

Karen O. Moury
717.237.6036
kmoury@eckertseamans.com

August 24, 2018

Via Electronic Filing

Rosemary Chiavetta, Secretary
PA Public Utility Commission
PO Box 3265
Harrisburg, PA 17105-3265

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

Dear Secretary Chiavetta:

Enclosed for electronic filing please find the Reply Comments on behalf of the Electric Generation Supplier Coalition for Supplier Consolidated Billing ("EGS Coalition for SCB") with regard to the above-referenced matter. The EGS Coalition for SCB consists of NRG Energy, Inc., Direct Energy, Inc., ENGIE Resources LLC, Interstate Gas Supply, Inc. d/b/a IGS Energy, and Just Energy Group, Inc.

Sincerely,



Karen O. Moury

KOM/lww
Enclosure

cc: Daniel Mumford, Director, Office of Competitive Market Oversight (via email only)
Kriss E. Brown, Deputy Director, Office of Competitive Market Oversight (via email only)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**REPLY COMMENTS
OF ELECTRIC GENERATION SUPPLIER COALITION FOR SUPPLIER
CONSOLIDATED BILLING**

Karen O. Moury
Attorney I.D. No. 36879
Eckert Seamans Cherin & Mellott, LLC
213 Market Street, Eighth Floor
Harrisburg, PA 17101
717.237.6036
kmoury@eckertseamans.com

August 24, 2018

Attorney for EGS SCB Coalition

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	COMMENTS	11
A.	What Are The Essential Elements Of SCB?	11
B.	Why Is Access To The Bill So Critical?	11
C.	What Are The Overall Benefits Of SCB?	15
	1. Overall Benefits	15
	2. Development of Innovative Product Offerings	15
	3. Reduction of Bad Debt Expenses.....	16
	4. Elimination of Monopoly Status	17
D.	Why Is Supplier Consolidated Billing So Important Now?	18
	1. Leveraging Investment in Smart Meters	18
	2. Meeting Customer Expectations	19
	3. Enhancing Customer Satisfaction	21
	4. Promoting Innovation.....	23
	5. Enhancing Transparency.....	25
	6. Delivering Specific Economic Benefits to Pennsylvania.....	26
E.	Why Not the Utility Bill?	27
F.	Why Not Dual Bills?	33
G.	Will Consumer Protections Be Preserved?	34
	1. Compliance with Consumer Protection Requirements	34
	2. Termination Process.....	36
	3. Low-Income Customers	39
H.	What Needs To Happen To Implement SCB?	42
I.	Is SCB Legal?	45
	1. Summary of Argument.....	45
	2. Express Legal Authority – Chapter 28.....	47
	3. Implied Legal Authority – Chapters 5 and 28.....	48
	4. Section 2807(c) – Billing Services.....	50
	5. Section 2807(d) - Customer Service Functions.....	55
	6. Chapter 14	56
J.	What Will SCB Cost?	57
III.	CONCLUSION	60

I. INTRODUCTION

Twenty years after the implementation of electric choice in Pennsylvania, the competitive retail market is lacking the innovative products and services that have long been the goal of the Commission, and two-thirds of mass market customers still receive default service from the electric distribution company (“EDC”) rather than choosing an electric generation supplier (“EGS”). It is time for a change. To quote American inventor and successful businessman Charles Kettering, “[t]he world hates change, yet it is the only thing that has brought progress.” If Pennsylvania expects the retail electric market to evolve into one that gives consumers more options and provides opportunities for them to choose energy products and services that are customized to meet their own individual needs, the Commission must embrace the changes that are needed to achieve that progress. Supplier consolidated billing (“SCB”) presents the Commission with a path to move this market forward and take it to the next generation of innovative product and service offerings, while ensuring the continuation of all existing customer protections.

NRG Energy, Inc. (“NRG”), Direct Energy Services, LLC (“Direct”), ENGIE Resources LLC (“ENGIE”), Interstate Gas Supply, Inc. d/b/a IGS Energy (“IGS”), and Just Energy Group, Inc. (“Just Energy”), on behalf of themselves and their respective EGS affiliates operating in Pennsylvania (collectively referred to as “the Coalition”), file these reply comments pursuant to the May 14, 2018 Secretarial Letter issued by the Pennsylvania Public Utility Commission (“Commission”) at the above-referenced docket. The Coalition filed comments on May 4, 2018.¹

¹ More information about each EGS in the Coalition is set forth on pages 7-10 of the May 4 comments.

The Coalition also participated in the *en banc* hearings that were held on June 14, 2018² and July 12, 2018.³

The Coalition consists of industry leaders who are committed to the Pennsylvania electric retail market. With 80 years of collective experience serving mass market customers, the Coalition members are currently serving over one-half million mass market electric customers in Pennsylvania and sending a total of 2.6 million supplier consolidated bills each month in other jurisdictions. For them, SCB is already “business as usual.” They know their businesses and they know how vital the implementation of SCB is to the continued growth of Pennsylvania’s retail market. If SCB is made available, the Coalition members stand ready to invest in this market. And, given the strong showing of support for SCB by the EGS community in this proceeding, it is apparent that numerous other EGSs are looking to invest in Pennsylvania if they are permitted provide supplier consolidated billing services to their customers.

With the significant investments in smart meters of over \$2 billion that Pennsylvania has made and the extensive work that has been done to develop protocols for sharing that information with EGSs, the Commission cannot stop there. To not take advantage of this large infrastructure investment would be a waste of ratepayer’s capital. Now that EGSs finally have access to smart meter data that enables them to develop customized energy solutions for existing and prospective

² During the *en banc* hearing on June 14, 2018, the Coalition provided a presentation as an exhibit, containing brief bios of each senior level executive appearing for the EGSs and comprehensively covering many of the issues related to the Coalition’s proposal for the Commission to implement SCB. This presentation also includes samples of EGS consolidated bills on slides 33, 34 and 39, as well as summary charts showing the Coalition’s short responses to the issues that have been raised by SCB opponents, on slides 46 and 47. The Coalition encourages the Commission to peruse the presentation as it deliberates these issues. <http://www.puc.pa.gov/Electric/pdf/EnBanc-SCB/Exhibit-CoalitionEGSs061418.pdf>

³ During the *en banc* hearing on July 12, 2018, the Coalition provided two exhibits, including “Responses of EGS SCB Coalition to Legal Questions” and a chart entitled “Customer Relationships Drive Customer Satisfaction.” Again, the Coalition encourages the Commission to review these exhibits, as they supplement these reply comments. http://www.puc.pa.gov/Electric/pdf/EnBanc-SCB/Exhibit-EGS_SCB_Coalition071218.pdf

customers, it is essential that the Commission press forward to allow EGSs to issue consolidated bills to those customers. As EGSs have explained, offering innovative products and services is meaningless if they are unable to properly bill for them and show the customer on a consolidated bill the benefits of choosing those options. Once EGSs have established direct relationships with their supply customers, learned what those customers want and are able to show those customers on the monthly bills the benefits of choosing a particular product or service, the possibilities are endless for the types of innovative products that EGSs can and will offer.

Some doubters have asked what problem the Coalition and other EGSs are seeking to fix through SCB. As has become clear during this proceeding, a whole host of problems would be solved by SCB, including:

- The fundamental unfairness of the current scenario where EDCs and EGSs are providing two separate services to customers – distribution services and generation services – but only the EDCs can offer consolidated billing services;
- The failure of the current framework to bring long-awaited innovative product and service offerings to Pennsylvania consumers due to the inflexibility of utility consolidated bills;
- The absence of choice among consumers to opt to receive a consolidated bill from their EGS;
- The unacceptability of the dual bill option, which consumers do not want and which prevents EGSs from managing their bad debt;
- The lack of transparency and accountability of EGSs, as well as confusion among customers about who their suppliers are, because customers do not receive a bill from their EGSs; and
- The failure of the competitive market to meet customers' expectations and provide the service that customers demand.

The fundamental unfairness of the current framework is the key reason that access to the utility bill is so critical in Pennsylvania's retail electric market. Although consumers rely on mobile applications ("apps") and other mechanisms to pay for other products and services they

purchase, EDCs in Pennsylvania continue to hold monopoly status as the only entity that can provide consolidated bills to consumers. If consumers desire to choose any product or service from an EGS other than a “plain-vanilla” per kWh price, their only choice is to receive dual bills from the EDC and EGS, which the consumers find unacceptable. Also, as a result of this monopoly status that EDCs hold over consolidated billing services, they have established themselves as the dominant energy providers in a generation market that - by law - is required to be competitive. Casting themselves in this light, the EDCs have perpetuated brand loyalty and provided a platform to sell and bill for non-commodity products and services to customers that are unrelated to their functions as delivery companies. The solution proposed by the Coalition to address these flaws in the current structure is to provide EGSs with the same ability that EDCs currently have of issuing consolidated bills to the customers, managing the bad debt associated with those bills and otherwise owning those relationships.

In launching the electric retail markets investigation in 2011, the Commission observed that the Commonwealth had emerged as a national leader in electricity policy in 1996 when the Choice and Competition Act was enacted.⁴ Importantly, not only did the General Assembly expect customers to have a choice of their EGS, but also that the end state was to be a “competitive” generation market.⁵ Two-thirds of the mass market customers continue to receive default generation service from their EDCs. By any definition, this is not a robust market. Notably,

⁴ *Investigation of Pennsylvania’s Retail Electricity Market*, Docket No. I-2011-2237952 (Order entered April 29, 2011) (“*RMI Launch Order*”).

⁵ *See, e.g.*, 66 Pa.C.S. § 2802(3); (citing advancements in technology, it is in the public interest “to permit retail customers to obtain direct access to a *competitive* generation market”) (emphasis added); 66 Pa.C.S. § 2802(7) (“Commonwealth must begin the transition from regulation to greater competition”); 66 Pa.C.S. § 2802(12) (purpose of chapter is to create direct access by retail customers to the competitive market); 66 Pa.C.S. § 2804(2) (consumers should be able to choose among EGSs in a competitive market).

however, even if all customers were shopping, SCB would be necessary to unleash the full potential of the competitive market where consumers have access to a diverse array of innovative products and services that are tailored to meet their individual needs. Among the choices that should be available to customers participating in a robust competitive market is the option to receive a consolidated electric bill from the entity that provides their electric supply services – just as they receive bills for any other product or service that they purchase from any other merchant, that include both the merchandise and delivery charges. By enabling SCB, the Commission would preserve Pennsylvania’s status as a national retail markets leader and permit EGSs to deliver the promises of a robust and fully-functioning competitive market.

Senior level executives of EGSs of varying sizes and business models presented compelling testimony during the *en banc* hearings as to the need for SCB to bring the innovative products and services to Pennsylvania consumers that are available in other jurisdictions and that will later be developed as technology evolves. These executives know their businesses, they know what customers expect and they know that SCB is vital to the development of a robust competitive retail electric market. If EGSs were satisfied with the existing structure of relying on utilities to bill for them or of requiring customers to receive dual bills as a price for selecting an innovative product or service, this proceeding would not be necessary. However, EGSs are not satisfied with these limitations, and the Commission should not be satisfied either. EGS executives emphasized the importance of the monthly bill in allowing them to form direct and long-term relationships with their customers. In turn, through those relationships, customers begin to trust the EGSs and view them as their “energy company.” Having established this trust, EGSs learn more about what their customers want from their energy company and are able to develop customized solutions

individually tailored to meet those unique needs. However, as EGSs told the Commission, they cannot bring these innovations to a market without SCB.

Relying on antiquated thinking, the utilities and the consumer advocates resist a change that is needed in the retail market, preferring instead to maintain the status quo and halt progress. Notably, both groups seek to *limit* the options that are available to consumers in the competitive retail market. In resisting the needed changes to the market, the opponents of SCB desperately cling to the traditional roles of EDCs - to the point of suggesting that EGSs are somehow less capable of providing consolidated billing services despite extensive experience doing so in other jurisdictions. References to “out of state entities” and “dozens of new actors,” and the use of baseless scare tactics about consumer protections, do not promote a thoughtful discussion of the importance of SCB in this market and how it would be implemented. Notably, not a single barrier raised by the opponents of SCB presents an insurmountable challenge; rather, the comments and testimony presented by the opponents regarding the operational details fall into the category of “implementation issues” – not reasons to impede progress.

