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January 23, 2017

Efiled

Ms. Rosemary Chiavetta, Secretary
Commonwealth Keystone Building
2nd Floor, Room-N201
400 North Street
Harrisburg, PA 17120

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

Dear Secretary Chiavetta:

Enclosed please find Duquesne Light Company's Petition to Intervene, Answer in Opposition and Comments in the above-referenced proceeding.

Upon receipt, if you have any questions regarding the information contained in this filing, please contact the undersigned.

Sincerely,

A handwritten signature in blue ink that reads "Shelby A. Linton-Keddie". The signature is written in a cursive style.

Shelby A. Linton-Keddie
Manager, State Regulatory Affairs
And Senior Legal Counsel

Enclosure

c: Certificate of Service

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served upon the following persons, in the manner indicated, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

VIA EMAIL AND FIRST CLASS MAIL

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**PETITION TO INTERVENE, ANSWER IN OPPOSITION AND COMMENTS OF
DUQUESNE LIGHT COMPANY**

TO THE HONORABLE, THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

Pursuant to the provisions of the Rules of Practice and Procedure of the Pennsylvania Public Utility Commission (“PUC” or “Commission”), 52 Pa. Code §§ 5.61-5.76, Duquesne Light Company (“Duquesne Light” or “Company”), hereby files with the Commission a Petition to Intervene, as well as an Answer in Opposition and Comments in the above-captioned proceeding.¹

In support thereof, Duquesne Light avers as follows:

1. Petitioner is Duquesne Light, a public utility as that term is defined under Section 102 of the Public Utility Code, 66 Pa. C.S. § 102, certificated by the Commission to provide electric distribution service in the City of Pittsburgh and in portions of Allegheny and Beaver Counties in Pennsylvania. The Company is also an electric distribution company (“EDC”) and a default service supplier as those terms are defined under Section 2803 of the Public Utility Code. 66 Pa. C.S. § 2803. Duquesne Light provides electric distribution service, which entails statutorily mandated responsibilities regardless of the identity of the provider of electric generation service including, among other things: billing for distribution service, meter reading, complaint resolution, and collections, for approximately 590,000 customers. *See* 66 Pa. C.S. §§ 2807(c), (d).

¹ Duquesne Light is a member of the Energy Association of Pennsylvania, (“EAP”) who is also submitting Comments in this proceeding. In addition to the positions stated herein, Duquesne Light supports the positions articulated in EAP’s Comments.

2. The complete name and address of the Petitioner is:

Duquesne Light Company
411 Seventh Avenue
Pittsburgh, PA 15219

3. Duquesne Light's attorney in this matter is:

Shelby A. Linton-Keddie (Pa. I.D. No. 206425)
Manager, State Regulatory Affairs
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Counsel for Duquesne Light is authorized to receive all notices and communications regarding this proceeding and requests that the name and address of the Company's attorney be added to the Commission's and all parties' service lists. Further, counsel for Duquesne Light consents to the service of documents by electronic mail at the above e-mail address, pursuant to 52 Pa. Code. § 1.54(b)(3).

4. On December 9, 2016, NRG Energy, Inc. ("NRG"), filed a Petition for Implementation of Electric Generation Supplier Consolidated Billing (hereinafter "Petition") with the Commission. At its core, the NRG Petition seeks a PUC Order implementing Supplier Consolidated Billing ("SCB") as a billing option that would be available to customers of electric generation suppliers ("EGSs") by the second quarter of 2018. NRG opines that SCB is a legally permissible billing option, would enable EGSs to directly bill their supply customers and include distribution charges, would allow EGSs to perform other functions such as collections and complaint resolution, and would provide more value-added services than available today. *See generally*, Petition at pp. 1, 14-15, 17. Notification of the Petition was published in the

Pennsylvania Bulletin on December 24, 2016. 46 Pa. B. 8154. In that notification, it states that answers and comments must be filed by January 23, 2017, with reply comments due by February 22, 2017.

5. Duquesne Light, consistent with its position on SCB in the 2011 Retail Market Investigation (Docket No. I-2011-2237952), does not believe that SCB is legally permissible or even contemplated by §2807(c) of the Public Utility Code, (“Code”), and should be rejected. Moreover, the numerous issues created by the proposed mechanism for customers that would disrupt the current level of service relating to areas such as: costs, confusion, collections, termination, complaint disputes, etc. are significant enough to require outright disapproval of this proposal as being adverse to the public interest.

