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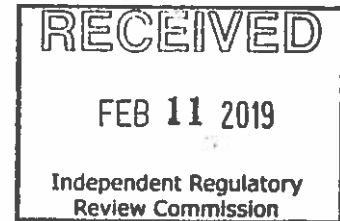
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September 12, 2017

VIA ELECTRONIC FILING

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



Re: Rulemaking to Amend the Provisions of 52 Pa. Code, Chapter 56 to Comply with the Amended Provisions of 66 Pa. C.S. Chapter 14; Docket No. L-2015-2508421

Dear Secretary Chiavetta:

Pursuant to the Commission's Order Seeking Additional Comments entered July 13, 2017 in the above-referenced proceeding, enclosed herewith for filing are the Comments of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company.

Please contact me if you have any questions regarding this matter.

Very truly yours,

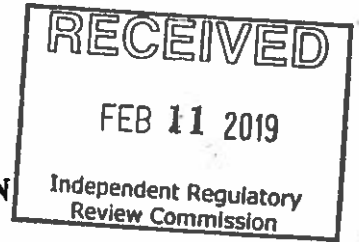
A handwritten signature in black ink, appearing to read "Teresa Harrold".

Teresa K. Harrold

Enclosures

c: As Per Certificate of Service
Daniel Mumford, Office of Competitive Market (dmumford@pa.gov)
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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Rulemaking to Amend the Provisions of
52 Pa. Code, Chapter 56 to Comply with
the Amended Provisions of 66 Pa. C.S.
Chapter 14

Docket No. L-2015-2508421

COMMENTS OF METROPOLITAN EDISON COMPANY,
PENNSYLVANIA ELECTRIC COMPANY, PENNSYLVANIA POWER
COMPANY AND WEST PENN POWER COMPANY

I. INTRODUCTION AND BACKGROUND

The Pennsylvania Public Utility Commission (“PUC” or “Commission”) is currently engaged in the above-referenced rulemaking to amend Chapter 56 of the Commission’s regulations.¹ On December 21, 2014, Act 155 of 2014 (“Act 155”) was adopted by the Pennsylvania legislature, which modified and reauthorized Chapter 14 of the Public Utility Code.² After Act 155 was enacted, the Commission issued an Implementation Order on July 9, 2015, providing utilities with interim implementation guidance in advance of a Chapter 56 rulemaking.³ On July 21, 2016, the Commission issued a Notice of Proposed Rulemaking Order (“NOPR”) proposing revisions to Chapter 56 of the Commission’s regulations to incorporate changes enacted by the legislature in Act 155. Metropolitan Edison Company (“Met-Ed”), Pennsylvania Electric Company (“Penelec”), Pennsylvania Power Company (“Penn Power”), and West Penn Power Company (“West Penn”) (each of which may be referred to as “Company” and/or in combination

¹ 52 Pa. Code § 56.1, *et seq.*

² 66 Pa.C.S. §§ 1401-1419.

³ *Chapter 14 Implementation*, Docket No. M-2014-2448824 (Final Order entered Jul. 9, 2015) (“Implementation Order”).

as “Companies”), as well as other stakeholders, submitted comments in response to the NOPR on April 19, 2017.

On July 13, 2017, the Commission issued an Order Seeking Additional Comments in response to the initial comments submitted by stakeholders. As part of the Order Seeking Additional Comments, the Commission requests additional feedback regarding: a) the use of medical certificates to avoid termination, the fraudulent use of medical certificates, how medical certificate fraud has affected uncollectible accounts, and what proportion of the utility's overall revenue is impacted by the use of fraudulent medical certificates; b) any additional costs and/or savings associated with compliance with the proposed changes to Chapter 56; c) whether customers should be permitted to designate third parties to receive copies of their supplier change confirmation notices, and if so, whether corresponding changes to the enrollment form are appropriate; d) whether utilities should be required to restore service to customers during a formal appeal if the Bureau of Consumer Services determines restoration is warranted; and e) whether privacy guidelines associated with the termination notification process should be developed as part of a subsequent proceeding. In addition, the Commission invites stakeholders to comment on “any topic they believe warrants additional comment.”⁴ The Companies respectfully submit the following comments in response to the Commission’s Order Seeking Additional Comments.

⁴ NOPR, p. 3.

II. COMMENTS

A. Medical Certificate Requirements

1. Medical Certificate Fraud Information

In its Order Seeking Additional Comments, the Commission requests that utilities provide additional evidence of medical certificate fraud to assist in the Commission's evaluation of appropriate medical certificate protections. Specifically, the Commission seeks the following information: the use of medical certificates to avoid termination; the fraudulent use of medical certificates; how medical certificate fraud has affected uncollectible accounts; and what proportion of the utility's overall revenue is impacted by the use of fraudulent medical certificates. Although the Companies' customer management system does not track suspected or confirmed medical certificate fraud, the Companies are able to provide comprehensive information related to the number of medical certificates and the arrearages associated with each account. In addition, the Companies will provide more information regarding suspected cases of medical certificate fraud.

Based on the Companies' records, in 2015, the Companies accepted 15,336 medical certificates associated with cumulative arrearages totaling \$25,496,722. In 2016, the Companies accepted 15,292 medical certificates associated with cumulative arrearages totaling \$24,610,936. When looking at the individual accounts associated with these medical certificates, customers had an average account balance of \$1,622.54 in 2015 and \$1,609.40 in 2016 at the time the medical certificates were accepted. In addition, the Companies rejected a total of 2,724 medical certificates in 2015 and 3,884 medical certificates in 2016. The Companies do not track the reason a medical certificate is rejected within their customer management system. However, examples of typical reasons for medical certificate rejection include medical certificates with incorrect information (*e.g.*, the medical certificate is in the name of a non-household member) and medical certificates

with incomplete information (e.g., a medical professional fails to sign the form). Of course, occurrences of medical certificate fraud could be present both within the categories of accepted and rejected medical certificates, as the Companies cannot always be aware of medical certificate fraud as it is occurring.

Medical certificates are utilized when a customer is facing termination for nonpayment or seeking reconnection after termination due to nonpayment. Obtaining a medical certificate is one of numerous options offered to customers when they call the Companies looking for help in avoiding termination or for assistance with reconnection of service. Where a customer's balance is extremely high and their financial resources are limited, a medical certificate may be the customer's only option for continuing service or having service restored, which increases the likelihood of medical certificate fraud.

Any effort by a customer to inappropriately obtain a medical certificate constitutes medical certificate fraud. Unfortunately, the Companies are not in a position to present a comprehensive list of all suspected and confirmed medical certificate fraud because they do not track this data within their customer management system. However, the Companies manually conducted a random sampling of 300 recent medical certificate denials in an effort to identify possible instances of medical certificate fraud. Through their review of this sample, the Companies concluded that, of the customers eligible to receive medical certificates, 50% of medical certificates were denied by the medical professional for the following reasons: the medical professional refused to sign the certificate; the medical professional deemed the customer's condition as not eligible for a medical certificate; or the medical professional confirmed the customer was not a patient. This figure confirms that the Commission should maintain protections within its regulations that ensure

medical professional involvement and sign off in the medical certificate process, as well as require medical professionals to include their medical license numbers on medical certificate forms.

In addition, 4% of eligible customers were denied medical certificates due to an unauthorized signature on the medical certificate. While only a small percentage of medical certificates were denied for unauthorized signatures, the Companies believe this type of fraud is currently minimized because the Companies typically fax or e-mail medical certificate forms directly to the medical professional. Previously, oral medical certificates were accepted by the Companies, which permitted customers to impersonate medical professionals over the telephone in an effort to obtain a medical certificate. The transition from oral to written medical certificates established an important protection against this type of fraud; however, the Companies are concerned that an online posting of the medical certificate form could increase the incidence of fraud by customers signing their own medical certificates or even attempting to forge the signature of their doctors.

As the Companies' figures for 2015 and 2016 demonstrate, each year, medical certificates are associated with approximately \$25 million in arrearages across the Companies in total. If these arrearages ultimately become uncollectible, this \$25 million will be collected from other residential customers. Sufficient protections against medical certificate fraud must be in place to ensure that only those customers with legitimate medical concerns requiring continuous electric service are able to delay payment on their arrearages.

2. Other Stakeholders' Medical Certificate Positions

The Commission's regulations regarding medical certificates should be structured to balance the objectives of Chapter 14 of the Public Utility Code, which both assist temporarily payment-troubled customers while also minimizing the uncollectibles passed on to other

residential customers.⁵ Where a customer experiences a serious medical issue, the Companies do not object to postponing the customer's responsibility for arrearages as long as the customer is required to continue paying current bills. Although the customer may have significant arrearages at the time of the medical issue, as long as the customer continues paying current bills, the potential uncollectible impact on other residential customers would not escalate. However, in order for customers to receive the extraordinary benefit of avoiding payment of their arrearages, safeguards must be in place to ensure that only eligible customers receive medical certificates, and that those benefits do not unduly burden other ratepayers. In this section, the Companies will highlight certain medical certificate proposals by other stakeholders that would eliminate necessary medical certificate safeguards and likely cause the Companies' uncollectibles to rise in contravention of the Public Utility Code and to the detriment of other ratepayers.

The Commission's regulations currently prohibit termination activities while a customer has a medical certificate in place. Each medical certificate is valid for a maximum of thirty days.⁶ Customers are eligible to receive an unlimited number of medical certificate renewals as long as they continue paying current bills.⁷ If a customer fails to pay current bills, the customer is limited to two medical certificate renewals.⁸ In comments, certain stakeholders propose that medical certificates should be extended from thirty days in length to the length of a customer's illness as determined by a medical professional.⁹ This proposal should be rejected for several reasons.

⁵ "The General Assembly seeks to achieve greater equity by eliminating opportunities for customers capable of paying to avoid the timely payment of public utility bills. Through this chapter, the General Assembly seeks to provide public utilities with an equitable means to reduce their uncollectible accounts by modifying the procedures for delinquent account collections and by increasing timely collections. At the same time, the General Assembly seeks to ensure that service remains available to all customers on reasonable terms and conditions." 66 Pa.C.S. § 1402.

⁶ 52 Pa. Code § 56.114.

⁷ *See id.*; *see also* 52 Pa. Code § 56.116.

⁸ *See id.*

⁹ Consumer Advisory Council ("CAC") Comments, pp. 12-13; Tenant Union Representative Network ("TURN"), Action Alliance of Senior Citizens of Greater Philadelphia, and the Coalition for Affordable Utility Service and Energy

Customers are already eligible to receive medical certificates for the length of their illness as long as they are paying current bills. In addition, customers are eligible for three medical certificates even if they stop paying current bills. While a medical certificate is in place, a customer is not subject to termination procedures. Accordingly, the only purpose of extending the length of medical certificates would be to permit customers to avoid paying their utility bills entirely.

Further, allowing medical professionals to determine the length of medical certificates could result in customers permanently avoiding their arrearages, as many conditions could result in medical professionals approving lifetime medical certificates. For example, one condition that may be used to justify the issuance of a medical certificate is sleep apnea, due to the fact that individuals who experience sleep apnea are required to use an oxygen machine while they sleep to prevent snoring. Sleep apnea is a condition that could exist throughout an individual's life. If asked to identify the length of this condition, medical professionals likely would identify the condition as permanent. A permanent or indefinite medical certificate would result in free electricity for the customer, which is undeniably inconsistent with Chapter 14 of the Public Utility Code.

TURN, *et al.*, further propose that both applicants and customers should be permitted to obtain medical certificates without a payment obligation.¹⁰ Under the Commission's current regulations, all customers are eligible to receive a medical certificate without payment towards their arrears, unless they had three prior medical certificates and failed to pay current bills. By

Efficiency in Pennsylvania Comments ("TURN, *et al.*"), pp. 36-38; and Community Justice Project ("CJP"), Disability Rights Pennsylvania, Health Education and Legal Assistance Project: A Medical-Legal Partnership at Widener University, the Homeless Advocacy Project, the Housing Alliance of Pennsylvania, the Pennsylvania Coalition Against Domestic Violence, the Pennsylvania Health Law Project, the Pennsylvania Utility Law Project, the Women's Center, Inc. of Columbia and Montour Counties, and the Women's Center Comments ("CJP, *et al.*"), p. 16.

¹⁰ TURN, *et al.* Comments, p. 9.

contrast, applicants, who are defined as customers new to a utility or customers who were without service for more than thirty days, are only eligible to have their service connected if they make a payment towards their arrearages.¹¹ Typically, the only applicants who would require medical certificates to have service turned on are those who were previously disconnected for nonpayment.

The Companies oppose the availability of medical certificate protections to applicants without payment towards their arrearages. When the applicant was a customer of the Companies, he or she was provided all of the opportunities and protections found within Chapter 14 of the Public Utility Code and Chapter 56 of the Commission's regulations to catch up on arrearages, including medical certificates, payment arrangements, and customer assistance programs. Despite these opportunities, the applicant's arrearages continued to increase until such a point that he or she was ultimately lawfully disconnected for nonpayment. While termination of service is a last resort, in this situation, it may be the only means for a utility to control uncollectibles. The arrearages associated with the applicant's prior account with the Companies may already be considered uncollectible when the applicant attempts to have service restored with a medical certificate. The Commission should continue to require payment from an applicant for restoration of service to avoid further increases in uncollectibles that are ultimately passed on to other customers.

In addition to duration and payment requirements, the format and informational requirements of medical certificate forms have been discussed in a number of stakeholder's comments. In particular, stakeholders submitted conflicting comments regarding two issues: the inclusion of medical certificate forms at utility websites and the requirement of medical license numbers on medical certificate forms. Posting medical certificates online exposes the process to

¹¹ See 52 Pa. Code § 56.191.

an increase in medical certificate fraud as compared to the Companies' current preferred practice of faxing or emailing the forms directly to the relevant medical professional. Where the forms are available for download online, customers without legitimate medical issues would have unbridled access to the forms. Meanwhile, the convenience offered to customers under today's process will be eliminated because those customers – some of whom are truly dealing with conditions that make it challenging for them to conduct personal business on their own – would now be faced with the hassle of searching for, printing, and bringing the form to a doctor's appointment.

Along the same lines, the Companies believe the medical license number of medical professionals should be required information on a medical certificate form, particularly if medical certificate forms are posted online. Medical professional names, addresses, and phone numbers are easily accessible online. Although medical license numbers are also often accessible as well, they require additional research and can be confirmed, which provides an extra safeguard against forged medical certificates.

Finally, CJP, *et al.*, and CAC suggest that a working group be established among stakeholders to evaluate the appropriate format and availability of medical certificates.¹² While most of the medical certificate issues can be resolved within the scope of this rulemaking, the Companies would be open to participating in a working group to the extent the Commission deems it appropriate.

B. Restoration of Service During Formal Appeal of Informal Complaint Decision

In the Order Seeking Additional Comments, the Commission proposes to modify 52 Pa. Code § 56.172 to state that utilities are required to restore service to customers during a formal appeal of a Bureau of Consumer Services (“BCS”) decision where the BCS ordered restoration of

¹² CJP, *et al.*, Comments, pp. 6-7; CAC Comments, pp. 5-6.

service. The Companies oppose this change to the extent it would require utilities to restore service where they believe a safety issue exists or where the customer does not meet the conditions required to restore service as set forth by statute, regulations, Commission orders, and utilities' Commission-approved tariffs.

Wherever possible, the Companies strive to adhere to all BCS orders, and typically will restore service when ordered to do so by the BCS whether or not the decision is appealed. However, the Companies occasionally disagree with a BCS decision, which may then be appealed by either the Companies or their customers. One primary reason the Companies would disagree with the BCS over restoration of service is where a safety concern may exist. In these situations, the Companies would strongly disagree with a requirement to restore service to a customer before a Commission decision on the matter is rendered. For instance, if a customer were to tamper with his or her meter, the Companies would require an independent electrical inspection before restoration to ensure the customer's facilities are safe to reenergize. Oftentimes, customers dispute the requirement to secure such an inspection due to the out-of-pocket cost incurred by the customer to do so. If a customer were to dispute such a requirement and a BCS decision were issued directing immediate reconnection, such restoration could result in physical harm or injury to a customer, his neighbors, other members of the public, and the Companies' employees. In an instance such as this, the BCS should not have the authority to order the Companies to ignore a safety issue and reconnect a customer.

Furthermore, the BCS informal complaint process does not properly afford due process to the Companies to advance legal arguments with regard to a particular issue at hand. Instead, the determinations issued are made in a vacuum by someone who – while familiar with the Commission's regulations and applicable statute – is not typically going to have a formal legal

education nor is in an adjudicatory role with the Commission. Therefore, to require a utility to either expose individuals to safety hazards or to potentially continue incurring its own losses during a formal complaint proceeding appealing the BCS ruling (which in some cases can take up to several years to fully resolve) is wholly inappropriate. Where a utility has incentive to ensure it is adhering to the letter of the law lest it be found in violation and assessed civil penalties, among other possible ramifications, there is no incentive for the customer to act in good faith in a scenario where this provision is adopted.

Accordingly, the Companies recommend that the Commission decline to adopt revisions with regard to this topic. In the alternative, should the Commission find that revisions are appropriate, the Companies propose that the Commission revise its proposed changes to 52 Pa. Code § 56.172(d) with the following underlined language: “Informal complaint decisions directing the restoration of utility service are not subject to an automatic stay, and utility service must be restored, unless restoration would endanger a person or property. In addition, where informal complaint decisions direct the restoration of utility service subject to certain conditions, the conditions must be met before restoration is required.” Where a utility has a legitimate safety concern related to restoration that could endanger the safety of a person or property, restoration during an appeal is inappropriate. In addition, if the BCS orders restoration of service contingent on a customer payment or inspection, the Commission should clarify that utilities are only required to restore service during a formal appeal if the customer first completes the conditions identified by the BCS.

C. Third-Party Notification of Supplier Change

Pursuant to 52 Pa. Code §§ 56.131 and 56.361, customers are permitted to designate third parties to receive copies of their past due, collection, and termination notices. The Commission is

proposing to modify these regulations, as well as Appendices E and F of the regulations, to allow for third-party notification of supplier change confirmation letters. The Companies do not oppose this proposed change to the Commission's regulations, but request that the implementation details and costs associated with this change be permitted to be recovered on a full and current basis through the Companies' Default Service Support Riders, or other similar mechanisms, as appropriate for each utility.

D. Privacy Guidelines for Electronic Termination Notices

In Act 155, the legislature modified Chapter 14 to permit utilities to send emails, text messages, and other electronic messages to customers regarding termination subject to the Commission's privacy guidelines approved by Commission order.¹³ In the Order Seeking Additional Comments, the Commission proposes to develop these privacy guidelines as part of a future proceeding initiated by tentative order rather than within this rulemaking. The Companies support this approach and agree it is consistent with legislative intent.

As the Commission prepares its tentative order, the Commission should develop proposed guidelines that are not overly burdensome on utilities and customers. CJP, *et al.*, CAC, and TURN, *et al.*, argue that in order to receive electronic notification of termination notices, customers must provide prior written and signed consent for such notices that is periodically reaffirmed by the customer.¹⁴ The Companies find it highly unlikely that customers would be willing to provide written and signed permission for electronic termination notices, or any format of termination notices for that matter. The Companies suggest that a working group could be established as part of the future proceeding on this issue to discuss the appropriate language for obtaining affirmative

¹³ 66 Pa.C.S. § 1406(b)(1)(ii)(D).

¹⁴ CJP, *et al.*, Comments, p. 23; CAC Comments, pp. 9-10; and TURN, *et al.*, Comments, pp. 28-29.

customer consent to electronic notifications, as well as to address privacy concerns associated with electronic notifications in general.

E. Additional Cost and Savings Information Related to Rulemaking

Other than what has been provided herein and in their Comments dated April 19, 2017 at this docket (“April 19, 2017 Comments”), the Companies have no additional cost or savings information to provide.

F. Other Stakeholders’ Comments

As part of this proceeding, other stakeholders raised certain issues of concern in their comments. Where the Companies already addressed such issues in their April 19, 2017 Comments, the Companies will avoid repeating those positions here. However, a few stakeholders raised issues that were not discussed in the NOPR or in the Companies’ April 19, 2017 Comments. As a result, the Companies respond to these issues below.¹⁵

1. Security Deposit Waivers for Confirmed Low-Income Customers

In Act 155, the legislature prohibited utilities from collecting security deposits from customers when they are confirmed to be eligible for a customer assistance program.¹⁶ As part of this proceeding, certain stakeholders are seeking guidance from the Commission on the meaning of the phrase “confirmed to be eligible for a customer assistance program.” The Companies, like many other stakeholders in this proceeding, agree that a customer is “confirmed to be eligible for a customer assistance program” once a utility receives income information from the customer confirming that his or her household income is at or below 150% of federal poverty income guidelines.¹⁷

¹⁵ The Companies respond to some, but not all, comments by other stakeholders in this proceeding. The Companies’ decision not to address another stakeholder’s position herein should not be construed as support for that position.

¹⁶ 66 Pa.C.S. § 1404(a.1).

¹⁷ April 19, 2017 Comments, p. 10.

CJP, *et al.*, and CAC suggest a number of additional changes to the regulations establishing requirements for security deposit waivers. CJP, *et al.*, propose to modify 52 Pa. Code § 56.36 to require utilities to provide verbal notice to a customer of the possibility of a security deposit waiver when it is first assessed.¹⁸ Similarly, CAC suggests that the Commission require that all security deposit warning letters refer to this exemption.¹⁹

The Companies question whether these proposed changes are necessary, as utilities do not seek to collect security deposits from customers confirmed to be low income. In addition, these proposals would require the Companies to make changes to their scripting such that significant increases to call handling time may occur. Currently, the Companies only discuss security deposit waivers if customers answer affirmatively when the Companies' customer service representative asks them if they might qualify for low-income assistance programs. Providing security deposit waiver information to all customers, many of whom are ineligible for the exemption, is not an efficient use of the Companies' resources.

In addition, TURN, *et al.*, argue that 52 Pa. Code § 56.53 should be amended to explicitly require utilities to refund security deposits within two billing periods after discovering that a customer's income is at or below 150% of federal poverty income guidelines.²⁰ The Companies once again question the necessity of this proposed change as utilities already have an overarching obligation not to hold security deposits for customers who are confirmed to be eligible for a customer assistance program as a result of their household income level. To the extent the Commission adopts this proposed change, the Companies caution the Commission to ensure that only customers who are confirmed by the utility to be eligible for a customer assistance program

¹⁸ CJP, *et al.*, Comments, pp. 20-21.

¹⁹ CAC Comments, pp. 8-9.

²⁰ TURN, *et al.*, Comments, pp. 26-27.

would trigger this two-month reimbursement requirement. The Companies oppose any security deposit waiver requirement based on a customer merely calling in to inform a customer service center that his or her income has fallen below 150% of federal poverty income guidelines. In order for a customer to be eligible for a security deposit waiver, the customer must provide confirmatory information to the Companies regarding his or her income level.

2. Chapter 56 Reporting Requirements

In its comments, the Office of Consumer Advocate (“OCA”) proposes modification to the Commission’s proposed language within 52 Pa. Code § 56.231. Specifically, the OCA disagrees with the Commission’s proposal that utilities provide a “snapshot” of data related to accounts exceeding \$10,000 in arrearages at the end of a calendar year; instead, the OCA submits that utilities should include information related to all accounts with arrearages that exceeded \$10,000 during the prior calendar year.²¹

The issue of whether utilities should provide “snapshot” or “cumulative” data regarding their accounts exceeding \$10,000 was already thoroughly evaluated as part of the Commission’s Chapter 14 Implementation proceeding at Docket No. M-2014-2448824, where the Commission determined that a year-end “snapshot” approach was reasonable.²² In the NOPR, the Commission proposes to formally modify 52 Pa. Code § 56.231 to require utilities to provide information related to their accounts exceeding \$10,000 at the end of each year.

The Companies support the Commission’s proposal for these reports to provide a “snapshot” of data. Many customers will have arrearages with accounts exceeding \$10,000 throughout the year, while other customers have balances that may fluctuate above and below \$10,000 multiple times. It would be significantly time-consuming and expensive to track each and

²¹ OCA Comments, p. 23.

²² Implementation Order, p. 34.

every moment an account exceeds \$10,000 and report to the Commission regarding each of these accounts, as this may require manual effort to develop for each account.

The OCA also proposes the addition of new reporting categories related to accounts with arrearages exceeding \$10,000.²³ A number of the OCA's proposed categories including length of time for a customer's arrearages to accumulate to \$10,000; prior enrollment in a usage reduction program; number of medical certificates; and number of accounts worked through each step of the collection process cannot be accomplished automatically within the Companies' customer management system. Instead, the Companies would need to conduct a manual review of each account with a balance exceeding \$10,000. Where some customers have maintained large balances with the Companies on and off for many years, it may be impossible to accurately identify how long it took their arrearages to exceed \$10,000 and their collection histories likely would be quite complex. The Companies oppose the addition of these reporting categories within 52 Pa. Code § 56.231 due to the high level of effort and complexity associated with this information gathering.

