

333 OAK LANE
BLOOMSBURG, PA 17815
SCOTT.J.RUBIN@GMAIL.COM

SCOTT J. RUBIN
ATTORNEY • CONSULTANT

TEL: (570) 387-1893
FAX: (570) 387-1894
CELL: (570) 850-9317

May 2, 2018

Rosemary Chiavetta, Secretary
Pa. Public Utility Commission
P.O. Box 3265
Harrisburg PA 17105-3265

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

Dear Secretary Chiavetta:

Enclosed for filing please find the Comments of Pennsylvania AFL-CIO Utility Caucus
in the above-referenced proceeding.

The document was filed electronically with the Commission on this date.

Sincerely,

A handwritten signature in black ink that reads "Scott J. Rubin". The signature is written in a cursive style with a large, stylized "S" and "R".

Enclosure

cc: Per certificate of service

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

En Banc Hearing on
Implementation of Supplier Consolidated Billing

⋮
⋮
⋮

Docket No. M-2018-2645254

COMMENTS OF PENNSYLVANIA AFL-CIO UTILITY CAUCUS

Introduction

The Pennsylvania AFL-CIO Utility Caucus ("PA AFL-CIO") is an ad hoc association of labor unions representing thousands of employees of public utilities, including all of the major electric distribution companies ("EDC") and some electricity generation suppliers ("EGS") operating in the Commonwealth of Pennsylvania. Among the utility employees represented by PA AFL-CIO are people who staff utility call centers and perform disconnection and reconnection of service.

PA AFL-CIO provides these Comments in response to the Secretarial Letter dated March 27, 2018, in the above-referenced proceeding. The following comments will provide PA AFL-CIO's perspective on some of the issues raised in the Secretarial Letter. PA AFL-CIO does not have an opinion or position at the present time on issues that are not addressed below.

PA AFL-CIO is not asking to testify at the June 14 *en banc* hearing.

Legal

1. Is SCB permitted under Chapters 14 and 28 of the Public Utility Code, 66 Pa. C.S. §§ 1401-1419, 2801-2815? If so, what limits, if any, are imposed by the Public Utility Code? In particular, does the language in Section 2807(c) limit the Commission to only (1) dual billing and (2) EDC consolidated billing? Does the statutory language in Chapter 14 require that customer billing functions, especially those related to service connections, payment arrangements, terminations of service and reconnection of service, are functions that are to be performed solely by the EDC?

Throughout the process of restructuring the electricity industry, PA AFL-CIO and its member unions consistently expressed the opinion that while the Public Utility Code does not require the Pennsylvania Public Utility Commission ("Commission") to permit Supplier Consolidated Billing ("SCB"), the Code provides the Commission with sufficient discretionary authority to allow SCB under terms and conditions that the Commission finds to be warranted.¹ Moreover, as explained below, the Code contains various requirements that must be met regardless of the entity that issues utility bills.

There are certain responsibilities, however, that are placed by law solely on EDCs. In particular, the requirements of Chapter 14 of the Public Utility Code (which were enacted in 2004, well after the electricity industry had been restructured) apply solely to "public utilities." That term is defined in Section 1403 as being limited to any "electric distribution utility, natural gas distribution utility, small natural gas distribution utility, steam heat utility, wastewater utility or water distribution utility ..." 66 Pa. C.S. § 1403 (definition of "Public utility").

In other words, while the Commission may have discretion to allow certain types of SCB, any such billing mechanism cannot transfer Chapter 14 responsibilities to an EGS. By law, those responsibilities must remain with the EDC. Chapter 14 responsibilities include the calculation, collection, holding, and dispersing of customer deposits (§ 1404); entering into and managing

¹ See, e.g., Comments of International Brotherhood of Electrical Workers in Docket No. M-00011467 (Electric Generation Suppliers Offering Billing Services Affecting Electric Retail Choice), dated June 4, 2001.

payment arrangements for overdue charges (§§ 1405 and 1410.1); all procedures concerning the termination of utility service, including notice requirements, receipt of payment, medical certification, and actual termination (§ 1406); and all procedures concerning the reconnection of service after termination (§ 1407).

While it may be tempting to think of Chapter 14 as applying only to relatively few utility customers (such as "low-income" customers, CAP participants, or LIHEAP recipients), that is not correct. A 2017 survey found that 78% of workers live "paycheck to paycheck," meaning that they have little or no savings and little to no ability to deal with emergencies or catastrophic income loss.² In other words, millions of Pennsylvanians (including, unfortunately, many PA AFL-CIO members) are just one emergency (such as a serious illness, loss of employment, or disability of a wage earner) away from needing help paying for electricity or other utility services. This means that consumer protections such as payment agreements in Chapter 14 could apply to a significant majority of utility customers.

In addition to the Chapter 14 requirements, the law requires that any bill for electric utility service meet certain requirements, including the following:

- "Customer bills shall contain unbundled charges sufficient to enable the customer to determine the basis for those charges." 66 Pa. C.S. § 2807(c)(1).
- "No public utility shall, directly or indirectly, by any device whatsoever, or in anywise, demand or receive from any person ... a greater or less rate for any service rendered by such public utility than that specified in the tariffs of such public utility applicable thereto." 66 Pa. C.S. § 1303.

² Living Paycheck to Paycheck is a Way of Life for Majority of U.S. Workers, According to New CareerBuilder Survey (Aug. 24, 2017), <http://press.careerbuilder.com/2017-08-24-Living-Paycheck-to-Paycheck-is-a-Way-of-Life-for-Majority-of-U-S-Workers-According-to-New-CareerBuilder-Survey>.