It is up to the Commission to assume its leadership role and ensure that necessary changes are made to Pennsylvania’s retail market so that the investments in smart meters will be more fully realized, consumers will have more choices in the way they are billed and Pennsylvanians will finally have access to a diverse array of innovative products and services. Absent a continuation by the Commission of its role as a national leader in developing retail markets, the utilities and consumer advocates will have succeeded in depriving customers of the benefits of progress and innovation, in the following ways:

- *Preserve Focus of Market on Price.* If the utilities and consumer advocates are successful in quashing progress, they will have ensured that Pennsylvania’s retail market continues to be only about price. A market that is only about price will

continue along its sluggish pace where two-thirds of the mass market customers still take default service from the EDCs – twenty years later.

- *Deprive Customers of Innovation.* If the utilities and consumer advocates successfully impede progress, they will have made sure that Pennsylvania consumers continue to be deprived of the opportunity to choose products and services that are customized to meet their own individual needs. Without those innovative product offerings, Pennsylvania will have failed to achieve the goals of the restructuring law for a “competitive” generation market.
- *Fail to Capitalize on Smart Meter Investment.* If the utilities and consumer advocates successfully halt progress, they will have succeeded in making sure that Pennsylvania never capitalizes on the \$2 billion of smart meter investments that customers have made. Without SCB, EGSs will have access to standardized smart meter data but will have no ability to effectively market innovative products to customers because they cannot bill for them or show on the bill how customers are benefiting from the choices they make.
- *Limit Customer Choices.* If the utilities and consumer advocates are successful in their efforts to stall progress, they will have succeeded in limiting the choices that consumers have in the retail market. Consumers will be prevented from selecting another billing option they may wish to choose. Instead, they will be stuck with receiving the utility consolidated bill, along with all its limitations on the types of products that can be offered.
- *Continue Lack of Transparency.* If the utilities and consumer advocates are successful in their efforts to maintain the status quo, they will have ensured that customers continue to lack transparency regarding what they purchase and from whom. While customers may still enroll with suppliers, they will continue to be unaware who their supplier is since they do not receive a monthly bill from them.

Questions have arisen as to whether SCB is permitted by the Public Utility Code (“Code”).⁶

As the Coalition has explained, the Commission has both express and implied legal authority under the Code to implement SCB. The Commission is expressly authorized by the Code to mandate further unbundling beyond generation, transmission and distribution. The only services carved out by the Code to continue as monopoly functions are transmission and distribution. Therefore, the General Assembly clearly viewed further unbundling as involving any other services provided

⁶ 66 Pa.C.S. §§ 101 *et seq.*

by the EDCs, which absolutely includes billing services. Further, the Commission is obligated by numerous sections of the Code to foster the development of a competitive generation market, and the EGS community is clearly conveying to the Commission that SCB is necessary to advance this generation market to one that is “competitive.”⁷

Importantly, the provision in the Code that obligates EDCs to perform consolidated billing services – if required by the Commission – does not in any way entitle the EDCs to be the only entity handling these functions. To the contrary, this language has been consistently interpreted by the Commission dating back to 1997 as ensuring the ability of consumers to receive a single bill for all electric charges. Understanding the importance of consumers being able to receive a consolidated electric bill, the General Assembly took steps to ensure the continued availability of this service from the EDCs. However, nothing in that section or in any other provision of the Code restricts the ability of the Commission to permit other entities to also provide these services, subject to the choice of the customer, whose interests are paramount.⁸

Attempts by the EDCs in this proceeding to derail these discussions by engaging in a flawed statutory construction analysis should be rejected. While the EDCs have set forth a “general” over “particular” analysis, the rules of statutory construction that apply to this debate are those that require the Commission to construe provisions together and to give effect to all provisions and parts of a statute relate to the same matters. When one goes through that exercise, it is clear that the various provisions of the Code that have been identified during this proceeding can all be given full effect. Specifically, consistent with the authority under Code Section 2804(3),

⁷ See Reply Comments at 44-47.

⁸ See Reply Comments at 49-53.

the Commission may mandate that billing services be unbundled enabling SCB to be implemented. Also, the availability of consolidated billing services from another entity would not alter the obligation that EDCs have under Code Section 2807(c) to offer consolidated billing services to consumers if the Commission requires them to do so. And, Code Section 2809(e) would ensure that when EGSs are providing SCB they must comply with Commission requirements designed to ensure that the present quality of service provided by electric utilities does not deteriorate, including assuring that standards and billing practices for residential customers are maintained. The same outcome is true for Chapters 14 and 28 of the Code, which can and should be interpreted as one harmonious component of the entire statutory structure.⁹

Additionally, the Commission has full authority under the Code to impose standards on EGSs providing consolidated billing services. In fact, the Code obligates the Commission to do so if necessary to ensure continued adherence to the standards and billing practices established by Chapter 56 of the Commission's regulations. Moreover, the Commission is authorized by the Code to impose any requirements on EGSs that it believes are necessary to protect the public, including the protections of Chapter 14. Notably, EGSs have agreed to subject themselves to the Commission's jurisdiction and to comply with these consumer protection requirements.¹⁰

In cobbling together a legal argument based on vague references to a variety of Code sections, which falls short upon scrutiny, the opponents of SCB have failed to refer to a single provision of the Code prohibiting the implementation of SCB. The reason for that is simple – there is no such provision. The Code likewise does not have a sentence saying that “the Commission

⁹ See Reply Comments at 54.

¹⁰ See Reply Comments at 33-34.

may direct the implementation of supplier consolidated billing.” However, that is not the standard that applies when considering whether the Commission has legal authority to take action. Every single day the Commission takes actions that are not explicitly authorized by the Code. The Commission does this because it is permitted to act on the basis of either express or implied powers, and these powers are very broad. It is well-settled that the Commission’s authority arises from both the express words of the pertinent statutes or by the strong and necessary implication therefrom. Given the language in the Code about further unbundling, the development of a competitive generation market and the carve-out of only transmission and distribution to remain as monopoly services, no doubt exists as to the Commission’s legal authority to move forward with SCB. It is only a question of whether the Commission has the will to move forward.

While change is hard, progress is key. More active EGS participation in the retail market, with EGSs investing in the Commonwealth and using technology to develop innovative product offerings, can only be good for Pennsylvania and its consumers. As Chairman Brown has observed, “we want innovative companies to choose to do business in the Commonwealth. Encouraging this type of investment creates jobs, improves the economy, and benefits consumers.”¹¹ Pennsylvania is a place “where innovative companies...can invest and grow.”¹² When EGSs are able to truly compete, they invest and grow, and consumers benefit from more competitive prices, innovative product offerings and better customer service.

Implementation of SCB in Pennsylvania would be a game-changer, propelling retail electric competition to the next level as envisioned by the General Assembly in 1996 when

¹¹ *Application of Freed Man Autonomous Vehicles LLC*, Docket No. A-2017-2585722 (Joint Statement dated February 9, 2017).

¹² *Id.*

Pennsylvania emerged as a national leader in promoting the development of the electric retail market. Moreover, adding SCB to the available electric service billing options would support the Commission's goals of enhancing product offerings to consumers and encouraging long-term investments by EGSs within Pennsylvania.¹³ The Coalition stands ready to invest in Pennsylvania's retail electric market if EGSs have the same ability that EDCs already have to send consolidated bills to their customers.

II. COMMENTS

A. What Are The Essential Elements Of SCB?

In basic terms, a qualified EGS choosing to provide SCB services would be responsible for billing and collecting from the customer for both the EGS's generation service and the EDC's distribution charges. This model would replicate the normal practice followed by other providers of goods and services that directly bill their customers for those products or services, including any associated delivery charges. The Coalition's proposal for SCB includes the following key elements: 1) the preservation of all existing consumer protections; 2) the establishment of robust technical and financial qualifications for participating EGSs; 3) the full purchase of EDC receivables by EGSs, including the EDC transmission and distribution charges, nonbypassable riders and other surcharges; and 4) the ability of the EGS to initiate the termination process for non-payment.

B. Why Is Access To The Bill So Critical?

Bills are the vehicle for EGSs to form relationships with their customers. The effectiveness of this monthly channel for establishing direct and long-term relationships with customers cannot

¹³ *Investigation of Pennsylvania's Retail Electricity Market*, Docket No. I-2011-2237952 (Order entered February 15, 2013) ("End State Final Order") at 24.

be overstated. Enabling EGSs to enjoy a direct relationship that allows for monthly communication – whether via paper or electronically, through which the EGS can (i) build trust with the customer and demonstrate its proficiency at meeting the customer’s needs; (ii) increase its visibility with customers and; (iii) be more fully accountable to its customers -- is critical in moving toward a robust market. By providing a direct billing relationship between EGSs and their customers, SCB would enable EGSs to establish trust and loyalty with those customers and be perceived as their “energy company.” The supplier-customer relationship would grow as the supplier consistently provides timely and accurate bills, properly processes customer payments and diligently handles the customer’s inquiries. Testifying for the Coalition, Mike Starck, General Manager and Vice President, NRG Retail East, explained that even for customers who do not get paper bills, they “get that email every month from NRG and they send their payment to us. They look to us to bill them correctly and process their payments correctly, and that interaction helps them build trust with us, and that we know what we’re doing.” Tr. 214.

With this trust that develops, suppliers are able to better educate their customers about other beneficial products and services, field customer inquiries about their electricity usage, and offer alternatives that lower customers’ overall consumption and costs. Another of the advantages of having the billing relationship, as described by Mr. Starck, is that EGSs learn how the customers pay, when they pay, what payment channel they use – and all of that allows the EGS to customize options to meet each individual customer’s preferences. Tr. 214.

Having a strong relationship and brand recognition with customers enables a business to grow and thrive and improves customer satisfaction with the services they receive. Customers expect to be billed by, and pay, the provider of the goods and services they consume. Customers also demand simplicity – they want a single bill for all of their energy services. Through the ability

to send consolidated bills that include charges for all electric services, EGSs fulfill these expectations. Notably, in the current environment, not only are EGSs failing to meet these expectations, they are often the subject of complaints filed by customers alleging that they were slammed many years after they affirmatively selected the supplier. It is not a wonder that this occurs given the fact that the customer enrolls and then receives no bill from the EGS – no monthly reminder of the transaction or the relationship, such as it is. Indeed, customers routinely allege that they could not have selected the supplier since they never received a bill from the EGS. Moreover, needing to inform prospective customers that the EGS cannot issue a consolidated bill to them leaves the impression that the EGS is incompetent, especially in a world where invoices are routinely issued by individuals running small businesses out of their homes.

Questions arose during the recent *en banc* hearings about why access to the utility bill is so critical when many consumers rely on mobile applications (“apps”) and automatic payments to pay for other products and services. A key reason that access to the utility bill is so critical in Pennsylvania’s retail market is that despite the fact that two separate entities are providing distribution services and generation services, only one of them – the EDC – may offer consolidated billing services. In this regard, SCB is a matter of fundamental fairness and ensuring a level playing field. Also, as a result of this monopoly status they hold over consolidated billing services, the EDCs have established themselves as the dominant energy providers in a market that – by law – is required to be competitive.

Some commenters have suggested that EGSs have other means of communicating with their customers besides issuing a monthly bill. Testifying for the Coalition, Mr. Starck explained that NRG is constantly communicating with its customers and trying to figure out different ways to talk to them to ensure they know the benefits they are getting from being a customer of NRG.

The question is “what is the best vehicle for communication with customers” and NRG has concluded, every time, that the best vehicle is the monthly bill. Tr. 65-67. People are inundated with communications from a number of different organizations and simply do not open all of the emails or letters that they receive. According to Mr. Starck, “that is why getting access to billing is such an important element of creating that relationship with our consumers.” Tr. 210.

Darrin Pfannenstiel of Stream Energy, and President of the Retail Energy Supply Association (“RESA”), testified that in retail companies, the billing department beats out the marketing team in terms of customer engagement because 97 percent of customers view their bills for an average of two to five minutes. No marketing department at any retailer can create a social media post or even a television or radio ad with that level of customer engagement, and yet each month customer bills and statements do just that. Tr. 38.

