code Section 501 for authority to require EGSs to issue refund to customers must fail.

Commonwealth of Pennsylvania, et al., v. Blue Pilot Energy, LLC, Docket No. C-2014-2427655, Blue Pilot Petition for Reconsideration at 15 citing Delmarva Power & Light Co. v. Pa. PUC, 870 A.2d 901 (Pa. 2005) (emphasis in original).

The EGS Coalition further claims that the Commission has both express and implied legal authority under the Code to implement SCB. EGS Coalition Comments at 21. According to the EGS Coalition, Section 2804(3) "empowers the Commission to require the further unbundling of services, beyond distribution, transmission and generation, and does not exempt billing services." EGS Coalition Comments at 24. Section 2804(3) states as follows:

(3) The commission shall require the unbundling of electric utility services, tariffs and customers 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). Separating charges on the customer bill for generation, transmission, and distribution is not equivalent to permitting an EGS to issue an SCB. As noted by Mr. Fitzpatrick during the second *en banc* hearing, the language in Public Utility Code Section 2804(3) stating that the Commission may require the unbundling of other services, cannot reasonably be construed

to empower the Commission to undo the specific directives in the Act which establishes that the duty of customer billing is an EDC duty. See, Further Hearing Transcript at 142.

As noted in the OCA's Comments, in 2015, the Commonwealth Court discussed the roles and obligations of EDCs and EGSs in the restructured electricity market. OCA Comments at 6-7.

The Commonwealth Court stated as follows:

Under the Choice [*1101] Act, public utilities are required to open their jurisdictional transmission and distribution facilities to EGSs chosen by the public utility's retail customers. Id. § 2804(6). **Moreover, while the chosen EGS is obligated to provide the contracted supply, the public utility, or EDC, remains the direct contact with the consumer on matters relating to billing and customer service.** Id. § 2807(c) [**35] , (d). If a customer contracts for electric supply and it is not delivered or if a customer does not choose an alternative EGS, in most cases the public utility is required to purchase electric energy at prevailing market prices to service that customer—i.e., default service. Id. § 2807(e).

Coal. for Affordable Util. Servs. & Energy Efficiency in Pa. v. Pa. PUC, 120 A.3d 1087, 1100-01 (Pa. Commw. Ct. 2015) (Cause PA) (emphasis added). The express statutory provisions, the enactment of Chapter 14, as well as Commission and Pennsylvania Court precedent, counsel that SCB is inconsistent with the Public Utility Code and the Restructuring Act.³

³ The OCA notes that the EGS Coalition also argues that concerns with consumer protection could be handled within the rulemaking regarding the Commission's regulations at 52 Pa. Code Chapter 56 currently pending before the Commission. The Commission, however, cannot do by regulation that which is inconsistent with the Public Utility Code. The EGS Coalition points to NRG comments filed in the Chapter 56 rulemaking for support. NRG proposed a new subchapter within Chapter 56 that would govern the provision of SCB by EGSs. EGS Coalition Comment at 70. In NRG's comments to the Chapter 56 rulemaking, NRG requests multiple revisions and additions to Chapter 56 to accommodate SCB. See, Notice of Proposed Rulemaking, Standards and Billing Practices for Residential Public Utility Services, Docket No. L-2015-2508421, NRG Comments (April 19, 2017) ("NRG Chapter 56 Comments").

Rather than accepting Chapter 56 protections, NRG proposed to add a new subsection and propose significant modifications that would reduce consumer protections in order to implement SCB. For example, NRG proposes to revise the due date of the initial payment from 21 to 10 days. NRG Chapter 56 Comments at 16-17. NRG further proposes that billing entities are not required to modify or eliminate the payment required to restore service if a medical certificate is presented. NRG Chapter 56 Comments at 20. Moreover, NRG proposes that separate and specific confidential reporting requirements as opposed to monthly and annual reporting requirements for EDCs and NGDCs. NRG Chapter 56 Comments at 22. The OCA submits that the significant revisions proposed to Chapter 56 to speculatively deepen the private contractual relationship between certain EGSs and their customers would favor a private interest over the public interest.