3. Public Availability of Reports Pursuant to 52 Pa. Code § 56.100(j)

52 Pa. Code § 56.100(j) requires utilities to submit reports to the Commission where "they become aware of a household fire, incident of hypothermia or carbon monoxide poisoning or other event that resulted in a death and that the utility service was off at the time of the incident." These reports are strictly confidential and are not available "for public inspection except by order of the Commission, and may not be admitted into evidence for any purpose in any suit or action for damages...."²⁴ As part of its comments, TURN, *et al.*, request that the Commission modify 52 Pa. Code § 56.100(j) to remove the language that prohibits public inspection of these reports. The

²³ OCA Comments, p. 24.

²⁴ 52 Pa. Code § 56.100(j).

Companies strongly disagree with this proposal and urge the Commission to preserve the confidentiality protection within 52 Pa. Code § 56.100(j).

It is highly unfortunate when the utility becomes aware of the death of a customer when his or her electric service was off. The Companies understand the need to provide information regarding such incidents to the Commission to allow the Commission to better understand the prevalence of this issue and strategies for addressing it. However, public availability of this information would constitute a violation of the Public Utility Code, Pennsylvania's Right-to-Know Law, and Commission precedent and regulations, as well as would raise a host of public policy concerns. As such, the recommendation should be dismissed without further action.

Under 66 Pa.C.S. § 1508, public utilities are required to report "any accident in or about, or in connection with, the operation of its service and facilities, wherein any person shall have been killed or injured...."²⁵ 52 Pa. Code § 56.100(j) reports are considered a subset of the reporting obligations required under 66 Pa.C.S. § 1508, as they are limited to accidental deaths as a result of a specific set of causes, which are, however remote, related to or "in connection with" the loss of utility service. When the Commission adopted 52 Pa. Code § 56.100(j), the Commission made clear that 52 Pa. Code § 56.100(j) reports are subject to the same restrictions as all other 66 Pa.C.S. § 1508 reports.²⁶ Specifically, reports made to the Commission under both 66 Pa.C.S. § 1508 and 52 Pa. Code § 56.100(j) "shall not be open for public inspection, except by order of the commission, and shall not be admitted in evidence for any purpose in any suit or action for damages growing out of any matter or thing mentioned in such report."²⁷ Further, the Commission

²⁵ 66 Pa.C.S. § 1508.

²⁶ *See Re Provisions of 52 Pa. Code, Chapter 56 to Comply with the Provisions of 66 Pa.C.S., Chapter 14*, Docket No. L-00060182 (Order entered June 11, 2011).

²⁷ *See id.*

explicitly stated that the 52 Pa. Code § 56.100(j) reporting obligation is not meant “to infer liability or causation.”²⁸ Accordingly, public availability of 52 Pa. Code § 56.100(j) reports is prohibited under Section 1508 of the Public Utility Code.

In addition, the Right-to-Know Law bars disclosure of utilities’ 52 Pa. Code § 56.100(j) reports to the public. Utilities prepare 52 Pa. Code § 56.100(j) reports based on an internal investigation. When the Commission receives these reports, the Commission will review the reports and possibly seek additional information from utilities. Under the Right-to-Know Law, Pennsylvania agencies are prohibited from disclosing to the public any record related to a noncriminal investigation including “investigative materials, notes, correspondence and reports....”²⁹ A report provided by utilities to the Commission regarding its investigation into the death of a customer, as well as any notes or reports by the Commission related to this event, would certainly qualify as investigative materials or reports that are exempt from public disclosure under the Right-to-Know Law.

Further, public availability of 52 Pa. Code § 56.100(j) reports would raise significant customer privacy concerns. Under 52 Pa. Code § 54.8, utilities are prohibited from disclosing “private customer information” to third parties without customer consent. Although 52 Pa. Code § 54.8 is within the Commission’s customer choice regulations, utilities typically apply this regulation to all third parties and do not disclose customer-specific information to any third party without a customer’s authorization. The Companies do not disclose a customer’s name, address, phone number, account number, billing history, usage history, and status of termination or reconnection to any third party without that customer’s consent. When a utility submits a report to the Commission pursuant to 52 Pa. Code § 56.100(j), the entire report consists of customer-

²⁸ *Id.*

²⁹ 65 Pa.C.S. § 67.708(b)(17)(ii).

specific information. If the public may access this report, any third party would have access to this private customer information. The protection against public disclosure within 52 Pa. Code § 56.100(j) ensures that utilities are not forced to disclose private customer information to third parties in contravention of 52 Pa. Code § 54.8.

Finally, despite the best efforts of utilities to provide continuous service to and ensure the safety of their customers, there are unfortunately times that utilities are without any other option but to terminate service to their customers. The Commission's statutory function in ensuring the adequacy, efficiency, safety and reasonableness of public utility service under 66 Pa.C.S. § 1501 relies upon the Commission having significant cooperation from the public utilities it regulates through self-reporting, open communication, and exchange of information among public utilities and the Commission's staff members. The revisions recommended by TURN, *et al.* would make such reports – which are provided immediately upon a utility becoming aware of an incident and well before any comprehensive investigation can be undertaken, much less concluded – public, and in turn, available to anyone who may wish to review them. The public dissemination of this information would significantly risk harm to the reputation of the reporting utilities, and as a result may unfairly skew public perception based on information that is at best preliminary. Apart from the risk of such unfair and deleterious effect on public sentiment, such a revision would also allow these reports to be obtained by personal injury attorneys looking for information they could not otherwise have access to, by design, in essence allowing them to take advantage of the collaborative relationship between the Commission and the public utilities it regulates. As a result, making this material publicly available could have a dramatic “chilling effect” on the thoroughness of public utilities' reports, and the willingness of public utilities to cooperate and volunteer

information. Accordingly, TURN, *et al.*'s proposed changes to 52 Pa. Code § 56.100(j) should be rejected by the Commission as unlawful.

4. The Companies' Response to NRG Energy, Inc.

NRG Energy, Inc. ("NRG") is proposing to revise Chapter 56 of the Commission's regulations to permit electric generation suppliers ("EGSs") to provide supplier consolidated billing ("SCB") to their supply customers. NRG previously submitted a Petition for Implementation of Electric Generation Supplier Consolidated Billing ("NRG Petition") at Docket No. P-2016-2579249, which is currently pending before the Commission. The Companies are opposed to NRG's proposed changes to Chapter 56 for the same reasons they oppose the NRG Petition. The Companies address many of their specific arguments for their position in the comments which follow, as well as incorporate by reference their full response to the NRG Petition, which is attached to these Comments for ease of reference.³⁰

In the simplest terms, Chapter 14 of the Public Utility Code and the Electricity Generation Customer Choice and Competition Act ("Competition Act") do not permit SCB.³¹ Chapter 14 of the Public Utility Code imposes a number of non-delegable duties on "public utilities," including retaining customer deposits; establishing and maintaining payment arrangements; termination and reconnection of service, as well as all related functions; payments to restore service; formal and informal complaints; and providing customer assistance information where a customer is seeking a payment arrangement.³² Most of these functions are inextricably linked to a public utility's ability to bill a customer for its services. A public utility cannot place a customer on a payment

³⁰ Attachment A contains the Companies' Answer to the NRG Petition; Attachment B contains the Companies' Comments in response to the NRG Petition; and Attachment C contains the Companies' Reply Comments to the NRG Petition.

³¹ 66 Pa.C.S. §§ 1401-1419; 66 Pa.C.S. § 2801, *et seq.*

³² *Id.*

arrangement where the public utility is not the entity responsible for billing the customer. Similarly, a public utility cannot implement the termination or reconnection process without the ability to bill and receive payment from customers. As the Pennsylvania legislature requires public utilities to perform these functions, NRG's proposal would necessarily lead to public utilities standing in violation the Public Utility Code – without their having any control to do otherwise.

In addition, Section 2807(d) of the Competition Act, which was adopted by the legislature in 1996 to introduce retail competition within the Commonwealth, mandates that “[t]he electric distribution company shall continue to provide customer service functions.”³³ The legislature’s use of the term “shall” leaves no doubt that the legislature intends for public utilities to be the entities responsible for customer service functions. A utility’s customer service functions primarily include maintaining a customer’s billing account.

The illegality of NRG’s proposed changes to Chapter 56 warrant outright rejection of NRG’s comments in this proceeding. However, as further addressed by the Companies at Docket No. P-2016-2579249, SCB would present additional implementation challenges as well. If EGSs are involved in the billing process, utilities’ termination and restoration procedures would become significantly more complicated, if not impossible. Utilities would be required to be in constant communication with EGSs regarding changes to each customer’s account, including payments, payment arrangements, and medical certificates, all of which could have a different impact on a customer’s termination or restoration process. Each of these changes creates different termination and restoration terms and timelines. Involving an EGS in this process would add unnecessary complexity into this process, which would likely increase the chance of errors in the termination and reconnection process to the disadvantage of customers.

³³ 66 Pa.C.S. § 2807(d).

Finally, NRG has not provided sufficient information to support the benefits of SCB to customers. NRG contends that SCB would allow EGSs to provide “value-added” products to customers, such as a “flat bill,” but has not explained how these products could be implemented in Pennsylvania in light of Pennsylvania’s bill presentment requirements. The Commission’s regulations require that utility bills separately identify customers’ basic and nonbasic charges, differentiating between a customer’s generation, distribution, transmission, and other charges.³⁴

For all the foregoing reasons, NRG’s proposal for SCB should be rejected. Likewise, NRG’s proposed changes to Chapter 56 to allow for implementation of its proposal should be disregarded.

³⁴ 52 Pa. Code § 54.4(b).

III. CONCLUSION

Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company appreciate the opportunity to provide Comments and respectfully request that the Pennsylvania Public Utility Commission consider and adopt the recommendations in the foregoing Comments.

Respectfully submitted,

Dated: September 12, 2017



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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Rulemaking to Amend the Provisions of :
52 Pa. Code, Chapter 56 to Comply with : **Docket No. L-2015-2508421**
the Amended Provisions of 66 Pa. C.S. :
Chapter 14 :

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true and correct copy of the foregoing document upon the individuals listed below.

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January 23, 2017

VIA eFILING

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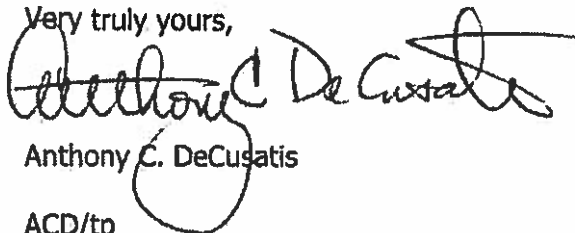
**Re: Petition of NRG Energy, Inc. for Implementation of
Electric Generation Supplier Consolidated Billing
Docket No. P-2016-2579249**

Dear Secretary Chiavetta:

Enclosed for filing, on behalf of **Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company**, is their **Answer to the Petition of NRG Energy, Inc. for Implementation of Electric Generation Supplier Consolidated Billing** (the "Answer") in the above-captioned proceeding.

As evidenced by the attached Certificate of Service, copies of the Answer are being served upon all parties listed in the Certificate of Service that accompanied NRG Energy, Inc.'s Petition.

Very truly yours,



Anthony C. DeCusatis

ACD/tp
Enclosures

c: Per Certificate of Service (w/encls.)

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

PETITION OF NRG ENERGY, INC. FOR : Docket No. P-2016-2579249
IMPLEMENTATION OF ELECTRIC : :
GENERATION SUPPLIER : :
CONSOLIDATED BILLING : :

CERTIFICATE OF SERVICE

I hereby certify and affirm that I have this day served copies of **Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company's Answer to Petition of NRG Energy, Inc. for Implementation of Electric Generation Supplier Consolidated Billing** on the following persons, in the manner specified below, in accordance with the requirements of 52 Pa. Code § 1.54:

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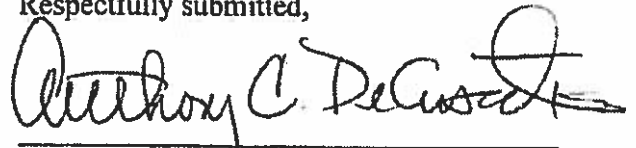
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Dated: January 23, 2017

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PETITION OF NRG ENERGY, INC. FOR :
IMPLEMENTATION OF ELECTRIC : Docket No. P-2016-2579249
GENERATION SUPPLIER :
CONSOLIDATED BILLING :

ANSWER OF METROPOLITAN EDISON COMPANY,
PENNSYLVANIA ELECTRIC COMPANY, PENNSYLVANIA
POWER COMPANY AND WEST PENN POWER COMPANY
TO THE PETITION OF NRG ENERGY, INC.

Pursuant to 52 Pa. Code § 5.61 and the Notice published by the Pennsylvania Public Utility Commission (“Commission”) in the *Pennsylvania Bulletin* on December 24, 2016, Metropolitan Edison Company (“Met-Ed”), Pennsylvania Electric Company (“Penelec”), Pennsylvania Power Company (“Penn Power”) and West Penn Power Company (“West Penn”) (each, a “Company” and collectively, the “Companies”) hereby submit this Answer in opposition to the Petition for Implementation of Electric Generation Supplier Consolidated Billing (“Petition”) filed by NRG Energy, Inc. (“NRG”) in the above-captioned docket.¹

L INTRODUCTION

NRG concedes that it cannot compete effectively based on the price it offers for generation service.² However, rather than address the deficiencies in its own business model, NRG has chosen to disparage Pennsylvania’s competitive retail generation market – contending that the market is to blame for NRG’s poor performance because “price is the key driver” of

¹ The Companies are also filing Comments regarding NRG’s Complaint in accordance with the Notice.

² Petition, ¶ 46.

customers' "shopping decisions" and because "customers remain focused on price" as the "predominant factor" for their purchasing decisions.³

It should come as no surprise that customers shop for a fungible commodity principally on the basis of price,⁴ particularly when the electric industry was restructured in Pennsylvania twenty years ago specifically to enable customers to have direct access to competitive generation suppliers in order to reduce their cost of electric service. In fact, the Declaration of Policy for electric restructuring clearly expresses the legislature's intent that *price* competition for *generation* service lay at the heart of what the Electricity Generation Customer Choice and Competition Act ("Competition Act")⁵ was designed to achieve.⁶

NRG, by its own admission, is out of step with the purpose and intent of the Competition Act because it is unable – or unwilling – to compete on the basis of the price it offers for generation. Consequently, NRG seeks to create, by administrative fiat, a special marketing channel for its *non-generation* products and services in order to: (1) produce a margin on non-generation sales it cannot obtain from selling generation alone; and (2) distract residential and small commercial customers from the non-competitive prices of its generation products.⁷ There is a host of reasons why NRG's proposals should be rejected out of hand. Chief among them is

³ *Id.*

⁴ See PUC Marks 20th Anniversary of Electric Competition in PA, New Survey Shows High Levels of Customer Awareness and Satisfaction with Electric Choice, Touts 14 Consecutive Months of Growth, Announces Upgrades to Electric Shopping Website PA PowerSwitch, PUC Press Release (Dec. 8, 2016) (summarizing remarks of Chairman Brown, who pointed out that a recent Commission survey showed that "the largest motivating factor behind switching electric providers is to lower monthly electricity bills ...").

⁵ 66 Pa.C.S. §§ 2801 *et seq.*

⁶ See e.g., 66 Pa.C.S. §§ 2802 (4) and (5), which focus exclusively on the *cost* of electric service, and 66 Pa.C.S. § 2802(6), which articulates the fundamental principle underlying the Competition Act, namely, that "[c]ompetitive market forces are more effective than economic regulation in controlling the *cost of generating electricity*" (emphasis supplied). This principle is tied directly to the substantive provisions of the Competition Act by 66 Pa.C.S. §§ 2802(12), (13) and (14), which declare that the purpose of the Act is to enable "direct access by retail customers to the competitive market" and, thereby, "to allow competitive suppliers to *generate and sell electricity* directly to consumers in this Commonwealth" (emphasis supplied).

⁷ See Petition, ¶ 46.

the fact that the Public Utility Code does not authorize the Commission to promote the sale of *non-generation* products and services by a subset of electric generation suppliers (“EGSs”) that want to get a leg up on their competitors by tying non-generation offerings to the sale of generation.⁸

II. THERE ARE NUMEROUS LEGAL DEFECTS IN NRG’S PROPOSAL THAT PRECLUDE THE COMMISSION FROM ADOPTING IT

The vehicle NRG seeks to promote its non-generation merchandising effort is supplier consolidated billing (“SCB”). As envisioned by NRG, SCB would make EGSs the primary point of contact with residential and small commercial customers not only for generation service, but for distribution service, customer billing and credit issues, customer inquiries, issuing a range of regulatory and other required notices, and a variety of other customer-care functions. If adopted, NRG’s SCB proposal would fundamentally change the relationship between electric distribution customers and electric distribution companies (“EDCs”) that the Commission, in its Report and Recommendations on the Investigation Into Retail Electric Competition, concluded should *not* be altered by the introduction of electric competition:

Customer services should be established to protect consumers, not to provide marketing opportunities for competitors. Disputes between sellers about the ownership of complaints and customer contacts should not impact the quality or responsiveness of customer services. Distribution utilities will continue to fall under Commission jurisdiction so they are the obvious place for all contacts which fall under Chapter 56. Responsibility for all initial customer contacts should be clearly assigned to the local

⁸ See, e.g., 66 Pa.C.S. § 2811(a), authorizing the Commission to monitor competitive conditions only for “the supply and distribution of electricity to retail customers.” The Public Utility Code confers no authority on the Commission to promote a competitive market for non-generation products or services – which can be offered by a wide array of vendors, the majority of whom are *not* EGSs.

distribution company to ensure that those contacts are uniformly and effectively addressed.⁹

A. NRC's Proposal Is Contrary To Several Key Provisions Of The Public Utility Code

The legislature followed the Commission's blueprint for allocating customer service functions in crafting the terms of Section 2807(d) of the Competition Act, which commands that "[t]he electric distribution company *shall* continue to provide customer service functions."¹⁰ Thereafter, in 2004, the legislature affirmed the mandate of Section 2807(d) when it imposed non-delegable duties on "public utilities" under Chapter 14 of Public Utility Code¹¹ for the full range of "residential utility service standards" listed in Section 1402(1) and delineated in detail in the balance of Chapter 14. These duties encompass, among other key functions, obtaining and returning customer deposits (Section 1404); establishing payment arrangements and assuring customer compliance with payment agreements (Section 1405); termination and reconnection of service, including mandatory notices, in-person contacts, payment arrangements and medical certifications to forestall termination (Sections 1406 and 1407); payments to restore service (Section 1407); formal and informal complaints, including the obligation to attempt to resolve such complaints through direct customer/public utility contacts (Section 1410); and public utilities' obligation to provide information concerning universal service programs when a customer contacts the public utility for a payment arrangement (Section 1410.1).

⁹ *Investigation Into Retail Competition*, Docket No. 1-940032, Report and Recommendations on the Investigation Into Retail Electric Competition (July 3, 1996), p. 38 (emphasis supplied).

¹⁰ 66 Pa.C.S. § 2807(d) (emphasis supplied).

¹¹ *See, e.g.*, 66 Pa.C.S. §§ 1405, 1406, 1407, 1410 and 1410.1 (imposing duties on "public utilities," which, as clearly defined in Section 1403, include EDCs but do *not* include EGSS).

More recently, the Commonwealth Court decided *Dauphin Cty. Indust. Dev. Auth. v. Pa. P.U.C.*, which holds that the Commission cannot “interpret” clear statutory language imposing a duty on a specific entity as authorizing the delegation of that duty to another:

The Commission’s interpretation of Section 2807(f)(5) is not entitled to deference. Unlike the statute at issue in *Popowsky*, there is no ambiguity in the Competition Act’s mandate. It provides, plainly, that “[t]he default service provider shall offer the time-of-use rates ... to all customers that have been provided with smart meter technology.” 66 Pa. C.S. §2807(f)(5) (emphasis added). Our rules of statutory construction require that words and phrases be read according to their common and approved usages. 1 Pa. C.S. §1903(a). The legislature’s unqualified use of the words “shall offer” in Section 2807(f)(5) places the burden on the default service provider, in this case PPL, to offer Time-of-Use rates to customer-generators. The legislature knows the difference between a default service provider and an Electric Generation Supplier. Its decision to place the onus on default service providers was neither accidental nor arbitrary.¹²

Just like the statutory language at issue in *Dauphin County*, Section 2807(d)¹³ and Chapter 14¹⁴ contain the “legislature’s unqualified use” of the word “shall” in imposing obligations on EDCs and “public utilities” (defined in Section 1403 as EDCs and not EGSs), respectively, and in a

¹² 123 A.3d 1124, 1134-1135 (Pa. Cmwlth, 2015) *appeal denied* 140 A.3d 14 (Pa. 2016) (footnotes omitted) (“*Dauphin County*”).

¹³ 66 Pa.C.S. § 2807(d) (“The electric distribution company shall continue to provide customer service functions consistent with the regulations of the commission, including meter reading, complaint resolution and collections.”)

¹⁴ *See, e.g.*, 66 Pa.C.S. § 1406(b)(1) (“Prior to terminating service under subsection (a), a public utility: (i) Shall provide written notice of the termination to the customer . . . (ii) Shall attempt to contact the customer or occupant to provide notice of the proposed termination . . .”); 66 Pa.C.S. § 1405(a) (“The commission is authorized to establish payment arrangements between a public utility, customers and applicants within the limits established by this chapter.”); 66 Pa.C.S. §1406(f) (“A public utility shall not terminate service to a premises when a customer has submitted a medical certificate to the public utility.”); 66 Pa.C.S. § 1407(c)(1) (“A public utility shall provide for and inform the applicant or customer of a location where the customer can make payment to restore service.”); 66 Pa.C.S. §1410(1) (“The commission shall accept formal and informal complaints only from customers or applicants who affirm that they have first contacted the public utility for the purpose of resolving the problem . . .”); 66 Pa.C.S. §1410.1 (“When a customer or applicant contacts a public utility to make a payment agreement as required by section 1410, the public utility shall: (1) Provide information about the public utility’s universal service programs, including a customer assistance program. (2) Refer the customer or applicant to the universal service program administrator of the public utility. . . (3) Have an affirmative responsibility to attempt to collect payment on an overdue account.”).

number of other ways clearly identify EDCs and “public utilities” as the entities responsible for the actions required.

By advancing its SCB proposal, NRG is asking the Commission to countermand the clear statutory directives of Section 2807(d) and Chapter 14. The comprehensive reshaping of the landscape for customer billing and collection, customer service functions, dispute resolution, payment arrangements and responding to customer inquiries that NRG advocates cannot occur without extensive changes to the Public Utility Code that only the legislature and Governor are empowered to make.

Notably, while NRG offers Texas as an example of where its version of SCB purportedly has been implemented, it neglects to mention that SCB was adopted as part of a comprehensive statutory overhaul of the Texas electricity market that specifically authorizes SCB.¹⁵ Just as important, again unmentioned by NRG, Texas employs a radically different market model from the one the Pennsylvania legislature adopted in the Competition Act.¹⁶ Under the Texas model, SCB is not – as NRG proposes here – merely an “option” along with utility consolidated billing and dual billing. Rather, in Texas, distribution and transmission companies (i.e., “wires” companies) are relieved of responsibility for billing, accounting, collection and customer care functions, and those duties are placed on the Retail Electric Provider. Consequently, there is no need for redundant (EDC and EGS) billing, accounting, collection and customer care infrastructure. Nor are the Texas equivalents of EDCs required to backstop Retail Electricity Providers in providing those functions.

¹⁵ Tex. Utilities Code §§ 39.001 *et seq.*

¹⁶ See *City of Corpus Christi v. Public Util. Comm'n*, 51 S.W.3d 231, 237 (Tex. 2001); *Office of Pub. Util. Counsel v. Pub. Util. Comm'n*, 185 S.W.3d 555 (Tex. App. 2006) (describing the Texas model for electric restructuring).

B. NRG's Proposal Could Not Be Approved Before Extensive Notice And Comment Rulemakings Are Completed To Revise Existing Regulations

In addition to being beyond the Commission's statutory authority to adopt, NRG's proposal would require extensive changes to existing regulations. NRG acknowledges this undeniable point and concedes that the regulatory changes needed to accommodate its proposal require notice and comment rulemaking.¹⁷ Indeed, changing existing regulations, no less than adopting new regulations, must satisfy the rigorous requirements of the Commonwealth Documents Law¹⁸ and the Regulatory Review Act,¹⁹ including review by the Independent Regulatory Review Commission ("IRRC") and standing committees of the House of Representatives and the Senate. NRG, nonetheless, is asking the Commission to fully implement its version of SCB *before* the Commission even initiates the necessary rulemakings.²⁰

NRG's proposed schedule is unlawful on its face. Even if statutory authority existed for the Commission to adopt NRG's SCB proposal – and it does not – the rulemakings that are indispensable for implementing such a proposal, including IRRC and standing committee reviews, would have to be *completed* successfully *before* implementation could begin.