6. As an EDC with statutorily mandated duties to provide many of the functions referenced in the Petition such as billing for distribution service, complaint resolution and collections, Duquesne Light has a significant interest on the impact this proposal will have on the quality of service for its customers, as any decision will directly affect them. In addition, any determination made by the Commission regarding the Petition will be binding on the Company. Collectively, these interests are not adequately represented by other parties to this proceeding. *See* 52 Pa. Code § 5.72.

7. Accordingly, Duquesne Light respectfully requests that the Pennsylvania Public Utility Commission grant this Petition to Intervene, provide the Company with full-party status in this proceeding, and reject the Petition in its entirety, for the reasons detailed in the Answer in Opposition and Comments below.

ANSWER IN OPPOSITION AND COMMENTS

Just over one month ago, on December 8, 2016, the PUC publically celebrated the 20th Anniversary of the Electricity Generation Customer Choice and Competition Act (“Competition Act” or “Act”). During this celebration, Pennsylvania was lauded by Chairman Brown as being “on the national forefront of electric competition [for two decades]”² and by current NARUC³ President Powelson as having a “foundation that proves it’s working” as well as noting the importance of safeguards, consumer protections and the Commission’s ability to act as “custodial leaders” of the retail electric market.⁴

On the heels of this celebration, NRG argued, in a Petition filed that same afternoon, that shopping is stagnant (although the PUC’s documented 14 consecutive months of growth would suggest otherwise)⁵ and, without demonstrating any problems with either, that overall shopping experience and customer satisfaction would be “greatly improved” if EGSs were allowed to provide SCB rather than only a dual bill for supply service, which is the only type of EGS generated bill that the Public Utility Code (“Code”) currently allows. In a desire to force the use of this mechanism, NRG has ignored the most recent direction of the Commission in the February 15, 2013 RMI Final Order regarding any future plans for SCB (which, notably, the Commission would initiate),⁶ opting instead to support a suggestion made years earlier during a March 24, 2011, Committee Handling Activities for Retail Growth in Electricity (“CHARGE”) call that the

² See http://www.puc.state.pa.us/about_puc/press_releases.aspx?ShowPR=3794

³ NARUC stands for National Association of Regulated Utility Commissioners. It is a national association comprised of the Commissioners from utility regulatory bodies in each state that regulate essential utility services, including energy, telecommunications and water. See <https://www.naruc.org/>

⁴ See <https://www.youtube.com/watch?v=vocwpS17CsQ&feature=youtu.be> (PUC video titled “Dec. 8, 2016, Public Meeting + 20th Anniversary of Electric Choice”).

⁵ See http://www.puc.state.pa.us/about_puc/press_releases.aspx?ShowPR=3794

⁶ See Investigation of Pennsylvania’s Retail Electricity Market: End State of Default Service Final Order, Docket No. I-2011-2237952, at 69 (Order entered Feb. 15, 2014). (hereinafter “RMI Final Order”).

Commission would prefer a party to seek a Petition asking for authority for SCB before making an ultimate determination on this issue.⁷

The granting of any petition that seeks waiver of statutes, revisions to regulations and/or processes, especially when aimed at “enhancing” the retail electric market, must be legal and based on the Commission’s statutory charge in the Competition Act to ensure “that the quality of service provided [under retail competition] does not deteriorate.”⁸ Put another way, the Commission, when given the statutory authority to do so, must look to first, as Vice Chairman Place is known to say, “do no harm.”⁹ When reviewing the current Petition in its entirety, NRG has not satisfied its burden of proof to show that SCB is legal under the Public Utility Code, that this type of billing option was contemplated by the General Assembly, that it is necessary for a fully functioning retail market or that it would be used by anyone other than NRG. Accordingly, this Petition should be denied in its entirety.

1. There is Neither Legal Authority for Supplier Consolidated Billing in the Public Utility Code Nor has the Commission Ever Found One Exists.

NRG’s Petition attempts to attack the notion that, upon opening the electric generation market for retail competition, having EDCs (which are fully regulated and under the supervision of the Commission) maintain continuity over consumer services such as billing for distribution service, collections and complaint resolution hold back EGSs and the market, in general, from being as vibrant as it otherwise would exist as contemplated under the Act. Using Texas as an

⁷ See http://www.puc.pa.gov/electri/pdf/OCMO/CHARGE_Recap032411.pdf.