B. It Is Not In The Public Interest to Adopt SCB

As noted in the OCA's Comments, SCB was raised as an issue in 2014 and the Commission concluded that the development of SCB would not be sufficiently utilized to justify the costs. See, OCA Comments at 11; Investigation of Pennsylvania's Retail Electricity Market: End State of Default Service, Docket No. I-2011-2237952, Final Order at 67 (Order Feb. 15, 2013) ("Electric RMI Final Order"). Before arriving at this conclusion, the Commission listed several unresolved policy questions which remained, and continue to be unresolved to this day:

- What is the payment obligation of the EDC and EGS to each other? Does the billing party have to make the other party "whole," regardless of customer payment/nonpayment? How do Purchase of Receivables (POR) programs interact with SCB?
- Which entity is responsible for providing regulatory inserts, or bill stuffers, concerning proposed rate increases, consumer education, conservation, etc.?
- Which entity addresses consumer billing disputes, including informal and formal complaints filed at the Commission?
- Which entity is obligated to negotiate and track payment agreements that may be required by regulation, such as amortizations of a make-up bill due to a previous billing error? *See* 52 Pa. Code § 56.14 (relating to previously unbilled utility service).
- What are the eligibility standards for customers to participate in SCB? If customers owe past-due arrears to the utility, what happens to these arrears and who bills for them going forward?
- What occurs if an SCB customer fails to pay in full? Suppliers cannot physically terminate service, and an EDC that is being made whole has no motive or grounds to terminate service. Does the customer's supply contract end and the customer reverts to EDC billing? If so, what kind of notice to the EDC and the customer is needed?
- What occurs if the EDC fails to submit billing information (such as the meter read) to the EGS in time for the bill? Can the EGS estimate usage?
- What is the obligation of the EGS to handle hardship fund donations for those utilities that bill for the donation?
- Can utilities that provide and bill for both electric and gas segregate electric from gas charges if only the electric charges are SCB?

Investigation of Pennsylvania's Retail Electricity Market: End State of Default Service, Docket No. I-2011-2237952, Tentative Order at 26-27 (Order Entered Nov. 8, 2012) (“Electric RMI Tentative Order”).

These are all critical issues with a myriad of consumer implications that have yet to be resolved. Indeed, Calpine Energy Solutions, LLC. (“Calpine”), for example, noted the following in its comments:

While it does not draw any conclusions on those questions at this time, Calpine cautions that implementation of SCB in Pennsylvania, if pursued, must be done with extreme care and in a manner which does not result in the creation of disparate treatment for those that do not select the SCB option or the creation of an uneven playing field for competitive EGSs. Moreover, not only do the mechanics of SCB need to be fully considered and vetted before implementation (a topic that Calpine does not address herein and requires more substantive development), but the Commission, more importantly, must weigh the cost allocation and oversight ramifications of SCB.

Calpine Comments at 2-3.

As discussed more thoroughly in the OCA's Comments, the consumer protection issues and the impact of increased costs on customer's bills associated with SCB suggests that SCB is not in the public interest. SCB is a business model sought by some EGSs to sell non-commodity products and services. The dual bill option is available for this business, and is more consistent with the billing and collection procedures of other business entities that sell these same non-commodity products and services. Simply put, there has been no showing that SCB is desired by more than a few EGSs and there has been no showing that it is in the public interest to further pursue this path.

C. Reliance on Other States' SCB Programs is Misplaced

The EGS Coalition relies on Texas and Georgia for support. The OCA submits that reliance on Texas' and Georgia's SCB programs is misplaced. No other restructuring state has

implemented SCB on any large scale other than the Texas electric and Georgia gas markets. There is, however, no default service or distribution utility billing option available in either Texas or Georgia. The market model in those states eliminated EDC default service and any obligation for the EDC to directly bill a customer or maintain customer call centers or conduct other direct interactions with retail customers at the inception of their programs. As a result, neither customers nor suppliers in these two markets have any of the billing options mandated by Pennsylvania law. By contrast, in Pennsylvania, all of the EDCs retain their billing and customer service obligations and have implemented the EGS requested POR programs for those EGSs that do not wish to engage in dual billing.

While the EGS Coalition argues that SCB is already “business as usual” for their companies⁴, none of the companies have operated in an environment that contains both UCB and SCB, or an environment requiring them to meet certain Pennsylvania statutory and regulatory responsibilities. Moreover, as noted in First Energy’s comments, Illinois previously offered SCB and dual billing until a coalition of EGSs requested that the Illinois Commerce Commission mandate UCB with a POR feature to improve competition. FirstEnergy Comments at 11. While the EGSs were initially unsuccessful, Illinois’ General Assembly enacted Public Act 95-0700 to amend Illinois’ Retail Electric Competition Act and now requires EDCs with over 100,000 customers to implement UCB and POR programs. FirstEnergy Comments at 12-13.

