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January 23, 2017

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

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 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,



Enclosure

cc: Per certificate of service

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

COMMENTS OF PENNSYLVANIA AFL-CIO UTILITY CAUCUS

1. 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 of the electricity generation suppliers ("EGS") (including NRG Energy, Inc.) operating in the Commonwealth of Pennsylvania. PA AFL-CIO provides these Comments in response to certain assertions made in the Petition of NRG Energy, Inc., dated December 8, 2016 ("Petition").

For the past 15 years or more, PA AFL-CIO and its member unions have 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. In addition, while the restructuring settlements of some utilities provided for SCB, the Duquesne

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.

Light Company restructuring case was decided by Commission Order without a settlement, and that Order specifically prohibited SCB (as described below). For that and other reasons, as described below, the Commission needs to provide interested parties an opportunity to develop an evidentiary record concerning several issues raised in the Petition.

2. Legal Requirements

Initially, 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.
- "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.

3. The Petition is Inconsistent with the Law and is Otherwise Unclear

In light of these legal requirements, PA AFL-CIO is concerned that several proposals contained in the Petition appear to violate the applicable law. For example, the Petition requests permission to charge a customer a bundled price for distribution service, and even to have that price be less than what the EDC charges under its approved tariff. Petition ¶¶ 37(c) and 50. This provision would violate both Section 2807(c)(1) (requiring an unbundled bill that allows a customer to see the basis for the charges) and Section 1303 (requiring that all customers pay the rates set forth in the tariffs).

Similarly, the Petition proposes to offer pre-paid service plans, but does not provide any specific information about such plans. This appears to violate Section 1305 that prohibits the payment of rates in advance without specific Commission authorization.

In addition, there appears to be some inconsistency in the Petition regarding the effect of SCB on service disconnection. The Petition states that the EGS would "purchase the full value of the receivables of the EDC" and that the EGS would pay the EDC's charges in full within 30 days. Petition ¶ 28. The Petition further clarifies this proposal, stating: "EDCs would send the EGSs their charges for transmission and distribution service, and the EGSs would pay those charges within a Commission-approved time period, regardless whether the end-user or retail customer pays the EGSs." Petition ¶ 54.

Yet, the Petition also seeks to give an EGS the ability to ask an EDC to terminate service to a customer for non-payment of the distribution portion of the bill. Petition ¶ 29. It is unclear, to say the least, how an EDC can 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, the Petition never explains how an EDC can 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.

4. The Law Requires the Commission to Develop an Evidentiary Record

Paragraph 10 of the Petition correctly states that the settlements in restructuring proceedings included provisions authorizing SCB. Further, PA AFL-CIO members were parties to some of those settlements. What the Petition fails to mention, however, is that one major EDC's restructuring case was resolved by Commission order without a settlement, and in that case the Commission explicitly ruling against SCB.

Specifically, in *Application of Duquesne Light Co.*, R-00974104 (Pa. PUC May 21, 1998), slip op. at 254-55, the Commission ruled as follows:

We adopt the ALJ's recommendation that Duquesne must provide all billing services, including billing for generation services, unless a customer elects to receive a separate bill directly from the supplier for generation services. With respect to the arguments made by Enron and MAPSA, we note that the mere fact that we can unbundle billing services does not mean that we should unbundle those services. ... As in PECO Energy, we do not have a record before us which is adequate to support adoption of this proposal. We note that the proponent of a rule or order has the burden of proof in the matter pursuant to 66 Pa. C.S. §332(a). The advocates of unbundling all billing services have not met that burden in this proceeding.

Likewise, the "third" billing option which permits customers to receive a single bill from their EGS that includes billing for the EDC charges cannot be determined on the basis of this record and should await the results of this Commission's generic rulemaking. The fact, as Enron argues, that no party has presented evidence why we should not permit this option immediately is not a persuasive reason as to why we should approve Enron's proposal. We believe those arguments for these billing options, as well as those against the proposals, are best considered in a generic proceeding.

In that decision, the Commission made clear that there must be evidence to support the adoption of SCB, and in the absence of such evidence the proposal would be rejected. The same is still true today.