⁸ See Investigation of Pennsylvania’s Retail Electricity Market: End State of Default Service Tentative Order, Docket No. I-2011-2237952, at 21 (Order entered Nov. 8, 2012) (hereinafter “RMI Tentative Order”). See also 66 Pa. C.S. §2807(d), “...Customer services shall, at a minimum, be maintained at the same level of quality under retail competition.”

⁹ Vice Chairman Place made these remarks, for example, at the EAP Consumer Conference on Oct. 19, 2016.

example, NRG opines that SCB works well in Texas, therefore it should work in Pennsylvania. This type of argument should be rejected outright.

Texas has SCB because Texas took the billing function from its distribution utilities and gave it to retail electric providers except when billing “is incidental to providing retail billing services at the request of a retail electric provider ...”¹⁰ -- something that Pennsylvania’s Legislature specifically chose not to do when drafting the Commonwealth’s Competition Act. Rather, the General Assembly recognized that there are certain functions that should remain with the transmission and distribution utility for that service, such as billing, even upon the ability for a customer to choose and be billed for generation service by EGSs. This conclusion is clear upon review of the Public Utility Code.

Section 2802(16), when read in combination with Sections 2807(c) and (d) of the Code, plainly shows the General Assembly’s recognition that there are situations such as billing for distribution service, collections, and complaint resolution where electric distribution companies can and should retain direct customer contact even if a customer can elect an EGS bill for their generation supply service. This intention is made even clearer when looking at a similar provision in the Natural Gas Choice and Competition Act that was passed three years after the Competition Act was enacted.¹¹ Further, this result serves the public interest, because electric distribution in the Commonwealth remains “regulated ... [and] subject to the jurisdiction and active supervision of the commission.”¹² The understanding of the General Assembly’s intent that distribution companies would retain customer contact (including billing for distribution service) is illustrated

¹⁰ See, e.g. PURA §25.246(d)(4). “The transmission and distribution utility may not directly bill an end-use retail customer for services that the transmission and distribution utility provides except when the billing is incidental to providing retail billing services at the request of a retail electric provider pursuant to PURA §39.107(e).”

¹¹ 66 Pa. C.S. § 2205(c).

¹² 66 Pa C.S. § 2802(16).

by reviewing legislative history from the House associated with the Competition Act, specifically with reference to consumer protections:

Mr. THOMAS. Thank you. Now, if we can turn to that section on consumer protections, section 2807. You had mentioned earlier that this bill provides the same myriad of protections that exist in the current law. This section seems to imply that there are changes being made to the traditional obligation which has existed between utility companies and the customer. Is that correct, or am I interpreting this wrong?

Mrs. DURHAM. The same protections are still in the bill; that is correct.

Mr. THOMAS. So I should not give any credence to this language which says that the traditional obligations are being changed?

Mrs. DURHAM. Mr. Speaker, could you give me specifically the line and page you are referring to?

Mr. THOMAS. Well, I am reading from, I guess, the analysis or out of the pre-session report, and it says that section 2807 changes the traditional obligation-to-serve requirement to an obligation to deliver for the electric distribution companies, and it talks about a modified obligation.

Mrs. DURHAM. Mr. Speaker, the difference is, you are going to have generation and you are going to have transmission and distribution. **The consumer will be dealing directly with the transmission and distribution, and that stays the same, and that is also still regulated.** And the duty to serve is still there.

Mr. THOMAS. Thank you.

House Journal page 2566 (November 25, 1996). (emphasis added)

While Duquesne Light concedes that the Commission has sought information in the past (*e.g.*, through the Electronic Data Exchange Working Group (“EDEWG”), CHARGE and most recently through inclusion as a subject in the Retail Markets Investigation, Docket No. I-2011-2237952) on what types of issues (technical, legal and policy) would arise if the ability for EGSs to provide a SCB was permitted, Duquesne Light disagrees with NRG’s contention that the Commission has ever made a definitive finding on the legality of SCB or has “endorsed” such a mechanism as permissible under the Public Utility Code.