In its 2008 through 2018 Annual Reports following the passage of Public Act 095-0700, the Office of Retail Market Development of the Illinois Commerce Commission discussed the subsequent tariff filings and associated proceedings that were necessary to implement UCB and

⁴ See, EGS Coalition Comments at 3; EGS Coalition Exhibit, *Coalition of Electric Generation Suppliers* (June 14, 2018) (“EGS Coalition Presentation”) at 3. Available at: <http://www.puc.state.pa.us/Electric/pdf/EnBanc-SCB/Exhibit-CoalitionEGSs061418.pdf>

POR in the Illinois market.⁵ A review of those yearly discussions as set out in the Annual Reports shows that use of UCB/POR by electric generation suppliers in Illinois increased year by year.⁶ Since 2013 the adoption of UCB/POR continued to grow as the 2018 Annual Report provided that “[w]hile all suppliers are currently using UCB/POR for their residential customers, it is worth noting the widespread use of UCB/POR for non-residential customers as well.” 2018 Annual Report at 13.⁷

Furthermore, while at least one EGS mentioned the proposal to implement SCB in Maryland, the Maryland Public Service Commission has yet to rule on a pending petition that would allow that billing option.⁸ It is also important to note that the Maryland competition law, unlike Pennsylvania, explicitly authorizes competitive billing options by alternative suppliers.⁹

Connecticut recently came to the conclusion that SCB is unlikely to benefit the electric retail market. See, PURA Review of the Billing of all Components of Electric Service by Electric Suppliers, Docket No. 13-08-15, Decision (Aug. 6, 2014) (“PURA SCB Decision”). For example, Connecticut’s Public Utilities Regulatory Authority (“PURA”) noted that credit issues associated with multiple billing entities could result in improper credits and disconnections, as well as EGSs collecting on prior balances of another EGS. PURA SCB Decision. Connecticut’s PURA concluded as follows:

Because the EDCs and Suppliers have not conducted studies that estimate the costs to implement SCB, the Authority is unable to provide this information to the General Assembly. Without such a study, the changes to the EDC and Supplier

⁵ The complete 2008 through 2018 Annual Reports are available at <https://www.icc.illinois.gov/reports/report.aspx?rt=22>

⁶ In Illinois, SCB, dual billing and UCB/POR are all presently available billing options for electric generation suppliers. Contrary to the EGSs’ assertions here that implementation of SCB would be a “game changer”, it does not appear to have worked that way in Illinois.

⁷ The complete 2008 through 2018 Annual Reports are available at <https://www.icc.illinois.gov/reports/report.aspx?rt=22>

⁸ Maryland PSC, Case No. 9461 is a petition by NRG Energy to implement SCB.

⁹ 1999 Laws of Md., Ch. 3, § 1, & 4, § 1 (codified at PUA § 7-501, et seq.), referred to as the “Electric Customer Choice and Competition Act of 1999.” See, PUA Sec. 7-511.

systems and processes discussed above are inconclusive. Also unknown is whether the cost to Suppliers of performing SCB would be any less than the EDC; what the benefits of SCB are and who would benefit; and whether SCB is feasible. Especially if only a small number of Suppliers elect to offer SCB. In the end, any additional costs to implement and operate SCB would most likely be passed on to the customers.

...

The billing of all electric services by a multitude of Suppliers at this time does not seem practical. The reasons are numerous. First, and foremost, there does not appear to be real benefits to ratepayers. If the desired result is to offer ratepayers the convenience of a single electric bill, the UCB is the most administratively and perhaps cost efficient way to provide this benefit. Second, while there is interest among some Suppliers who participated in this proceeding to provide SCB, the lack of Supplier participation in this proceeding seems to infer that to many, especially smaller companies, the interest in SCB is also lacking. Requiring the EDCs to make the necessary and potentially costly changes to their respective customer information systems and other processes to accommodate SCB for a small number of interested Suppliers would not be practical. Third, the billing components of electric service consist of numerous charges, the vast majority of which are for services provided or administered by the EDCs. These EDC charges are very complex with some having annual or semi-annual reconciliation mechanisms. Fourth, while the costs are unknown, it appears likely that enabling the EDCs to transfer the necessary billing information and for the Suppliers to obtain the necessary resources to successfully assume the billing responsibility could be costly to the EDCs and Suppliers and ultimately, to ratepayers. Fifth, other options exist for Suppliers to achieve the same or similar desired result. Finally, given the responsibilities that the EDCs have for billing aspects, such as meter installation and reading, bill inserts, and implementing rate changes, transferring the billing responsibilities to entities that have no responsibilities in these matters seems ill advised.