C. The NRG Proposal Raises Many Serious Unanswered Questions That Directly Implicate Existing Customer Safeguards

The NRG proposal also leaves unanswered multiple, serious questions about whether the major realignment in customer service functions it envisions adequately protects residential and small business customers as required by Section 2807(d) and the Commission's duties and

¹⁷ See Petition, ¶ 73 and n. 88.

¹⁸ 45 P.S. §§ 1201-1202 (The Agency must give public notice of its intent to promulgate an administrative regulation, publish the proposed regulation and explain its purpose, state the statutory basis for its action, solicit comments and review and consider any written comments submitted.)

¹⁹ 71 P.S. §§ 745.1 *et seq.*

²⁰ See Petition, ¶¶ 72 and 73 (Calling for "implementation of SCB in the first quarter of 2018" while contemplating that the Commission would "initiate any proposed rulemakings" on or after January 31, 2018.)

obligations under Section 1501. Significantly, NRG's Petition itself outlines a plan to use SCB to merchandise non-generation products and services. Specifically, NRG conceives a future in which, for example, it would market "home security" systems, "HVAC maintenance" and "surge protection," among other products and services, to residential and small commercial customers and include those costs in a "single and more simplified summary bill" for "combined services" that could be presented as a "flat" bill option.²¹ While NRG's preferred approach would no doubt facilitate NRG's marketing of non-generation products and services, it would also diminish customers' "focus" on the price of generation, since customers would not even be able to discern that price.²² In that regard, NRG's "innovative" approach to billing directly contravenes the Commission's existing regulations dictating the format of bills for residential and small commercial customers, which require every charge to be stated separately and identified as a charge for either "basic" or "nonbasic" service.²³ Thus, under the guise of offering customers "tools" to "better manage their energy consumption,"²⁴ NRG is, in effect, proposing to "re-bundle" rates – a course that the Competition Act does not allow and the Commission's regulations explicitly prohibit.

Furthermore, while NRG says it intends to adhere to Chapter 56 of the Commission's regulations and Chapter 14 of the Public Utility Code,²⁵ the "innovations" in billing it proposes to introduce – changes that NRG claims are necessary for customers to realize the benefits SCB allegedly offers – would make it difficult, if not impossible, to distinguish charges for "basic"

²¹ Petition, ¶¶ 48-50.

²² While NRG acknowledges that it must show the price to compare ("PTC") on customers' bills, it is silent on whether it will show its generation price in a form that can be readily compared to the PTC. See, e.g., Petition ¶ 49 and Appendix A, Question 6.

²³ 52 Pa. Code § 54.4(b). See also 66 Pa.C.S. § 2807(c)(1) (requiring that bills "enable customers to determine the basis" for all of their "unbundled" charges).

²⁴ See Petition, ¶ 49.

²⁵ See, e.g., Petition, ¶ 37.

from “nonbasic” services. This blurring of the lines raises serious customer protection issues because the Commission does not allow termination for non-payment of charges for nonbasic service.

NRG also fails to address the lawfulness of its proposals to: (1) purchase EDCs’ accounts receivables; and (2) make EDCs responsible for terminating customers’ distribution service for non-payment.²⁶ In fact, there is no valid legal authority for either request. Under existing voluntary EDC purchase of receivables (“POR”) programs, participating EGSs that elect utility consolidated billing sell their receivables to the EDC. Under those circumstances, the customer’s receivable for generation service is, after the EDC’s purchase, owed to the EDC – just like generation charges for default service. The EDC can, therefore, lawfully terminate service for non-payment of the purchased receivable, because the delinquent account is owed to the EDC. The process cannot lawfully be operated in reverse, as NRG erroneously assumes.

Unlike an EDC’s purchase of an EGS’s receivable, if the EGS purchases the EDC receivable, the customer does not owe the EDC anything. Consequently, the EDC has no basis for terminating service for non-payment. Thus, there is no legal authority for the EGS to demand that a customer’s service be terminated under the process envisioned by NRG in its Petition. Simply stated, this element of NRG’s proposal cannot lawfully be implemented.

III. NRG’S PROPOSAL WOULD IMPERIL EXISTING CUSTOMER SAFEGUARDS AND IS NOT NEEDED TO FOSTER A COMPETITIVE RETAIL MARKET FOR ELECTRIC GENERATION

The Commission has an important obligation to protect customers. If adopted, NRG’s proposal would introduce unwarranted complexity, create multiple opportunities for errors that could seriously harm customers, and diminish real, price-based competition for generation

²⁶ Petition, ¶¶ 29-30.

service – i.e., the only form of competition that the Commission is authorized to monitor and safeguard. These concerns were succinctly summarized by the Connecticut Public Utilities Regulatory Authority (“PURA”) in its report to the Connecticut General Assembly on the “complexities and challenges involved to effectuate supplier consolidated billing.”²⁷ In its report, the PURA concluded that switching distribution customers’ “primary point of contact” from the EDC to a generation supplier “is not practical and could add to customer confusion:”

Currently, customers know that they are to call the EDC for outages, emergencies, and starts and stops in service. The one constant element absent dual billing is EDC billing, regardless of who the customer’s Supplier is. Each month, thousands of customers switch Suppliers. It is unknown how the existing switching process would work when SCB is entered into the mix. Numerous challenges could result. For example, credit issues associated with multiple billers could result in improper credits and disconnections, as well as SCB Suppliers collecting on prior balances of another Supplier. Additionally, customer records and billing would be spread among numerous SCB entities, possibly jeopardizing customer information security. This area would need to be explored before SCB could be approved. Another area that would need to be explored is how Suppliers would administer initiatives for low-income customers such as budget billing, on-bill donations to charitable organizations (i.e., Operation Fuel), arrearage forgiveness programs and energy assistance programs.²⁸

The PURA also questioned how EGSs could handle the wide range of customer service issues that EDCs must deal with every day:

Additionally, Suppliers offering SCB would be required to address a wide range of issues impacting customers, including billing disputes and disconnections. Billing questions would likely include questions associated with the EDC’s own charges on customer bills. Consequently, customer service representatives

²⁷ *Connecticut Public Utility Regulatory Authority Review Of The Billing Of All Components Of Electric Service By Electric Suppliers*, Conn. PURA Docket No. 13-08-15 (Aug. 6, 2014) (“*PURA Report on SCB*”). A copy of the *PURA Report on SCB* is attached as Appendix A.

²⁸ *PURA Report on SCB*, p. 4

(CSR) for every Supplier opting for SCB would need to be educated on all of the non-Supplier rate components on customer bills to be effectively responsive to customer inquiries. Supplier staffing would likely need to increase as well. Currently, the EDC's CSR are fully equipped to answer all billing questions, with the exception of some Supplier service questions. The EDC CSR are also trained when to refer the customer to the Supplier to address as the Supplier issues. Under SCB however, the EDC CSR would have to pass the caller to the Supplier to answer all billing questions because the EDC would not have the customer billing information readily available as they do now. Additionally, implementation of SCB could cause customer confusion over whom to call for general inquiries, new service requests, terminating service, and low-income programs. Having Suppliers address EDC customer billing issues may not be practical.²⁹

While NRG claims that it already handles customer service issues in Texas through its existing customer service infrastructure, NRG has not provided any evidence that Texas imposes requirements as rigorous, detailed or comprehensive as those set forth in Chapter 56 of the Commission's regulations and Chapter 14 of the Public Utility Code.

Other significant issues flagged by the PURA³⁰ include the following:

- **Timing Of Bill Payments And Its Impact On EDCs:** "Under SCB, the payment to EDCs would have an additional 30-day lag time, which could have a substantial negative impact to the EDCs' cash flow. At a minimum, this 30-day lag may necessitate the need for an increase to the EDCs' working capital requirements. Further analysis would need to be performed to determine what other impacts may result from this payment delay."³¹
- **Compromising Customer Protection By Complicating The Termination And Reconnection Processes:** "To complicate matters further, SCB could result in 50 plus Suppliers performing the consolidated billing function that is currently performed by the two EDCs. This payment delay could also negatively impact customers facing critical situations such as service termination for non-payment, a delay in service reconnection by the EDC, or the accrual of late payment charges."

²⁹ *Id.*

³⁰ *Id.*, pp. 4-5.

³¹ NRG also proposes a thirty-day lag in forwarding payment for distribution service. Petition, ¶ 28.

- **Customer Switching Between Suppliers (EGSs) Adds Complications That Would Be Difficult Or Impossible To Untangle:** “The ease by which a customer may move between Suppliers complicates this matter further. Because customers can switch between Suppliers or to/from standard offer service, SCB could impact the Supplier’s ability to provide accurate and timely bills. The additional lag time for EDCs receiving payment from numerous different Suppliers is also cause for concern.”
- **Just Like In Pennsylvania, The Connecticut PURA Would Require New Statutory Authority And Existing Regulations Would Have To Be Comprehensively Revised Before SCB Could Be Implemented:** “An additional consideration is that the Authority’s regulations include numerous requirements regarding billing, customer notices, and service termination that have been implemented to protect customers. Thus, Connecticut statutes and the Authority’s regulations would need to be thoroughly reviewed to determine the changes, if any, that would be made to protect customers under SCB. Finally, statutory changes would be needed if the General Assembly intends to permit SCB.”

The PURA rejected arguments from SCB supporters that SCB is necessary for EGSs to developing meaningful long-term relationships with customers and “market their products and services.” Instead, the PURA found and determined that the dual billing option satisfied those needs better and more efficiently.³² Accordingly, the PURA concluded that adopting SCB “does not seem practical,” noting that the reasons supporting its conclusion were “numerous:”

First, and foremost, there does not appear to be real benefits to ratepayers. If the desired result is to offer ratepayers the convenience of a single electric bill, the UCB [utility consolidated bill] is the most administratively and perhaps cost efficient way to provide this benefit. *Second*, while there is interest among some Suppliers who participated in this proceeding to provide SCB, the lack of Supplier participation in this proceeding seems to infer that to many, especially smaller companies, the interest in SCB is also lacking. Requiring the EDCs to make the necessary and potentially costly changes to their respective customer information systems and other processes to accommodate SCB for a small number of interested Suppliers would not be practical. *Third*, the billing components of electric service consist of numerous charges,

³² *Id.* at 6-7.

the vast majority of which are for services provided or administered by the EDCs. These EDC charges are very complex with some having annual or semi-annual reconciliation mechanisms. *Fourth*, while the costs are unknown, it appears likely that enabling the EDCs to transfer the necessary billing information and for the Suppliers to obtain the necessary resources to successfully assume the billing responsibility could be costly to the EDCs and Suppliers and ultimately, to ratepayers. *Fifth*, other options exist for Suppliers to achieve the same or similar desired result. *Finally*, given the responsibilities that the EDCs have for billing aspects, such as meter installation and reading, bill inserts, and implementing rate changes, transferring the billing responsibilities to entities that have no responsibilities in these matters seems ill advised.³³

All of the reasons Connecticut's PURA offered for rejecting SCB apply with equal force today in Pennsylvania. In short, the Commission would be fully justified in summarily rejecting NRG's Petition.

IV. NRG HAS MISCHARACTERIZED THE COMMISSION'S PRONOUNCEMENTS IN BOTH THE *END STATE FINAL ORDER* AND THE *JOINT BILL ORDER*

In an attempt to put its own "spin" on the Commission's prior decision declining to adopt SCB,³⁴ NRG portrays the *End State Final Order* as a ringing endorsement of SCB that made SCB a foregone conclusion but temporarily postponed its implementation.³⁵ The Commission's actual words tell a much different story:

While the Commission is of the opinion that SCB might someday play a role as a billing option in the competitive market, upon review of the comments, we have to conclude that we are not prepared to move to an SCB environment at this time. We agree with many of the suppliers who point out that SCB will facilitate the offering of innovative new products and services and will also help the supplier in establishing a brand identity with the customer.

³³ *Id.* at 7 (emphasis supplied).

³⁴ *Investigation of Pennsylvania's Retail Electricity Market: End State of Default Service*, Docket No. 1-2011-2237952 (Final Order entered Feb. 15, 2013) ("*End State Final Order*").

³⁵ See Petition ¶¶ 7-8.

However, all parties appear to be in agreement that SCB could only be implemented after extensive work and expense by many entities. We are concerned with the burden this would impose, especially given the multitude of other, more critical, changes we are mandating in the near-term. We are also concerned that the extensive work and expense could result in a feature that will not be utilized sufficiently to justify the costs at this time.³⁶

Notably, the Commission also expressed “substantial concerns” that imposing demands on time, resources and money to move forward with SCB made little sense because of a decided lack of interest by the EGS community overall and in light of other initiatives that had taken place or were just starting:

We have substantial concerns that use of an SCB process may be even more unlikely now since POR programs are available. It is unclear how many suppliers would be willing to forgo the ease and convenience of utility consolidated billing under POR, where they have no bad debt risk, to opt for an SCB model where they assume the full burden of billing, collections and bad debt. We also point out that suppliers do currently have the option of issuing a separate bill to the customer (the dual billing option) if they find utility consolidated billing not conducive to their offerings or business model.³⁷

Although the Commission, in its *End State Tentative Order*,³⁸ considered asking its Office of Competitive Markets Oversight (“OCMO”) to submit a recommendation on how to proceed with SCB, the Commission reversed course and undertook a new approach, namely, the development of a “joint” bill for use in conjunction with utility consolidated billing:

Therefore, the Commission will revise what we proposed in the Tentative Order – OCMO will not be submitting a recommendation to the Commission in July 2013 as to how to proceed with SCB. Instead, we direct OCMO to explore another

³⁶ *End State Final Order*, pp. 66-67 (emphasis supplied).

³⁷ *End State Final Order*, p. 67

³⁸ *Investigation of Pennsylvania’s Retail Electricity Market: End State of Default Service*, Docket No. 1-2011-2237952 (Tentative Order entered Nov. 8, 2012) (“*End State Tentative Order*”)

possibility, more along the lines of what PPL suggested, to seek “simple, cost-effective solutions.” By the end of 2013, OCMO should submit a recommendation regarding the possibilities for making the utility consolidated bill more supplier-oriented. The current utility consolidated bill looks like the utility’s bill – with supplier information often relegated to a few lines, with the supplier’s name, phone number, rate and charges. This is an especially incongruent result for many customers whose supplier generation charges actually exceed the utility’s distribution charges. We are interested in pursuing options to make the supplier’s charges and information more prominent. This could include making the supplier information more visible, incorporating the supplier’s logo, providing more space for suppliers to provide bill messages and even the opportunity to include EGS bill inserts. The expected end-result would look more like a joint EDC-EGS bill.

As promised in the *End State Final Order*, the Commission developed well-crafted criteria and required EDCs to conform to those criteria to implement “joint” bills.³⁹ NRG attempts to minimize the significance of the joint-bill initiative by, among other things, claiming that joint bills give greater prominence to the EDC’s name and logo than to the EGS’s name and logo.⁴⁰ However, that is certainly not the case for the Companies. Their joint bill format displays the name and logo of the EGS and EDC the same number of times and with equal prominence. Moreover, the Companies only began issuing joint bills for the first time in mid-2015. This initiative has not been in place long enough to develop the basis for review that the Commission envisioned when it directed OCMO to move forward with its joint bill recommendation. In short, the joint bill program has not been given a fair test, and there is no basis to declare it unsuccessful, as NRG does, absent the review and analysis the Commission anticipated when the joint bill initiative was put forth in the *End State Final Order*.

³⁹ *Joint Elec. Distribution Co.-Elec. Gen. Supplier Bill*, Docket No. M-2014-2401345 (Final Order entered May 23, 2014) (“*Joint Bill Order*”).

⁴⁰ Petition, ¶ 61.

V. IN ADDITION TO ITS OTHER DEFECTS, NRG'S PROPOSAL FOR RAPID IMPLEMENTATION OF SCB MAKES NO SENSE WHEN FIVE EDCS WILL NOT HAVE FULLY DEPLOYED SMART METERS UNTIL AFTER 2020

NRG has proposed an accelerated schedule which, if adopted, would require full implementation of SCB by the second quarter of 2018.⁴¹ Apart from the fact that NRG's proposed schedule is totally unworkable, even if the legal defects in that proposal could, somehow, be resolved, the amount of work required to implement SCB in the manner NRG conceives could not be done in that little time. Indeed, the Commission recognized the considerable time and work that would be needed to move forward with SCB in the *End State Final Order*.⁴²

Additionally, NRG stated that the alleged benefits of SCB could only be realized fully for those EDCs that have deployed smart meters.⁴³ However, five of Pennsylvania's major EDCs (the Companies and Duquesne Light Company ("Duquesne")), will not fully have smart meters and the associated advanced meter infrastructure ("AMI") deployed and operational until after 2020. Duquesne is currently scheduled to complete full deployment in 2020,⁴⁴ while the Companies will not fully deploy smart meters until 2022.⁴⁵ Given these schedules for the roll-

⁴¹ Petition, ¶ 72.

⁴² *End State Final Order*, p. 66 ("SCB could only be implemented after extensive work and expense by many entities.").

⁴³ Petition, ¶ 51 (Stating that the "choices" it hoped to provide would only become "possible with the full deployment of AMI and smart meters to all Pennsylvania customers.").

⁴⁴ On August 4, 2015, Duquesne filed a petition seeking approval to revise its Smart Meter Procurement and Installation Plan to, among other things, complete deployment of smart meters to residential and commercial and industrial customers by the end of 2018 and 2019, respectively, instead of the end of 2020. While, Administrative Law Judge Katrina L. Dunderdale recommended that the Commission approve Duquesne's proposal to accelerate its smart meter deployment schedule in an Initial Decision issued on October 31, 2016 at Docket No. P-2015-2497267, Duquesne will not complete universal deployment under such accelerated schedule until after NRG's proposed implementation of SCB during the second quarter of 2018.

⁴⁵ See *Joint Petition of Metropolitan Edison Co., Pennsylvania Electric Co., Pennsylvania Power Co. and West Penn Power Co.*, Docket No. M-2013-2341990 *et al.* (Opinion and Order entered June 25, 2014) (approving the Companies' revised deployment plan under which over 98% of customers would receive smart meters by mid-2019, interval data for such customers would become available by the end of 2019 and the remaining customers would receive smart meters by the end of 2022), p. 8.

out of smart meter technology, there is no reason to move forward with SCB in the first quarter of 2018 as NRG proposes. There is no evidence in the Petition that NRG even considered this point.

VI. SCB COULD WELL HAVE A SIGNIFICANT ADVERSE EFFECT ON COMPETITION IN THE RETAIL GENERATION MARKET

NRG asserts that, because it does business in Texas, it already has the customer billing, accounting and customer service infrastructure that would be needed for it to implement SCB in Pennsylvania.⁴⁶ Of course, that is not the case for a number of other EGSs that are active in the Pennsylvania market. Thus, the subtext for NRG's proposal is that SCB, if implemented in the manner and on the highly accelerated time-line NRG wants, will give NRG a significant competitive advantage *over other EGSs*. In other words, NRG believes it can leverage the alleged benefits of SCB and the head-start provided by its existing customer billing and customer service "infrastructure" to increase its market share in Pennsylvania. That leveraging would, of course, come at a cost to other EGSs that, unlike NRG, are not players in the Texas market but, instead, are focused on providing generation service at the most competitive prices to customers in Pennsylvania. However, hobbling other EGSs – or perhaps driving them from the Pennsylvania market entirely – would harm the competitive retail market in the Commonwealth and is clearly not in the best interests of Pennsylvania consumers.

VII. ANSWERS TO AVERMENTS IN THE NUMBERED PARAGRAPHS OF NRG'S PETITION

1. Denied. The Commission's Order cited by NRG speaks for itself. Accordingly, NRG's characterization of the Commission's purpose and intent in entering that Order is denied. By way of further answer, the Commission's authority to promote the Commonwealth's goals to

⁴⁶ Petition, ¶¶ 20 and 65.

enhance retail competition is limited to the authority conferred upon it by the Competition Act. For the reasons set forth in detail in Section I, *supra*, and incorporated herein by reference as if set forth at length, the Commission lacks authority to create, regulate, monitor, or oversee the competitive market for *non-generation* products and services such as those NRG proposes to bundle with offers for competitive generation service.

2. Denied. The Commission's Order cited by NRG speaks for itself. Accordingly, NRG's attempted summary and characterization of that Order are denied.

3. Denied. The Commission's Order cited by NRG speaks for itself. Accordingly, NRG's attempted summary and characterization of that Order are denied.

4. Denied. The Commission's Order cited by NRG speaks for itself. Accordingly, NRG's attempted summary and characterization of that Order are denied. It is specifically denied that the Commission has the authority to remove the "link" between the EDC and the customer and redefine the framework for customer service functions for the reasons set forth in Section II.A, *supra*.

5. Denied. The Commission's Order cited by NRG speaks for itself. Accordingly, NRG's attempted summary and characterization of that Order are denied.

6. Denied. The Commission's Order cited by NRG speaks for itself. Accordingly, NRG's attempted summary and characterization of that Order are denied. To the extent NRG claims that the EGS-customer relationship is "tenuous" absent adoption of its SCB proposal, its averments are denied for the reasons set forth in detail in Sections III and IV, above, which are incorporated herein by reference as if set forth at length.

7. Denied for the reasons set forth in Section IV, *supra*, which are incorporated herein by reference as if set forth at length. To the extent NRG is suggesting that SCB is only means for an EGS to establish brand identity with customers, its averments are denied. As the Commission explained in the *Joint Bill Order*, inclusion of the EGS logo and expanded bill messaging space on utility consolidated bills “aids the customer in developing a stronger recognition of his or her EGS.”⁴⁷ Of course, EGSs are also free to issue separate bills to their customers to gain brand loyalty or market non-generation products and services consistent with their business models in the same manner that non-EGS vendors market their products and services.

8. Denied for the reasons set forth in Section IV, *supra*, which are incorporated herein by reference as if set forth at length.

9. Admitted in part, denied in part. It is admitted that the Companies and other EDCs implemented the Commission’s “joint bill” initiative in June 2015. To the extent NRG suggests that this initiative has been unsuccessful in providing opportunities for EGSs and customers to strengthen their relationship, its averments are denied for the reasons set forth in Section IV, *supra*, which are incorporated herein by reference as if set forth at length. It is also denied that NRG’s proposal, if implemented, would actually achieve the alleged goals identified in Paragraph No. 9.

10. Admitted in part, denied in part. It is admitted that the restructuring settlements of several EDCs, including Met-Ed and Penelec, contained “competitive billing” options such as SCB and utility consolidated billing. It is denied that the settlements cited by NRG justify its unnecessary and unauthorized proposal to change a distribution customer’s primary point of

⁴⁷ *Joint Bill Order*, pp. 5-7; see also *id.*, p. 35.

contact for billing, collections, dispute resolution and other customer service functions from the EDC to an EGS. Indeed, the SCB option in the Met-Ed and Penelec restructuring settlements was not implemented, in large part, due to lack of EGS interest. The SCB “competitive billing” option was not utilized by any EGSs for nearly a decade after Commission approval of those settlements. As a consequence, Met-Ed and Penelec replaced the “competitive billing options” in their Electric Generation Supplier Coordination Tariffs with POR programs in the context of their first default service programs as part of the settlement that was approved by the Commission’s Final Order entered November 9, 2009.⁴⁸

11. Admitted in part, denied in part. NRG’s recitation of the history of the stakeholder process regarding electronic data interchange protocols for SCB in the 2010-2011 timeframe is admitted. It is denied that those prior working groups, which generated significant policy questions that remain unanswered, justify NRG’s unauthorized SCB proposal.

12. Admitted in part, denied in part. It is admitted only that Pennsylvania shopping statistics have not increased substantially since 2011. To the extent NRG claims its SCB proposal is necessary to ensure that Pennsylvania retail customers are shopping “at a pace that would be expected in a well-functioning market,” its averments are denied for the reasons set forth in Section III, *supra*, which are incorporated by reference herein as if set forth at length. By way of further answer, Pennsylvania shopping statistics sharply declined after customers on a variable rate plan with their EGSs (many times unknowingly) faced exorbitant electric bills arising from fluctuations in wholesale energy prices caused by historically cold weather during the winter of 2013-2014.

⁴⁸ *Joint Petition of Metropolitan Edison Co. and Pennsylvania Elec. Co. for Approval of Their Default Service Programs*, Docket Nos. P-2009-2093053 and P-2009-2093054 (Opinion and Order approving settlement entered Nov. 6, 2009).

13. Denied. The Commission's Order cited by NRG speaks for itself. Accordingly, NRG's attempted summary and characterization of that Order are denied. By way of further answer, several of the "innovative products" offered to retail customers in Texas at the beginning of the Commission's Retail Market Investigation are now, or will be, available to Pennsylvania retail customers, including access to real-time energy consumption information, when the deployment of advanced metering infrastructure is completed.