NRG goes to great lengths to claim that there is no question of SCB's legality, due to part of one line in 66 Pa. C.S. § 2807(c) that uses the word "may" instead of "shall,"¹³ a general "belief" in the RMI Tentative Order that "SCB should be made available ... as part of vibrant, competitive market"¹⁴ and a broad interpretation of the RMI Final Order claiming that the PUC "did not reject the lawfulness [of SCB]."¹⁵ Duquesne Light vociferously disagrees with this conclusion as well as the notion that "the legal authority for an order directing the implementation of SCB is clear, and it has been endorsed by the Commission." Petition at 21. In fact, the opposite is true: the Public Utility Code does not provide authority for SCB, the Competition Act mandates that electric distribution utilities are to retain certain functions including billing for distribution service, collections and complaint resolution after generation service is available elsewhere, and the Commission has never squarely addressed the legality of SCB because where a statute is unambiguous, no explanation is necessary.

NRG's analysis of the Competition Act violates basic tenets of statutory interpretation. Section 1921(a) of the Statutory Construction Act, 1 Pa. C.S. § 1921(a) provides that the object of all statutory interpretation is to determine the General Assembly's intent based on the express words used in the statute. In making that determination, courts and agencies must apply the express words in the statute and cannot ignore them. *See* 1 Pa. C.S. § 1921(b). When the words of statute may not be viewed as explicit, courts and agencies may consider other matters such as the occasion

¹³ *See* 66 Pa. C.S. § 2807(c), which states: "Subject to the right of an end-use customer to choose to receive separate bills from its electric generation supplier, the electric distribution company may be responsible for billing customer for all electric services, consistent with the regulations of the commission, regardless of the identity of the provider of those services." Moreover, while NRG attempts to further state its belief (with no legal authority cited) that if the Commission permits an EGS to serve in the default service role that would also include consolidated billing (Petition at 19), Duquesne Light disagrees. Such a conclusion ignores that fact that distribution companies retain responsibility for billing for all electric services, **regardless of the identity of the provider of those services**, which includes default service. *Id.* (emphasis added).

¹⁴ RMI Tentative Order at 28.

¹⁵ Petition at 19.

and necessity for the statute, the object to be obtained, the consequences of a particular interpretation and administrative interpretations. 1 Pa. C.S. § 1921(c)(2). Unless a statute falls under the strict construction rules, all statutory provisions “shall be liberally construed to effect their objects and promote justice.” *See* 1 Pa. C.S. § 1928(c).

In addition, courts and agencies must interpret individual provisions in a statute in a way that gives effect to all the provisions in the statute. *Consulting Engineers v. Licensure Bd.*, 522 Pa. 204, 560 A.2d 1375 (1989) (explaining that individual provisions of a statute are to be interpreted, whenever possible, in a manner that gives effect to the entire statute). Similarly, when separate provisions in a statute deal with the same subject matter, they should be construed as one statute and consistent with one another. 1 Pa. C.S. § 1932(a)(b) (“Statutes or parts of statutes are *in pari materia* when they relate to the same person or things or to the same class of persons or things.”; “Statutes *in pari materia* shall be construed together, if possible, as one statute.”).

Finally, neither the courts nor agencies may insert exceptions to statutory provisions that are not there. *Pa. School Bds. Ass’n, Inc. v. Cmwlth., Public School Employees’ Retirement Bd.*, 863 A.2d 432 (Pa. 2004) (“It is not this Court’s function to read a word or words into a statute that do not actually appear in text where, as here, the text makes sense as it is, and the implied reading would change the existing meaning or effect of the actual statutory language.”).

With these principles in mind, NRG’s analysis of SCB’s legality must fail. Identical to the argument made in 2012 by Duquesne Light when commenting on the lack of legal authority for SCB in response to the RMI Tentative Order, the Company renews the following argument:

Duquesne Light submits that mandated Supplier Consolidated Billing is not currently permitted under the Competition Act. Section 2807(c) of the Competition Act provides as follows:

Customer billing. – Subject to the right of an end-use customer to choose to receive separate bills from its electric generation supplier,

the electric distribution company may be responsible for billing customer for all electric services, consistent with the regulations of the commission, regardless of the identity of the provider of those services.

Section 2807(c)(2) defines the procedure for conducting consolidated billing:

If services are provided by an entity other than the electric distribution company, the entity that provides those services shall furnish to the electric distribution company billing data sufficient to enable the electric distribution company to bill customers.

There are no provisions in the Competition Act that authorize the Commission to mandate SCB or require EDCs to provide data to EGSs to conduct SCB.