Even though the Petition claims that it is not based on factual statements (such that evidentiary hearings would not be required) (Petition ¶¶ 16-17), the Petition contains several unsupported and undocumented factual assertions that appear to be material to the relief claimed in the Petition. To give just a few examples, the Petition states that consumers "would gain access to more innovative products and services" (Petition, p. 2); that SCB would "encourag[e] long-term investments by EGSs within Pennsylvania" (Petition ¶ 44); and that "by having EGSs handle a growing number of billing inquiries, efficiencies should be realized that result in lower EDC overhead costs and overall lower rates for customers" (Petition ¶ 54). All of these are averments of fact that are provided without any supporting data, analyses, or testimony.²

Moreover, those statements are subject to question, to say the least. If the call volume to an EDC decreases, that might or might not decrease an EDC's costs, but it also may increase the *cost per call* to the EDC. That is, the EDC would be required to maintain the same (or nearly the same) billing and customer service infrastructure and resources, but it would spread those costs over fewer customers and fewer calls. It is difficult to understand how such an approach would result in "efficiencies" as claimed by the Petition. While that may be possible under certain scenarios, it is certainly an important question of fact that cannot be determined without an evidentiary record.

² The Petition even states that the verification provided with the Petition does not apply to at least some of these factual statements. In footnote 37 (page 11), the Petition states that the verification is limited to "the Company's business and participation in the retail market; the status of the retail market; a description of SCB; customer benefits that may flow from SCB; barriers to UCB [*sic*]; and the work that has already been done in Pennsylvania and elsewhere to develop EDI proposals." Thus, the statements regarding the encouragement of long-term investments in the Commonwealth and potential EDC efficiencies appear to be unverified.

Similarly, no support is provided for the claim that approving the Petition would encourage EGSs to make long-term investments in Pennsylvania; nor is any detail provided as to what types of investments might be made. Without any detail or support for this claim, it is at least as likely that approving the Petition could harm the economy of Pennsylvania. For example, SCB could result in exporting call center and other customer service jobs from Pennsylvania to the state or country in which EGSs have their call centers and customer service operations.

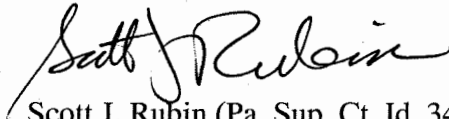
Despite the claim in the Petition that any call for evidentiary hearings would be a delaying tactic (Petition ¶ 69 and fn. 86), the Commission cannot rely on the Petition's unsupported allegations of benefits to the Commonwealth and efficiencies in operations. If the Commission believes it is important to consider the effects of the proposal on utility rates (including potential efficiencies or inefficiencies in utility operations), the Commonwealth's economy, and customer service, then the law requires the Commission to develop an evidentiary record on those issues. See, e.g., 66 Pa. C.S. § 703(e) ("findings shall be in sufficient detail to enable the court on appeal to determine the controverted question presented by the proceedings, and whether proper weight was given to the evidence") and *ARIPPA v. Pa. PUC*, 792 A.2d 636, 668-69 (Pa. Commw. Ct. 2002) (relying on Section 703(e), the court reversed a Commission finding where "the Commission failed to refer to any facts in the record and did not adequately explain its reasoning").

6. Conclusion

For the reasons set forth above, PA AFL-CIO respectfully submits that the Commission cannot issue a substantive order based on the Petition as filed. In order to reach a decision in this matter, the Commission should assign this matter to the Office of Administrative Law Judge so

that testimony, exhibits, and other evidence can be developed to determine whether SCB would provide any benefits to the Commonwealth and its utility consumers. In addition, there are numerous legal and procedural concerns with the proposals in the Petition on which the Commission might desire further input, including a recommendation from an Administrative Law Judge.

Respectfully submitted,



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Dated: January 23, 2017

CERTIFICATE OF SERVICE

I hereby certify that I have caused to be served this day a true copy of the foregoing document upon the parties listed below by electronic mail and U.S. mail, first-class, postage prepaid, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

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Dated: January 23, 2017