By contrast to the percent of bills that are viewed, Mr. Starck testified that NRG sends out monthly newsletters to its customers and typically sees between a 10 and 15 percent open rate. The July 2018 newsletter had a 12 percent open rate. Tr. 210. Although NRG includes valuable information in the newsletter, the reality is that it is fighting for people’s time with every communication it makes. Mr. Starck explained that everyone looks at their bill – maybe not 12 times a year, but certainly on a more frequent basis than they are even opening newsletters or anything else that an EGS sends to them. Tr. 66. When customers open the bill, a more transparent relationship develops and the EGS has more accountability with those customers. Tr. 66-67. Testifying for RESA, Mr. Pfannenstiel added that while an EGS can try to communicate via an app, the consumers do not engage with the EGS when they are getting a consolidated bill from another entity. Tr. 80.

C. What Are The Overall Benefits Of SCB?

1. Overall Benefits

On behalf of the Coalition, Mr. Starck summarized the overall benefits of SCB as: 1) allowing customers to have another billing option; 2) allowing customers to choose different products and services; and 3) allowing innovation to benefit all Pennsylvanians. Tr. 35. When EGSs are able to truly compete, consumers benefit from more competitive prices, innovative product offerings and better customer service. Pennsylvania's retail electric consumers would benefit from SCB by gaining access to existing and emerging tools that enable them to budget their energy dollars more effectively and that are designed to help them be smarter energy consumers. Customers would also be able to receive valuable information about their energy usage through state of the art billing systems used by EGSs, as well as more customer friendly bills that are simpler and easier to understand. Enabling a direct relationship between EGSs and their customers would enhance the overall shopping experience and customer satisfaction would be greatly improved.

2. Development of Innovative Product Offerings

SCB would ensure that customers in Pennsylvania realize the full value of their smart meter investment and provide opportunities for consumers to enroll in competitive demand reduction and energy efficiency programs. Examples of specific innovative product offerings that can be made available through SCB include time-of-use products, bundled services, and customized plans, each of which leverages real-time interval usage data that enables innovative apps for smartphones, optimizes meter functionality and empowers customers to learn more about energy usage and control their usage at pivotal times. Indeed, with the way in which SCB would spark innovation, EGSs would have opportunities to attract customers who have not previously had an interest in shopping.

If EGSs are empowered to develop and deliver innovative product offerings, the possibilities are endless, and it is the consumers who will benefit. It is ultimately up to EGSs to determine what customers want from their energy suppliers and to bring those products and services to the market. Having the ability to form those essential customer relationships, gain the customer's trust and learn what customers want would give EGSs the opportunity to respond to those demands.

As Laura Greenholt-Tasto, General Manager of Shipley Energy ("Shipley") emphasized, "it comes down to what customers want... We are stymieing progress and innovation for customers with the rigid, monopolistic utility bill that shows just one product." Tr. 53. She asked the Commission to imagine "if we could consolidate bills for several different energy or home products all on one and imagine how much more energy and bill conscious consumers would be if they had all the information in one place. Supplier consolidated billing would allow us to do just that." Tr. 53.

3. Reduction of Bad Debt Expenses

Another very concrete benefit of SCB, as proposed by the Coalition, is that EGSs would assume the bad debt risk for both the commodity piece of the charges as well as the utility's distribution charges, with which EDCs would otherwise be saddled. Through the full purchase of the utilities' receivables by EGSs, SCB would reduce the EDCs' bad debt risk and operational costs. While this model can increase bad debt exposure to the EGSs, it is a necessary by-product of true competition. This risk should lie with the entities that are billing for the commodity service. Additionally, by having EGSs handle a growing number of billing inquiries, efficiencies should be realized that result in lower EDC overhead costs and overall lower rates for customers.

4. Elimination of Monopoly Status

SCB would also correct serious deficiencies in the market today due to the EDCs having a monopoly hold on providing consolidated billing services. Despite twenty years of strong Commission support for electric choice, the EDCs in Pennsylvania have maintained their dominant position in Pennsylvania's retail market. Providing default supply service to about two-thirds of their distribution customers, the EDCs capitalize on their monopoly status of being the only consolidated billing entity by portraying themselves to consumers as "the energy company." Casting themselves in this light, the EDCs have perpetuated brand loyalty and provided a platform to sell other products and services to customers, such as electrical wiring, landscaping and other services unrelated to their functions as delivery companies.

The Coalition is not seeking to preclude EDCs from performing consolidated billing services for non-shopping customers or for customers served by EGSs that do not offer SCB. However, the Coalition is seeking to put a stop to the EDCs' continued use of its monopoly status as the only consolidated billing entity, as well as their attempts to expand and bill for their own non-commodity service and product offerings, which go beyond their core functions of delivering electricity to homes and businesses. For EDCs to use their utility bill to sell these additional products and services to consumers and to strengthen their relationships with their customers, while EGSs have no ability to send a consolidated bill, is a serious deficiency in the market that SCB can begin to rectify. The way that the EDCs use their monthly bills also demonstrates the branding benefits they see flowing from their direct billing relationship with customers, which in a truly competitive retail market needs to be available to EGSs. Given the EDCs' use of this monthly channel to build customer relationships and sell non-commodity items, their opposition to a tool that would result in increased competition from EGSs is not surprising. It is time for the

Commission to embrace the changes that are needed to enhance – not thwart – competition from and among EGSs.

D. Why Is Supplier Consolidated Billing So Important Now?

The impressive outpouring of strong support from the EGS community for SCB highlights the importance of SCB to Pennsylvania’s competitive retail market today. The company executives who testified for the EGSs at the *en banc* hearings know their businesses, understand customer expectations and comprehend what it takes to meet those expectations and succeed in this market. They were unanimous in their message to the Commission - they need to be able to send consolidated bills to their customers. As the RESA President testified, “[i]t is time that Pennsylvania energy retailers are allowed to utilize their billing abilities to create brand awareness and loyalty, improved customer satisfaction, customer engagement and customer lifetime value.”

Tr. 38.

1. Leveraging Investment in Smart Meters

In the Joint Motion adopted in this proceeding on January 18, 2018, the Commission recognized the critical role that SCB plays in capitalizing on the investments that have been made to bring smart meters to Pennsylvania. Specifically, the Commission acknowledged that the “advent of smart meters brings many potential benefits that would be greater utilized with corresponding upgrades to equipment within houses and businesses.”¹⁴ Noting that the “competitive market makes EGSs well situated to have the expertise and incentive to provide such upgrades in order to best utilize the capabilities of smart meters,” the Commission pointed to the

¹⁴ *Petition of NRG Energy, Inc. for Implementation of Electric Generation Supplier Consolidated Billing*, Docket No. P-2016-2579249 (Joint Motion adopted January 18, 2018) (“*SCB Joint Motion*”) at 2.

reality that “EGSs are hampered by the fact that charging for EGS value-added services is effectively limited to dual billing.”¹⁵

As to why SCB is important now, Chairman Brown’s opening comments on June 14, 2018 recognized the investment of over \$2 billion in the roll-out of advanced metering over the past eight years and the opportunity that SCB would present to move the market into the next generation of value-added product and service offerings. Tr. 9-10. Indeed, testifying for the Coalition, Greg Leflar, Vice President of Operations for ENGIE, noted that with the deployment of smart meters and the development of data sharing protocols enabling EGSs to access standardized data, SCB is the final piece that is needed to truly leverage that significant investment and move Pennsylvania’s retail market to the next level. Tr. 21. As the Chief Customer Officer for TXU Energy, which is the largest retail electric supplier in Texas and part of the Vistra Energy portfolio companies, John Duessel agreed that “the implementation of SCB combined with the roll-out of advanced meters will position the Pennsylvania market to realize new levels of product innovation and thereby expand the customer experienced benefits of electric choice.” Tr. 46.

2. Meeting Customer Expectations

SCB is also key in meeting the expectations of modern consumers. Mr. Leflar explained the importance of adapting the way an EGS operates to meet customer expectations. Rather than focusing only on price and viewing the customer as a consumer of a kilowatt-hour, he noted that “the future of retail energy is about so much more than this. We need to begin thinking not just about how to provide low cost, but how we maximize the value that organizations like ours can deliver to customers to help them meet their needs.” Tr. 18. Citing a recent personal experience

¹⁵ *SCB Joint Motion* at 2.

upgrading his mobile phone, Mr. Leflar described how that industry has already transitioned to the point of trying to understand the consumer's needs and offer a customized product tailored for that particular consumer. Tr. 19. In the same way, it is critical for energy providers to “stop speaking to customers in terms of kilowatt-hours” when customers “are interested in having solutions and outcomes.” Tr. 20. As Mr. Leflar explained, it is up to EGSs “to take all the innovations that are out there” – things like smart thermostats, smart hot water heaters, distributed generation, battery storage, microgrids – “and bring those together into comprehensive solutions that we can offer customers that solve their problems.” Tr. 20.

Testifying for RESA, Sean Garrity, Director of Operations for Stream Energy, offered similar comments. He explained that consumers “want more than just to be able to turn their lights on. They want new technologies to manage their energy consumption, help the environment, and new ways to think about energy.” Tr. 43. Mr. Garrity further noted that trends such as deployment of rooftop solar, connected home devices, smart LED lighting and thermostats and service innovations change the way customers think about the energy supplier, and that it is this type of innovation that caused Pennsylvania to restructure the market in the first place. Tr. 43. Mr. Garrity also testified that SCB allows the customer to have the conversation with their supplier, enabling EGSs to meet the ever-growing needs of the modern consumer. Tr. 44. Mr. John Duessel explained that “[w]ith SCB, retailers own the end to end customer experience and as such are directly accountable for not only ensuring all applicable regulatory requirements are met, but also providing customers with exceptional service and unique product offerings, often tailored to a customer's specific needs.” Tr. 45.

The co-founder and CEO of Drift Marketplace, Inc. (“Drift”), Greg Robinson, expressed similar sentiments. As a venture-backed technology company, Drift's main goal is to drive up the

adoption of clean energy and distributed energy resources and to drive down the cost of electricity as a service to customers. In the age of Amazon and Netflix, Drift has found that customers expect “control, choice and transparency” and Mr. Robinson believes that allowing suppliers to issue consolidated bills will help consumers achieve those goals. Tr. 57. What Drift has learned from its experience in New York is “that if a customer has opted in to buying something from a business, the business must be a hundred percent responsible for that customer relationship and satisfaction.” Tr. 58.

3. Enhancing Customer Satisfaction

SCB will result in greater customer satisfaction. As participants in the competitive market, EGSs are well aware of the fundamental importance of customer service and satisfaction. It is the Coalition’s experience that having a direct relationship with the customer unequivocally impacts the customer’s perceptions of the supplier and the services it provides. The Coalition sees first-hand in Texas, Georgia, Alberta and the United Kingdom that customers believe that billing and payment services are just as important as price in driving customer satisfaction. As the President of RESA explained, EGSs “want satisfied and engaged customers.” Tr. 38.

Testifying for RESA, Mr. Duessel gave examples of how EGSs worked in Texas to enhance customer satisfaction. They “expanded call center hours to compete on service, developed customer interactive platforms to provide electricity usage insights, built on-line capabilities to allow customers to self-serve at times that fit their schedules, and more. Simply put, supplier consolidated billing offers retailers a complete platform to differentiate themselves through customer experience and product and service innovation along with the competitive incentive to do so.” Tr. 45-46.

On behalf of the Coalition, Mr. Starck referred to an independent customer satisfaction study performed by J.D. Power which shows that an EGS’s ability to have a direct relationship

with the customer unequivocally impacts the customer's perceptions of his or her EGS and plays an important role in determining the customer's satisfaction with that EGS and the services it provides.¹⁶ That direct relationship is established through the billing and payment services provided by the EGS. From the J.D. Powers findings, in the Northeast states that were surveyed (including Pennsylvania), price carries the largest weight, and has the largest impact on customer satisfaction. In contrast, where the EGS manages the customer relationship, billing and payment has equal impact on customer satisfaction as price. Tr. 212-213.

Moreover, the same J.D. Power study showed that Texas electricity customers – all of whom have a direct relationship with their supplier – provide more positive assessments of their current suppliers versus Northeast consumers for being: friendly, of good reputation, affordable, flexible and customer focused. And, Texas customers rate their suppliers higher than customers in the Northeast (including Pennsylvania) who do not have a direct relationship with their supplier for being environmentally responsible and innovative.