The [RMI] Tentative Order states that SCB “complies with the Competition Act’s requirement that customer have the right to choose their billing option.” Tentative Order at 28. The Company respectfully submits that this is not a correct statement of the Competition Act, which provides the customer the choice of either dual billing or EDC consolidated billing. These statutory provisions clearly state that the EDC may provide consolidated billing and EGSs may bill their charges separately. There is no authority under the Competition Act to mandate EGS consolidated billing

Further, Section 2807(d) of the Competition Act provides clarity as to the entity that should provide customer services related to billing:

Consumer protections and customer service. – 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. Customer services, shall, at a minimum, be maintained at the same level of quality under retail competition.

These provisions read together make it clear that the General Assembly intended that billing and related activities for collection and termination were to remain with the EDC.¹⁶

Moreover, the conclusion that billing, collections and complaint resolution are to remain with electric distribution companies can be seen by reviewing a similar provision in the Natural Gas Choice and Competition Act. The Natural Gas Choice and Competition Act, which was

¹⁶ Duquesne Light Comments, Docket I-2011-2237952, at 8-9 (Dec. 10, 2012).

enacted in July of 1999, similarly retains the billing for distribution service with distribution companies, while allowing customers the option to be billed for supply by its Natural Gas Supplier.

Specifically, Section 2205(c)(1) of the Gas Competition Act provides:

(c) Customer billing. –

(1) Subject to the right of a retail gas customer to choose to receive separate bills from its natural gas supplier for natural gas supply service, the natural gas distribution company shall be responsible for billing each of its retail customers for natural gas distribution service, consistent with the orders or regulations of the commission, regardless of the provider of natural gas supply services.¹⁷

The parallels here to Section 2807(c) should not be overlooked.

Noticeably absent from NRG’s Petition is any mention of 2807(d) – this is particularly troubling, as NRG’s proposal for SCB contemplates both collections and complaint resolution¹⁸ in addition to billing for distribution service – two other items that are also unambiguously to remain with electric distribution companies, per the Competition Act. NRG has failed to show any legal authority for this ability.

In addition, the conclusion by NRG that, when deciding this issue in the RMI Final Order the PUC “did not reject the lawfulness or the notion of SCB but rather referred to ‘other, more pressing priorities’”¹⁹ is misleading. In the RMI Tentative Order, Duquesne Light admits the Commission attempts to state its “belief” that having SCB as an option complies with a customer’s choice to choose a billing option,²⁰ however, beyond that sentence in a Tentative Order, the Commission never found or explained in the RMI Final Order why SCB is a legally permissible option under the Competition Act.

¹⁷ 66 Pa. C.S. §2205(c)(1).

¹⁸ See *e.g.*, Petition at 14,15,17.

¹⁹ Petition at 19.

²⁰ See RMI TO at 28.

In fact, and as explained *supra*, Duquesne Light was one of three parties that questioned the legality of that articulated “belief” in comments in response to the RMI Tentative Order.²¹ Rather than concluding that the PUC “did not reject the lawfulness ... of SCB,” it is more accurate to state that the Commission did not address the legality of SCB, instead choosing to “punt the issue” down the road, concluding that “we[the Commission] are not prepared to move to an SCB environment at this time.”²²

To summarize, a review of the Competition Act makes clear that the responsibility for electric distribution service billing, complaint resolution and collections remain with the distribution company, regardless of the entity that provides generation service. While this may be different than what happens in Texas, it is because Pennsylvania’s Legislature wanted a different result when crafting the Competition Act. This result was known by the General Assembly, who recognized that the public interest would best be served by retaining fully regulated electric distribution companies, whose service includes direct dealings with customers and that would stay the same, “subject to the jurisdiction and active supervision of the commission.”²³ This interpretation is further endorsed when looking at the parallel treatment for natural gas distribution company responsibilities included in the Natural Gas Competition Act. While customers have the choice to receive a bill for generation service from their EGS, no similar mechanism in the Code exists in Pennsylvania for a SCB that would include distribution service charges, nor has NRG proven one exists. As such, the Petition should be rejected in its entirety.

²¹ The other two parties that raised legal foundation questions were PPL Electric Utilities Corporation and the Pennsylvania Utility Law Project (“PULP”). *See* RMI Final Order at 65.

²² *Id.* at 67.