14. Denied for the reasons set forth in the answer to Paragraph No. 12 and Section III, *supra*, which are incorporated herein by reference as if set forth at length.

15. Denied. For the reasons set forth in Sections II.C and V, *supra*, which are incorporated herein by reference as if set forth at length, it is denied that the unlawful and unrealistic schedule proposed by NRG is a "workable plan." Accordingly, even if the Commission does not – as it should – summarily reject NRG's Petition, then a proper schedule would have to be established providing for, at a minimum, successful completion of rulemakings that are indispensable for implementing NRG's SCB proposal, including IRRC and standing committee reviews, prior to implementation.

16. Denied for the reasons set forth in Section II.B, *supra*, which are incorporated herein by reference as if set forth at length herein. By way of further answer, the cases cited by NRG are inapplicable because they do not involve proposals that would require extensive changes to existing regulations. In addition, the averments of Paragraph No. 16 are inconsistent with the averments of Paragraph No. 73 and footnote 88 of the Petition, wherein NRG concedes that extensive notice and comment rulemakings must be completed to implement the NRG proposal.

17. Denied. It is specifically denied that any request for hearings in this matter would be a tactic to “delay” implementation of NRG’s unlawful SCB proposal. The remaining averments in Paragraph No. 17 constitute a prayer for relief to which no response is required.

18. Admitted in part, denied in part. NRG’s summary of its Petition is admitted. It is denied that the arguments raised therein provide a valid basis for the Commission to adopt NRG’s SCB proposal.

19. Admitted.

20. Admitted. By way of further answer, as explained in Section VI, *supra*, the fact that NRG is a player in the Texas market, unlike many other EGSs in Pennsylvania, is strong evidence Commission should carefully consider the adverse impact SCB could have on retail competition. Additionally, as explained in Section II.A, *supra*, SCB has been expressly authorized by statute in Texas.

21. Admitted.

22. Admitted in part, denied in part. NRG’s summary of its position on SCB in the Commission’s Retail Market Investigation is admitted. It is denied that any of the alleged drawbacks of utility consolidated billing identified in Paragraph No. 22 provide a basis for the Commission to adopt NRG’s unauthorized SCB proposal. Moreover, contrary to NRG’s contention, the Companies have implemented “rate ready” and “bill ready” options to facilitate utility consolidated billing for multiple EGSs with different billing needs.

23. Denied. For the reasons set forth in Section III, *supra*, it is denied that SCB is necessary for EGSs to develop meaningful long-term relationships with customers.

24. Admitted in part, denied in part. It is admitted that NRG intends to utilize its SCB proposal, if implemented, "to improve its position in the retail market." For the reasons set forth in Sections II, III and VI, *supra*, it is denied that NRG's commitment provides a valid basis for the Commission to adopt its unsupported and unauthorized SCB proposal.

25. Denied for the reasons set forth in Sections II and III, *supra*, which are incorporated herein by reference as if set forth at length.

26. The averments of Paragraph No. 26, which outline NRG's SCB implementation plan, constitute a prayer for relief to which no answer is required. To the extent NRG asserts that its proposed implementation plan "ensures uniformity in the design and implementation of the mechanism, as well as the consumer protections, rules and protocols that would be followed," such averment is denied for the reasons set forth in Sections II.C, III and V, *supra*, which are incorporated herein by reference as if set forth at length.

27. The averments of Paragraph No. 27, which outline NRG's SCB proposal, constitute a prayer for relief to which no answer is required. By way of further answer, the analogy to the sale of lightbulbs offered by NRG in Paragraph No. 27 is inapposite. NRG's example does not involve the provision of a non-storable product essential to public health and safety that must be available instantaneously in every home and business on a continuous basis through capital intensive fixed infrastructure, subject to comprehensive regulation by the Commission, including detailed specifications for delivery, customer service, payment terms, billing, and termination of service.

28. The averments of Paragraph No. 28, which outline NRG's SCB proposal, constitute a prayer for relief to which no answer is required. Nonetheless, the Company denies the factual averments regarding the purchase of EDCs' accounts receivable embedded in NRG's

request for relief for the reasons set forth in detail in Sections II, III and IV, *supra*. Accordingly, the responses to NRG's SCB proposal set forth in Sections II, III and IV, above are incorporated herein by reference as if set forth at length.

29. The averments of Paragraph No. 29, which outline NRG's SCB proposal, constitute a prayer for relief to which no answer is required. Nonetheless, the Company denies the factual averments regarding termination of service for non-payment embedded in NRG's request for relief for the reasons set forth in detail in Sections II, III and IV, *supra*. Accordingly, the responses to NRG's SCB proposal set forth in Sections II, III and IV, above, are incorporated herein by reference as if set forth at length.

30. The averments of Paragraph No. 30, which outline NRG's SCB proposal, constitute a prayer for relief to which no answer is required. Nonetheless, the Company denies the factual averments regarding termination of service for non-payment embedded in NRG's request for relief for the reasons set forth in detail in Sections II, III and IV, *supra*. Accordingly, the responses to NRG's SCB proposal set forth in Sections II, III and IV, above, are incorporated herein by reference as if set forth at length.

31. The averments of Paragraph No. 31, which outline NRG's SCB proposal, constitute a prayer for relief to which no answer is required. Nonetheless, the Company denies the factual averments regarding termination of service for non-payment embedded in NRG's request for relief for the reasons set forth in detail in Sections II, III and IV, *supra*. Accordingly, the responses to NRG's SCB proposal set forth in Sections II, III and IV, above, are incorporated herein by reference as if set forth at length.

32. The averments of Paragraph No. 32, which outline NRG's SCB proposal, constitute a prayer for relief to which no answer is required. Nonetheless, the Company denies

the factual averments regarding termination of service for non-payment embedded in NRG's request for relief for the reasons set forth in detail in Sections II, III and IV, *supra*. Accordingly, the responses to NRG's SCB proposal set forth in Sections II, III and IV, above, are incorporated herein by reference as if set forth at length.

33. The averments of Paragraph No. 33, which outline NRG's SCB proposal, constitute a prayer for relief to which no answer is required. By way of further answer, under NRG's proposal, if adopted, an EDC would depend on a single EGS to pay all of the EDC's charges reflected on the bills of multiple customers that elect SCB. This dependency creates a material, additional credit risk because the EDC would be exposed to nonpayment or late payment by the EGS of the total of individual customers' charges that the EGS bills and collects. The collateral security currently required from EGSs under the Commission's regulations does not consider, and is not adequate to properly secure, this additional risk that EDCs would be required to bear under NRG's proposal. Consequently, an additional collateral requirement would be needed to cover the risk of nonpayment or late payment of the EDC's charges billed and collected by an EGS that employs SCB. Collateral requirements needed to cover such additional risk exposure could be up to two months' worth of SCB customers' distribution billings plus 50%.

34. The averments of Paragraph No. 34, which outline NRG's SCB proposal, constitute a prayer for relief to which no answer is required. Nonetheless, the Company denies the factual averments regarding financial requirements for EGSs offering SCB embedded in NRG's request for relief for the reasons set forth in detail in Sections II, III and IV, *supra*. Accordingly, the responses to NRG's SCB proposal set forth in Sections II, III and IV, above, are incorporated herein by reference as if set forth at length.

35. The averments of Paragraph No. 35, which outline NRG's SCB proposal, constitute a prayer for relief to which no answer is required. Nonetheless, the Company denies the factual averments regarding fees for SCB embedded in NRG's request for relief for the reasons set forth in detail in Sections II, III and IV, *supra*. Accordingly, the responses to NRG's SCB proposal set forth in Sections II, III and IV, above, are incorporated herein by reference as if set forth at length.

36. The averments of Paragraph No. 36, which outline NRG's SCB proposal, constitute a prayer for relief to which no answer is required. Nonetheless, the Company denies the factual averments regarding unresolved SCB policy questions embedded in NRG's request for relief for the reasons set forth in detail in Sections II, III and IV, *supra*, and the Comments. Accordingly, the responses to NRG's SCB proposal set forth in Sections II, III and IV, above, and in the Comments are incorporated herein by reference as if set forth at length.

37. The averments of Paragraph No. 37 constitute a prayer for relief to which no answer is required. Nonetheless, the Company denies the factual averments regarding the administration and operation of SCB embedded in NRG's request for relief for the reasons set forth in detail in Sections II, III, IV and V, *supra*, and the Comments. Accordingly, the responses to NRG's SCB proposal set forth in Sections II, III, IV and V, above, and in the Comments are incorporated herein by reference as if set forth at length.

38. Denied. NRG's reliance on Sections 501, 2804(3) and 2807(c) of the Public Utility Code is misplaced. None of those provisions furnishes any authority for the Commission to adopt NRG's SCB proposal. NRG's proposal cannot be implemented consistent with existing provisions of the Public Utility Code, including Section 2807(d) and Chapter 14.

39. Admitted in part and denied. It is admitted that the Commission issued the *End State Tentative Order*. NRG's characterization of the *End State Tentative Order* is denied because the Commission, in the *End State Final Order*, substantially revised the *End State Tentative Order*, as explained in Section IV, *supra*, which is incorporated herein by reference as if set forth at length.

40. Denied. It is denied that there is a "legal foundation" for SCB as it is proposed by NRG for the reasons set forth in Section II.A, *supra*, which are incorporated herein by reference as if set forth at length. Additionally, NRG does not address at all whether the 1998 restructuring settlements that it cites as alleged authority for SCB provided for all of the changes – particularly changes in customer service functions and the conditions precedent and procedures for termination of service for non-payment – that NRG claims are essential to implementing its proposal. Additionally, the fact that no incremental costs were "identified" in connection with the SCB provisions of the 1998 restructuring settlements does not mean that those costs did not exist or that EDCs should be prohibited from recovering the costs they undoubtedly would incur to implement SCB now that the rate caps imposed by Section 2804(4) and the restructuring settlements themselves have expired.

41. Denied. It is denied that either the prior Orders, Secretarial letter or miscellaneous alleged actions of the Commission cited by NRG confer authority to adopt the NRG proposal when key elements of that proposal directly contravene the Public Utility Code and existing regulations, as explained in Sections II.A and B, *supra*, which are incorporated herein by reference as if set forth at length. Moreover, NRG has failed to address whether the limited implementation of a form of SCB it alleges took place in the past mirrored the comprehensive reshaping of customer service functions – including EDC terminations of service

for delinquent accounts owed to an entity other than a EDC – that NRG is proposing in its Petition. Accordingly, there is no indication that the examples cited by NRG, even if they conform to NRG’s characterization, parallel NRG’s proposal.

42. Denied. The averments of Paragraph No. 42 of the Petition attempt to summarize and characterize various documents, including prior Orders of the Commission, that speak for themselves. To the extent the averments of Paragraph No. 42 are offered as alleged authority for the Commission to adopt NRG’s proposal, those averments are denied for the reasons set forth in Sections II.A,B., and IV, *supra*, which are incorporated herein by reference as if set forth at length.

43. Denied. NRG misstates and mischaracterizes the *End State Final Order*, as explained in Section IV, *supra*, which is incorporated herein by reference as if set forth at length. Additionally, it is denied that legal authority exists to implement the NRG proposal for the reasons set forth in Sections II.A and B, *supra*, which are incorporated herein by reference as if set forth at length.

44. Denied. The Companies lack facts or information sufficient to affirm or deny the accuracy of the factual averments set forth in Paragraph No. 44 and, therefore, those averments are denied and proof thereof, if relevant, is demanded at any hearing held in connection with the Petition. Additionally, NRG’s characterization of the *End State Final Order* is erroneous and, therefore, is denied, for the reasons set forth in Section IV, *supra*, which are incorporated herein by reference as if set forth at length.

45. Denied. Paragraph No. 45 contains numerous averments of fact that purport to be based on a study that has not been provided, is not in evidence, is not supported by the testimony of any witness with personal knowledge whose views could be tested by cross-examination.

Accordingly, the averments of Paragraph No. 45 are denied and proof thereof, if relevant, is demanded at any hearing held in connection with the Petition. In addition, Paragraph No. 45 includes exactly the kind of factual assertions that must be tested in an evidentiary hearing, notwithstanding NRG's erroneous contentions to the contrary in Paragraph Nos. 16 and 17 of the Petition.

46. Denied. The Companies lack facts or information sufficient to affirm or deny the accuracy of the factual averments set forth in Paragraph No. 46 and, therefore, those averments are denied and proof thereof, if relevant, is demanded at any hearing held in connection with the Petition. In further answer, competition for the sale and purchase of retail generation service based on "price" is the guiding principle underlying the Competition Act. NRG is proposing a departure from the design, intent and express statutory mandates of the Competition Act that should be rejected for that reason alone, as explained in detail in Section I, *supra*, which is incorporated herein by reference as if set forth at length.

47. Denied. The averments of Paragraph No. 47 are denied for the reasons set forth in the answer to Paragraph No. 45, *supra*, which are incorporated herein by reference as if set forth at length.

48. Denied. The Companies lack facts or information sufficient to affirm or deny the accuracy of the factual averments set forth in Paragraph No. 48 and, therefore, those averments are denied and proof thereof, if relevant, is demanded at any hearing held in connection with the Petition. In further answer, the allegedly "unique products and services tailored to meet individual needs" that are premised on the availability of "customer usage and usage patterns" would require the availability of smart meter technology. As explained in Section V, *supra*, which is incorporated herein by reference as if set forth at length, full deployment of smart

meters for the Companies will not be completed until 2021. Additionally, NRG has not addressed whether the “single and more simplified bill for . . . combined services” that it proposes to employ would comply with the requirements of Section 2807(c)(1) of the Public Utility Code and the bill format provisions of Section 54.4 of the Commission’s regulations. Based on the information provided by NRG, including its plan to institute a “flat bill” option for all EDC and EGS charges if its Petition were approved,⁴⁹ NRG is proposing billing methods and formats that are not permitted under the Public Utility Code and the Commission’s regulations.

49. Denied. Paragraph No. 49 contains numerous averments of fact concerning the terms and conditions of “mobile phone plans” and billing methods allegedly employed in Texas where, NRG avers, such billing methods are “growing in popularity.” The facts underlying these averments are not in evidence and are not supported by the testimony of any witness with personal knowledge whose views could be tested by cross-examination. Accordingly, the averments of Paragraph No. 49 are denied and proof thereof, if relevant, is demanded at any hearing held in connection with the Petition. In addition, Paragraph No. 49 includes exactly the kind of factual assertions that must be tested in an evidentiary hearing, notwithstanding NRG’s erroneous contentions to the contrary in Paragraph Nos. 16 and 17 of the Petition.

50. Denied. Paragraph No. 50 contains averments of fact concerning the nature and terms of “flat bill plans” allegedly being offered in Texas that purportedly allow customers “complete control of their energy bill.” It also contains averments about the number customers allegedly choosing this option in Texas. NRG has not provided sample bills to illustrate the so-called “flat bill” option and compare it to the Commission’s bill format requirements as set forth in Section 54.4 of the Commission’s regulations. Moreover, the facts underlying NRG’s

⁴⁹ See Petition, ¶ 50.

averments are not in evidence and are not supported by the testimony of any witness with personal knowledge whose views could be tested by cross-examination. Accordingly, the averments of Paragraph No. 50 are denied and proof thereof, if relevant, is demanded at any hearing held in connection with the Petition. Paragraph No. 50 includes exactly the kind of factual assertions that must be tested in an evidentiary hearing, notwithstanding NRG's erroneous contentions to the contrary in Paragraph Nos. 16 and 17 of the Petition. In further answer, NRG has not addressed whether the "flat bill plans" it anticipates offering would comply with the requirements of Section 2807(c)(1) of the Public Utility Code and the bill format provisions of Section 54.4 of the Commission's regulations. Based on the information provided in the Petition, NRG is proposing a billing method and a bill format that are not permitted under the Public Utility Code and the Commission's regulations.

51. Denied. The Companies lack facts or information sufficient to affirm or deny the accuracy of the factual averments set forth in Paragraph No. 51 and, therefore, those averments are denied and proof thereof, if relevant, is demanded at any hearing held in connection with the Petition. In further answer, contrary to the tacit assumptions underlying the averments of Paragraph No. 51, smart meters have not been deployed for most of the Companies' customers, and full deployment will not occur until 2012, as explained in Section V, *supra*, which is incorporated herein by reference as if set forth at length.

52. Denied. Paragraph No. 52 contains averments of fact concerning customers' attitudes, their bases for making decisions about electric generation suppliers, their ability to "understand the competitive market," and ways that "more information" might allegedly change their behavior. The facts underlying NRG's averments are not in evidence and are not supported by the testimony of any witness with personal knowledge whose views could be tested by cross-

examination. Accordingly, the averments of Paragraph No. 52 are denied and proof thereof, if relevant, is demanded at any hearing held in connection with the Petition. Paragraph No. 52 includes exactly the kind of factual assertions that must be tested in an evidentiary hearing, notwithstanding NRG's erroneous contentions to the contrary in Paragraph Nos. 16 and 17 of the Petition.

53. Denied. Paragraph No. 53 contains averments of fact concerning the way customers "choose products and services," marketing methods that allegedly "differentiate" vendors' offers, and the purported limitations EGSs currently face in marketing generation and non-generation products and services. The facts underlying NRG's averments are not in evidence and are not supported by the testimony of any witness with personal knowledge whose views could be tested by cross-examination. Accordingly, the averments of Paragraph No. 53 are denied and proof thereof, if relevant, is demanded at any hearing held in connection with the Petition. Paragraph No. 53 includes exactly the kind of factual assertions that must be tested in an evidentiary hearing, notwithstanding NRG's erroneous contentions to the contrary in Paragraph Nos. 16 and 17 of the Petition.

54. Admitted in part and denied in part. Paragraph No. 54 contains a recitation of certain elements of NRG's proposal, which are admitted. Paragraph No. 54 also contains averments of alleged benefits associated with its proposal. The Companies lack facts or information sufficient to affirm or deny the accuracy of the factual averments set forth in Paragraph No. 54 regarding such benefits and, therefore, those averments are denied and proof thereof, if relevant, is demanded at any hearing held in connection with the Petition. In further answer, delegating EGSs to "handle a growing number of billing inquiries" is not authorized under the Public Utility Code or the Commission's regulations, for the reasons set forth in

Sections II.A and B., *supra*, which are incorporated herein by reference as if set forth at length, and would deprive customers of significant customer safeguards they currently enjoy, for the reasons set forth in Sections II.C and III, *supra*, which are incorporated herein by reference as if set forth at length.

55. Admitted. It is admitted that neither the Public Utility Code nor the regulations of the Commission authorize EGSs to tie the purchase of electric generation to the sale of non-generation products and services or to require EDCs to purchase accounts receivable created by EGSs' sale of non-generation products and services, such as "home security" systems or "HVAC services." In further answer, EGSs can market their non-generation products and service in the same manner as non-EGS vendors market their non-generation products and service.

56. Denied. NRG has not explained why its SCB proposal must be implemented in order for EGSs or EDCs to offer pre-paid plans to customers. Moreover, as NRG also acknowledges, pre-paid plans require smart meters and smart meter infrastructure. As explained in Section V, *supra*, which is incorporated herein as if set forth at length, smart meters will not be fully deployed throughout the Companies' service territories until 2021.

57. Denied. Paragraph No. 57 contains averments concerning the terms of "flat bill plans," the level of alleged "control" such plans offer customers, the extent to which such plans are currently available in the Pennsylvania retail market, and the extent to which such plans might be expanded if NRG's SCB proposal were adopted. The facts underlying NRG's averments are not in evidence and are not supported by the testimony of any witness with personal knowledge whose views could be tested by cross-examination. Accordingly, the averments of Paragraph No. 57 are denied and proof thereof, if relevant, is demanded at any hearing held in connection with the Petition. Paragraph No. 57 includes exactly the kind of

factual assertions that must be tested in an evidentiary hearing, notwithstanding NRG's erroneous contentions to the contrary in Paragraph Nos. 16 and 17 of the Petition.

58. Denied. EDCs offer both bill-ready and rate-ready options, and their billing systems can accommodate a wide range of billing alternatives. In addition, EGSs are free to employ dual billing (i.e., issue separate EGS bills) to "accommodate the changing needs" they may perceive. NRG has not provided any reasons why the comprehensive, fundamental changes in billing and customer service functions its proposal would entail are necessary to achieve an outcome that is already available under the dual billing option.

59. Denied. It is denied that the joint bill initiative, which has been in place only for approximately eighteen months, has "fallen short of the Commission's expectation." The joint bill initiative has not been in place long enough, nor has the Commission conducted a review of its operation, to pass judgment on whether it is meeting the Commission's "expectation" – a judgment only the Commission can make, not NRG. The averment that an EGS's "logo" is not "in color" ignores the fact that none of the Companies' bills depict any logo – including their own – "in color." NRG's averments concerning electronic bills are also erroneous – the Companies' electronic bills are an exact duplicate of their paper bills and, therefore, contain the EGS's information, name and logo.

60. Denied. Under the Joint Bill Order, EGSs have up to four lines of messaging and, contrary to NRG's averments, the messaging can be customized by customer.

61. Denied. The Companies' joint bill complies with the criteria of the Commission's *Joint Bill Order* and, contrary to NRG's averments, does, in fact, appear as a true "joint" bill. The Companies' actual bill (i.e., not including the pay stub) shows the EDC's logo once and its name four times and also shows the EGS's logo once and its name four times.

62. Denied. The Companies lack facts or information sufficient to affirm or deny the accuracy of the factual averments set forth in Paragraph No. 62 and, therefore, those averments are denied and proof thereof, if relevant, is demanded at any hearing held in connection with the Petition. In further answer, dual billing is available to EGSs, and they are also free to employ the same marketing channels for non-generation products and services that are employed by non-EGS vendors of those products and services.

63. Admitted. In the *End State Final Order*, the Commission itself found and determined that the cost and complexity of implementing SCB militated against its implementation in Pennsylvania, stating: “However, all parties appear to be in agreement that SCB could only be implemented after extensive work and expense by many entities.”⁵⁰ As a consequence, the Commission countermanded its recommendation in the *End State Tentative Order*, stating: “Therefore, the Commission will revise what we proposed in the Tentative Order – OCMO will not be submitting a recommendation to the Commission in July 2013 as to how to proceed with SCB. Instead, we direct OCMO to explore another possibility more along the lines of what PPL suggested, to seek ‘simple, cost-effective solutions.’”⁵¹ See Section IV, *supra*, which is incorporated herein by reference as if set forth at length.

64. Admitted in part and denied in part. It is admitted that “EDEWG” has looked into the many issues that would have to be resolved to implement SCB. However, it is denied that EDEWG’s “proposal” is sufficient to provide any foundation – let alone a “solid foundation” – for “moving forward” with SCB. The work done by EDEWG to date leaves many unanswered questions concerning whether and, if so, how SCB could be implemented. The alleged answers

⁵⁰ *End State Final Order*, pp. 66-67

⁵¹ *Id.* at 67-68.

provided by NRG in Appendix A to the Petition are either not feasible or, themselves, raise additional, unresolved issues. Moreover, none of the work done by EDEWG to date addressed the kind of comprehensive revision to customer service functions – including EGS purchases of EDC receivables and EDC termination of service for non-payment of EGS-owned accounts – that are embodied in the NRG proposal.

65. Denied. Paragraph No. 65 contains factual averments concerning “EDI protocols” allegedly “developed in Texas for SCB,” the “process flow” for how SCB purportedly operates in Texas, and a list of what NRG asserts are the “EDI transactions that are currently in use in Texas.” The facts underlying NRG’s averments are not in evidence and are not supported by the testimony of any witness with personal knowledge whose views could be tested by cross-examination. Accordingly, the averments of Paragraph No. 65 are denied and proof thereof, if relevant, is demanded at any hearing held in connection with the Petition. Paragraph No. 65 includes exactly the kind of factual assertions that must be tested in an evidentiary hearing, notwithstanding NRG’s erroneous contentions to the contrary in Paragraph Nos. 16 and 17 of the Petition. In further answer, the “process flow” chart provided as Appendix C by NRG shows that the Electric Reliability Council of Texas (“ERCOT”) functions as a critical intermediary in transferring “monthly usage” data between the “Transmission and Distribution Service Provider” and the “Competitive Retailer.” NRG has not explained how that function would, if at all, be performed if the Texas model were to be implemented in Pennsylvania and, specifically, whether NRG has obtained the commitment of the PJM Interconnection, L.L.C. (“PJM”) to perform the same function in Pennsylvania that ERCOT does in Texas.

66. Admitted in part and denied in part. It is admitted that EDEWG developed a list of significant, unanswered policy questions relating to the implementation of SCB, that EDEWG

asked the Commission to resolve those questions before SCB received any further consideration, and that, to date, those questions have not been answered. It is also admitted that NRG has attempted to provide its unilateral responses to the EDEWG policy questions in Appendix A to the Petition. It is denied that NRG's proposed answers resolve the serious issues raised by EDEWG. In virtually every instance, NRG's answers propose an approach that is not feasible, is contrary to fact, or that raises a number of other unresolved issues. The Companies are addressing the errors and omissions in NRG's Appendix A in their Comments, which are being filed contemporaneously with this Answer.