When there is no direct relationship between the EGS and customer, the billing and payment experience cannot be measured and price becomes the predominant factor driving customer satisfaction levels. This emphasis on price makes it all the more difficult for EGSs to establish themselves as legitimate, reliable businesses capable of offering customers a value proposition beyond price.

¹⁶ JD Power 2015 Retail Electric Provider Residential Customer Satisfaction Survey. The chart was submitted as a Coalition exhibit during the July 12, 2018.

4. Promoting Innovation

As to the role of SCB in promoting innovation, the Commission has expressly touted this tool as facilitating the offering of new products and services.¹⁷ In the Order addressing the *Petition of NRG Energy, Inc. for Implementation of Electric Generation Supplier Consolidated Billing*,¹⁸ the Commission declared that it continues to be of the opinion that “SCB will facilitate the offering of innovative new products and services.¹⁹ Further, through unanimous adoption of the Joint Motion of Chairman Gladys M. Brown and Commissioner Norman J. Kennard on January 18, 2018, the Commission recognized that implementing SCB will provide EGSs with the ability to offer value-added services such as home security, HVAC maintenance, surge protection, and other services associated with smart meter deployment.²⁰

Duncan Stiles, the Senior Vice President of Product Development and Strategy for Just Energy, testified on behalf of the Coalition regarding the importance of SCB to product innovation.²¹ Explaining that product innovation starts with customers, Mr. Stiles emphasized that as a competitive supplier, his business “depends on earning customer loyalty by delivering great experiences.” Tr. 21. For Just Energy, the market is about choice – allowing customers to choose the products they want and recognizing that “all customers are different and will make different choices.” Tr. 21. Mr. Stiles remarked that in order to “drive value for the people of

¹⁷ *End State Final Order* at 66-67.

¹⁸ Docket No. P-2016-2579249 (Order entered January 31, 2018) (“*SCB Order*”).

¹⁹ *SCB Order* at 61.

²⁰ *Id.*

²¹ Slides 28 and 32 of the Coalition’s June 14, 2018 exhibit shows examples of both commodity only products and bundled services.

Pennsylvania, we need to get beyond transactional efficiency in billing and create a resilient platform that will allow innovation and choice.” Tr. 21-22.

Testifying for the Coalition, Tami Wilson, Chief Finance & Risk Officer of IGS Energy, also discussed some of the types of expanded and diversified products offerings that EGSs furnish, including pre-pay, flat bill, time of use and bundled products, green products and customized energy plans. To that list, she added energy efficiency, demand response, smart thermostats and products bundled with loyalty rewards and home warranties, and products that have not yet hit mass market commercialization, such as distributed solar generation and other forms of on-site generation, microgrids, battery storage and smart home products. However, as Ms. Wilson testified, “[t]hese innovative products are not going to come to a marketplace without supplier consolidated billing, and it only makes sense that the rest of the customer’s energy be billed along with these energy related products and services.” Tr. 27.

Additionally, the President of RESA testified that “as the Commission considers SCB, its decision has the potential to carry the market forward to further promote the purposes of the Act and the right of Pennsylvanians to choose from the portfolio of innovative products and services they want and which feel are best for them.” Tr. 39. He added that “consumers do not get the products and services they want, nor can retail suppliers deliver those to them, because current billing options do not allow suppliers to provide them.” Tr. 50. In fact, EGSs in Pennsylvania face significant obstacles in their ability to introduce even the most commonplace innovations seen in markets that have implemented SCB. Tr. 41.

Also, Mr. Garrity described products that Stream Energy offers in jurisdictions where SCB is available, such as competitive pricing on wireless, home and protective services. Additionally, Stream communicates valuable information through bill messages or inserts. Tr. 43. Mr. Garrity

identified a number of innovative products that are available in Texas and would be enabled by SCB in Pennsylvania, highlighting a wide array of time of use plans. Tr. 46-47. He also noted that some retailers offer solar buyback programs that allow customers with solar panels to receive credits on their bill for excess electricity they generate and return to the grid. SCB further provides EGSs with the incentive to develop innovative enrollment options and credit management solutions to attract and retain customers. As an example, Mr. Garrity cited a prepaid pay as you go plan that does not require a deposit or long-term contract. EGSs have similarly, in post-pay context, innovated to help customers mitigate up-front deposits through staggered payments, unique product structures, surety bonds and other credit enhancement vehicles. Tr. 47.

Testifying for WGL Energy Services (“WGL”), Phil Woodyard identified another area where SCB can improve the level of service for customers with multiple meters. Specifically, he noted that a “commercial customer may have many accounts and properties and desire to receive a single summary bill at a time of the month that they choose to be most effective for them.” Tr. 217. He added that while “utilities have recently been allowed to provide some of these value added services, to include smart thermostats and even Christmas lights for your home, the competitive market is better positioned to provide these services to consumers who value the offers and can take advantage of them. And most importantly, utility ratepayers are not burdened with the costs associated with product innovation.” Tr. 218.

5. Enhancing Transparency

Under the current structure, EGSs have very little transparency with their customers since they are not sending a monthly bill. Customers sign up and then have no periodic interaction with the EGS, except for efforts that the EGSs make to communicate with them which are largely ignored or overlooked. Testifying for the Coalition, Mr. Starck explained that in an effort to better understand how customers perceive NRG and their satisfaction, NRG does a fair amount of

surveying of customers. He indicated that the surveys reveal that customers have a vague understanding of who NRG is and what NRG does. His belief is that this vague understanding is attributable to the fact that when customers switch, nothing changes for them – “[t]hey continue to get their bill from the utility, and they pay their utility, and their lights stay on.” Tr. 211.

A few of the quotes that Mr. Starck shared at the *en banc* hearing are very telling about the lack of transparency. The surveys were done within the first one or two months of becoming customers of NRG, and one customer said: “I can’t tell if I’m saving money or spending more money by using NRG. The bill is very confusing.” Tr. 211. Another customer remarked: “Because I’ve only had one billing cycle with NRG and I also got a bill from PECO for an even larger amount of money which I paid, I am assuming NRG got what they’re entitled to. It is all very confusing.” Tr. 211. And a third customer observed: “There’s no difference that I can tell between NRG and PECO. I was really hoping to get better customer service, but everything still runs through PECO.” Tr. 211-212. As Mr. Starck indicated, NRG has done several surveys that are repetitive of that specific theme, despite NRG’s robust customer engagement program which it continually works to improve, to regularly communicate to its customers. Tr. 212.

Mr. Starck provided additional context regarding this lack of transparency, explaining that customers repeatedly tell NRG that they do not have enough direct dealings with the company to form an opinion. They are confused about NRG’s role because they do not see NRG as a service provider when they do not receive an invoice. While NRG can communicate with its customers and offer them a variety of attractive products, at the end of the day, the customer cannot make the connection to what NRG does because nothing changes for them. Tr. 212.

6. Delivering Specific Economic Benefits to Pennsylvania

SCB will deliver specific economic benefits to Pennsylvania. As Ms. Wilson testified on behalf of the Coalition, EGSs are interested in growing their customer base and growing the

products and services that they sell to their customers, and growth in their businesses “translate to growth for Pennsylvania.” Tr. 25. Ms. Wilson explained that growth for Pennsylvania will be created on a direct basis by the economic activity generated by EGSs, resulting in additional revenues to the Commonwealth through payroll and income related taxes, and on an indirect basis by the economic activity generated by EGSs’ upstream partners. Tr. 25-26.

Testifying that IGS has sales offices throughout the state in which it operates, she also noted that IGS invests in corporate sponsorships, advertising and marketing and supports local communities in which its employees live. Simply, IGS invests in the states where it is the most successful, and SCB is a critical component of that success in that it allows IGS to grow in non-commodity products. This growth translates to growth for local contractors. Ms. Wilson explained, “For example, we have home warranty products that we sell to our customer base, and we partner with local contractors to help service those warrant contracts. We also use local contractors to install solar panels on our customers’ roofs.” Tr. 26. SCB can bring these economic benefits to Pennsylvania.

E. Why Not the Utility Bill?

Some presenters suggested that EGSs can use the utility bills to offer innovative products now and specially mentioned time of use products. However, the utility bills lack the flexibility to allow for dynamic pricing enabled by smart meter data or charges for other services. Moreover, using the utility bill perpetuates the existing problem of preventing a direct relationship between customers and suppliers through the most basic interaction that each customer has – their monthly electric bill. During the electric retail markets investigation (“RMI”), the Commission recognized the importance of establishing a relationship between EGSs and their customers, noting that the

link between the EDC and the customer has been a barrier to a fully competitive market.²² More recently, the Commission agreed that SCB will help the supplier in establishing a brand identity with the customer.²³ The Commission further acknowledged during the RMI that it is confusing for customers to receive a bill from the utility that contains supply charges from the customer's chosen supplier.²⁴

In short, as the seller of the commodity in a competitive retail market, EGSs should not be expected to depend on the regulated utility – currently their biggest competitor – to bill for these services. As the RESA President testified, EGSs face significant obstacles in being able to bring innovative products to the market “when the utility is the one issuing a bill that is limited in design, permits only so many characters for any messaging, and allows a supplier at best to puts logo on the bill to remind the customer who their supplier is.” Tr. 41. Mr. Starck also explained that as a line item on the bill today, the EGS does not have full transparency and accountability as the customer's vendor. Tr. 66.

Testifying as Chairman of the Advanced Energy Management Alliance (“AEMA”), Frank Lacey illustrated the deficiencies of the utility bill. Noting the AEMA's strong support for SCB “as it will enable advanced energy products and services, including innovative solutions tailored to meet individual consumers' needs,” he explained that AEMA's members provide dozens of different types of services that allow consumers to either reduce their energy consumption or to manage their consumption in a manner that will reduce their electric bill. They include investment

²² *Investigation of Pennsylvania's Retail Electricity Market: End State of Default Service*, Docket No. I-2011-2237952 (Order entered November 8, 2012) (“*End State Tentative Order*”) at 27-28.

²³ *SCB Order* at 61.

²⁴ *End State Tentative Order* at 27-28.

for a solar panel or thermostat, financing charges and lease arrangements, retail energy efficiency or demand response program payments, etc. Tr. 60-61. However, as Mr. Lacey pointed out, “[n]one of this matters if the customer sees a small box with a \$98.00 charge on his electric bill from a supplier with really no explanation.” Tr. 61.

Referring to his own utility bill, he explained that although he has smart thermostats and participates in Act 129 programs, all he sees is a \$98.00 charge for electricity. As he testified, “[t]hat small box just simply doesn’t work it doesn’t accommodate all of the charges that a supplier might need to communicate to its customers.” Tr. 62. While Mr. Lacey said that it might be possible to expand the box, it “would have to be expanded to meet the needs of every supplier and everyone one of our members at AEMA and all of their products and services that they offer, and that box would have to be updated continually to accommodate new products and services.” Tr. 62.

With respect to time-of-use rates, of which free nights and weekends are a popular version selected by customers in Texas, they also cannot effectively be offered in Pennsylvania today. While an EGS can sell this type of product to a Pennsylvania electric customer, the EGS cannot show the customer on the bill how they benefitted from being on this service. Testifying for the Coalition, Mr. Stiles explained that calculating a time of use product is not complex but the challenge is presenting the savings on the bill. With a time of use product, consumers are asked to adjust their behavior. Therefore, communicating and displaying those rates in ways that work for different types of customers is very important. Tr. 81. Moreover, as Mr. Stiles explained, suppliers offer a variety of different types of such products, including different time classifications and different day classifications. In order to bill them, the EGS would need multiple different line

items to suit the different product structures, along with graphics and other features on the bills to make them properly understood. None of this is possible with the utility bill. Tr. 22.

Mr. Woodyard, on behalf of WGL, echoed these sentiments. He testified that while “a few TOU products are available in the market today, suppliers are limited in what we can provide because we simply cannot communicate fully about the product under the utility consolidated billing format. Customers struggle to understand the value of the TOU under the current billing regime. Suppliers are in a position to only be able to back out some charges for the free weekend or free night, without a clear presentation of the overall impact and results.” Tr. 217.