²³ 66 Pa. C.S. 2802(16)

2. Supplier Consolidated Billing is Unnecessary for a Fully Functioning and Vibrant Competitive Retail Market.

Duquesne Light agrees with NRG that the Commission is committed to ensuring that a properly functioning and workable competitive retail electricity market exists in Pennsylvania. Petition at 3. This commitment is seen through numerous actions and initiatives the PUC has undertaken over the past two decades, some of which have been publicly recognized.

In both 2014 and 2015, Pennsylvania has ranked 2nd in the United States and 3rd overall for residential scores in the Annual Baseline Assessment of Choice in Canada and the United States (“ABBACUS”), issued by the Distributed Energy Financial Group, LLC (DEFG). In addition, in October 2013, the National Energy Marketers Association (NEM) presented the Commission with NEM’s Outstanding Achievement Award for the Commission’s success in structuring competitive energy markets in Pennsylvania,²⁴ an occasion also memorialized through recognition from Governor Tom Corbett.²⁵ Further, in 2014, the Commission was recognized by the state for the success of its Standard Offer Customer Referral Program, one of the outgrowths of the RMI Final Order, Docket No. I-2011-2237952, winning the “Best Customer Service Innovation” award in July of 2014 at the 2014 Innovation Expo.²⁶

Despite these recognitions and the characterization of Pennsylvania as “a national leader in energy policy,”²⁷ NRG argues at length that it needs the ability to provide consolidated bills (rather than a bill for its supply service) to “create a valuable link between EGSs and their customers and establish a solid foundation for long-term relationships.” Petition at 13. This opinion, with no basis in fact, should be dismissed. While EGSs do not have the legal ability to

²⁴ http://www.puc.state.pa.us/about_puc/press_releases.aspx?ShowPR=3292

²⁵ A copy of this written recognition, if needed, can be produced by Duquesne Light’s counsel upon request.

²⁶ http://www.puc.state.pa.us/about_puc/press_releases.aspx?ShowPR=3396

²⁷ Petition at 9.

offer a SCB in Pennsylvania, there are no restrictions on the number and type of contacts EGSs can have with their customers, once customer consent is given. EGSs are free to do direct mailings, send e-mail communications and/or make telephone calls (unless their customers have restricted this ability). Further, EGS information (recently enhanced by including additional messaging, a “Shopping Information Box” and an optional logo) currently exists on EDC bills. Accordingly, the argument that EGSs can only create a foundation for long-term relationships with their customers through a bill that includes distribution charges is specious and countered by the success of the Commonwealth’s retail electric market to date.

In its Petition, NRG argues that, even with enhancements through the PUC’s RMI Investigation, which have “improved various features of the market,” competition has remained stagnant. In support of this idea, NRG explains:

Over five years ago, the Commission noted that nearly two-thirds of consumers were not participating in the retail market. Based on these shopping statistics, the Commission found that consumers were not moving into the retail market at a pace that would be expected in a well-functioning market. The shopping statistics are nearly the same today.

Petition at 9.

Duquesne Light takes issue with the proposition that retail electric shopping has plateaued and therefore any action is needed to jump start the market or take things “to the next level.” Any contention that years ago, shopping numbers were around two million customers and that today, shopping numbers are again around two million customers, shows that shopping has “remained stagnant,” disregards the volatility of market movement, especially over the past three years. Further, as cautioned by Commissioner John Coleman during the December 8, 2016 celebration of the Competition Act, while many look at shopping numbers as an indicator of market success,

we should “respect the decision for people to be on default service” and that, in reality, because default service is an option, shopping numbers are likely much higher.²⁸

An explanation of the reality of market movement over the past three years illustrates the truism expressed by the Retail Energy Supply Association that “Pennsylvania has a very dynamic competitive retail power market.”²⁹ The highest number of total shoppers occurred at the end of February 2014 (2,227,927). Shortly thereafter, with the aftermath of the 2014 polar vortex, shopping numbers began to drop precipitously as the full impact of the vortex became apparent. The lowest month for total electric shopping was September 2015 (2,019,587). Since then, the Commonwealth has experienced 14 consecutive months of shopping growth.