PURA SCB Decision at 7-8. Other than the Texas electric market and the Georgia natural gas market, restructured states have relied on Purchase of Receivables programs similar to those adopted in Pennsylvania.

D. The Speculative Benefits of Implementing SCB Do Not Outweigh the Costs Associated with Implementation

The EGS comments have not provided any quantification of costs to EGSs that choose to utilize SCB, and no detail on costs that would be passed on to ratepayers. When asked by

Commissioner Sweet about costs at the first *en banc* hearing, an EGS representative responded as follows:

I think that's something that we do need to work through and I think it's going to vary, my understanding, it's probably going to vary by utilities in figuring out what that overall cost would look like, and then figuring out what that payment will look like.

But for instance, I think with – we've already started conversations with a couple of utilities, that it could be in the \$4 million range, for instance, to have supplier consolidated billing set up.

Initial Hearing Transcript at 70. None of the EGSs were able to quantify any savings that would occur from SCB for ratepayers. In fact, it is reasonable to assume that suppliers that implement SCB will seek increased revenues from electric customers through marketing and billing for non-basic services and to cover the costs of their own billing systems. The EDCs, however, will turn to the Commission to seek increased costs from ratepayers through distribution service rates for any costs incurred in the implementation of SCB.

It should also be noted that if the EGS offering SCB assumes all of the risk of uncollectibles, the EGS is likely to exclude customers presenting risks of non-payment. The OCA points to the Texas market where suppliers require deposits, conduct credit checks, and have lobbied for and obtained regulatory relief in the form of preventing customers from moving to a new supplier unless the customer's prior unpaid bill is paid. This policy has serious implications for a customer's right to return to default service without penalty under Pennsylvania law and regulations.

No reliable information on the costs that would be incurred by the EDCs to implement SCB nor of the costs to EGS to perform this billing service in accordance with Pennsylvania requirements was provided. Neither did the EGSs discuss the costs to the Commission to respond to complaints, investigations, and enforcement issues with additional entities providing billing.

There was also no discussion regarding the estimated costs of customer education. Unlike Texas and Georgia, the EDCs will not avoid any current or embedded costs to implement SCB since they have to retain the current billing and customer service systems to serve all default service customers, as well as any customer that seeks a return to default service or a switch to an EGS in the POR program. Simply put, costs to consumers will only increase under this approach.

There has also been no showing of benefits to customers. Indeed, several of the purported “benefits” that the EGSs have offered as justification for their SCB proposal cannot be billed on a utility bill.¹⁰ Flat bills, for example, that fail to provide the approved rates for distribution services are not permitted in Pennsylvania. Additionally, prepaid electric service has not been approved for any widespread implementation in Pennsylvania. The OCA submits that pursuing a path to allow suppliers to market products and services to residential customers that are currently not allowed for important consumer protection reasons cannot be considered a benefit.

Pennsylvania has already spent hundreds of millions of ratepayer dollars on consumer education, POR implementation, accelerated switching, instant connect, seamless move, and the on-going upgrades to billing systems, as well as the development of the joint bill to provide more detailed information for a customer’s EGS. There is no basis to impose additional costs on ratepayers to develop a means of billing in order to deepen the relationship between two private contractual parties, the EGS offering SCB and the consumer receiving an SCB.

E. Supplier Consolidated Billing Is Not Necessary To Enhance the Retail Market.

As the OCA noted in its Comments, there has been no demonstration of how SCB would improve the Pennsylvania electric retail market or provide any additional benefit to customers. OCA Comments at 27. Moreover, no additional information has been provided since the

¹⁰ EGS Coalition Presentation at 15, 28.