67. Denied. The material averments of Paragraph No. 67 are denied for the reasons set forth in the Companies' answer to Paragraph No. 40 of the Petition, *supra*, which are incorporated herein by reference as if set forth at length. It is also denied that that the 1998 restructuring settlements constituted a lawful endorsement of SCB for the reasons set forth in Section II.A, *supra*, which are incorporated herein by reference as if set forth at length. In further answer, EDCs are entitled to full and current recovery of all costs they would prudently incur to implement SCB.

68. Denied. It is denied that the Commission was raising mere "red herrings" when it found and determined in the *End State Final Order* that the implementation of SCB would require "extensive work and expense by many entities."⁵² Indeed, not only the Commission, but utility regulatory authorities in other states, including the Connecticut PURA, have identified substantial "technical and policy issues" with the adoption of SCB, as explained in Section III, *supra*, which is incorporated herein by reference as if set forth at length. It is also denied that SCB was "started" in 1998 or that the General Assembly envisioned SCB as essential to the

⁵² *End State Final Order*, pp. 66-67.

development of competitive retail generation markets in Pennsylvania. To the contrary, the Competition Act did not envision SCB⁵³ and neither the Competition Act nor Chapter 14 of the Public Utility Code authorize the fundamental reordering of customer service functions that NRG's proposal entails, as explained in Section II.A, *supra*, which is incorporated herein by reference as if set forth at length.

69. Denied. It is denied that "all issues that must be decided to move forward with SCB are legal or policy in nature" and "no issues of material fact warrant . . . evidentiary hearings." As demonstrated previously by the Companies' answers to earlier paragraphs of the Petition, NRG has premised its request for relief on numerous factual averments for which there is no evidentiary support. Such averments are not "substantial evidence." Substantial evidence should be presented in the testimony of a witness that is available for cross-examination, and other parties must be afforded a reasonable opportunity to present countervailing testimony and other evidence. Additionally, apart from the fact that NRG's proposal would contravene the Public Utility Code, implementing that proposal would require – in addition to statutory amendments – extensive notice and comment rulemakings to revise existing regulations that do not permit most of the actions contemplated by NRG's proposal.

70. Admitted. In fact, the Commission published the notice requested by NRG.

71. The averments of Paragraph No. 71 constitute a prayer for relief to which no answer is required. However, the timeline for SCB implementation offered by NRG is totally unrealistic and fails to provide a reasonable opportunity to explore the numerous issues that NRG's Petition raises and to develop a complete evidentiary record. Sections I-VI and the

⁵³ See Section 2807(c), which identifies only utility consolidated billing and dual billing as options. Indeed, there is no explicit or implicit reference to SCB anywhere in the Competition Act.

Companies' answers to the specific averments of the Petition clearly demonstrate that NRG's Petition should be summarily rejected. However, if the Commission were inclined to give any further consideration to the Petition, the procedural mechanism proposed by NRG is grossly deficient for that purpose.

72. The averments of Paragraph No. 72 constitute a prayer for relief to which no answer is required. However, it is to be noted that NRG acknowledges that the Commission's regulations must be revised if its SCB proposal were to be implemented: "[T]he Order should direct OCMO to initiate a SCB Stakeholder Work Group to: . . . (3) review and identify Commission regulations that may be impacted by the implementation of SCB." In that regard, in footnote 88, NRG concedes that the Commission's regulations cannot be amended without notice and comment rulemaking. As explained in Section II.B, *supra*, which is incorporated herein by reference as if set forth at length, such rulemakings must comply with the requirements of the Commonwealth Documents Law and the Regulatory Review Act, including review and approval by the IRRC and standing committees of the House and Senate. Such rulemakings would have to be completed before NRG's proposal could be implemented, and the schedule proposed by NRG would simply not accommodate such rulemakings.

73. The averments of Paragraph No. 73 constitute a prayer for relief to which no answer is required. In further answer, NRG asserts that the rulemakings needed to amend the regulations that currently prohibit implementing its proposal would not even be initiated before January 31, 2018, while, at the same time, NRG proposes full implementation of its proposal in the second quarter of 2018. NRG's proposed schedule is unworkable and, in fact, calls for the Commission to act unlawfully.

74. The averment of Paragraph No. 74 constitutes a prayer for relief to which no answer is required.

75. The averment of Paragraph No. 75 constitutes a prayer for relief to which no answer is required. In further answer, full implementation by the “second quarter of 2018” is not possible and would not be lawful, for the reasons set forth in the answer to Paragraph Nos. 72 and 73, *supra*, which are incorporated herein by reference as if set forth at length.

Section III of the Petition, captioned “Conclusion,” constitutes a prayer for relief to which a response is not required.

WHEREFORE, for the foregoing reasons, NRG's Petition for Implementation of Electric Generation Supplier Consolidated Billing should be denied.

Respectfully Submitted



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Dated: January 23, 2017

APPENDIX A

Connecticut Public Utility Regulatory Authority
Review Of The Billing Of All Components Of Electric Service By Electric Suppliers,
Conn. PURA Docket No. 13-08-15 (Aug. 6, 2014)



STATE OF CONNECTICUT

**PUBLIC UTILITIES REGULATORY AUTHORITY
TEN FRANKLIN SQUARE
NEW BRITAIN, CT 06051**

**DOCKET NO. 13-08-15 PURA REVIEW OF THE BILLING OF ALL COMPONENTS
OF ELECTRIC SERVICE BY ELECTRIC SUPPLIERS**

August 6, 2014

By the following Commissioners:

John W. Betkoski, III
Arthur H. House
Michael A. Caron

Lead Staff: C. Wood
Legal Advisor: R. Luysterborghs

DECISION

DECISION

I. SUMMARY

The purpose of this review is to report to the General Assembly the costs and benefits associated with allowing the licensed electric suppliers to bill for all of the electric rate components on the electric bill. Unfortunately, the Public Utilities Regulatory Authority was unable to obtain any cost information on this issue from the electric distribution companies and the electric suppliers who participated in this proceeding. To determine the costs and benefits of supplier consolidated billing, a study would need to be conducted to identify the necessary changes and associated costs to the customer information systems and other processes of the electric distribution companies and electric suppliers. Such a study has not been conducted by these participants. Consequently, no cost information is available.

Absent the cost information, the Public Utilities Regulatory Authority provides to the General Assembly in this report a sense of some of the complexities and challenges involved to effectuate supplier consolidated billing. It discusses some of the necessary changes to the customer information systems and other processes of the electric distribution companies and electric suppliers to effectuate supplier consolidated billing. It also offers options to supplier consolidated billing that may provide the same or similar results that electric suppliers contended would be achieved by supplier consolidated billing. It is not clear what benefits, if any, would result from supplier consolidated billing or who would be the benefactor(s), as there appears to be disagreement on this issue.

This report does not approve or deny suppliers' billing of all electric rate components on the electric bill. Rather, it recommends that further analysis is warranted regarding the feasibility, cost effectiveness and overall desirability of the supplier consolidated billing option.

II. BACKGROUND

Pursuant to Section 16-245d of the General Statutes of Connecticut (Conn. Gen. Stat.) as amended by Section 10 of Public Act 13-119, An Act Concerning the Public Utilities Regulatory Authority, Whistleblower Protection, the Purchased Gas Adjustment Clause, Electric Supplier Disclosure Requirements, and Minor and Technical Changes to the Utility Statutes (Act), the Public Utilities Regulatory Authority (Authority or PURA) is required, on or before October 1, 2013, to conduct a review of the costs and benefits of electric suppliers' billing for all components of electric service, and report to the General Assembly the results of such a review (Report). The Authority conducted its review based on the information submitted in this proceeding and hereby submits this Report to the General Assembly.

III. PARTICIPANTS TO THE PROCEEDING

The Authority recognized the following as Participants to this proceeding: The Connecticut Light and Power Company (CL&P); The United Illuminating Company (UI);

the Office of Consumer Counsel (OCC); the Department of Energy and Environmental Protection; all electric suppliers licensed in the State of Connecticut (Suppliers); and trade associations. All Participants are listed in the attached service list.

IV. CONDUCT OF THE PROCEEDING

By Notice of Request for Written Comments dated October 15, 2013, the Authority sought comments from the Participants, including more than 50 electric Suppliers. Written comments were received by the following: The Connecticut Light and Power Company (CL&P); The United Illuminating Company (UI); Direct Energy Services, LLC (Direct); National Energy Marketers Association (NEMA); Retail Energy Supply Association (RESA); Starion Energy, Inc. (Starion); and North American Power and Gas, LLC (NAPG). Subsequently, the Office of Consumer Counsel (OCC) submitted its own analysis (OCC Analysis). Additionally, the Authority issued 58 interrogatories to the various Participants to which HOP Energy, LLC (HOP), energy-me midwest llc (energy-me) and Sunwave Gas & Power Connecticut Inc. (Sunwave) responded. In total, only 11 Participants, of which seven are Suppliers, and two are trade associations chose to respond to some or all of the Authority's inquiries.

V. AUTHORITY REVIEW

A. CURRENT ELECTRIC SERVICE BILLING PRACTICES

Under current statutes, electric distribution company (EDC) customers receiving Supplier service have available to them two billing options: (1) utility consolidated billing (UCB) where the EDC bills for all components of the bill including the generation component; and (2) dual billing, whereby the Supplier directly bills for the generation component and the EDC bills for transmission and distribution service components as well as billing components for legislatively mandated programs. The Act requires that the Authority conduct a review of the costs and benefits of having a third billing option for EDC customers. This option is the Supplier consolidated billing (SCB) option which would allow Suppliers to bill for all components of electric service. EDCs are responsible in part for, bill printing and document retention, meter issues, bill inserts and messages, as well as statutory and regulatory mandates prior to issuing bills to customers.

CL&P currently performs all of the billing for the distribution services to its 1.2 million customers in Connecticut. It also provides UCB for 96% of its customers that purchase generation service from Suppliers. Written Comments dated November 14, 2013, p. 2.

UI currently has 49 active Suppliers in its service territory and CL&P has 57. The annual number of UCBs issued by UI in 2013 was 1,906,311. The number of UCBs issued by CL&P as of March 3, 2014, was 480,630. Responses to Interrogatories RA-1 and RA-18. Each UCB contains the name, address and contact information of the EDC and the Supplier. The utility name and the applicable delivery charges are listed separately from the name of the Supplier and its generation service charge. The typical residential UCB currently contains a total of seven billing components; six EDC billing components for distribution and transmission services and public benefits charges and

one Supplier charge for generation service. The EDCs do not bill Suppliers for their services that include meter reading, bill production, postage, and customer service. Responses to Interrogatory RA-4. Consequently, all EDC customers pay for these services through their delivery rates.

B. CHALLENGES AND BENEFITS OF SUPPLIER CONSOLIDATED BILLING

Of the 11 active Participants in this proceeding, the two EDCs (UI and CL&P); the OCC; and Starion do not support SCB. UI and CL&P Written Comments dated November 14, 2013; OCC Analysis dated April 1, 2013; Starion Written Comments dated October 29, 2013. HOP has not yet considered using SCB and energy-me stated that it does not make sense to implement SCB in Connecticut based on its own experiences in other jurisdictions and the operating environment in Connecticut. HOP Response to Interrogatory CS-5; energy-me Response to Interrogatory CS-10. Direct, RESA, NAPG; Sunwave and NEMA, support SCB. Direct and RESA Written Comments dated November 14, 2013; NAPG Written Comments dated October 31, 2013; Sunwave Response to Interrogatory CS-10; NEMA Written Comments dated November 13, 2013. NEMA and RESA are retail supplier trade associations that each represented other Suppliers. Currently, only three Suppliers that participated in this proceeding each provide SCB in one jurisdiction; Energy-me in Illinois; NAPG in Georgia through the Atlanta Gas Light; and Direct in Texas. Responses to Interrogatory CS-1.

1. Challenges of Instituting SCB

None of the participants to this proceeding were able to provide the estimated costs to implement SCB. This is because a thorough review and study would need to be conducted to determine what this undertaking would entail. While no specific cost information was provided, it is expected that substantial and costly changes would be required to build and integrate the customer information systems to implement SCB. Additionally, the operating costs would likely increase for the EDCs and the Suppliers who choose to provide SCB. The EDC customer information system is very complex. The Electronic Data Interchange (EDI) system, which is used to exchange information between the EDC and Supplier, is not currently conducive to the SCB model. The EDI would need a significant redesign to provide Suppliers with several types of meter data and billing determinants in a timely and accurate manner for the Supplier to calculate the bills. EDCs would be required to transmit a significant quantity of complex data to the participating Suppliers, the content of which would be very different than what it is currently. The data transfer today is limited to dollars billed, kilowatt and kilowatt hour usage and customer and Supplier identity information. Information transmitted under SCB would include information for things like budget billing, account coding (e.g., winter moratorium non-shut off), credit, payments, etc. Additionally, EDCs would have to coordinate all distribution and transmission rate changes with each Supplier on a strict schedule, which can increase the likelihood of billing errors.

Other potentially costly changes would be to the Suppliers who choose to offer SCB. The ability of and the costs associated with providing SCB could vary by Supplier depending on whether the Supplier provides this service in other jurisdictions, type of infrastructure, and necessary program changes for Suppliers who do not provide this

option. Such changes may involve the restructuring of their billing and customer service systems to handle the complexity of the large volume and variety of rates and rate structures currently offered by the EDCs. Rather than make these potentially costly changes to their billing systems, Suppliers may utilize a third-party service for billing.

The primary point of contact for customers receiving their generation from a Supplier would switch from the EDC to the Supplier as a result of SCB. This is not practical and could add to customer confusion. Currently, customers know that they are to call the EDC for outages, emergencies, and starts and stops in service. The one constant element absent dual billing is EDC billing, regardless of who the customer's Supplier is. Each month, thousands of customers switch Suppliers. It is unknown how the existing switching process would work when SCB is entered into the mix. Numerous challenges could result. For example, credit issues associated with multiple billers could result in improper credits and disconnections, as well as SCB Suppliers collecting on prior balances of another Supplier. Additionally, customer records and billing would be spread among numerous SCB entities, possibly jeopardizing customer information security. This area would need to be explored before SCB could be approved. Another area that would need to be explored is how Suppliers would administer initiatives for low-income customers such as budget billing, on-bill donations to charitable organizations (i.e., Operation Fuel), arrearage forgiveness programs and energy assistance programs.

Additionally, Suppliers offering SCB would be required to address a wide range of issues impacting customers, including billing disputes and disconnections. Billing questions would likely include questions associated with the EDC's own charges on customer bills. Consequently, customer service representatives (CSR) for every Supplier opting for SCB would need to be educated on all of the non-Supplier rate components on customer bills to be effectively responsive to customer inquiries. Supplier staffing would likely need to increase as well. Currently, the EDC's CSR are fully equipped to answer all billing questions, with the exception of some Supplier service questions. The EDC CSR are also trained when to refer the customer to the Supplier to address as the Supplier issues. Under SCB however, the EDC CSR would have to pass the caller to the Supplier to answer all billing questions because the EDC would not have the customer billing information readily available as they do now. Additionally, implementation of SCB could cause customer confusion over whom to call for general inquiries, new service requests, terminating service, and low-income programs. Having Suppliers address EDC customer billing issues may not be practical.

Another challenge regarding SCB is the timing of bill payments to the EDC. Under SCB, the payment to EDCs would have an additional 30-day lag time, which could have a substantial negative impact to the EDCs' cash flow. At a minimum, this 30-day lag may necessitate the need for an increase to the EDCs' working capital requirements. Further analysis would need to be performed to determine what other impacts may result from this payment delay. To complicate matters further, SCB could result in 50 plus Suppliers performing the consolidated billing function that is currently performed by the two EDCs. This payment delay could also negatively impact customers facing critical situations such as service termination for non-payment, a delay in service reconnection by the EDC, or the accrual of late payment charges. Additionally, prior to approval of SCB, it would need to be determined which entity (EDC

or Supplier) would assume the risk for unpaid EDC charges. Under the SCB scenario, substantial financial assurance would need to be in place to protect both the EDCs and the customers.

The Authority is concerned that having the potential of more than 50 suppliers billing for EDC services can create a complicated mess. The ease by which a customer may move between Suppliers complicates this matter further. Because customers can switch between Suppliers or to/from standard offer service, SCB could impact the of Supplier's ability to provide accurate and timely bills. The additional lag time for EDCs receiving payment from numerous different Suppliers is also cause for concern. This lag may jeopardize not only the EDC's bill collection but also that of the entities for which the EDCs bill.¹ Additionally, because Suppliers do not have the physical capability to terminate service, they would have little leverage in their billing collection service.

Before SCB is approved, important issues concerning the need for additional PURA oversight and customer safeguards and protections should be reviewed. For example, the Authority would need to: (1) address the qualification of Suppliers who choose to provide SCB; (2) address SCB customer complaints; (3) ensure that financial assurance instruments are in place for each SCB Supplier; (4) monitor Supplier billing practices; and (5) enforce Supplier billing compliance with statutes and regulations. Such oversight would likely require an increase in the Authority's staff and thus, increased costs.

An additional consideration is that the Authority's regulations include numerous requirements regarding billing, customer notices, and service termination that have been implemented to protect customers. Thus, Connecticut statutes and the Authority's regulations would need to be thoroughly reviewed to determine the changes, if any, that would be made to protect customers under SCB.

Finally, statutory changes would be needed if the General Assembly intends to permit SCB. Conn. Gen. Stat. §16-244i states that the EDCs must provide metering, billing and collection services, with a limited exception that permits Suppliers to provide direct billing and collection services for electric generation services. Pursuant to Conn. Gen. Stat. §16-245d, PURA is only authorized to adopt regulations that permit Suppliers to bill for electric generation services. Therefore, absent a statutory change, the PURA has no authority to adopt regulations or issue a Decision permitting Suppliers to bill directly for all components of electric service and exercise responsibility for other billing-related functions that are currently performed by EDCs.

2. Benefits of SCB

Without a full study, the limited information provided in this proceeding indicates, it is unclear what, if any benefits may result from SCB or who would be the benefactor. Proponents of SCB believe that the EDCs could reduce operating costs and administrative burdens under SCB. These potential cost savings would result from a

¹ The EDCs collect payments for the Department of Revenue Services, the Connecticut Clean Energy Finance and Investment Authority and the Conservation Fund.

reduction in personnel for customer service functions, and reduced bad debt and working capital requirements. However, the EDCs argued that operating costs and administrative burdens would increase under SCB. CL&P and UI Written Comments dated November 14, 2013. For example, the EDCs would need to develop methods for transferring data to the participating Suppliers. Additionally, the EDCs would still be required to maintain billing and associated systems to provide service to customers who choose a Supplier that does not offer SCB and to customers who remain with the EDC for generation service. Since cost estimates were not provided, the Authority was unable to assess and identify findings or estimates about whether SCB would create savings or increase overall costs to customers.

Supporters of SCB appear to do so for two main reasons. The first is that they claimed that UCB places a significant barrier between the customer and the Supplier. Under SCB, the barrier would be removed. The second is that UCB cannot accommodate the Suppliers desire to offer customers a wider range of competitive and innovative products and services, rate plans and billing options. To supporters, SCB is very important in establishing a relationship with retail customers because the primary point of contact for all billing questions would be the Supplier for customers choosing service. They claimed that SCB would provide the Supplier with more direct customer interface and communications to sell their products and services. Additionally, the Supplier would no longer have to conform to the requirements and limitations of the EDC's billing platform that exists under UCB. See for example, Written Comments.

SCB supporters also contend that it would alleviate customer confusion over the respective responsibilities of the EDC and Supplier. Opponents of SCB disagree; rather customer confusion may increase. In fact, they argued that it may even increase customer confusion. Especially for customers who frequently switch Suppliers as each may have their own bill format. One Supplier argued against SCB because it would lead to customer confusion, would drastically increase operating costs for smaller emerging companies such as itself, and because Suppliers do not have the capability to start or stop electric service. Starion Written Comments.

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

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

Third, shifting the responsibility of consolidated billing from the EDCs to potentially 50-plus Suppliers would, in the Authority's view, likely increase customer confusion and decrease customer service satisfaction. The EDCs are and will most likely continue to be the best equipped to address issues pertaining to the services that

Docket No. 13-08-15

they provide. It is not reasonable for these entities to address issues concerning each other provider's services. Additionally, customer confusion under the current UCB may be alleviated by modifying the UCB billing format to more prominently display Supplier information and responsibilities.

VI. CONCLUSION

Because the EDCs and Suppliers have not conducted studies that estimate the costs to implement SCB, the Authority is unable to provide this information to the General Assembly. Without such a study, the changes to the EDC and Supplier systems and processes discussed above are inconclusive. Also unknown is whether the cost to Suppliers of performing SCB would be any less than the EDC; what the benefits of SCB are and who would benefit; and whether SCB is feasible. Especially if only a small number of Suppliers elect to offer SCB. In the end, any additional costs to implement and operate SCB would most likely be passed on to the customers.

If the General Assembly seeks to pursue the costs and benefits of SCB, the Authority recommends that a full study be performed that explores what this process would entail for both the EDCs and Suppliers. This study should not only identify and quantify the physical and administrative changes and associated costs that would be required for the EDCs and Suppliers to effectuate SCB, but it should also: (1) provide detailed information regarding consumer protections; (2) detail the effect on consumer rates and from whom these costs should be recovered (i.e., EDC customers or Supplier customers) and why; (3) identify all benefits and benefactors of SCB including how SCB is in the best interest of ratepayers; (4) explore the existing Supplier switching process; and (5) how SCB would comport with existing statutes and regulations.

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

**DOCKET NO. 13-08-15 PURA REVIEW OF THE BILLING OF ALL COMPONENTS
OF ELECTRIC SERVICE BY ELECTRIC SUPPLIERS**

This Decision is adopted by the following Commissioners:

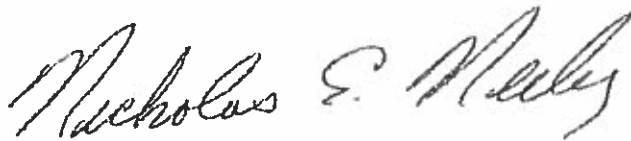
John W. Betkoski, III

Arthur H. House

Michael A. Caron

CERTIFICATE OF SERVICE

The foregoing is a true and correct copy of the Decision issued by the Public Utilities Regulatory Authority, State of Connecticut, and was forwarded by Certified Mail to all parties of record in this proceeding on the date indicated.



Nicholas E. Neeley
Acting Executive Secretary
Public Utilities Regulatory Authority

August 6, 2014

Date

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**PETITION OF NRG ENERGY, INC. FOR :
IMPLEMENTATION OF SUPPLIER : Docket No. P-2016-2579249
CONSOLIDATED BILLING :**

VERIFICATION

I, Charles V. Fullem, hereby state, that I am the Director, Rates and Regulatory Affairs – Pennsylvania for FirstEnergy Service Company and that the facts set forth in the foregoing **Answer to the Petition of NRG Energy, Inc.** are true and correct to the best of my knowledge, information and belief. I understand that this verification is made subject to the provisions and penalties of 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities).

Dated: January 23, 2017



Charles V. Fullem

Morgan Lewis

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January 23, 2017

VIA eFILING

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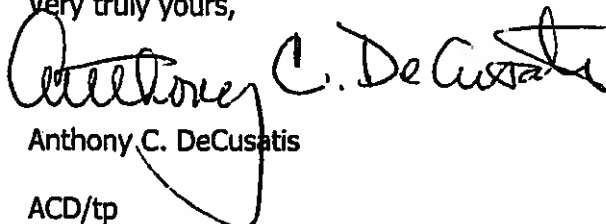
**Re: Petition of NRG Energy, Inc. for Implementation of
Electric Generation Supplier Consolidated Billing
Docket No. P-2016-2579249**

Dear Secretary Chiavetta:

Enclosed for filing, on behalf of **Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company**, are their **Comments to the Petition of NRG Energy, Inc. for Implementation of Electric Generation Supplier Consolidated Billing** (the "Comments") in the above-captioned proceeding.

As evidenced by the attached Certificate of Service, copies of the Comments are being served upon all parties listed in the Certificate of Service that accompanied NRG Energy, Inc.'s Petition.

Very truly yours,



Anthony C. DeCusatis

ACD/tp
Enclosures

c: Per Certificate of Service (w/encls.)