In fact, after considering all the movement explained above, when comparing the statistics from 2015 and 2016, overall shopping in Pennsylvania increased in all categories:

	Dec. 2015	Dec. 2016	Differential	% Change
Res.	1,715,733	1,754,287	+47,502	+2.3%
Sm..C&I	317,406	326,319	+8,913	+2.8%
Lg C&I	8,590	8,625	+35	+0.4%
Total	2,041,729	2,089,231	+47,502	+2.3%

Accordingly, rather than agreeing with the statement that shopping is “stagnant,” it is more accurate to say that Pennsylvania’s competitive market has rebounded from shopping losses incurred in 2014 and 2015, is dynamic, vibrant and growing again at a modest pace.

The RMI process began in 2011 to explore what changes, if any, needed to be made to remove obstacles for the short and long term success of the competitive retail market. This process

²⁸ See <https://www.youtube.com/watch?v=vocwpS17CsQ&feature=youtu.be> (PUC video titled “Dec. 8, 2016, Public Meeting + 20th Anniversary of Electric Choice”).

²⁹ <https://www.resausa.org/states/pennsylvania>

included technical conferences, voluminous orders, and a number of recommendations, many of which have been implemented to date by EDCs, either through default service proceedings, regulation changes or other Commission orders.

As a result of this and other orders, there have been a number of PUC initiatives in the past four years, many times at great expense for EDC ratepayers, designed to enhance the retail electric market. A sampling of these retail market enhancements, many if not all of which have only been in effect for a year or two, include:

- Bill Ready capability;
- Standard Offer Program;
- Joint EDC/EGS bill;
- TOU rates;
- Seamless move/instant connect;
- Accelerated 3-day switching;
- Enhanced consumer education; and
- Enhanced EDI protocols and web portal capability.

Each of these initiatives come at a significant cost to the Company's customers. A sampling of these market enhancement initiatives have cost Duquesne Light's customers in excess of \$24 million dollars to date.³⁰ As of December 2016, more than 70% of the Company's load is served by EGSs. This is success. At what point will the Commission let competition stand on its own?

In the RMI Final Order, the Commission indicated that it would look at the success of other initiatives, such as Joint Bill, before deciding "when or how we proceed with SCB"³¹ – a conclusion NRG conveniently ignores by filing its Petition. The Commission receives monthly

³⁰ This total includes costs for developing, implementing and maintaining the following: 3-day switching, Joint EDC-EGS Bill, Account number access mechanism, Seamless moves and instant connects, as well as aggregate annual value of the Company's billing system.

³¹ See RMI Final Order at 69 (emphasis added).

updates from EDCs and posts shopping numbers on a monthly basis on the PAPowerSwitch.com website. A review of these numbers shows that since Joint Bill has been in effect for most EDCs (on or around June 2015), the Commonwealth has seen consistent shopping growth.³²

This growth, in addition to the realization of the number of mandated actions, combined with the tens of millions of dollars that EDC ratepayers have paid in order to “enhance” a competitive market, are likely reasons why the Commission has not, on its own, restarted any inquiry into SCB since the RMI Final Order. This inaction by the PUC should not be overlooked. Simply put, it is neither legal nor necessary for Pennsylvania customers to have SCB at this time.

3. Beyond its Illegality, There are Numerous Questions and Issues Concerning Consumer Protection That Need to be addressed by Petitioners.

Setting aside the lack of legal authority for SCB, an examination of the Petition highlights a number of unaddressed concerns regarding consumer protection that need to be addressed before a SCB mechanism should ever be considered for implementation.³³ As discussed *supra*, the Commission recognizes its responsibility in the Competition Act to ensure that, with the addition of EGSs in the market, the present quality of service provided by electric utilities does not deteriorate. 66 Pa.C.S. § 2809(e). Chief among these concerns are ensuring the provision and availability of this essential service to all customers, as well as issues attendant to ensuring the protections, policies and services that now assist low-income customers remain in place.

Maintaining consumer protections in general, as articulated both in the Competition Act and more generally in the Code as well as Commission regulations, are generally the responsibility

³² In fact, as noted *supra*, since September 2015, the Commonwealth has experienced 14 consecutive months of shopping growth.