Mr. Leflar described the utility bill as a barrier to innovation. Citing simple examples of changing payment term options or bill due dates, he noted that in the future, customers may want to have other types of information on the bill, such as analytics or data that helps them understand their usage. Tr. 68. He added that “[t]he constraints that are on bills today do not allow us to do more complex, solution oriented products that might include on-bill financing for a piece of equipment to help them manage their consumption.” Tr. 69. Similarly, utility bills do not afford flexibility to permit EGSs to offer customers different payment options. For instance, Just Energy has innovated offerings such as “pick your bill due date” that allows customers to match the timing of their electric utility payment to their own cash flow.²⁵ Tr. 23. Also, reliance on the utility bill precludes an EGS from considering the content of the bill or how it is delivered to customers. As Mr. Stiles noted, “as bills become more digital and customers become more engaged,” the possibilities will increase. They may be interested in analytical content or interactive content to

²⁵ See Slide 29 of the Coalition’s June 14, 2018 exhibit.

help them better understand their bills, which EGSs could develop and innovate through market testing. Tr. 23.

Another product type that cannot be included on the utility bill is a “flat bill” product that Just Energy has launched. This product allows customers to pay a flat monthly amount and take the weather risk out of their electric bills. Just Energy has tested this product by offering a flat bill that covers only the commodity portion of the bill or a flat bill that covers the entire electric bill, including regulated charges. Through this testing, Just Energy has “found that overwhelmingly, customers prefer the full flat bill.” Tr. 22.

Testifying as Director of Regulatory Strategy for WGL, Bernice McIntyre also noted that one of its most successful natural gas products has been a flat billed product that protects the customer from weather driven volatility in their gas prices and includes the distribution charges. Mr. Woodyard, also testifying for WGL, added that “[t]ens of thousands of customers have been very loyal in choosing this product, many of whom have enjoyed this price and budget protection for over 15 years.” Tr. 216. Mr. Pfannenstiel likewise pointed to “flat billing” that is very popular in Texas because consumers want to manage their budget and not worry about it fluctuating, especially millenials,” but it will not work here with the utility bill. Tr. 79-80.

Supplier representatives also discussed the prepay product as being possible through SCB. Mr. Stiles, on behalf of the Coalition, explained that in Texas, the customers who have selected this option are those that have a credit score at a level where the EGS would be typically asking for a deposit, which they are unwilling or unable to pay.²⁶ However, in the United Kingdom, with the adoption of smart meters, more customers are choosing the pre-pay product where they are

²⁶ See Slide 30 of the Coalition’s June 14, 2018 exhibit.

able to load their account through an app and they use this product as a way to help them budget. Tr. 88. Mr. Starck added that NRG sees the same trends – with the demographics of products changing and evolving over time. He emphasized that what NRG prides itself on “is providing customers with choices that fit their lifestyle.” Tr. 88-89

Besides being inadequate to permit various commodity offerings, the utility bill does not allow EGSs to include charges for value-added products and services (despite including charges for value-added products and services offered by the EDC). Mr. Stiles explained that the bundling of such products and services is becoming increasingly important to customers. A flexible way to do that in a differentiated way for each supplier is to allow the EGSs to make investments in their own billing systems to accommodate such products. Tr. 23.

It would be inefficient to expect utility bills to be modified each time EGSs develop a new product offering – both from a cost standpoint and the time that it would take utilities to implement those changes. Supporting innovation requires ongoing systems development based on customer needs, and Mr. Stiles pointed out that we cannot think that “today we know all the products that are going to be relevant to customers in the next 20 years.” Tr. 24. Also, if utilities change their bills to accommodate the needs of EGSs, ratepayers will have to fund those modifications. By contrast, EGS will fund the development of their own billing systems. Tr. 24. In addition, trying to create a common EDC billing platform that accommodates the needs of all EGSs would not only be complex but would also limit innovation and differentiation among EGSs, as well as ultimately customer choice and competition. Tr. 25.

Testifying for Shipley, Ms. Greenholt-Tasto explained that its customers “want the ability to receive their electricity, heating and HVAC service all on one bill, and with...smart home technology, we would have the ability to run data analysis to offer customized products to help

them conserve energy, lower their bills and take advantage of alternative energy products like solar and wind and even do some security.” Tr. 50-51. Adding that the best mechanism for customers to enjoy these new products is through SCB, she questioned how “utilities would be able to include different options, pricing components, analytics, charts and graphs for the 121 approved electricity suppliers on PA Power Switch.” Tr. 51. Ms. Greenholt-Tasto noted that the utility’s static invoice does not permit this sort of flexibility, but since the utility charges are known and regulated, EGSs can easily put them on their invoice. Tr. 51.

F. Why Not Dual Bills?

Presenters at the hearing questioned why EGSs do not use dual bills. Expecting the EGS to send its own separate bill to consumers – or the dual bill option – is not a reasonable alternative. As participants in the competitive market, interacting with customers on a daily basis, the members of the Coalition are well aware that consumers do not want to receive two separate bills for their electric services. Customers demand simplicity, and if EGSs cannot deliver, the customers will go elsewhere for their energy needs. Moreover, a dual bill option would not allow EGSs to manage their bad debt and would therefore be an ineffective solution. Specifically, absent the ability to initiate the termination process for non-payment in the same way that EDCs can do now, EGSs would have no effective means for collecting the monies that are owed to them for generation services. This alternative also does not address the inherent inequities of allowing the EDC to be the only entity in the market that is able to offer consolidated billing services. Mr. Stiles further explained that dual billing “creates a more complex customer experience” and precludes integrated products such as the flat bill product that is popular among customers. Tr. 24.

Testifying for Shipley, Ms. Greenholt-Tasto addressed the suggestion that dual billing is a solution to the issue by describing Shipley’s direct experience with this alternative. While she acknowledged that the idea of dual bills seems simple in concept, she testified that Shipley “knows

firsthand that having to pay just one extra bill per month is a barrier to competition and new products.” Tr. 194. Ms. Greenholt-Tasto explained that when Shipley first launched into the PECO service territory for natural gas, it followed a dual bill strategy. Even though Shipley’s “offer showed savings versus the price to compare, it failed. Customers were not interested in having one more bill they needed to monitor and pay. It was just easier for them to stay with the utility and pay more.” Tr. 194. As a result, Shipley changed its approach and switched to UCB, but as Ms. Greenholt-Tasto observed, “ultimately those customers missed out.” Tr. 194.

From practical experience, EGSs are telling the Commission that the dual bill is not an acceptable option. If it were, they would be using it today.

G. Will Consumer Protections Be Preserved?

1. Compliance with Consumer Protection Requirements

As proposed by the Coalition, SCB would be implemented in a manner that fully preserves all existing consumer protection requirements. Specifically, EGSs would be required to certify during the qualification process that they will comply with the Public Utility Code, Commission regulations and any conditions placed on SCB EGSs by the Commission. Such compliance would include adherence to all customer protections afforded by Chapter 14 of the Public Utility Code²⁷ and Chapter 56 of the Commission’s regulations,²⁸ including those provisions establishing standards for deposits, payment agreements, termination, reconnection and bill content. As confirmed during the *en banc* hearings, EGSs would adapt their business models to reflect these regulatory requirements. Tr. 253-255.

²⁷ 66 Pa.C.S. Ch. 14.

²⁸ 52 Pa. Code Ch. 56.

With respect to concerns that have been raised regarding the Commission’s authority to require compliance with its consumer protection requirements, the Coalition points to Code Section 2809(e), which obligates the Commission to impose requirements on EGSs that are necessary to maintain the quality of services previously provided, including compliance with Chapter 56 billing practices.²⁹ Additionally, Code Section 2802(14) authorizes the Commission to impose any “requirements concerning service as the commission deems necessary for the protection of the public.”³⁰ Indeed, EGSs have agreed to subject themselves to the Commission’s jurisdiction as necessary.

Importantly, if an EGS fails to abide by any requirements imposed by the Commission, the Commission has the ability to revoke the EGS’s license. By contrast, the Commission cannot cancel the certificate of public convenience held by an EDC unless it another public utility is available to assume the provision of distribution services. Similarly, customers cannot leave their utilities but are free at any time to switch to a different EGS or return to default service if they are not receiving the quality of service they expect. Being in the competitive market provides EGSs a natural incentive to provide customer service that complies with and even exceeds the regulatory requirements.

At the June 14, 2018 *en banc* hearing, the Acting Consumer Advocate testified that the Pennsylvania Supreme Court’s decision in *Delmarva Power & Light Co., v. Pa.P.U.C.*,³¹ precludes the Commission from enforcing consumer protection requirements against EGSs. However, the

²⁹ 66 Pa.C.S. § 2809(e).

³⁰ 66 Pa.C.S. § 2802(14).

³¹ 870 A.2d 901 (Pa. 2005).

Delmarva ruling says the exact opposite. In *Delmarva*, the Commission had originally concluded that it could impose regulatory assessments on EGSs, while Commissioner Fitzpatrick had dissented, noting the Commission may regulate EGSs as public utilities only by applying those Code provisions that are “necessary to ensure that the present quality of service provided by electric utilities does not deteriorate.”³² On appeal, the Commonwealth Court found that the Commission could impose assessments because of the Commission’s determination that they were necessary to ensure that the present quality of the service does not deteriorate.

The Supreme Court, however, reversed the Commonwealth Court, explaining that EGSs may be characterized for regulatory purposes as public utilities only as necessary to ensure that the present quality of service provided by electric utilities does not deteriorate, including reliability of service and maintaining the standards and billing practices for residential utility service. The Supreme Court could not find that Section 510 assessments, which simply fund the administrative practices of the Commission, are necessary to maintain current standards of electric service, noting “that these assessments have nothing to do with maintaining reserve margins or adequate billing practices.”³³ By contrast, under the clear language of *Delmarva* and Section 2809(e), rules that govern public utility billing practices are necessary to maintain current standards of electric service and may be enforced against EGSs.

2. Termination Process

To be effective in their collection activities, EGSs need the ability to manage their bad debt in the same way that EDCs currently do. While this feature of the program need not be activated

³² 870 A.2d at 906 (quoting Fitzpatrick Dissent, 9/7/2001, at 1, quoting 66 Pa.C.S. § 2809(e)).

³³ 870 A.2d at 911.

from the outset and could be phased-in, the Coalition encourages the Commission to establish policy direction up-front announcing its commitment to support collection efforts of the EGSs. Importantly, the Coalition is not proposing that EGSs have the final say on whether terminations occur, but rather the ability to initiate the process by communicating with the EDC. The Coalition also reminds the Commission that EGSs have built-in reasons to encourage payment by customers and to avoid termination since the latter means that the EGS's resources to acquire the customer are lost, along with any opportunity to sell additional products and services.

Through the communication to the EDC, the EGS would verify that the termination is for a reason that is authorized by Chapter 14 of the Code, and the EDC would have the opportunity to reject the request based on Chapter 14 criteria. Under the Coalition's proposal, the EDC – if it accepts the termination request – would thereafter handle the termination process, including issuance of notices, physical disconnection and reconnection. All exchanges of customer information between the EDC and EGSs with respect to these transactions would be timely and accurately handled through electronic data interchange (“EDI”), which is relied upon today to continuously process communications necessary for the effective operation of the competitive retail market.³⁴

Some presenters expressed concerns about allowing EGSs to initiate the termination process for non-payment. These concerns are unfounded. Mr. Starck, testifying for the Coalition, stressed that EGSs “commit to preserving all the current consumer protections that are

³⁴ EDI transactions allow for the transfer and exchange of electronic data relating to customer information between the EDC and EGS computer systems by standard message formatting without the need for human intervention. *See Standards for Electronic Data Transfer and Exchange between Electric Distribution Companies and Electric Generation Suppliers*, Docket No. M-00960890, F.0015 (Order entered October 15, 1999).

in place today.” Tr. 32. Since the EGSs would fully purchase the utility receivables without discount, they would be responsible for collecting all charges from customers. Although EGSs would initiate the termination process, they would do so under the current rules, with all of the same notices being sent to customers. Terminations would continue to be the last resort. Yet, EGSs need the ability to collect bad debt, which necessarily includes the ability to have service terminated for non-payment. As Mr. Starck further explained, EGSs are looking to build relationships with their customers and to build trust with them, which would naturally involve treating them appropriately in any termination process that becomes necessary. Mr. Starck also discussed the EGS commitment to have appropriate reporting requirements in place to ensure that the termination process is being managed appropriately and that if concerns arise, they are being addressed. Tr. 32-34.