Commission last considered this issue that suggests that SCB is necessary or that the substantial concerns held by the Commission about this billing method can now be addressed.¹¹

Rather than enhancing the retail market, the proposal for SCB is likely to lead to a deterioration in consumer protections. Notably, the vast majority of recurring bill payments are made online.¹² If non-basic charges are included in the total amount due, which is the case according to the EGS Coalition's provided SCB samples¹³, then the inclusion of non-basic charges presented as the total amount owed on the online utility bill may harm consumers who assume that the total amount due must be paid to ensure retention of essential electric service.

Further, the notion that the utility bill is the crucial means of ensuring a relationship with their customers is contrary to research of modern billing practices.¹⁴ As we move to electronic online billing, research indicates an increasing lack of customer attention to the utility bill other than as a means of providing the total amount owed.¹⁵

¹¹See, Petition of NRG Energy, Inc. for Implementation of Electric Generation Supplier Consolidated Billing, Docket No. P-2016-2579249, Opinion and Order (entered January 18, 2018) at 21 (2016 NRG Order); See also, Investigation of Pennsylvania's Retail Electricity Market: End State of Default Service, Docket No. I-2011-2237952, Final Order at 66-67 (Order Feb. 15, 2013) (Electric RMI Final Order).

¹² Aite Group, *How Americans Pay Their Bills: Sizing Bill Pay Channels and Methods* (January 2017) at 15 ("Among the 4.7 billion recurring bill payments made in 2016, approximately 3.4 billion bills, or 71%, are paid online, dwarfing the 1.1 billion paid through the mail or via phone").

¹³ EGS Coalition Presentation at 33-34.

¹⁴ See, NRRI, *Energy and Water Utility Billing Rules, Standards, and Practices: A Survey of the State of the Art and Ideas about Future Directions* at 13. Available at: https://www.researchgate.net/publication/302643230_Energy_and_Water_UTILITY_Billing_Rules_Standards_and_Practices_A_Survey_of_the_State_of_the_Art_and_Ideas_about_Future_Directions (accessed on Aug 20, 2018). ("Many consumers spend minimal time thinking about their utility bill, pay minimal attention to any bill inserts, and give little if any thought to their preferences for utility communications."); see also, Greentechmedia.com, *Customers Spend 8 Minutes per Year Interacting Online With Their Utility*. Available at: <https://www.greentechmedia.com/articles/read/customers-spend-8-minutes-a-year-interacting-online-with-their-utility#gs.Z8s6cZE> (accessed on Aug 20, 2018).

¹⁵ Id. ("They also want bill formats that prominently display the most important information, in a larger, bolder font, so that they can quickly focus on the amount due and due date (Kline and Stanton 2016, p. 5). Foster and Alschuler (2011, p. iv) report that 'research show[s] that overly-specific rate information reduces bill comprehension.' Therefore, they recommend that details be presented 'on page 2 or after.' Or, they suggest, '[P]ut it where users can find it as needed,' for example, on the utility's website.").

The EGS comments that promote the need for SCB in order to enhance their ability to communicate with their customers is without justification. EGSs can communicate with their customers in a variety of ways and through a variety of channels even if their charges are included on the joint bill. EGSs routinely gather email addresses for their customers at the time of enrollment and have other data they need to reach their customers. Currently, there is nothing that prevents the EGSs from communicating and marketing their products to Pennsylvania customers through the use of dual billing, smart phone “apps,” text communications, social media, websites, mailings, or through any other medium of advertisement. The OCA agrees with Vice Chairman Place’s response, in which he notes that this type of information “is really tailor made for an app experience.” Initial Hearing Transcript at 82. There is no apparent basis for insisting that these modern communication methods cannot be implemented unless the EGS can issue an SCB.

The EGSs offered no support to the notion that the regulated utility bill is the necessary vehicle to market and sell their products and services. Nothing in the Act suggests that the goal of restructuring compels the Commission to create a market for non-basic or non-utility services and products. The point of the Act was to lower the cost of electricity. Moreover, the non-commodity products and services that the EGSs hope to offer on the utility bill are also being offered by unregulated providers who would not be able to gain the competitive advantage of the utility bill. None of the non-EGS providers for these same products and services can include their charges on the regulated utility bill, even if the customer were to request that the charges be placed on their utility bill.

The OCA submits that Pennsylvania got it right with well-functioning, reasonable UCB/POR programs. There is no need to go through the considerable time and expense to establish SCB in Pennsylvania.