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

PETITION OF NRG ENERGY, INC. FOR : Docket No. P-2016-2579249
**IMPLEMENTATION OF ELECTRIC :
GENERATION SUPPLIER :
CONSOLIDATED BILLING :**

CERTIFICATE OF SERVICE

I hereby certify and affirm that I have this day served copies of the **Comments of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company on the Petition of NRG Energy, Inc. for Implementation of Electric Generation Supplier Consolidated Billing** on the following persons, in the manner specified below, in accordance with the requirements of 52 Pa. Code § 1.54:

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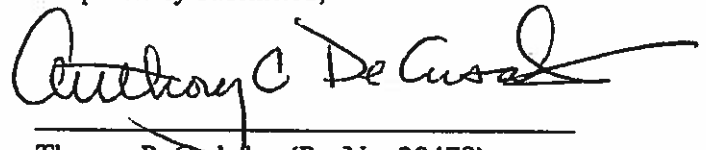
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Dated: January 23, 2017

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**PETITION OF NRG ENERGY, INC. FOR :
IMPLEMENTATION OF ELECTRIC : Docket No. P-2016-2579249
GENERATION SUPPLIER :
CONSOLIDATED BILLING :**

**COMMENTS OF METROPOLITAN EDISON COMPANY,
PENNSYLVANIA ELECTRIC COMPANY, PENNSYLVANIA
POWER COMPANY AND WEST PENN POWER COMPANY
ON THE PETITION OF NRG ENERGY, INC.**

I. INTRODUCTION

Metropolitan Edison Company (“Met-Ed”), Pennsylvania Electric Company (“Penelec”), Pennsylvania Power Company (Penn Power”) and West Penn Power Company (“West Penn”) (collectively the “Companies”) appreciate the opportunity the Pennsylvania Public Utility Commission (“PUC” or the “Commission”) is affording interested parties to submit comments on the dramatic reshaping of the landscape for customer billing and customer service that NRG Energy, Inc. (“NRG”) is proposing in its Petition of NRG Energy, Inc. For Implementation Of Electric Generation Supplier Consolidated Billing (“Petition”). The Commission has also given interested parties the opportunity to file Answers to the Petition. Accordingly, the Companies are contemporaneously filing their joint Answer (“Answer”) to the Petition, which is attached hereto as Appendix A.

In its Petition, NRG proposes that the Commission mandate supplier consolidated billing (“SCB”) as an “option,” along with utility consolidated billing and dual billing, and implement a large number of other changes in customer service functions, including dispute resolution, formal and informal complaint handling, purchase of accounts receivables of electric distribution companies (“EDCs”), termination of service for non-payment, and dissemination of required

regulatory notices and other customer communications. In their Answer, the Companies have provided a comprehensive response to NRG's Petition and, of paramount importance, explain that authority does not exist under the Public Utility Code to implement the NRG proposal. Accordingly, these Comments incorporate the substance of the Companies' Answer and address only those few areas where further elaboration of the Answer's key averments may be helpful to the Commission. In that regard, Appendix B to these Comments provides the Companies' commentary on the answers NRG attempted to provide to the "Policy Questions" set forth in Appendix A to the Petition.

II. ABSENCE OF LEGAL AUTHORITY TO ADOPT THE NRG PROPOSAL

The Companies have explained in detail in their Answer¹ that the Public Utility Code does not provide authority for the Commission to adopt the NRG proposal as set forth in the Petition. In particular, if adopted, the NRG proposal would directly contravene key provisions of Public Utility Code, including Section 2807(d) and Chapter 14. Simply stated, the NRG proposal cannot be adopted under current law.

NRG asserts in conclusory fashion that the Electricity Generation Customer Choice and Competition Act ("Competition Act")² provides a "legal foundation" for its proposal.³ However, the Petition is otherwise devoid of any meaningful legal analysis that identifies the authority for each element of the comprehensive revision of existing billing and customer service practices NRG envisions. The Companies have undertaken that analysis in their Answer and have shown that the NRG proposal is unlawful in many key respects.

¹ Answer, pp. 2-6, 13-15.

² 66 Pa.C.S. §§ 2801 et seq.

³ See Petition, ¶ 40.

NRG believes that the legal defects in its proposal are somehow cured by the Commission's approval of restructuring settlements in 1998 that included provisions calling for EDCs to permit SCB.⁴ However, NRG does not address whether those settlements provided for all of the changes – particularly changes in customer service functions and the conditions precedent and procedures for termination of service – that NRG claims are essential to the implementation of its SCB proposal.⁵ Even more significant, however, are two developments that occurred since the 1998 restructuring settlements were approved.

Chapter 14 of the Public Utility Code was enacted in 2004, and the Commonwealth Court decided *Dauphin Cty. Indust. Dev. Auth. v. Pa. P.U.C.*⁶ in 2015. As explained in the Companies' Answer,⁷ Chapter 14 places a host of non-delegable duties on "public utilities," which are defined to include EDCs but *not* electric generation suppliers ("EGSs").⁸ These non-delegable duties are precisely the kinds of functions that NRG proposes should be taken over by EGSs under NRG's version of SCB.⁹ Additionally, in *Dauphin County*, the Commonwealth Court held that, when the legislature, by clear statutory language, has imposed a duty on a specific entity, the Commission has no authority, under the aegis of "interpreting" that language, to delegate those statutory duties to another entity. Simply stated, the duties imposed on "public utilities" under Section 2807(d) and Chapter 14 of the Public Utility Code cannot be shifted to EGSs as NRG erroneously assumes as the basis for its proposal.

⁴ *Id.*

⁵ *See* Petition, ¶¶ 26-35 and Answer, Section II.C.

⁶ A.3d 1124, 1134-1135 (Pa. Cmwlth. 2015) *appeal denied* 140 A.3d 14 (Pa. 2016) ("Dauphin County").

⁷ Answer, pp. 4-6.

⁸ In this regard, Chapter 14 affirms the imposition of non-delegable duties on EDCs that is embodied in Section 2807(d): "The electric distribution company shall continue to provide customer service functions . . ."

⁹ *See* Petition, ¶¶ 26-35.

III. THE COMMISSION'S REGULATIONS WOULD HAVE TO BE COMPREHENSIVELY REVISED, PURSUANT TO NOTICE AND COMMENT RULEMAKINGS, TO AUTHORIZE THE KEY ELEMENTS OF NRG'S PROPOSAL

NRG concedes that its proposal cannot be implemented without a comprehensive revision to a large number of the PUC's regulations.¹⁰ In particular, Chapter 56 would require extensive revisions because its provisions, like Chapter 14 of the Public Utility Code, impose non-delegable duties on public utilities and EDCs. Existing regulations cannot be changed without adhering to the formal and substantive requirements of the Commonwealth Documents Law¹¹ and the Regulatory Review Act,¹² including review by the Independent Regulatory Review Commission ("IRRC") and standing committees of the House and Senate. Nonetheless, NRG proposes that SCB should be fully implemented by the second quarter of 2018 before the rulemakings necessary to amend the Commission's regulations could be completed. That, of course, is totally unlawful. The rulemakings necessary to implement SCB as envisioned by NRG would have to be successfully completed *before* SCB (if approved by the Commission) could even begin, as explained in the Companies' Answer.¹³

IV. THE "INNOVATIVE" BILLING PRODUCTS AVAILABLE IN THE TEXAS RETAIL MARKET THAT NRG SEEKS TO INTRODUCE IN PENNSYLVANIA WOULD MAKE IT DIFFICULT FOR CUSTOMERS TO DISCERN THE PRICE FOR GENERATION SERVICE

In the Petition, NRG contends that SCB will enable EGSs to market "value-added" non-generation products and services to residential and small commercial customers and include

¹⁰ Petition, ¶ 73.

¹¹ 5 P.S. §§1201-1202 (The Agency must give public notice of its intent to promulgate an administrative regulation, publish the proposed regulation and explain its purpose, state the statutory basis for its action, solicit comments and review and consider any written comments submitted.)

¹² 71 P.S. §§745.1 et seq.

¹³ See Answer, p. 7.

those costs in a single “flat” bill for “combined services.”¹⁴ In support of its “innovative” billing approach, NRG points to “flat bill plans” that it alleges are “growing in popularity” in Texas and, if offered in Pennsylvania, would allow customers “complete control of their energy bill.”¹⁵ However, NRG has not provided sample bills to illustrate the “flat bill plans” it offers in Texas or explained how those products comport with the bill format provisions of the Commission’s regulations, which require every charge to be stated separately and identified as a charge for either “basic” or “nonbasic” service.¹⁶ Indeed, NRG does not explain how customers would be able to discern the price for generation service and distinguish basic and non-basic charges if a “flat” bill were issued.

V. NRG ERRONEOUSLY ASSUMES THAT EDCS COULD TERMINATE SERVICE TO CUSTOMERS FOR NON-PAYMENT IF NRG’S SCB PROPOSAL WERE ADOPTED

As explained in the Companies’ Answer,¹⁷ NRG’s SCB proposal would couple EGSs’ purchase of EDCs’ receivables with a requirement that EDCs terminate service to customers for non-payment.¹⁸ NRG assumes that EDC termination of service under these circumstances is lawful, but offers no explication of the legal basis for this unprecedented approach. While NRG attempts to analogize its proposal to EDCs’ termination of service for non-payment of supplier charges under EDCs’ voluntary purchase of receivables (“POR”) programs, that analogy fails.

Under EDC POR programs, the customer’s receivable for generation service is owed to the EDC. The EDC can, therefore, lawfully terminate service for non-payment of the purchased

¹⁴ See Petition, ¶¶ 48-50.

¹⁵ *Id.* at ¶ 50.

¹⁶ 52 Pa. Code § 54.4(b). See also 66 Pa.C.S. § 2807(c)(1) (requiring that bills “enable customers to determine the basis” for all of their “unbundled” charges).

¹⁷ Answer, p. 9.

¹⁸ Petition, ¶¶ 29-30.

receivable, because the delinquent account is owed to the EDC. The process cannot lawfully be operated in reverse, as NRG erroneously assumes. Unlike an EDC's purchase of an EGS's receivable, if the EGS purchases the EDC receivable, the customer does not owe the EDC anything. The EDC has no basis for terminating service for non-payment because the EDC has, in fact, been fully paid. Thus, there is no legal authority for the EGS to demand that a customer's service be terminated under the process envisioned by NRG in its Petition.

VI. TERMINATION OF SERVICE FOR NON-PAYMENT AND RESTORATION OF SERVICE WOULD BECOME MUCH MORE COMPLICATED UNDER NRG'S PROPOSAL, WHICH RAISES SERIOUS QUESTIONS AS TO WHETHER CUSTOMERS WILL HAVE THE SAME LEVEL OF PROTECTION FROM UNWARRANTED TERMINATION THAT CURRENTLY EXISTS

As fully explained in the Companies' Answer,¹⁹ NRG's SCB proposal would introduce unnecessary complexities to customer service functions, particularly with respect to termination and restoration of service. Currently, EDCs are the primary point of contact for customer service. Under NRG's SCB proposal, EGSs would assume that role for SCB customers with a requirement to purchase EDC accounts receivable. NRG also seeks to allow EGSs providing SCB to pursue termination for non-payment of those accounts receivable by directing the EDC to "physically" terminate the SCB customer's service within five days. However, NRG envisions that the EGS – not the EDC – would provide all required notices and handle all customer inquiries associated with the process to terminate a customer's service for non-payment. This proposal would not only necessitate amendments to statutory and regulatory provisions authorizing termination and restoration of service by "public utilities," but would increase the likelihood of erroneous termination.

¹⁹ Answer, pp. 9-13.

Chapter 14 of the Public Utility Code and Chapter 56 of the Commission's regulations set forth procedures governing termination and restoration of service by "public utilities," including notice requirements, medical emergency procedures and parameters for timing of termination and restoration of service.²⁰ To that end, the Companies have adopted uniform termination policies, including call center scripts, customer service representative training materials and information technology ("IT") protocols. Under those termination policies, the applicable Company provides written notice to the customer facing termination for non-payment at least ten days prior to the proposed termination date and attempts personal contact immediately prior to termination. If a customer contacts the Company's call center prior to termination, the customer service representative handling the call explains the reasons for the proposed termination, all available methods for avoiding a termination (e.g., entering a payment plan) and the medical emergency procedures, in accordance with Section 56.97 of PUC regulations.²¹ Any actions taken on the call that would prevent termination are recorded in the Company's customer information system and trigger an IT protocol to suspend termination. For instance, if a customer contacts the Company's call center at 6:00 a.m. on the same day as the proposed termination and enters a payment arrangement, the termination is immediately suspended.

NRG assumes that termination and restoration of service will be just as seamless under its SCB proposal even though a customer would need to contact the EGS – not the EDC – to take

²⁰ See, e.g., 66 Pa.C.S. § 1406(b)(1) ("Prior to terminating service under subsection (a), a public utility: (i) Shall provide written notice of the termination to the customer . . . (ii) Shall attempt to contact the customer or occupant to provide notice of the proposed termination . . ."); 66 Pa.C.S. § 1406(d) ("A public utility may terminate service... from Monday through Thursday..."); 66 Pa.C.S. § 1406(e)(1) ("[A]fter November 30 and before April 1, an electric distribution utility... shall not terminate service to customers with household incomes at or below 250% of the Federal poverty level..."); 66 Pa.C.S. § 1406(f) ("A public utility shall not terminate service to a premises when a customer has submitted a medical certificate to the public utility."); 66 Pa.C.S. § 1407(c)(1) ("A public utility shall provide for and inform the applicant or customer of a location where the customer can make payment to restore service.").

²¹ 52 Pa. Code § 56.97.

steps avoid potential termination by, for example, making a payment, before the proposed termination date. However, NRG has not explained how the EGS will timely and accurately provide information to the EDC regarding payments, payment arrangements or medical certifications during the pendency of a demand from the EGS to terminate a customer's service for non-payment. This is especially problematic if a customer, late in the termination process, takes steps that, under Chapter 14 and the Commission's regulations, would avoid or postpone termination. NRG also does not address how EGSs would handle contacts from customers facing termination after the proposed termination date identified in the notices required under Chapter 14 but before expiration of the five-day period for an EDC to complete a termination. These unresolved operational issues increase the likelihood of inadvertent service terminations and potentially harmful delays in the restoration of service following termination for non-payment.

VII. EGS ACCESS TO RECORDS HELD BY EDCS UNDER NRG'S SCB PROPOSAL WOULD COMPROMISE THE SECURITY OF CUSTOMER INFORMATION

Under NRG's proposal, EGSs offering SCB would assume responsibility for billing disputes with the requirement that EDCs provide EGSs customer information "as needed" to effectively respond to customer billing inquiries and complaints. However, if NRG's approach were adopted, SCB customers must be given advance notice of the EDC's intent to release account information to an EGS and the opportunity to restrict the release of the customer's telephone number and/or historical billing data.²² This raises questions about how an EGS would be able to respond to billing inquiries if the SCB customer restricted the release of historical billing data. In addition, there are serious concerns regarding the confidentiality of customer information arising from EGS access to customer billing data predating the SCB

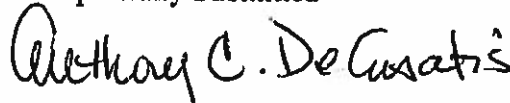
²² 54 Pa. Code § 54.8(1).

customer's enrollment and disclosure of customer records to multiple EGSs. NRG does not address or even acknowledge these issues.

VIII. CONCLUSION

The Companies appreciate the opportunity to comment on the NRG Petition and request that the Commission consider the foregoing Comments and their Answer in opposition to the Petition. For the reasons set forth above and in the Companies' Answer, the NRG Petition should be rejected by the Commission.

Respectfully Submitted



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February 22, 2017

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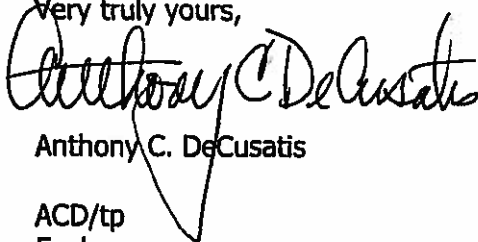
**Re: Petition of NRG Energy, Inc. for Implementation of
Electric Generation Supplier Consolidated Billing
Docket No. P-2016-2579249**

Dear Secretary Chiavetta:

Enclosed for filing, on behalf of **Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company**, are their **Reply Comments to the Petition of NRG Energy, Inc. for Implementation of Electric Generation Supplier Consolidated Billing** (the "Reply Comments") in the above-captioned proceeding.

Copies of the Reply Comments are being served upon all parties listed in the attached Certificate of Service.

Very truly yours,



Anthony C. DeCusatis

ACD/tp
Enclosures

c: Per Certificate of Service (w/encls.)

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

PETITION OF NRG ENERGY, INC. FOR : Docket No. P-2016-2579249
IMPLEMENTATION OF ELECTRIC : :
GENERATION SUPPLIER : :
CONSOLIDATED BILLING : :

CERTIFICATE OF SERVICE

I hereby certify and affirm that I have this day served copies of the **Reply Comments of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company to the Petition of NRG Energy, Inc. for Implementation of Electric Generation Supplier Consolidated Billing** on the following persons, in the manner specified below, in accordance with the requirements of 52 Pa. Code § 1.54:

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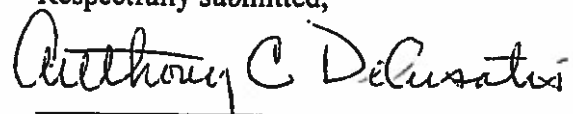
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Dated: February 22, 2017

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**PETITION OF NRG ENERGY, INC. FOR :
IMPLEMENTATION OF ELECTRIC : Docket No. P-2016-2579249
GENERATION SUPPLIER :
CONSOLIDATED BILLING :**

**REPLY COMMENTS OF METROPOLITAN EDISON COMPANY,
PENNSYLVANIA ELECTRIC COMPANY, PENNSYLVANIA
POWER COMPANY AND WEST PENN POWER COMPANY
ON THE PETITION OF NRG ENERGY, INC.**

I. INTRODUCTION

On January 23, 2017, Metropolitan Edison Company (“Met-Ed”), Pennsylvania Electric Company (“Penelec”), Pennsylvania Power Company (“Penn Power”) and West Penn Power Company (“West Penn”) (collectively, the “Companies”) contemporaneously filed an Answer and Comments opposing the Petition of NRG Energy, Inc. (“NRG”) For Implementation Of Electric Generation Supplier Consolidated Billing (“Petition”). In its Petition, NRG proposed that the Pennsylvania Public Utility Commission (“Commission”) mandate supplier consolidated billing (“SCB”) as an “option,” along with utility consolidated billing (“UCB”) and dual billing, and to transform the existing framework for customer service functions. Currently, electric distribution companies (“EDCs”) are the primary point of contact for billing and customer service. Under NRG’s version of SCB, electric generation suppliers (“EGSs”) would assume that role for SCB customers with a requirement to purchase EDC accounts receivable.

In their Answer and Comments, the Companies opposed the Petition and explained that the Commission should not adopt NRG’s unlawful and unsupported SCB proposal. Answers and/or Comments submitted by eighteen other stakeholders, including EDCs, statutory advocates for residential and small business customers, industrial customer groups, low-income customer

representatives, an association of labor unions and a retail marketer also voiced strong opposition to NRG's Petition.¹ The Companies and such other parties urged the Commission to summarily reject NRG's SCB proposal on three principal grounds.

NRG's SCB Proposal is Unlawful. The Commission does not have authority under the Public Utility Code ("Code") to implement NRG's proposal for several reasons. First, if adopted, the NRG proposal would directly contravene key provisions of the Code and the Commission's regulations.² In particular, Section 2807(d) of the Code provides that EDCs "shall" continue to provide customer service functions notwithstanding the introduction of competition in the Commonwealth.³ The legislature affirmed this mandate in 2004 when it imposed a host of statutory duties on "public utilities" under Chapter 14 of the Code, including standards for credit and payment arrangements, termination and restoration of service, and customer complaint handling. The duties imposed on "public utilities" under Section 2807(d) and Chapter 14 of the Code are the same functions that would be taken over by EGSs under NRG's proposal. However, the Commonwealth Court has held that the Commission cannot

¹ The Office of Consumer Advocate ("OCA"), the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania ("CAUSE-PA"), Citizens' Electric Company of Lewisburg, PA ("Citizens") and Wellsboro Electric Company ("Wellsboro") (jointly), Duquesne Light Company ("DLC"), the Energy Association of Pennsylvania ("EAP"), the Met-Ed Industrial Users Group ("MEIUG"), the Penelec Industrial Customer Alliance ("PICA"), the Philadelphia Area Industrial Energy Users Group ("PAIEUG"), the PP&L Industrial Customer Alliance ("PPLICA") and the West Penn Power Industrial Intervenors ("WPPI") (collectively, the "Industrials"), the Office of Small Business Advocate ("OSBA"), PECO Energy Company ("PECO"), Pennsylvania AFL-CIO Utility Caucus ("PA AFL-CIO"), PPL Electric Utilities Corporation ("PPL"), the Tenant Union Representative Network and Action Alliance of Senior Citizens of Greater Philadelphia (collectively, "TURN *et al.*") and UGI Utilities, Inc. ("UGI") generally opposed the implementation of SCB in the manner proposed by NRG. While Calpine Energy Solutions, LLC ("Calpine"), an EGS licensed in Pennsylvania, supports the concept of SCB, it opposes NRG's proposal based on several concerns related to its adverse impact on retail competition and existing customer protections.

² See Companies' Answer, pp. 2-7, 13-15, 19-20, 26-28 & Comments, pp. 2-6; OCA Comments and Answer, pp. 7-9; Calpine Answer and Comments, pp. 6-7; CAUSE-PA Answer, pp. 21-22, 29-34 & Comments, p. 2; Citizens/Wellsboro Comments, pp. 3-4; DLC Answer and Comments, pp. 5-12; EAP Comments, pp. 2-3, 8-11; OSBA Answer and Comments, pp. 6-7; PECO Comments and Answer, pp. 1, 7-8, 41-44; PA AFL-CIO Comments, p. 3; PPL Comments, pp. 5, 23; UGI Comments and Answer, pp. 10-13.

³ 66 Pa.C.S. § 2807(d).

“interpret” clear statutory language imposing a duty on a specific entity to delegate those duties to another entity.⁴ Furthermore, NRG’s proposal to use SCB to market *non-generation* products and services and include those costs in a single “flat” bill would make it difficult, if not impossible, for customers to discern the price for generation service, contrary to Section 2807(c) of the Code and the Commission’s bill format regulations.⁵

Second, SCB cannot be implemented as envisioned by NRG without extensive revisions to the Commission’s regulations.⁶ Existing regulations cannot be changed without adhering to the formal and substantive requirements of the Commonwealth Documents Law⁷ and the Regulatory Review Act,⁸ including review by the Independent Regulatory Review Commission (“IRRC”) and standing committees of the legislature. Nonetheless, NRG improperly seeks to fully implement SCB by the second quarter of 2018 *before* the rulemakings necessary to amend the Commission’s regulations could be completed.

Finally, there is no legal authority for the Commission to require an EDC to sell its accounts receivable to an EGS.⁹ In addition, an EGS cannot lawfully demand that a customer’s service be terminated for non-payment of a receivable owed to an EGS. Indeed, if an EGS were to purchase an EDC’s receivable, the entire delinquent account would then be owed to the EGS,

⁴ *Dauphin Cty. Indust. Dev. Auth. v. Pa. P.U.C.*, 123 A.3d 1124, 1134-1135 (Pa. Cmwlth. 2015), *appeal denied*, 140 A.3d 14 (Pa. 2016).

⁵ See 66 Pa.C.S. § 2807(c)(1) (requiring that bills “enable customers to determine the basis” for all of their “unbundled” charges); 52 Pa. Code § 54.4 (requiring that every charge to be stated separately and identified as a charge for either “basic” or “nonbasic” service on residential and small business customer bills).

⁶ See, e.g., 52 Pa. Code Ch. 56 (imposing standards and billing practices for residential utility service on public utilities and EDCs but not EGSs).

⁷ 45 P.S. §§ 1201-1202.

⁸ 71 P.S. §§ 745.1 *et seq.*

⁹ *Petition of PPL Elec. Util. Corp. Requesting Approval Of A Voluntary Purchase Of Receivables Program And Merchant Function Charge*, Docket No. P-2009-2129502, 2009 WL 4087051 (Pa. P.U.C., Nov. 19, 2009) (“PPL POR Order”) (affirming that the Commission lacks authority to require an EDC to purchase the accounts receivable of an EGS; accordingly, forcing an EDC to sell its accounts receivable is equally unauthorized).

and the EDC would have no lawful basis to terminate service for non-payment.¹⁰ In fact, RESA itself has acknowledged that a receivable must be owed to an EDC as a condition precedent to the EDC's lawful right to terminate service for non-payment of that receivable.¹¹

NRG's Proposal Would Jeopardize Existing Customer Safeguards. As previously explained, in restructuring the electric industry, the legislature specified that EDCs would continue to be responsible for maintaining existing levels of customer service, including complaint resolution, collections and assisting low-income customers. NRG's SCB proposal would introduce unnecessary complexities to customer service functions and, in turn, increase the likelihood of harm to customers associated with, among other things, erroneous terminations or inadvertent disclosure of customer information.¹² In short, NRG's proposal to delegate customer service functions to EGSs offering SCB is unauthorized and raises serious customer protection issues.