Mr. Duessel, on behalf of RESA, added that the Texas experience “shows that it is possible for a market to rely on retailers to accurately manage SCB and disconnection authority while also ensuring customer protection.” Tr. 48. He explained that when Texas opened to competition in 2002, retailers were not initially allowed to initiate discussions for non-payment. “Thorough testing by market participants, however, ensured that these procedures worked reliability before retailers were authorized to request disconnection and ongoing PUC oversight has fostered retailer accountability.” He concluded by saying that “with thoughtful planning, we submit that the same can happen in Pennsylvania.” Tr. 49.

Mr. Duessel also stressed that they EGSs would avoid the outcome where the customer becomes a bad debt. The goal of EGSs would be “to retain the customers and find ways to help them get over a financial hurdle, whether that’s creative payment arrangements, whether that’s bill credits.” Tr. 241. He emphasized that EGSs “will do whatever we can to try to retain the customer

as long as we can. So I think you'd actually see the overall bad debt exposure for the market go down." Tr. 241-242.

3. Low-Income Customers

During the *en banc* hearings, low-income customer advocates expressed concerns about protections and programs for low-income customers. The Coalition has proposed that, at the outset, low-income customers receiving subsidies not be eligible to select an EGS providing SCB.³⁵ This proposal is based on the lack of portability of the subsidies and on getting the Commission more comfortable with EGSs in the SCB role before serving customers on low-income programs. In discussing low-income customers, Mr. Starck stressed that EGSs offering SCB would have the ability to serve low-income customers but are willing to delay that portion until the Commission is comfortable with EGSs being in this role. Tr. 231. Regarding protections for low-income customers, Ms. Greeholt-Tasto of Shipley likewise agreed that for now, they would not be eligible to choose an EGS offering SCB, but noted that this issue can be revisited in the future. In the meantime, she stressed the importance of not preventing progress for the vast majority of the customers. Tr. 195. Similarly, Ms. McIntyre of WGL discussed low-income customers, emphasizing the importance of allowing such customers to choose offerings from EGSs while noting that "the implementation of SCB may be best approached in two phases." As envisioned by Ms. McIntyre, the Commission could "defer the inclusion of low-income customers until the processes are operating effectively and there is a track record to provide the Commission." Tr. 56.

³⁵ This limitation is no different than the current situation in Pennsylvania where many low-income customers receiving subsidies are precluded from shopping at all. *See, e.g., Petition of PPL Electric Utilities Corporation for Approval of a Default Service Program and Procurement Plan for the Period June 1, 2017 Through May 31, 2021*, Docket No. P-2016-2526627 (Order entered October 27, 2016).

Some of the concerns advanced by the low-income customer advocates suggested that SCB is somehow a threat to universal service or to customers being referred to the various social services and agencies that provide assistance to customers with paying their bills. On behalf of the Coalition, Mr. Stark noted that in the markets where NRG manages billing and collections, it includes a line item on the bill to enable customers to contribute to hardship funds and it distributes those funds to community agencies that use them to help customers pay their energy bills. In addition, NRG's customer service representatives routinely refer customers seeking assistance to LIHEAP and other social welfare agencies. Explaining that these are minimum requirements that all EGSs must meet in Texas, Mr. Starck noted that there "is no reason why suppliers cannot be required to do the same here in Pennsylvania as a condition for certification in SCB." Tr. 206.

Beyond these measures, NRG's subsidiary Reliant, which operates one of the largest suppliers in Texas, has had a voluntary customer assistance program in place since the Texas market opened in 2002. Reliant works with 50 non-profit social service agencies across Texas to provide funds to customers who qualify for assistance with their electricity bills. Since 2002, Reliant as a corporate entity has contributed over \$10 million in donations to these local agencies to assist customers above and beyond the required funding levels. In addition, Reliant's call center refers customers to the FCC's 211 hotline, which refers customers to social services for assistance with energy and food. Reliant also accepts donations from hundreds of additional agencies such as churches and other local community groups that pledge funds for payment assistance to individual customers. Tr. 206-207.

Most importantly, the consumer advocates in Texas have worked collaboratively with stakeholders to structure regulations and to provide feedback on those voluntary programs. Mr. Starck testified that NRG is not aware of any concerns that have been raised by those advocates

concerning billing, collections or service termination in relation to low-income customers or any other customers that they represent. Tr. 207-208.

At the June 14 hearing, the low-income customer advocates expressed concern about having new entities involved in the process and pointed to difficulties they have encountered with the utilities handling of these issues. As Mr. Starck explained, “that’s what you get when you don’t have competition. It’s not that surprising that when you have a monopoly service with no competition and with no options, the service provider has zero incentive to do better to meet the customers’ needs, and in turn the customers suffer.” Tr. 208-209. He added that “competition creates choices and higher quality options, and customers have the opportunity to have a better experience.” Tr. 209. If an EGS does not provide great customer service, the customer will move on to another EGS or drop back to default service. Mr. Starck testified that it is “incumbent upon us to deliver that customer service.” Tr. 209.

The low-income customer advocates have also noted that under the current state plan, EGSs cannot receive LIHEAP subsidies. However, the express reason for that is that EGSs are not presently involved in the termination process. Clearly, if that situation changes, it would be possible to have the state plan changed to permit EGSs to receive those subsidies. Indeed, due to its provision of other services to retail customers, Ms. Greenholt-Tasto explained that Shipley receives LIHEAP funds. Tr. 52.

Questions were raised during the *en banc* hearing about the effect of SCB on the continued availability of universal service programs. As those programs are funded by non-bypassable distribution charges, SCB would have no effect on their funding. The only difference is that the EGSs would be collecting the money from customers and paying it to the EDCs. The funding sources for the programs do not change; this is just a billing mechanism. With respect to concerns

about a shrinking pool of default service customers being served by the EDCs, the answer is that the EDCs simply pass through their costs of default service. If they are serving fewer default service customers, they would incur fewer costs. Nothing about the billing system and the entity that provides consolidated billing services would have any effect on the EDCs' default service costs.

H. What Needs To Happen To Implement SCB?

Many of the comments of the opponents of SCB focused on the implementation details that would need to be addressed, without suggesting that any of those issues is insurmountable. Indeed, the Coalition knows that SCB is working in other jurisdictions and those models can be tailored to reflect the Pennsylvania requirements.

On behalf of the Coalition, Andres Varela, the Director of North American Back Office Operations at Direct Energy, discussed operational details that would need to be addressed. He stressed that while overcoming operational details and complexities of SCB may seem daunting, “implementation of a successful supplier consolidated billing program which provides timely, accurate and educational supplier provided bills can be accomplished.” Tr. 28. Explaining that successful implementation of SCB must begin with a Commission order that includes clear policy, directives on key issues including supplier qualifications, bad debt management or termination rights, and customer education, Mr. Varela recommended that the Commission include direction for its stakeholders to convene working groups to work out the details to achieve the goals set forth in the order within a specific time frame.³⁶ Tr. 28.

³⁶ Slide 38 of the Coalition's June 14, 2018 exhibit shows the SCB transaction flow.

Based on his experience in other states, Mr. Varela identified three issues that should be considered by the working groups: 1) potential rule changes to Chapter 56 to allow for SCB; 2) changes to utility supplier coordination agreements; and 3) modifications to existing utility supplier EDI transactions. With respect to potential rule changes to Chapter 56, Mr. Varela pointed to the pending rulemaking to amend Chapter 56, in which NRG has already provided redlines to the Commission would could serve as a starting point.³⁷ Concerning revisions to utility supplier coordination agreements, Mr. Varela explained that billing and payment agreements would need to be examined and that credit security requirements and the template used for posting would need to be developed. As to the need to examine utility supplier EDI transactions, Mr. Varela noted that roadmaps to achieve these changes exist. In 2000 and 2010, EDEW examined the operational considerations associated with SCB and developed work plans for necessary modifications. Tr. 29, Slide 38.

Importantly, Mr. Varela stressed that “[a]ll of these tasks are achievable. With close coordination and cooperation between stakeholders as well as clear direction set forth by the Commission, supplier consolidated billing can be implemented in Pennsylvania.” Tr. 29. Noting that the Commission does not have to take his word for it, he explained that this view is shared by at least some of the utilities in this region. He referred to the SCB initiative pending in Maryland and pointed out that in February, BGE, Pepco and Delmarva (Exelon affiliates) jointly highlighted some of the concerns previously expressed by this Commission and then testified that although details would need to be worked through, the issues were implementation details and were not

³⁷ *Notice of Proposed Rulemaking, Standards and Billing Practices for Residential Public Utility Services*, Docket No. L-2015-2508421 (Order entered July 21, 2016) (“*Chapter 56 Rulemaking*”). NRG’s comments are available at this link: <http://www.puc.pa.gov/pcdocs/1517574.pdf>

insurmountable. Tr. 30. As Mr. Varela concluded, “working together with the other stakeholders, we can find workable solutions just like we did in other states such as Georgia, Texas or the province of Alberta in Canada, that will allow Pennsylvania’s retail electricity market to move forward, that will enable suppliers to build long-lasting relationships with and better understand their customers and enable them to deliver innovative energy solutions that their customers desire.

Tr. 31.

Testifying for RESA, Mr. Duessel noted that SCB was not implemented overnight in Texas. Rather, it was phased in over many months. He added that “[w]ith thoughtful planning and coordination, we see no reason why supplier consolidated billing can’t operate effectively in Pennsylvania, too. Tr. 48. He explained the process in Texas as the stakeholders worked together to map out implementation over a series of months. Tr. 83.

Ms. Greenholt-Tasto also addressed the mechanics of SCB, noting that Shipley has been billing its own customers since 1929. Using propane has an analogy to the utility concept, she explained that customers are billed for their propane and HVAC on one invoice and that Shipley is able to market other products on the same invoice.

On behalf of WGL, Ms. McIntyre emphasized that “this is not a new frontier” and SCB can be phased in over time. Since customers must choose that particular product and the EGS must choose to offer it, the Commission should not expect that all supply customers at once would be served by an EGS offering SCB. Tr. 56. Similarly, Mr. Starck emphasized that it would naturally be a phased approach because there would not be a cutover of everything on a specific day or in a specific month. Tr. 83.

The Coalition submits that given the extensive experience that EGSs have in other jurisdictions implementing SCB so that customers can benefit from the innovative product and

service offerings, without any of the adverse consequences that the opponents have suggested in this proceeding, the Commission should be confident in its ability to successfully implement SCB. To the extent that questions still linger in the minds of the Commission, the Coalition suggests that it is time to take the leap of faith that the Commission has taken so many times in the past to continue in its role as a national leader of retail markets.

I. Is SCB Legal?

1. Summary of Argument

Questions have arisen as to whether SCB is permitted by Chapters 14³⁸ and 28³⁹ of the Public Utility Code. It is well-settled that the Commission's authority arises from both the express words of the pertinent statutes or by the strong and necessary implication therefrom.⁴⁰ As the Coalition has explained, the Commission has both express and implied legal authority under the Code to implement SCB.

The Commission is expressly authorized by the Code to mandate further unbundling beyond generation, transmission and distribution. The only services carved out by the Code to continue as monopoly functions are transmission and distribution. Therefore, the General Assembly clearly viewed further unbundling as involving any other services provided by the EDCs, which absolutely includes billing services. Further, the Commission is obligated by numerous sections of the Code to foster the development of a competitive generation market, and the EGS community is clearly conveying to the Commission that SCB is necessary to advance this market to one that is "competitive."

³⁸ 66 Pa.C.S. §§ 1401-1419.

³⁹ 66 Pa.C.S. §§ 2801-2815, which is the "Electricity Generation Customer Choice and Competition Act."

⁴⁰ See *City of Phila. v. Phila. Elec. Co.*, 473 A.2d 997, 999-1000 (Pa. 1984).