- "In regulating the service of electric generation suppliers, the commission shall impose requirements necessary to ensure that the present quality of service provided by electric utilities does not deteriorate, including ... assuring 52 Pa. Code Ch. 56 (relating to standards and billing practices for rendering utility service) are maintained." 66 Pa. C.S. § 2809(e).
- "No public utility shall require the payment of rates in advance, or the making of minimum payments, ready to service charges, or deposits to secure future payments of rates, except as the commission, by regulation or order, may permit." 66 Pa. C.S. § 1305.

Thus, while an SCB program could be lawful, there are numerous legal requirements that must be met, and core customer-service functions that much remain with the EDC.

4. If the Commission decides to explore these topics further, what are the preferred procedural methods for doing so?

If the Commission decides to explore SCB further, PA AFL-CIO would suggest that the Commission either (1) convene a formal collaborative working group to develop specific proposals that comply with the law; or (2) assign the matter to the Office of Administrative Law Judge to develop an evidentiary record concerning the advantages and disadvantages of SCB, as well as hearing further argument concerning the legal constraints on entities that are not "public utilities" under Chapter 14.

Collections - Termination

- 1. Does an EGS offering SCB need the power to order termination of a customer's service?*
- 2. Would allowing an EGS to order an EDC to terminate a customer's service comply with Chapter 14 of the Public Utility Code, 66 Pa. C.S. §§ 1401-1419, and Chapter 56 of the Commission's regulations, 52 Pa. Code §§ 56.81 56.83, 56.91 56.101, 56.111 56.118?*
- 3. If an EGS purchases an EDC's receivables and the EDC is no longer owed any money, does the EDC (or EGS) have the authority under the Public Utility Code and Commission regulations to terminate service for nonpayment of distribution charges?*

PA AFL-CIO submits that a non-utility does not have the power to order the termination of utility service to a customer, and it should not have that power. As a non-utility, EGSs must abide by the same rules as all other businesses in the marketplace. If a customer fails to pay your bill, then you have the right to stop serving that customer, and take lawful actions to collect the unpaid bill. Indeed, there are federal and state laws that govern the collections practices of entities that are not regulated as public utilities, such as the federal Fair Debt Collection Practices Act³ and Pennsylvania's Fair Credit Extension Uniformity Act.⁴ A non-utility business, however, does not have the right to order a third party (such as an EDC) to terminate service to a customer, or to use the threat of such termination as a collection tool.

Moreover, it is not apparent why an EGS would need to rely on service termination. Like any non-utility business, an EGS will have customers who do not pay their bills. An EGS would have the ability to protect itself by ending its relationship with the customer which would return the customer to an EDC's default service. PA AFL-CIO does not believe there is a compelling reason for an EGS to be able to order the termination of service to the customer, particularly when the EGS's service to the customer has ended.

³ 15 U.S.C. §§ 801, *et seq.*

⁴ 73 P.S. §§ 2270.1, *et seq.*

An EGS's voluntary purchase of the EDC's receivables for a customer still should not give an EGS the right to order termination of EDC service to the customer. It is unclear, to say the least, how an EDC could terminate service to a customer when the EDC's records would show that the customer's bill to the EDC has been paid in full (because payment was received from the EGS). Indeed, how could an EDC generate the required termination notice giving the customer a specific statement of the unpaid balance on the customer's account (as required under 52 Pa. Code § 56.91) when the EDC's records show no unpaid balance for the customer?

5. Would a blocking mechanism to prevent switching by customers who have made payment arrangements with the EGS be permitted under the Public Utility Code and Commission regulations, and prudent from a public policy perspective?

PA AFL-CIO respectfully disputes the premise of this question. Chapter 14 of the Public Utility Code requires that payment arrangements be made by a "public utility." As discussed above, an EGS is not a public utility under Chapter 14 and does not have the authority to make a payment arrangement for regulated utility services.

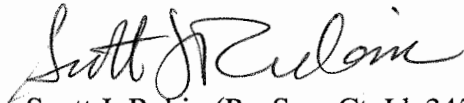
Further, there is no reason for an EGS to prevent a non-paying customer from leaving the EGS. A customer leaving the EGS's service would protect the EGS from further exposure to a non-paying customer. Presumably the customer would return to EDC default service and, if it continued to not pay its bills, the EDC would then be authorized to follow the payment arrangement and termination provisions of Chapter 14.

Finally, PA AFL-CIO would note that such a "locking" provision could be abused by unscrupulous EGSs. Specifically, who would determine whether the EGS had a legitimate reason for implementing the "lock" and how would it be policed? What would prevent an EGS from "locking" a customer's account to prevent the customer from switching to an EGS offering a better deal or improved customer service?

Conclusion

PA AFL-CIO appreciates the opportunity to provide these Comments for the Commission's consideration. For the reasons set forth above, PA AFL-CIO respectfully submits that there are significant legal constraints on the types of services an EGS could offer under an SCB program. If the Commission determines that SCB should be investigated further, PA AFL-CIO would ask to be a party to that process.

Respectfully submitted,



Scott J. Rubin (Pa. Sup. Ct. Id. 34536)
333 Oak Lane
Bloomsburg, PA 17815-2036
570-387-1893
scott.j.rubin@gmail.com

Counsel for PA AFL-CIO Utility Caucus


Dated: May 2, 2018

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the following parties by electronic mail (where an email address is shown) and first class mail.

DEANNE M O'DELL
ECKERT SEAMANS CHERIN & MELLOTT LLC
213 MARKET STREET 8TH FLOOR
HARRISBURG, PA 17101
dodell@eckertseamans.com

5/2/18
Date


Scott J. Rubin, Counsel for PA AFL-CIO Utility Caucus