SCB is Unnecessary for a Fully Functioning Competitive Retail Market. In the Petition, NRG asserts, in a conclusory fashion, that its SCB proposal is the "next natural and necessary step" in development of the competitive retail market. However, NRG has not explained how SCB would improve retail competition and benefit customers, for example, in terms of shopping statistics, price levels, or customer satisfaction. Likewise, NRG has not demonstrated that SCB is necessary today notwithstanding the retail market enhancement initiatives undertaken by EDCs since the conclusion of the Commission's Retail Market

¹⁰ See Companies' Answer, pp. 23, 27-28 & Comments, pp. 5-6; PA AFL-CIO Comments, pp. 3-4.

¹¹ *PPL POR Order*, p. 14 ("RESA's position on the termination issue is that since PPL would be purchasing an EGS's accounts receivable, PPL would own those accounts and should have all of the suspension and termination tools available for those customers as it has for its default service customers.").

¹² See Companies' Answer, pp. 9-13, 23-26, 32 & Comments, pp. 6-9; OCA Comments and Answer, pp. 15-24; Calpine Answer and Comments, pp. 3-4, 6-7; CAUSE-PA Answer, pp. 15-29, 32-33, 36-37 & Comments, pp. 2-3; DLC Answer and Comments, pp. 17-23; Industrials Comments, pp. 2-5; PECO Comments and Answer, pp. 9-31, 39-41, 47; PPL Comments, pp. 9-18, 21-22; TURN *et al.* Comments, pp. 5-9.

Investigation, including, most recently, a “joint” bill for use in conjunction with UCB.¹³ Notably, NRG does not even address the Commission’s rationale for *rejecting* SCB in the *End State Final Order*, namely, the cost and complexity of implementing SCB, a lack of EGS interest in light of the availability of UCB under EDCs’ purchase of receivables (“POR”) programs and customer protection concerns.¹⁴ Moreover, NRG seeks to use SCB to gain a competitive advantage over other EGSs – or perhaps drive them out of the Pennsylvania market. Stated simply, if NRG’s unlawful and unsupported SCB proposal were to operate in the manner NRG hypothesizes, it would diminish the price-based competition for *generation* service that the Electric Generation Customer Choice and Competition Act (“Competition Act”) was designed to achieve¹⁵ and, therefore, is not in the public interest.¹⁶

In addition to the foregoing legal defects, the commenters opposing NRG’s Petition highlighted several other reasons why the Commission should not adopt the form of SCB that NRG is proposing, including:

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- ¹³ See Companies’ Answer, pp. 12-15, 17-23, 29-31, 33; OCA Comments and Answer, pp. 3-5, 9-15; Calpine Answer and Comments, p. 6; CAUSE-PA Answer, pp. 5-14, 19-20 & Comments, p. 3; DLC Answer and Comments, pp. 13-17; EAP Comments, pp. 4-7; OSBA Answer and Comments, pp. 3-5; PECO Comments and Answer, pp. 3-4, 35-38, 45; PPL Comments, pp. 7-9, 19-21; TURN *et al.* Comments, pp. 9-12; UGI Comments and Answer, pp. 15-21.
- ¹⁴ See *Investigation of Pennsylvania’s Retail Electricity Market: End State of Default Service*, Docket No. I-2011-2237952 (Final Order entered Feb. 15, 2013) (“*End State Final Order*”), pp. 66-67.
- ¹⁵ See, e.g., 66 Pa.C.S. §§ 2802 (4) and (5), which focus exclusively on the *cost* of electric service, and 66 Pa.C.S. § 2802(6), which articulates the fundamental principle underlying the Competition Act, namely, that “[c]ompetitive market forces are more effective than economic regulation in controlling the cost of generating electricity.” This principle is tied directly to the substantive provisions of the Competition Act by 66 Pa.C.S. §§ 2802(12), (13) and (14), which declare that the purpose of the Act is to enable “direct access by retail customers to the competitive market” and, thereby, “to allow competitive suppliers to generate and sell electricity directly to consumers in this Commonwealth.”
- ¹⁶ See Companies’ Answer, p. 17; Calpine Answer and Comments, pp. 7-8; DLC Answer and Comments, p. 20; PPL Comments, p. 19.

- The “innovative” billing products that NRG seeks to introduce in Pennsylvania would reduce bill transparency, diminish a customer’s ability to make informed shopping decisions, and lead to customer confusion.¹⁷
- NRG’s proposal raises complex policy and implementation issues related to, for instance, EGS credit requirements, termination and restoration of service, protocol for the exchange of usage data, utility hardship fund donations, regulatory notices, Commission oversight, payment agreements and billing disputes.¹⁸
- NRG’s proposal would compromise the accessibility of universal service and energy conservation programs mandated by the Competition Act and would adversely impact federal Low Income Home Energy Assistance Program (“LIHEAP”) grants and subsidies under EDCs’ customer assistance programs.¹⁹
- NRG’s proposal to “block” customers from switching to another EGS or returning to default service until their SCB account balance is paid in full would restrain customer choice and endanger existing safeguards that protect customers against unauthorized switching, as well as price increases that may occur while customers are “blocked,” including, in particular, increases in “variable” prices that occur under variable-priced contracts.²⁰
- NRG’s SCB proposal would create billing system redundancies and impose unnecessary costs on customers to accommodate a limited number of EGSs.²¹

In sharp contrast to the overwhelming opposition to NRG’s Petition, only three parties – Direct Energy Services, LLC (“Direct Energy”), the Retail Energy Supply Association

¹⁷ See Companies’ Answer, pp. 7-9, 29-31; Calpine Answer and Comments, p. 6; CAUSE-PA Answer, pp. 22-23, 26-27, 33-35; DLC Answer and Comments, pp. 21-22; Industrials Comments, pp. 2-3; OCA Comments, pp. 18-19; OSBA Answer and Comments, p. 6; PA AFL-CIO Comments, p. 3; PECO Answer and Comments, pp. 17-19; PPL Comments, pp. 1, 17; TURN *et al.* Comments, pp. 11-12.

¹⁸ See Companies’ Answer, pp. 25, 36-37 & Comments App. B, pp. 2-8; CAUSE-PA Answer, pp. 24-30, 32-33, 36-37; DLC Answer and Comments, pp. 17-18, 21-23; OCA Comments, pp. 16, 22-24; OSBA Answer and Comments, pp. 6-7; PECO Answer and Comments, pp. 14-34; PPL Comments, pp. 7-16, 18, 20-22; TURN *et al.* Comments, pp. 5-6; UGI Comments and Answer, pp. 3-4, 6.

¹⁹ See Companies’ Comments App. B, p. 4; CAUSE-PA Answer, pp. 16, 27-28, 32-33 & Comments, p. 2; OCA Comments, p. 19; PECO Comments, pp. 16, 23-24; PPL Comments, pp. 16-17; TURN *et al.* Comments, pp. 6-8.

²⁰ See Calpine Answer and Comments, pp. 7-8; CAUSE-PA Comments, pp. 28-29; DLC Answer and Comments, pp. 22-23; Industrials Comments, pp. 4-5; PECO Answer and Comments, pp. 42, 44; PPL Comments, pp. 13-14.

²¹ See Companies’ Answer, p. 6; Calpine Answer and Comments, pp. 5-6; CAUSE-PA Answer, pp. 24, 30; DLC Answer and Comments, pp. 19-20; Industrials Comments, p. 5; OCA Comments, pp. 5, 20-21; PA AFL-CIO Comments, pp. 4-5; PECO Comments, pp. 33-34; PPL Comments, pp. 19-20; TURN *et al.* Comments, p. 4.

(“RESA”)²² and Washington Gas and Light Company (“WGL”) – support NRG’s SCB proposal. In their comments, Direct Energy, RESA and WGL (collectively, the “EGS Commenters”) assert that NRG’s SCB proposal is necessary for customers to realize the benefits of a robust competitive retail market and to facilitate what they characterize as “innovative” products and services.²³

The Companies now submit these Reply Comments to respond to the issues raised by the EGS Commenters. The Commission should dismiss NRG’s Petition for the reasons discussed below and in the Companies’ Answer and Comments.

II. REPLY COMMENTS

The EGS Commenters support NRG’s SCB proposal based on their view that SCB is allegedly necessary for customers to capture the full value of retail competition. Specifically, they assert that the UCB model does not support “value-added” products and services tailored to customer needs – such as electricity bundled with renewable energy, smart thermostats, loyalty rewards or home protection services – because the EGS does not have a direct relationship with the customer. This argument is flawed for several reasons.

First, the results of a recent Commission survey demonstrate that “value-added” opportunities are not a focus of customer shopping decisions.²⁴ Rather, customers reported that

²² Although RESA is a trade association for EGSs, widespread support for NRG’s proposal among EGSs cannot be inferred from its participation in this case. RESA’s membership is only a relatively small subset of EGSs serving the Pennsylvania market. In any event, RESA candidly admitted that its Comments reflect the view of the “organization” “but may not represent the views of any particular member of the Association.” RESA Comments, p. 1 n. 2. In short, RESA cannot even represent that it speaks for the subset of Pennsylvania EGSs that are its members, let alone for the much larger universe of EGSs actually doing business in the Commonwealth.

²³ Direct Energy Comments, pp. 3-4; RESA Comments, pp. 3-11; WGL Comments, pp. 1-4.

²⁴ See PA PowerSwitch Attitudes and Usage Report (October 2016), p. 13 (only 3% of survey respondents identified “access to new products, like time-of-use options” as a motivating factor for switching electric providers). A copy of the relevant portion of the PA PowerSwitch Attitudes and Usage Report is attached hereto as Appendix A.

their prime motivation for switching is to lower their monthly electric bill. Moreover, RESA's observation that customers enrolled in paperless billing must take additional steps to view EGS messaging²⁵ underscores that the electric bill may not be a useful marketing tool for the value-added products and services that the EGS Commenters seek to bundle with offers for generation supply. Simply stated, customers' increasing migration to paperless billing and automatic payment shows that they want to simplify and expedite the bill-paying process and do not want to be burdened each month by having to wade through extraneous solicitations and merchandizing material.

Second, the introduction of the UCB model widely used by EGSs in Pennsylvania – not SCB – was the key driver of retail competition for residential and small business customers in Illinois. In fact, the Illinois experience was a highly instructive empirical test of the EGS Commenters' contention in this case that SCB is needed to realize the goal of a "robust" competitive market for generation service in the Commonwealth. The results of that real-world test totally belie the EGS Commenters' unsubstantiated claims for SCB.

As of May 1, 2002, residential and small business customers in Illinois were allowed to choose their own electric supplier. At that time, however, Illinois law authorized two billing options for those customers: dual billing and SCB. Three years later, in the context of a Commonwealth Edison Company ("ComEd") base rate proceeding, a coalition of EGSs,²⁶ including Direct Energy, requested that the Illinois Commerce Commission mandate UCB with a POR feature to "improve the environment for retail electric competition in the small customer

²⁵ RESA Comments, p. 7.

²⁶ In Illinois, the equivalent of an EGS in Pennsylvania is called a Retail Electric Supplier ("RES"). For consistency, RESs are referred to herein as "EGSs."

market segment and help bring the benefits of competition to it.”²⁷ In support of this new billing option, a witness for CES – himself an employee of an EGS – emphasized the benefits of UCB for customers, utilities and EGSs:

The customer benefits by being able to take advantage of [EGSs] competitive offerings while still maintaining the simplicity of one bill delivered and collected by his familiar utility. *In my company's experience with residential customers, we have learned that our customers strongly prefer to receive one bill for both delivery and commodity charges from the utility.*

**

*UCB imposes no hardship on the utility in terms of physical delivery of its bills. If the utility does not issue a UCB, it still needs to issue a bill for its delivery charges. Where the [EGS] send the customer a bill for its commodity charges, the utility must still send the customer a bill for its delivery charges. The [EGS] benefits from UCB by not having to duplicate the costly billing systems that the utility already possesses. In turn, the [EGS]' customers avoid having to pay for the cost of a duplicate billing system by taking [EGS] service. All ComEd customers paid for the utility's underlying billing system prior to their ability to exercise choice. These customers should not be forced to pay for another billing system under competition.*²⁸

UCB with POR was not adopted in the ComEd rate case. Thereafter, in November 2007, Public Act 95-0700 was enacted to amend the Retail Electric Competition Act of 2006 and remove certain barriers to retail competition for residential and small business customers in Illinois. Those amendments required EDCs with more than 100,000 customers to implement UCB and POR programs.²⁹ To that end, Ameren Illinois Company (“Ameren”) and ComEd

²⁷ Direct Testimony of Ken Hartwick on Behalf of the Coalition of Energy Suppliers (“CES”), *Commonwealth Edison Company Proposed General Increase in Electric Rates, General Restructuring of Rates, Price Unbundling of Bundled Service Rates, and Revision of Other Terms and Conditions of Service*, Docket No. 05-0597 (submitted on Dec. 23, 2005), p. 2; see also *id.*, p. 8 (“My company has found that UCB with POR helps create a competitive market for residential and small commercial customers.”). A copy of Mr. Hartwick’s testimony is attached hereto as Appendix B.

²⁸ *Id.*, p. 6 (emphasis added).

²⁹ 220 ILCS §§ 5/16-118(c) and (d).

began to offer UCB, in addition to the existing SCB and dual billing options, in 2009 and 2010, respectively. The competitive electricity market in Illinois for residential and small commercial customers was very small prior to the availability of UCB with POR, and that market began to expand rapidly only after Ameren and ComEd began to offer UCB with POR.³⁰

In sum, the Illinois experience not only contradicts the EGS Commenters' position that SCB is necessary for customers to realize the benefits of retail competition in Pennsylvania, but it confirms the Commission's concern expressed in the *End State Final Order* that SCB would be of little interest to EGSs in light of the availability of UCB with a POR component that fully insulates them from bad debt risk.

Finally, SCB is not the sole means for an EGS to strengthen its relationship with customers or to communicate directly with their customers regarding potential offers that they feel are important. To the contrary, inclusion of the EGS logo and expanded bill messaging space on utility consolidated bill allows EGSs to gain brand loyalty.³¹ The joint bill initiative only began about eighteen months ago, and it has not yet been afforded a fair opportunity for its benefits to be fully realized and its results assessed by the Commission.³² Of course, EGSs are also free to issue separate bills to their customers or market non-generation products and services consistent with their business models in the same manner that non-EGS vendors market those same products and services.

³⁰ See Final Order, *Northern Illinois Gas. Co. d/b/a NICOR Gas Co. – Proposed Establishment of Rider 17, Purchase of Receivables with Consolidated Billing*, Docket No. 12-0569 (I.C.C. July 29, 2013), p. 11 (“RESA and [Interstate Gas Supply of Illinois, Inc. (“IGS”)] also noted that, in Illinois, on the electric side, both ComEd and Ameren have [purchase of receivables with utility consolidated billing (“PORCB”)] programs. RESA/IGS assert it is well known that the Illinois residential competitive market has expanded greatly since the implementation of PORCB... RESA/IGS argue that PORCB is part of the fundamental foundation for competition, without which large-scale residential customer switching simply could not have occurred.”).

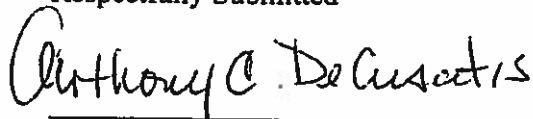
³¹ See *Joint Elec. Distribution Co.-Elec. Gen. Supplier Bill*, Docket No. M-2014-2401345 (Final Order entered May 23, 2014), pp. 5-7, 35.

³² See Companies' Answer, p. 15.

III. CONCLUSION

The Companies appreciate this opportunity to submit Reply Comments for consideration by the Commission and respectfully request that the Commission reject NRG's Petition for the reasons set forth above and in the Companies' Answer and Comments.

Respectfully Submitted



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Company*

Dated: February 22, 2017

DB1/ 90584030.6

APPENDIX A

**PA PowerSwitch Attitudes And Usage Report
(Relevant Portion)**

PA PowerSwitch

Pennsylvania Public Utility Commission

PA PowerSwitch Attitudes and Usage

October 2016

PAYONE.

GBH
INSIGHTS

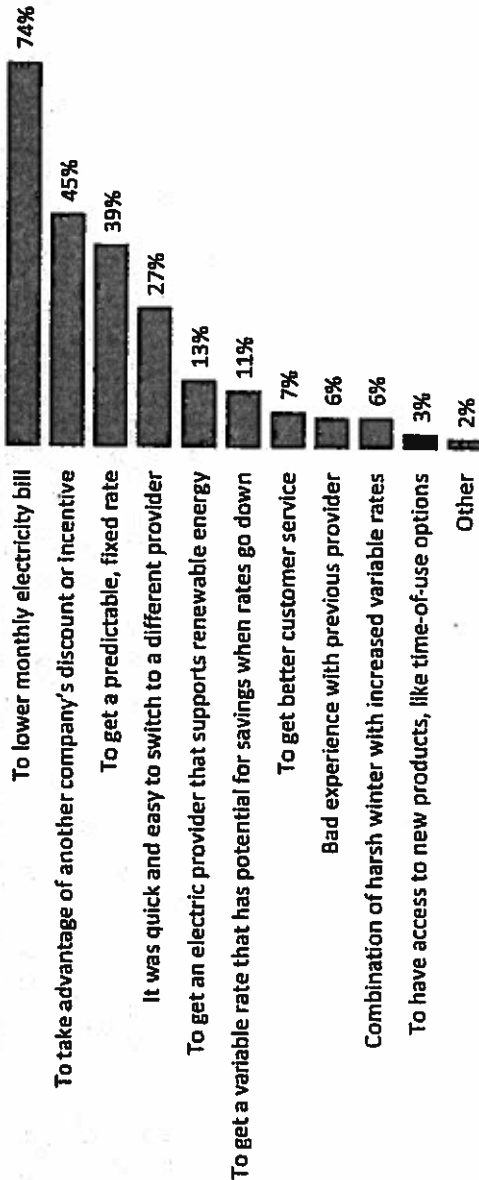
Executive Summary

- Almost all respondents (94%) are aware that they have the ability to shop for their own electric provider.
- Of those who know they have the ability to switch electric providers, 4 out of 10 respondents state that they have switched electric providers.
- The largest motivating factor behind switching electric providers is to lower monthly electricity bills, with the 45–64 age group being more likely to say so than the 18–44 and 65+ age groups.
- Over three-quarters of respondents who have switched electric providers state that the process of switching was very/extremely easy.
- Over half of the respondents who have not switched electric providers say this is due to them being happy with their current electric provider, with the 65+ age group more likely to say so than the 18–44 and 45–64 age groups.
- Just over one-quarter of total respondents are aware of the PAPowerSwitch.com website, with awareness most often stated to be from utility bill stuffers.
- Of those who visit PAPowerSwitch.com:
 - Eighty-seven percent are very/extremely satisfied.
 - Sixty-five percent have no suggestions on improvements needed to be made to the website.
 - Seventy percent say that the website is very/extremely easy to navigate.
 - Ninety percent somewhat/strongly agree that the website provides helpful information.
- PAPowerSwitch.com is a trusted resource to which respondents turn for information about electric providers, and it will be an educational and helpful resource in the future when making electric provider decisions.

Motivating Factors for Switching Providers

Of respondents who have switched electric providers, monetary reasons make up the top three motivating factors to switch electric providers, with a "quick and easy process" as a close fourth.

Motivating Factors for Switching Providers



♣ Males are more likely than females to state that getting better customer service is a motivating factor to switch providers (9.8% vs. 3.7%) and that having a bad experience with a previous provider is a motivating factor to switch (9.8% vs. 2.5%).

♣ 45-64-year-olds are more likely than the 18-44 and 65+ age groups to say that lowering their monthly electricity bill is a motivating factor to switch providers (45-64: 84.4% vs. 18-44: 72.0% and 65+: 58.3%).

♣ The 18-44 age group is more likely than the 45-64 and 65+ age groups to say that getting better customer service is a motivating factor to switch providers (18-44: 11.9% vs. 45-64: 4.4% and 65+: 2.8%).

Q11. Which of the following were motivating factors for switching electric providers? (Check all that apply)?

N=325 (Have Switched Electric Providers)

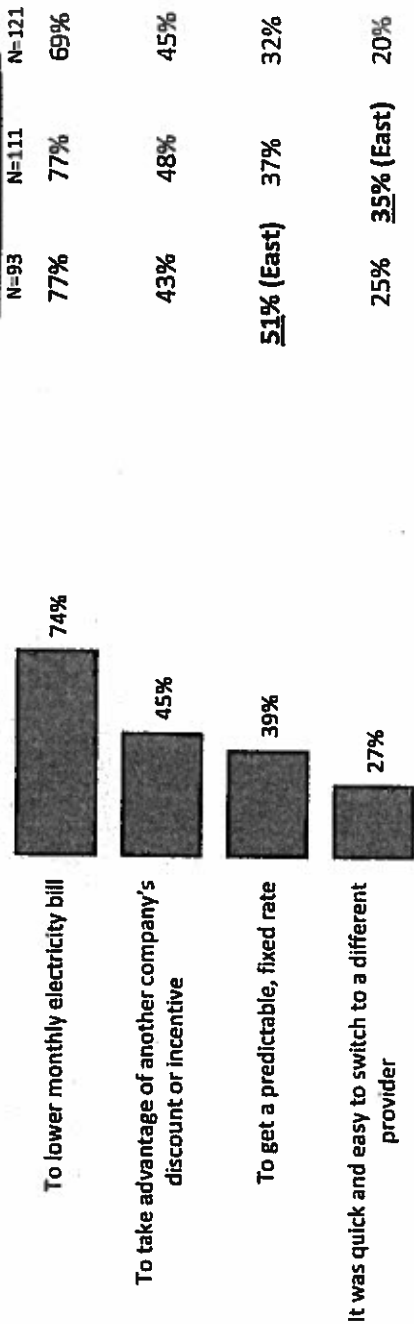
Source: PUC PA PowerSwitch Attitudes and Usage Report, October 2015

Motivating Factors for Switching Providers

When looking at the four most often mentioned motivating factors for switching providers by PA regions, the western region is more likely than the eastern region to switch providers for a predictable fixed rate. Also, the central region is more likely than the eastern region to switch due to being quick and easy to switch a different provider.



Motivating Factors for Switching Providers



Q11. Which of the following were motivating factors for switching electric providers? (Check all that apply)?

N=325 (Have Switched Electric Providers)

Source: PUC PA PowerSwitch Attitudes and Usage Report, October 2016

APPENDIX B

**Direct Testimony Of Ken Hartwick On Behalf Of
The Coalition Of Energy Suppliers
Submitted On December 23, 2005 In:
*Commonwealth Edison Company Proposed General Increase In Electric Rates,
General Restructuring Of Rates, Price Unbundling Of Bundled Service Rates,
And Revision Of Other Terms And Conditions Of Service*
Docket No. 05-0597**

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

COMMONWEALTH EDISON)	
COMPANY)	
)	
Proposal general increase in electric rates,)	
general restructuring of rates, price)	No. 05-0597
unbundling of bundled service rates, and)	
revision of other terms and conditions of)	
service.)	

DIRECT TESTIMONY OF

KEN HARTWICK

U.S. ENERGY SAVINGS CORP.

**ON BEHALF OF THE
COALITION OF ENERGY SUPPLIERS**

COMPRISED OF:

**CONSTELATION NEWENERGY, INC.
DIRECT ENERGY SERVICES, LLC
MIDAMERICAN ENERGY COMPANY
PEOPLES ENERGY SERVICES CORPORATION
U.S. ENERGY SAVINGS CORP.**

TABLE OF CONTENTS

	Page
I. INTRODUCTION	1
II. PURCHASE OF RECEIVABLES / UTILITY CONSOLIDATED BILLING PROPOSAL OF THE COALITION OF ENERGY SUPPLIERS	3
III. CONCLUSION	20

1 I. **INTRODUCTION**

2 Q. **Please provide your name, employment, and background relevant to your**
3 **appearance as a witness in this proceeding.**

4 A. My name is Ken Hartwick and I been serving since April 5, 2004, as Chief
5 Financial Officer of the Energy Savings Income Fund (“ESIF”), a trust
6 established under the laws of Ontario, Canada. U.S. Energy Savings Corp.
7 (“USESC”), an intervening party in this proceeding, is one of ESIF’s wholly
8 owned subsidiaries and affiliates. USESC is certificated in Illinois as an
9 alternative retail gas supplier. While USESC has not yet applied to be certificated
10 as an alternative retail electric supplier in Illinois, my company has been
11 marketing five year gas contracts to the state’s residential and small commercial
12 customers. USESC has been involved in the formal and informal proceedings
13 regarding the post-2006 structure of the Illinois electric industry as an active
14 member of the Coalition of Energy Suppliers (“CES” or the “Coalition”).