While cobbling together a legal argument based on vague references to a variety of Code sections, the opponents of SCB have failed to refer to a single provision of the Code prohibiting the implementation of SCB. The reason for that is simple – there is no such provision. While the Code also does not have a sentence saying that “the Commission may direct the implementation of supplier consolidated billing,” that is not the standard that applies when considering whether the Commission has legal authority to take action. Rather, the Commission’s powers are very broad. Every single day the Commission takes actions that are not explicitly authorized by the Code. Given the language in the Code about further unbundling, the development of a competitive market and the carve-out of only transmission and distribution to remain as monopoly services, no doubt exists as to the Commission’s legal authority to move forward with SCB.

Importantly, the provision in the Code that obligates EDCs to perform consolidated billing services – if required by the Commission – does not in any way entitle the EDCs to be the only entity handling these functions. To the contrary, this language has been consistently interpreted by the Commission dating back to 1997 as ensuring the ability of consumers to receive a single bill for all electric charges. Understanding the importance of consumers being able to receive a consolidated electric bill, the General Assembly took steps to ensure the continued availability of this service from the EDCs. However, nothing in that section or in any other provision of the Code restricts the ability of the Commission to permit other entities to also provide these services, consistent with the choice of the customer, whose interests are paramount.

Additionally, the Commission has full authority under the Code to impose standards on EGSs providing consolidated billing services. In fact, the Code obligates the Commission to do so if necessary to ensure continued adherence to the standards established by Chapter 56 of the Commission’s regulations. Moreover, the Commission is authorized by the Code to impose any

requirements on EGSs (including all aspects of Chapter 14) that it believes are necessary to protect the public. Notably, EGSs have agreed to subject themselves to the Commission's jurisdiction and to comply with these consumer protection requirements.

Relying on this authority, the Commission has approved restructuring settlements providing for SCB, found in other restructuring proceedings that it may direct the implementation of SCB, approved supplier tariff provisions and approved EDI transactions to support SCB. For the Commission to find today that it does not have statutory authority to implement SCB, when none of the applicable provisions of Chapter 28 have changed, it would have to conclude that those prior Commission rulings were unlawful.

2. Express Legal Authority – Chapter 28

Code Section 2804(3) mandates the unbundling of generation, transmission and distribution and expressly authorizes the Commission to “require the unbundling of other services.”⁴¹ Further, Code Section 2803(12) expressly envisions the EDC continuing in its monopoly role only “for the transmission and distribution of electricity.”⁴² Between the express unbundling authority and the General Assembly's carve-out of only transmission and distribution to remain as monopoly services, the Commission absolutely has the power to require the unbundling of billing services. Moreover, the only reason to unbundle billing services would be to allow other entities including EGSs to offer such services, under a regulatory framework established by the Commission. Indeed, in 1998, the Commission correctly viewed this language

⁴¹ 66 Pa. C.S. § 2804(3). Beyond generation, transmission and distribution, the Coalition is hard-pressed to think of any other services that could potentially be unbundled other than billing and metering. Indeed, the Commission has recognized in the natural gas industry that Code Section 2203(3) allows the Commission to address unbundling of other services, specifically referring to billing or metering. *See* <http://www.puc.pa.gov/PcDocs/570097.pdf> (Report at 69). 66 Pa. C.S. § 2203(3).

⁴² 66 Pa. C.S. § 2803(12).

as providing authority to unbundle billing services so that customers could receive a consolidated bill from their EGS that includes the EDC charges.⁴³ The Commission reiterated this legal conclusion during the RMI when it found that a “competitive market with this choice of billing options [supplier consolidated billing, utility consolidated billing and dual billing] fully complies with the Competition Act’s requirement that customers have the right to choose their billing option.”⁴⁴

3. Implied Legal Authority – Chapters 5 and 28

Even to the extent that the Commission finds that it needs more authority than the express authorization in Code Section 2804(3) to require further unbundling of services, it may rely on implicit authority. The Commission has frequently relied on its plenary authority under Code Section 501 to find that it has implicit power to take certain actions.⁴⁵ Code Section 501 provides: “The commission shall have general administrative power and authority to supervise and regulate all public utilities doing business within this Commonwealth.”⁴⁶ In case law reviewing questions of whether the Commission has implicit authority, courts have read this language in light of the enumerated powers set forth in the Code and in conjunction with the purposes of the Commission to implement and enforce the Code.⁴⁷

⁴³ See *Application of Duquesne Light Co.*, Docket No. R-00974104 (Order entered May 21, 1998), at 256 (Commission noted its ability to unbundle billing services).

⁴⁴ *Investigation of Pennsylvania’s Retail Electricity Market*, Docket No. I-2011-2237952 (Order entered November 8, 2012) (“*End State Tentative Order*”) at 28.

⁴⁵ See, e.g., *Commonwealth of Pa., et al. v. IDT Energy, Inc.*, Docket No. C-2014-2427657 (Order entered December 18, 2014), at 17-18 (“*IDT Interlocutory Order*”) (Commission relied on broad authority under Code Section 501 to direct EGSs to issue refunds to customers).

⁴⁶ 66 Pa. C.S. § 501(b).

⁴⁷ *United Telephone Co. of Pennsylvania v. Pennsylvania Pub. Util. Comm’n*, 676 A.2d 1244 (Pa. Cmwlth. 1996); *Fairview Water Co. v. Pa. PUC*, 502 A.2d 162, 509 Pa. 384 (1985).

Here, the Choice and Competition Act provides a strong and necessary implication authorizing the Commission to order SCB implementation. Numerous provisions of Chapter 28 charge the Commission with fostering the development of a “competitive” generation market, as follows:

- It is in the public interest for consumers to have “access to a competitive generation market” – Section 2802(3)
- Pennsylvania must “transition from regulation to greater competition in the electricity generation market” – Section 2802(7)
- Pennsylvania is moving “toward greater competition in the electricity generation market” – Section 2802(8)
- The purpose of Chapter 28 is to “create direct access by retail customers to the competitive market for the generation of electricity” – Section 2802(12)
- Chapter 38 provides for a “transition from the current regulated structure to a structure under which retail customers will have direct access to a competitive market for the generation and sale or purchase of electricity” – Section 2802(13)
- Changes must be made “to accomplish the move to a competitive market” – Section 2802(18)
- The Commission “shall allow customers to choose among electric generation suppliers in a competitive generation market” – Section 2804(2)
- The “transition to a competitive generation market shall be orderly” – Section 2804(14)

These provisions of Chapter 28 make clear that the Commission’s obligations go beyond allowing customers to directly access generation services. Specifically, these provisions emphasize the need for this market to be “competitive,” which obligates the Commission to take steps that are necessary to ensure that the market is competitive. EGSs have clearly conveyed to the Commission that for this market to evolve into one that is competitive, it is absolutely essential to create a level playing field by permitting EGSs to also issue consolidated bills to consumers. Allowing EDCs to continue being the only entities in the market that are permitted to issue

consolidated bills to customers is inconsistent with fostering the development of a competitive market. Limiting consumers' billing options to exclude the availability of an EGS consolidated bill is inconsistent with fostering the development of a competitive market. Narrowly reading Chapter 28 as focusing only on price competition without recognizing that innovation is a cornerstone of a well-functioning competitive market is inconsistent with developing a competitive market for the generation of electricity.

Further, the Choice and Competition Act confers extensive powers on the Commission to handle all matters relating to the implementation of electric choice.⁴⁸ As SCB would improve the functioning of the competitive market that the Commission was charged by the General Assembly to develop and monitor, the Commission has correctly determined that it has the statutory authority to direct its implementation and should affirm that conclusion in this proceeding.

4. Section 2807(c) – Billing Services

Opponents of SCB have relied heavily on Code Section 2807(c)⁴⁹ as precluding the implementation of SCB. However, their reliance on this provision is wrong. Code Section 2807(c) focuses only on the *obligation* that the Commission *may* impose on EDCs to provide consolidated billing services to customers who wish to have that option. Importantly, it does not mandate that only EDCs may provide consolidated billing services, authorize the Commission to allow the EDC to remain as the exclusive provider of these services or preclude the Commission from allowing other entities to perform these services.

⁴⁸ See 66 Pa.C.S. §§ 2801-2812.

⁴⁹ 66 Pa.C.S. § 2807(c).

Specifically, by providing that an EDC “*may* be responsible for billing customers for all electric services, consistent with the regulations of the commission,”⁵⁰ Code Section 2807(c) ensures that customers always have the option of getting a consolidated bill and gives the Commission the discretion to impose that obligation on EDCs – in apparent recognition of the General Assembly’s view that customers would not want to receive separate bills. 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 bill” and found that “there is nothing in the Act that would prohibit the supplier single bill options.”⁵¹

When the EDCs argued in 1997 that the Code Section 2804(3) authorization for further unbundling was not sufficient to override the language in the Code Section 2807(c) for consolidated billing functions to remain with the EDC, the Commission properly stated:

Regarding the legal interpretational issues raised in comments about this guideline, we simply disagree with the conclusions reached that only EDCs can provide these customer service functions. We submit that there is nothing in the Act that would prohibit the supplier single bill option and supplier complaint handling. Although § 2807(C) recognizes that the EDC “*may be*” responsible for the billing of all electric services, 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.⁵²

During the *en banc* hearings, an argument was advanced on behalf of the EDCs, comparing Code Section 2807(c) to Code, which sets forth obligations of EDCs, to Section 2809, which

⁵⁰ 66 Pa. C.S. § 2807(c) (emphasis added).

⁵¹ *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.

⁵² *Final Order Re Guidelines for Maintaining Customer Services at the Same Level of Quality*, Docket No. M-00960890, F. 11 (Order entered July 11, 1992), 1997 Pa. PUC LEXIS 119 at *23 (“*Customer Services Order*”).

discusses the requirements for EGSs, in the context of the electric choice program.⁵³ The argument was that because Code Section 2807(c) expressly mentions the EDCs' obligation to continue in the consolidated billing role and Code Section 2809 contains no similar language regarding EGSs performing these functions, then Code Section 2807(c) somehow precludes the Commission from implementing SCB. The difference between these two sections was then cited as trumping the language in Code Section 2804(3) that authorizes the Commission to require the unbundling of other services. The basis for the legal argument was that the Statutory Construction Act⁵⁴ provides for the "particular" to control the "general," and the EDCs view the language in Code Section 2807(c) as being particular as to billing duties while viewing the language of Code Section 2804(3) as being general as to further unbundling. Tr. 141-142.

The EDCs' statutory construction analysis is flawed. While the Coalition does not dispute that the Statutory Construction Act generally requires special provisions to prevail over general provisions, that rule of statutory construction only applies when a general provision is "in conflict with a special provision in the same or another statute."⁵⁵ Even when a conflict exists, the law requires that the two be "construed, if possible, so that effect may be given to both."⁵⁶ Further, only if the two provisions are irreconcilable does the rule of particular over general apply.⁵⁷

Here, Code Sections 2804(3), 2807(c) and 2809 are not in conflict, and effect may be given to all of the provisions. The reason that they are not in conflict is that each of these provisions

⁵³ 66 Pa.C.S. § 2809.

⁵⁴ 1 Pa.C.S. §§ 1501 *et seq.*

⁵⁵ 1 Pa.C.S. § 1933.

⁵⁶ *Id.*

⁵⁷ *Id.*

have a different purpose. Code Section 2804(3) authorizes the Commission to mandate further unbundling of services beyond generation, transmission and distribution. Code Section 2807(c) authorizes the Commission to require EDCs to issue a consolidated bill, subject to the ability of the customer to elect to receive a separate bill from the EGS. Code Section 2809 imposes licensing and financial responsibilities on EGSs; this section also contains language authorizing the Commission to impose requirements on EGSs that are necessary to ensure that the present quality of service provided by electric utilities does not deteriorate, including assuring that standards and billing practices for residential customers are maintained.

The EDCs have not explained why they view these three provisions as being in conflict. Clearly, in directing the implementation of SCB, the Commission can give full effect to each of these provisions. Consistent with the authority under Code Section 2804(3), the Commission may mandate that billing services be unbundled enabling SCB to be implemented. The availability of consolidated billing services from another entity would not alter the obligation that EDCs have under Code Section 2807(c) to offer consolidated billing services to consumers if the Commission requires them to do so. And, Code Section 2809(e) would ensure that when EGSs are providing SCB they must comply with Commission requirements designed to ensure that the present quality of service provided by electric utilities does not deteriorate, including assuring that standards and billing practices for residential customers are maintained.