F. There Is No Evidence that SCB Would Enhance Consumers' Understanding of the Competitive Market.

In its Comments, the EGSs assert that the implementation of SCB would result in enhanced consumer education and will enable consumers to better understand their options. EGS Coalition Comments at 18; Inspire Energy Comments at 4. The EGSs assert that direct billing by EGSs will improve customers' understanding of the competitive market and the options available to them. Inspire Energy Comments at 4; WGL Energy Comments at 6. In a December 2016 press release, the Commission stated that the results of a recent survey in Pennsylvania showed that 94 percent of respondents were aware of their ability to shop for their own electricity provider.¹⁶ The press release also notes that over half of the respondents who have not switched electric providers report that this is due to them being happy with their current provider.¹⁷ The OCA submits that consumers are aware of their electric shopping options. As the OCA noted in its Comments, SCB is likely to create price distortion and confusion in the retail market and require even more consumer education. OCA Comments at 14-15, 17-18.

G. Extending the Power to Order Termination of Essential Utility Service to EGSs Issuing SCB Raises Significant Concerns

Under SCB, EGSs seek the power to order termination of regulated service. Extending the power to order termination of electric service to EGSs puts the EGSs in the role of the regulated public utility. The National Energy Marketers Association ("NEM") stresses that EGSs offering SCB require the power to order termination of a customer's service for nonpayment in order to manage bad debt risk. NEM Comments at 12. NEM states as follows:

¹⁶ See, http://www.puc.state.pa.us/about_puc/press_releases.aspx?ShowPR=3794

¹⁷ Id.

Allowing suppliers to order termination for nonpayment would permit them to properly manage this risk (the utilities are currently permitted to collect for customer bad debt in their rates), by appropriately providing suppliers with payment collection tools, i.e., the ability to issue a disconnect request to the utility for nonpaying customers and to request customer deposits.

NEM Comments at 12. Moreover, at the first *en banc* hearing, NRG testified as follows:

And most importantly I think in terms of the questions in terms of consumer protection, the termination request would start at the supplier. That's the key difference.

Initial Hearing Transcript at 33. NRG further testified as follows:

But we do still need, unfortunately, the ability to collect bad debt, which as we know from experience not only in this industry but in other industries does require [the ability to] disconnect power.

Initial Hearing Transcript at 34. The OCA notes that no other industry can use termination of essential utility service to collect their debt. Additionally, Chapter 56 specifically precludes the use of the termination notice as a collection tool. 52 Pa. Code Section 56.99. The EGS Coalition, however, states in its comments that dual billing is not an option because “[s]uppliers would be unable to engage in effective collection efforts since termination would be driven solely by non-payment of distribution charges.”¹⁸ The Act does not contemplate suppliers initiating or directing termination.

Termination of an essential utility service is an extraordinary remedy available only to highly regulated public utilities under applicable regulations and state law. The OCA agrees with the PA AFL-CIO that a non-utility does not have the power to order termination of utility service to a customer and it should not have the power to terminate. See, AFL-CIO Comments at 5.¹⁹ The obligations regulated public utilities assume under their certificate of public convenience are

¹⁸ Id.; see also, EGS Coalition Presentation at 41 (“The ability to manage bad debt exposure is essential.”).

¹⁹ As is oftentimes pointed out by the EGSs, their prices are not regulated and there has been no determination that they are just and reasonable.

inextricably tied to the extraordinary remedy of a service termination made available to these utilities while their obligations are being carried out. EGSs have no such obligation.

III. CONCLUSION

The OCA submits that the Commission was correct in its NRG Order and Electric RMI Order when it declined to implement SCB. The OCA further submits that charging all ratepayers to deepen the relationship between certain EGSs that would offer SCB and their customers does not further the goals of the Act. The EGSs in their Comments have not made any showing of tangible benefits of SCB to consumers or the retail market. The Commission should not rely on vague and unsupported promises of benefits to undertake such a significant step to allow SCB. The POR programs in Pennsylvania are well utilized by EGSs, and as such, there is no need for SCB. The OCA submits that EGSs may utilize dual billing in order to establish deeper customer relationships if they so desire and bill for non-commodity products and services. As the Commission recently concluded for both the retail electric market and the retail natural gas market, there is no basis to expend the considerable time and resources on a SCB initiative.

Respectfully Submitted,



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