15
16 Prior to my current position, I served as Senior Vice President, Finance (October
17 2000 to September 2001) and Chief Financial Officer and Senior Vice President,
18 Finance (October 2001 to April 2004) of Hydro One, an Ontario electric utility.
19 Prior to joining Hydro One, I was Vice President from May to October, 2000,
20 at Cap Gemini Ernst & Young, a utility consulting business and a partner at Ernst
21 & Young LLP (auditors) in the energy practice from July 1994 to 2000.

22

23 **Q. On whose behalf are you testifying?**

24 A. I am testifying on behalf of the Coalition. The members of CES are Constellation
25 NewEnergy Inc. (“NewEnergy”), Direct Energy Services, LLC (“Direct”),
26 MidAmerican Energy Company (“MidAmerican”), Peoples Energy Corporation
27 (“Peoples”) and USESC.

28

29 This *ad hoc* coalition has been formed to propose measures to foster the
30 development of a competitive retail electric market in Illinois.¹

31

32 **Q. What is the purpose of your testimony in the instant proceeding?**

33 A. I will address one issue: the Coalition’s recommendation that the Commonwealth
34 Edison Company (“ComEd”) offer Utility Consolidated Billing (“UCB”) with a
35 Purchase of Receivables (“POR”) feature to Retail Electric Suppliers (“RESs”)
36 authorized to provide electric service to customers in its service territory.

37

38 If ComEd were to offer UCB with a POR program, this decisive action would
39 improve the environment for retail electric competition in the small customer
40 market segment and help bring the benefits of competition to it.

¹ The positions set out in this direct testimony represent the positions of the Coalition as a group, but do not necessarily represent the positions of individual companies that are members of the Coalition.

41 **II. PURCHASE OF RECEIVABLES / UTILITY CONSOLIDATED**
42 **BILLING PROPOSAL OF THE COALITION OF ENERGY SUPPLIERS**
43

44 **Q. What is a POR program?**

45 **A. Under a POR program, the utility reimburses the RES for its customer billings**
46 **regardless of whether the utility received payment from the customer. The utility**
47 **is made financially whole, however, by recovering the uncollectible amounts and**
48 **program administration expenses through one of two options: 1) a discount rate**
49 **equal to the utility's actual uncollectible amount that offsets the payments to the**
50 **RES and is subject to a periodic reconciliation process; or 2) an element of the**
51 **utility's base rates.**

52

53 **Q. Please describe the Coalition's POR proposal.**

54 **A. The Coalition has developed a POR proposal that would apply to the accounts of**
55 **ComEd's delivery services customers with a peak demand below 400 kW**
56 **(proposed CPP-B customers) who receive a consolidated bill from ComEd that**
57 **includes both the delivery services provided by ComEd and the commodity of**
58 **electricity provided by the RES. Under the Coalition's POR proposal, ComEd**
59 **would purchase the RES's electric commodity service accounts receivable and**
60 **any utility pass-through charges at a discount to the face value of the receivable.**
61 **Rather than ComEd implementing and maintaining differing billing programs for**
62 **POR, the most efficient approach suggests that ComEd offer POR through single**
63 **utility consolidated billing.**

64

65 **Q. Do any other utilities offer a POR program?**

66 A. Yes. Utilities across the country offer POR programs. Most notably, ComEd's
67 sister utility, PECO Energy Distribution Company ("PECO"), and possible sister-
68 to-be, Public Service Enterprise Group ("PSEG"), both offer this feature with
69 their consolidated billing system.

70

71 **Q. What are the characteristics of the programs offered by PECO and PSEG?**

72 A. Under PECO's UCB, PECO will pay the retailer, known in Pennsylvania as the
73 electric generation supplier ("EGS"), for the *undisputed* EGS charges PECO has
74 billed the customer on behalf of the EGS regardless of whether the customer has
75 paid PECO.² PECO or the EGS may request separate billing for accounts 90 days
76 or three billing cycles past due. PECO recovers the uncollectible amounts and
77 program administration expenses through utility base rates. PSEG likewise
78 assumes supplier receivables and makes payment for the full undisputed supplier
79 bill amount 5 days after the due date on the customer bill.

80

81 **Q. Please describe Utility Consolidated Billing.**

82 A. ComEd does not currently offer UCB. Under UCB, the utility provides a single
83 bill for its own charges as well as the RES' charges. The utility receives the
84 charges that the RES wants to include on the bill through an electronic
85 transaction. The utility does all of the regular billing and payment processing
86 functions that it already does for its bundled customers and then forwards

² Any dispute involving competitive energy markets is typically resolved through a dispute resolution process supervised by a state's energy regulatory body.

87 payment to the RES for its charges. UCB is in place in most deregulated retail
88 energy markets across North America, including at ComEd's sister utility, PECO,
89 and possible sister-to-be, PSEG. UCB is an efficient platform for a utility to
90 operate a POR program.

91

92 **Q. Is the Coalition proposing that Utility Consolidated Billing be mandatory for**
93 **all RESs?**

94 **A.** No. UCB should be a billing option that ComEd makes available to RES serving
95 residential and commercial customers with a demand below 400 kW. Under the
96 Coalition's proposal, RESs still would retain the right to offer the single bill
97 option ("SBO"), in which the RES bills for both the utility and RES charges, to
98 any customer under the provisions of Rider SB07 regardless of the size of the
99 customer.³ Likewise, if a RES chooses to forego either UCB with POR or the
100 SBO, the RES may continue to issue its own bill for the commodity charges under
101 a "dual-billing" model.

102

103 **Q. Would this UCB with POR program replace the Single Billing Option**
104 **("SBO")?**

105 **A.** No. It has been well established that customers want and desire the simplicity of
106 a single bill. The Coalition's UCB and POR proposal by no means seeks to do
107 away with the SBO. Again, for RESs serving customers with demand less than
108 400 kW, ComEd would still be required to offer the following billing: SBO,

³ The Coalition is requesting through other testimony certain revisions to the SBO tariff in order to provide customers and RESs with greater opportunities to capitalize on the benefits associated with receiving a single bill for electric service.

109 UCB/POR, and a “dual-billing” model in which the RES may issue its own bill
110 for its commodity charges.

111

112 **Q. Please describe the benefits of Utility Consolidated Billing?**

113 A. UCB has benefits for the customer, the utility and RESs. The customer benefits
114 by being able to take advantage of RES competitive offerings while still
115 maintaining the simplicity of one bill delivered and collected by his familiar
116 utility. In my company’s experience with residential customers, we have learned
117 that our customers strongly prefer to receive one bill for both delivery and
118 commodity charges from the utility. UCB removes one significant hurdle to
119 making a competitive choice.

120

121 UCB imposes no hardship on the utility in terms of physical delivery of its bills. If
122 the utility does not issue a UCB, it still needs to issue a bill for its delivery
123 charges. Where the RES sends the customer a bill for its commodity charges, the
124 utility must still send the customer a bill for its delivery charges. The RES
125 benefits from UCB by not having to duplicate the costly billing systems that the
126 utility already possesses. In turn, the RES’ customers avoid having to pay for the
127 cost of a duplicate billing system by taking RES service. All ComEd customers
128 paid for the utility’s underlying billing system prior to their ability to exercise
129 choice. These customers should not be forced to pay for another billing system
130 under competition.

131

132 Q. What effect would the Coalition's POR proposal have upon ComEd's
133 uncollectibles?

134 A. The problem of dealing with uncollectible expense is not new. Uncollectible
135 expenses refer to the revenues billed by the utility that are never collected from
136 ratepayers. The problem of dealing with uncollectible expense is not new for
137 ComEd. ComEd's delivery rates include an allowance for uncollectible expense
138 that the Company charges to all customers. ComEd proposes in its revised tariff
139 to apply an uncollectibles adjustment factor ("UFA") to its commodity charges
140 for bundled customers. This adjustment will enable ComEd to recover
141 uncollectible costs for commodity service to its bundled customers.

142

143 It appears in ComEd's proposed tariffs that customers who take commodity
144 service from a RES will appropriately avoid the UFA. Absent a POR program,
145 RESs offering residential and small customer commercial customers electric will
146 most likely credit screen applicants in order to limit their potential uncollectible
147 exposure. The weaker scoring customers remaining with ComEd for commodity
148 service will force ComEd to increase the UFA for those bundled customers as
149 ComEd can no longer spread the costs across all electric commodity customers in
150 its territory. Many customers with poor credit scores may have received those
151 scores due to financial hardship. As a result of the increase in the UFA for
152 customers with poor credit scores, the group of customers least likely to afford the
153 rate increases will receive the rate increase. A POR program allows ComEd to
154 avoid this result. A POR program also saves ComEd the problem of trying to

155 predict more volatile uncollectible rates while enabling all customers, not just
156 those with the best credit histories, the ability to make an electric supply choice
157 that best meets their needs.

158

159 **Q. Under the Coalition's proposal, which customers would be eligible to**
160 **participate in the POR program?**

161 **A. My company has found that UCB with POR helps create a competitive market for**
162 **residential and small commercial customers. The Coalition's proposal would limit**
163 **the POR program to ComEd's residential customers and commercial customers**
164 **with demand below 400 kW who upon switching to a RES elect to receive a**
165 **consolidated bill from ComEd that includes both delivery services and RES**
166 **commodity charges.**

167

168 For the same reasons that large commercial customers and industrial customers
169 prefer to receive a single supplier bill for their electric service, we want to bring
170 those same benefits to residential customers and smaller commercial customers.
171 Therefore, we are proposing to limit the applicability of the UCB with POR
172 program to customers with a peak demand below 400 kW. A RES account that is
173 not served under ComEd's consolidated billing service would not be eligible for
174 participation in the POR program.

175

176 Q. What are the benefits of a UCB and a POR program to customers?

177 A. With a POR program, customers benefit directly economically and indirectly
178 through access to competitive choices. Under a POR program, economies of
179 scale would be achieved by designating one party to handle all credit and
180 collections and several consumer protection functions. Duplicating credit and
181 collections functions at the utility and at each RES needlessly creates costs
182 ultimately borne by customers. A POR program frees residential and small
183 commercial customers from possibly having to post two separate security
184 deposits. For customers returning to service after having been terminated due to
185 non-payment, they will avoid having to contend with two payment plans.

186

187 By encouraging RES to accept residential and smaller commercial customers, not
188 only those with good credit scores, POR programs will facilitate migration of
189 customers who might be overlooked by RESs due to poor credit scores or past
190 financial troubles. In fact, by allowing low income and poor credit scoring
191 customers to participate, POR programs open up competitive choices to the very
192 customers who might most need it. In addition, elimination of credit checks
193 through a POR program will ensure that customers wishing to switch commodity
194 service to a RES will not fear a lowering of their credit scores by the performance
195 of a credit check. If a potential creditor performs a comprehensive credit check on
196 a consumer, this check may lower that consumer's credit score.⁴ Consumers with
197 lower credit scores face higher costs of credit or may be altogether denied credit.

⁴ See, e.g., the Equifax definition of "hard inquiry", at
<https://www.econsumer.equifax.com/consumer/sitepage.ehtml?forward=elearning_glossary>.

198 **Q. What are the benefits of a UCB and a POR program to ComEd?**

199 A. In addition to helping promote a robust competitive market for all of its
200 customers, ComEd has an economic reason to implement a POR program.
201 Utilities that implement POR programs avoid the problem of RESs serving the
202 good credit customers, leaving the poor credit customers on utility service where
203 they will escalate costs to all remaining bundled customers. Thus, a POR
204 program would save ComEd the problem of trying to predict more volatile
205 uncollectible rates while enabling all customers, not just those with the best credit
206 histories, the ability to make the choice for electric supply that best meets their
207 needs.

208

209 **Q. What are the benefits of a UCB and a POR program to RESs?**

210 A. A POR program in ComEd also would provide a level playing field for RESs to
211 compete with ComEd. Currently, RESs in Illinois, unlike the utilities, do not have
212 the ability to terminate the physical delivery of electric or gas service to
213 customers who do not pay the RES portion of their energy bill. While no RES
214 controls the delivery of electricity to the consumer, if one of ComEd's bundled
215 customers does not pay his bills, ComEd may disconnect the customer for both
216 delivery and commodity. By contrast, a RES may only return the customer to
217 bundled service and seek collection of the customer's arrears. As a consequence,
218 all else being equal, ComEd's ability under the current structure to encourage
219 payment through physical termination will always provide it with a lower
220 uncollectibles rate compared to RESs.

221 POR programs significantly reduce the RESs' credit risk associated with serving
222 residential and small commercial customers. They also reduce RESs' acquisition
223 costs by allowing RESs to enroll residential and small business customers without
224 conducting credit checks or requiring security deposits.

225

226 **Q. Please explain what costs associated with credit checks RESs would incur**
227 **absent a POR program.**

228 **A. Bad debt can impose high costs upon RESs. As a result, RESs typically screen**
229 **customers to determine the customer's creditworthiness. As it is not feasible for**
230 **customers to be credit screened during their first contact with the RES, the credit**
231 **check adds extra time to complete a customer enrollment. RESs must hire**
232 **additional personnel to perform the credit check and pay a credit agency such as**
233 **Equifax for credit reports. In short, uncollectibles are a significant cost of doing**
234 **business. Where the utility and the RES each operate credit and collections**
235 **systems, the customers pays twice for these costs.**

236

237 **Q. Please explain the likely impact upon customer choice if RESs are required**
238 **to perform credit checks and bear the risk of uncollectibles.**

239 **A. Data on credit scores from Equifax (see CES Ex. 4.1; CES Ex. 4.2), one of the**
240 **three national credit bureaus, reveal that a RES would be justified in denying the**
241 **applications of up to 31 percent of residential and 20 percent of small business**
242 **customers due to their credit scores. RESs, without the right to terminate the**
243 **delivery of service to customers for non-payment, will err on the side of caution**

244 when reviewing customer credit worthiness and demand a high credit score for
245 acceptance. These rejections would prevent higher-risk customers, who are likely
246 to be more financially constrained, from taking advantage of RES products that
247 meet their individual consumption and/or financial needs, including long term
248 price stability, savings, or both.

249

250 Even though RESs will credit screen customers, the RESs' charges still must
251 include a risk premium for uncollectibles (albeit a smaller one than if no customer
252 were screened), as credit screening is not foolproof. Regardless, any unnecessary
253 risk premium makes the RES' product less attractive to consumers.

254

255 **Q. What are costs to ComEd associated with a purchase of receivables**
256 **program?**

257 **A. ComEd will incur some implementation and administration costs as a result of**
258 **implementing a POR program. Under the Coalition's POR proposal, ComEd**
259 **would recover all of the costs of running the program through a discount rate.**
260 **However, the Commission and ComEd should realize that without a POR**
261 **program, ComEd's bad debt percentage would increase as the higher risk**
262 **customers remain with ComEd because RESs would not accept them due to their**
263 **low credit score. A POR program provides ComEd with a less risky approach to**
264 **manage its uncollectibles. Under our POR proposal, ComEd would recover all of**
265 **the costs of running the program through a discount rate.**

266

267 **Q. Does ComEd have the same risk associated with bad debt expense as a RES?**

268 **A. No. All else being equal, in the absence of a credit check, the inability of RESs to**
269 **terminate the delivery of electric service would result in RESs having a higher**
270 **level of bad debt expense relative to ComEd. Physical termination of service**
271 **provides a powerful incentive for customers to pay their electric bills. A POR**
272 **program, by contrast, eliminates this unfair advantage held by ComEd over the**
273 **RESs.**

274

275 **Q. Do you have any data to support your conclusion that, in the absence of a**
276 **POR program, RESs would have higher levels of bad debt than ComEd?**

277 **A. Yes. Employing data from Equifax, if a RES accepted all customers for**
278 **competitive supply without credit checks, one would expect the RES to**
279 **experience a cumulative bad debt rate of about 7.1 percent for residential**
280 **customers and 9.2 percent for small business customers. (See CES Ex. 4.3; CES**
281 **Ex. 4.4). By contrast, the bad debt rate for ComEd is 1.43 percent for residential**
282 **customers and 0.29 percent for small commercial customers. (See ComEd Ex.**
283 **10.7). Thus, the RES would likely only compete in ComEd's territory if market**
284 **supply prices are sufficiently below ComEd's commodity rate to cover the higher**
285 **risk premium relative to ComEd the RES must charge its customers due to its**
286 **higher uncollectibles rate.**

287

288 **Q. What are the characteristics of an effective POR program?**

289 **A. The Coalition believes the following are characteristics of an effective POR**
290 **program:**

291 • The rules should allow as many customers as possible to participate in
292 choice programs by not giving customers with better credit histories
293 preferential treatment to make an electric supply choice. Restricting
294 access to competitive supply options because of customer payment or
295 credit histories defeats the purpose of empowering them to consider
296 choices that best meet their energy needs.

297

298 • The utility should be allowed to recover all of the costs of running the
299 program through a discount rate or through rate base. Shareholders should
300 not be exposed to any incremental risk as a result of instituting a POR
301 program.

302

303 • The utility must provide timely payment of billed amounts to the RESs.

304

305 • If a customer is disconnected for non-payment and subsequently pays his
306 bill, this customer should be returned to service with the RES.

307

308 • The rules for resetting the discount rate should be clear and predictable to
309 all market participants, e.g., once each year on a specific effective date.

310

311 **Q. Can you please describe the characteristics of a particular POR program?**

312 **A. One example is the POR program offered by Northern Indiana Public Service**
313 **Company (“NIPSCO”). NIPSCO is the only utility in Indiana with a retail natural**
314 **gas Choice program. It bills its Choice program customers through a consolidated**
315 **utility bill and makes payment to the retailer.**

316 • **NIPSCO makes payment to the Supplier for the Accounts Receivable being**
317 **purchased within 20 days after the last unit billed in the final billing cycle of**
318 **each month. The Company makes the monthly payment to the Supplier**
319 **regardless of whether any particular Customer in the Supplier’s Customer**
320 **Base pays its bill.**

321 • **Currently the Account Receivable discount is 1 percent. NIPSCO agrees to**
322 **give a six month notification before any change is made to the accounts**
323 **receivable discount percentage.**

324 • **NIPSCO retains the right, to evaluate the financial risk associated with this**
325 **offering. Based upon the risk analysis, NIPSCO may change the percentage of**
326 **the accounts receivable discount. Retailer contracts with customers must**
327 **contain a provision that states that if the Customer receives an arrears notice**
328 **and does not pay the arrearage balance prior to the Customer’s next cycle**
329 **billing date, then effective as of that next billing date, the Customer will be**
330 **removed from the NIPSCO Choice program and returned to bundled utility**
331 **service.**

332

333 **Q. Are there any attributes of the NIPSCO POR program that you recommend**
334 **against adopting in ComEd?**

335 **A.** Yes. The NIPSCO program contains a provision that returns customers to bundled
336 service if those customers are in arrears for more than two billing periods. We
337 recommend against adoption of this provision. Returning the delinquent Choice
338 customer to bundled service does not lower the utility's collections and bad debt
339 costs. It potentially raises the costs to consumers as returning a customer to utility
340 service may force the customer to pay penalties to the retailer for early contract
341 termination. This will compound a customer's financial predicament. As the
342 customer continues to increase his arrears as a bundled customer, NIPSCO
343 achieves no more savings than if the customer had remained in the Choice
344 program. The only time service to a Choice customer should be severed from the
345 Supplier is when the utility ultimately disconnects the customer for non-payment
346 and, in that case, the customer should be returned to the Supplier when his
347 account becomes current.

348

349 **Q. What is the next market you wish to describe?**

350 **A.** In New York, every utility regulated by the New York Public Service
351 Commission ("PSC"), except Keyspan, has adopted a POR program. All New
352 York utilities offer UCB in addition to a dual bill option. The PSC "strongly
353 encourages" New York utilities to adopt POR programs.⁵ The PSC's Uniform

⁵ Case 00-M-0504, *Proceeding on the Motion of the Commission Regarding Provider of Last Resort Responsibilities, the Role of the Utilities in Competitive Energy Markets, and Fostering the Development of Retail Competitive Opportunities*, Statement of Policy on Further Steps Toward Competition in Retail Energy Markets, (issued August 25, 2005) at 16.

354 Business Practices regulate, among other matters, the operations of retailers and
355 utilities pertaining to customer billing, enrollment and termination. New York
356 State Electric and Gas ("NYSEG") recently adopted a program scheduled to
357 launch in early 2006. It is similar to other POR programs in the state. Here is a
358 detailed description of the program:

- 359 • New York's retail marketers ("Energy Service Companies or ESCOs") that
360 elect the NYSEG UCB option for all or a portion of their customers will be
361 required to sell their accounts receivable for these customers to NYSEG.
362 ESCOs will be precluded from participating in the POR for customers
363 receiving dual billing.
- 364 • Electric and gas accounts receivable for electricity and gas commodity sales
365 will be purchased at a discount off face value of the ESCO receivable as
366 ESCO customers do not pay NYSEG's charge for recovering the utility's
367 commodity-related uncollectible costs. The discount rate is intended to
368 compensate NYSEG for its financial risk in purchasing electric and/or gas
369 receivables, including, but not limited to, the level of NYSEG's uncollectibles.
370 NYSEG will purchase ESCO accounts without recourse.
- 371 • The electric discount will be set on January 1, 2006 at a rate of 1.01 percent.
372 The 1.01 percent electric discount rate is the sum of: 0.71 percent, reflecting
373 NYSEG's actual historical electric uncollectibles experience for the period
374 October 2004 through September 2005; a 0.15 percent adder, which is
375 designed to compensate NYSEG for its financial risk that the electric
376 uncollectible rate for the purchased receivables may be higher than 0.71%;

377 and a 0.15 percent adder, which is designed to compensate NYSEG for on-
378 going incremental and administrative costs, including credit and collection
379 costs.

380 • Revised annual discount rates will become effective January 1st of each
381 respective year. NYSEG will publish the revised discount rate 60 days before
382 the effective date.

383 • Each accepted Invoice receivable amount would be itemized to include the
384 gross amount, discount amount, and the net accounts payable amount. 20 days
385 after the receipt of the invoice, NYSEG Accounts Payable will release the
386 discounted payment by wire transfer (ACH).

387

388 **Q. Do you recommend ComEd should purchase receivables at a discount?**

389 **A.** Yes, provided ComEd separates its uncollectible expenses into accounts for
390 “delivery services”-related uncollectible expenses and “energy”-related
391 uncollectible expenses. ComEd has proposed adjusting upwards its bundled
392 customer supply charges to recover uncollectible commodity related costs. If, as
393 proposed under ComEd’s BES tariff sheets customers who leave bundled service
394 by taking commodity service from a RES no longer pay for the UAF, then
395 ComEd should use a discount rate model for its POR program. This way, by
396 purchasing receivables at a discount under UCB, ComEd’s bundled customers do
397 not pay for RES customers’ bad debt.

398

399 **Q. Please explain how the discount rate would be developed?**

400 **A. The discount rate should reflect ComEd's actual uncollectible experience during a**
401 **recent specific historical period. To avoid distortions occurring in any one year,**
402 **the discount rate might, for example, reflect a multi-year rolling average adjusted**
403 **each year the program is in effect.**

404

405 **Q. Should any other components be incorporated in the discount rate?**

406 **A. ComEd will incur some costs to administer and implement this new program.**
407 **Recovery of such costs through the discount rate is appropriate. It is relevant to**
408 **underscore that only net incremental administrative charges should be assessed to**
409 **RESs.**

410

411 **Q. What types of costs would ComEd incur to implement a POR program?**

412 **A. ComEd will need to enhance its billing system to provide for UCB and POR.**
413 **Rather than ComEd implementing and maintaining differing billing programs for**
414 **POR, the most efficient approach suggests that ComEd offer POR under a single**
415 **utility consolidated billing option. ComEd would not be required to offer any**
416 **RES additional UCB options apart from the one having the POR program. The**
417 **Coalition recommends that ComEd in the near term will need to upgrade its**
418 **billing and enrollment systems to eliminate manual transactions in favor of**
419 **electronic automation. (See CES Ex. 2.0 at lines 368-768.) The UCB-POR**
420 **feature could be added cost-effectively if ComEd performs this enhancement at**
421 **the time it performs these other billing and enrollment upgrades.**

422 **III. CONCLUSION**

423 **Q. Please summarize your testimony.**

424 **A.** The Commission and ComEd must realize that systems will need to change in
425 order to allow for the development of competition for small business and
426 residential customers. One of the most important elements of this transformation
427 involves the utility embracing POR and UCB in order to lower transaction costs,
428 increase efficiency and minimize customer confusion. The Commission and
429 ComEd have a great opportunity with this proceeding to develop a system that
430 accomplishes those goals. The Coalition's proposal sets forth the structure for a
431 pro-consumer, pro-competitive POR and UCB program. We look forward to
432 working with the Commission and ComEd to make this a reality.

433

434 **Q. Does this conclude your testimony?**

435 **A.** Yes, it does.