Opponents have referred to the Commonwealth Court's decision in *Dauphin County Industrial Authority v. Pa. P.U.C.*⁵⁸ ("DCIDA") as precluding the Commission from allowing EGSs to offer consolidated billing services. Their reliance on *DCIDA* for that proposition is wholly

⁵⁸ 123 A.3d 1124 (Pa. Cmwlth. 2015).

misplaced. DCIDA involved PPL's refusal to offer a time-of-use ("TOU") rate to customer-generators despite being required by law to do so. The Court held that PPL could not shirk this statutory duty and rely exclusively on suppliers to offer the TOU option.

The Coalition's proposal for the Commission to implement SCB has nothing to do with having EDCs shirk responsibilities and rely on their competitive market to fulfill statutory duties they are obligated to handle. Under SCB, both utilities and suppliers would perform consolidated billing functions, subject to the choice of the customer. Just because an EDC has certain statutory duties does not preclude other entities from offering the same services. This framework is exactly what exists – or will exist – in PPL's service territory following the *DCIDA* remand to the Commission. Specifically, PPL will now offer a TOU option and EGSs will have the opportunity to do the same.⁵⁹ In short, as the EDCs would not be shirking a statutory duty under the Coalition's proposal, *DCIDA* is inapplicable.

Importantly, as the Commission has already found, nothing in Code Section 2807(c) limits the Commission's ability to permit consumers to choose to receive consolidated bills from their EGSs. Indeed, nothing about the language in Code Section 2807(c) suggests that the Commission may only authorize consolidated billing by EDCs; it only assures that consumers will have the option to select utility consolidated billing ("UCB") or to be separately billed by their EGS. Similarly, it does not restrict the ability of the Commission to permit EGSs to also provide consolidated billing services.

⁵⁹ See *Proceeding Initiated to Comply with Directives Arising from DCIDA*, Docket No. M-201-2578051 (Order entered May 17, 2018).

5. Section 2807(d) - Customer Service Functions

Similarly, nothing in Code Section 2807(d) limits the ability of EGSs to handle customer service functions. Code Section 2807(d) simply provides that the EDC “shall continue to provide customer service functions consistent with the regulations of the commission.”⁶⁰ Although Code Section 2807(d) obligates EDCs to perform these functions, as directed by the Commission, it does not give EDCs the *exclusive* responsibility of providing customer services. Indeed, EGSs are already handling these services for their supply customers. Under the UCB model, EGSs handle bill inquiries, complaint resolution and customer service functions related to their supply charges. In addition, EGSs who are issuing dual bills manage these responsibilities.

When the EDCs previously relied on the language in Code Section 2807(d) to contend that customer service functions had to remain with the EDC, the Commission correctly concluded as follows:

We believe that the Act’s reference to the EDC’s responsibility to provide customer service functions under § 2807(D) is intended to maintain the status quo and is merely a reflection that the EDC must stand ready to provide these customers service functions. However, concerning the two specific customer service functions at issue; namely, billing and complaint resolution, we do not read this provision or any other provision of the Act as excluding suppliers from providing these functions. In fact, we believe that this interpretation is consistent with the declared policy of the Act to create a competitive market for the generation of electricity.⁶¹

By imposing this customer service obligation on EDCs, the express purpose of Code Section 2807(d) is to ensure that customer services are maintained at the same level of quality under competition. Nothing suggests that only the EDC can provide customer service functions

⁶⁰ 66 Pa. C.S. § 2807(d).

⁶¹ *Customer Services Order* at *23.

at that level. As proposed by Coalition, the participating EGSs would be complying with the Commission's regulations, so the purpose of this requirement has been satisfied.

6. Chapter 14

Opponents point to Chapter 14 of the Public Utility Code as being a barrier to the implementation of SCB. Their reasoning is that Chapter 14 imposes a series of duties regarding customer service on "public utilities, a term that includes EDCs but does not include EGSs." Tr. 143. As discussed earlier, however, the Commission is expressly authorized by Code Section 2809(e), which was confirmed by the Court in *Delmarva*, to treat EGSs as public utilities as necessary to preserve the quality of service previously provided by the EDCs, including assuring compliance with standards and billing practices for residential customers set forth in Chapter 56 of the Commission's regulations. Since Chapter 56 mirrors the requirements of Chapter 14 of the Code, with the exception of recent amendments that the Commission has proposed to reflect in Chapter 56,⁶² compliance with Chapter 56 would equate to compliance with Chapter 14.

Moreover, Chapter 14 is irrelevant to the implementation of SCB, and nothing in Chapter 14 interferes with the Commission's authority and obligations under Chapter 28. While Chapter 14 was enacted to give public utilities the tools they needed to terminate customers for non-payment and to limit the Commission's authority to order payment arrangements, Chapter 28 was enacted to permit electric choice and competition. As a result, Chapters 14 and 28 are separate subjects in a scheme covering the same subject matter (generally, public utility regulation). Under

⁶² *Chapter 56 Rulemaking.*

rules of statutory construction, they should, whenever possible, be interpreted as one harmonious component of the entire statutory structure.⁶³

Here, Chapters 14 and 28 of the Public Utility Code can, and therefore should, be construed together. In the context of exercising its powers under Chapter 28 to direct the implementation of SCB, the Commission is authorized to impose any requirements on EGSs that are necessary to ensure adherence to Chapter 56 or that the Commission deems necessary for the protection of the public.⁶⁴ Alternatively, the Commission can require compliance with the provisions of Chapter 14 as a condition of being licensed as a supplier offering SCB. In offering SCB, the Coalition is prepared to comply with each and every provision of Chapter 14 and fully expects the Commission to exercise its statutory authority to impose these standards on EGSs performing SCB. EGSs have expressly indicated a willingness to subject themselves to the Commission's jurisdiction and to modify their business practices to conform to all Chapter 14 requirements, including those related to payment arrangements, termination and reconnection.

It is also noteworthy that Chapter 14 was designed to reduce public utilities' uncollectible expenses, which would be supported by SCB. Through the Coalition's proposed POR program, where EGSs would fully purchase their receivables without discount and without recourse, EGSs would be managing that bad debt rather than the utilities.

J. What Will SCB Cost?

Questions have been raised about the costs of SCB and whether the benefits will outweigh those costs. Notably, in exchange for various concessions, including the recovery of stranded

⁶³ Statutes or parts of statutes which relate to the same persons or things or to the same class of persons or things are to be construed together, if possible. 1 Pa.C.S. § 1932 (relating to statutes in *pari materia*); *City of Philadelphia v. F.A. Realty*, 95 A.3d 377, 389 (Pa. Cmwlth. 2014).

⁶⁴ 66 Pa.C.S. §§ 2809(e); 2802(14).

costs, several EDCs agreed in 1998 to implement SCB by January 1, 1999.⁶⁵ Rather than identifying any incremental costs, the settlements provided for a further unbundling of the EDCs' retail electric rates for metering, meter reading, and billing and collection services to furnish *credits* to those customers who elect to have their EGSs perform these services.⁶⁶

Notwithstanding those earlier agreements, PECO provided an estimate of \$4.6 million in IT and call center training costs for implementing SCB.⁶⁷ Although the Coalition has no information upon which to assess the reasonableness or validity of PECO's estimate, we note that PECO has had this functionality in the past and still has provisions for SCB in its supplier tariff.⁶⁸ Assuming that PECO serves approximately 1.6 million electric customers, the average one-time cost per customer would be less than \$3.00, which does not appear to represent a significant concern with respect to costs. Indeed, as Ms. Greenholt-Tasto noted, that is less than the cost of a bag of potato chips. Tr. 194. With the recognition that the EDCs typically recover such costs over a period of time,⁶⁹ the Coalition notes that if these costs were recovered over one year, SCB would cost customers on average less than a quarter per month. Also, this estimate does not consider any savings that EDCs would be realizing as a result of sending fewer bills, handling fewer

⁶⁵ See, e.g., *Application of PECO Energy Company for Approval of its Restructuring Plan*, Docket No. R-00973953 (Order entered May 14, 1998) ("*PECO Restructuring Order*"). SCB was referred to as "competitive billing" at that time.

⁶⁶ See, e.g., *Joint Petition for Full Settlement of PECO Energy's Proposed Restructuring Plan* filed April 29, 1998, ¶ 22, approved by the *PECO Restructuring Order*.

⁶⁷ PECO Comments filed on May 4, 2018.

⁶⁸ See, e.g., PECO Pa. P.U.C. No. 1S, Page Nos. 97-101, Billing Service Options, Section 19. Due to the passage of time and to standardize the process throughout Pennsylvania, these provisions are now in need of updating.

⁶⁹ See, e.g., *Petition of PECO Energy Company for Approval of its Act 129 Energy Efficiency and Conservation Plan and Expedited Approval of its Compact Fluorescent Lamp Program*, Docket No. M-2009-2093215 (Order entered October 28, 2009).

consumer complaints and reduced uncollectible amounts due to EGSs fully purchasing their accounts receivables for their distribution charges. Further, the costs of developing innovative products would be borne by the EGS community, leaving EDCs to focus on their core functions of delivering electricity.

Testifying for the Coalition, Mr. Starck emphasized the significant savings for the utilities when they are not managing bad debt for a population of customers. Tr. 241. In Mr. Starck's opinion, "the benefits far outweigh the cost." Tr. 71. Testifying for WGL, Mr. Woodyard also addressed costs. As he noted, while "there will be some costs associating with implementing SCB, there will also be some savings...for the utility in the areas of sending out fewer bills, and the bad debt will be transferred...for the supplier to manage for those customers on SCB." Tr. 218.

Importantly, despite providing another billing option that would be available to consumers in the market, the Coalition does not envision SCB as requiring any changes to the EDC's existing billing systems. Rather, EDCs would simply be sending fewer bills to consumers. On behalf of RESA, Mr. Pfannenstiel also explained what is involved to implement – reversing the EDI transaction. Tr. 71. For instance, billing data would need to be transmitted by EDCs to EGSs rather from EGSs to EDCs. Changes to EDI transactions and the exchange of information between EDCs and EGSs would not result in any modifications to the EDCs' billing systems.

While Mr. Pfannenstiel agreed that there will be certain amount of implementation costs, he also pointed to the savings. With EGSs doing the billing, EGSs will pay the costs of mailing the bills. He further testified that "the bottom line is that there's already an existing infrastructure that certainly would need to be adjusted, but it's not something that needs to be built from the ground up that's going to cost the hundreds of millions of dollars that I think is a parade of horrors that you're hearing about." Tr. 72. Conceding that he does not know a dollar amount, Mr.

Pfannenstiel also noted that he does not think it will be the level the Commission is hearing about in the comments. Tr. 72.

To the extent that the EDCs incur incremental costs, they should be permitted to use a non-bypassable mechanism to recover costs from all customers. Since implementation of SCB will benefit the competitive market and will affect all customers, it is reasonable that the costs associated with it be recovered from all distribution customers on a non-bypassable basis through a surcharge of some similar mechanism. This approach would be consistent with what the Commission has done in connection with other retail market enhancements. For example, in 2014, a non-bypassable surcharge was used to recover, on a full and current basis, the costs of implementation of billing system changes related to implementing and promoting electric competition within this Commonwealth.⁷⁰

III. CONCLUSION

Based upon the foregoing, NRG Energy, Inc. (“NRG”), Direct Energy Services, LLC (“Direct”), ENGIE Resources LLC (“ENGIE”), Interstate Gas Supply, Inc. d/b/a IGS Energy (“IGS”), and Just Energy Group, Inc. (“Just Energy”) respectfully request that the Commission issue an Order announcing its determination to implement supplier consolidated billing by a date certain and launching the necessary processes to accomplish its directives.

⁷⁰ *Investigation of Pennsylvania's Retail Electricity Market: Joint Electric Distribution Company -- Electric Generation Supplier Bill*, Docket No. M-2014-2401345, Opinion and Order entered May 23, 2014 (costs of the inclusion of the EGS logo, the expansion of bill messaging space and the inclusion of a Shopping Information Box be recovered from all distribution customers).

Respectfully submitted,



Karen O. Moury
PA Attorney ID No. 36879
Eckert Seamans Cherin & Mellott, LLC
213 Market Street, 8th Fl.
Harrisburg, PA 17108-1248
717.237.6000

Date: August 24, 2018

Attorney for the EGS SCB Coalition