³³ Please note that this discussion only highlights initial concerns with the Petition, which as stated above, lacks legal authority and, as such, should be dismissed in its entirety. The failure of the Company to address any specific NRG proposal should not be construed as agreement to that aspect of the proposal. Accordingly, should this proceeding go forward, Duquesne Light specifically reserves its right to oppose all aspects of NRG’s Petition.

of regulated EDCs.³⁴ Duquesne Light submits that most consumer protections arise in conjunction with failure to pay, or consumer issues with, bills. Further, termination of service for failure to pay bills and associated processes and protections would remain with the EDC, even under NRG's proposal.³⁵ The Company is deeply concerned that separation of the billing function from these essential protections for Residential and Small C&I customers will likely lead to confusion³⁶ and increased failures in maintaining consumer protections, which is unacceptable and violates the charge of the Competition Act.

Moreover, attempting to separate billing from responsibility for consumer protections will likely increase costs of maintaining current levels of consumer protection. In the Petition, NRG reproduces the 15 policy questions that were identified by the EDEWG-SCB Report.³⁷ These unresolved issues range in importance from determining customers' eligibility for SCB to operational concerns to bill presentment to CAP treatment.³⁸ Many of these unresolved issues illustrate the significant customer service and consumer protection issues that are implicated by SCB and must be understood and fully vetted before moving toward consideration of this mechanism.

Duquesne Light is also concerned that SCB could create higher costs for the Company and its customers. Duquesne Light does not believe that EDCs should be required to rely on another entity to bill for its services and transmit necessary funds to the Company. While Duquesne acknowledges NRG's proposal to have "more stringent financial requirements," a heightened

³⁴ See RMI Final Order pp. 49-50 referencing numerous regulations that contain consumer protections and pertain to EDCs including Chapter 56, reporting requirements for quality of service benchmarks and standards as well as universal service reporting requirements, to name a few.

³⁵ Petition at 15-16.

³⁶ Confusion could take the form of customers calling EGSs instead of EDCs for service outages. This could lead to safety issues if customers are not clear who to contact in emergency situations.

³⁷ See Petition Appendix A.

³⁸ *Id.*

demonstration of “technical expertise to perform billing and related functions” and a registration process similar to that of conservation service providers (*See* Petition at 17), these purported safeguards are not enough. No matter what financial standards would be applied to such parties, no standard can avoid all fraud, misconduct or simple failures of systems or third party employees to issue bills.

Moreover, the Company is concerned that the use of SCB will result in duplication of costs and increases in costs to be paid by the Company’s customers. One of the reasons that the Commission decided not to move forward with SCB in 2013 centered around the PUC’s skepticism that this mechanism would be used by many EGSs. Specifically, the Commission stated:

We have substantial concerns that use of an SCB process may be even more unlikely now since POR [Purchase of Receivable] 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.³⁹

While NRG has committed to using SCB if allowed,⁴⁰ this was the case during the RMI proceeding when NRG sought for the same mechanism, which as explained above, was not pursued by the Commission. In the intervening time between these observations in 2013 and the current Petition, NRG has yet again failed to establish that anyone other than itself would use this mechanism in lieu of utility consolidated billing.

Similarly, NRG does not address the fact that EDCs would have to continue to retain their billing systems for not only themselves as distribution companies and current default service

³⁹ RMI Final Order at 67.

⁴⁰ Petition at 13.

suppliers, but also for other EGSs that may not want, or be able, to perform SCB, as well as for those customers that do not want SCB. More importantly, EDCs would need to remain ready and willing to serve and bill customers should an EGS decide to leave the market or decide that it no longer wants to offer SCB. The Petition is silent as to how that notification would take place, what timing would be involved, how costs would be recovered, etc. These are all issues that need to be addressed before any decision on SCB can be made.

With multiple entities maintaining billing systems to serve customers, there is necessarily duplication of costs, which need to be recovered. Any proposal for mandatory SCB could lead to claims that EGS's customers subject to SCB should not be required to pay EDC billing costs. Further, EGSs could also contend that EDCs should pay EGSs for billing when EGSs choose to bill, despite the fact that EDCs have built and must retain facilities to bill all customers. Allowing EGSs to choose whether to provide SCB or rely on EDC consolidated billing will create variability of EDC cost recovery if unbundling of billing costs is required. Mandating SCB and allowing EGSs to bypass EDC billing costs through unbundling could significantly increase costs to remaining customers and also could force smaller EGSs without billing systems out of the market. This result is inimical to creating an open competitive retail electric market, such as the one that exists today.

Further, and in addition to the fact that Duquesne Light has already explained that it would need to maintain its same billing system regardless of whether SCB is allowed, to suggest that having SCB would somehow lead to cost savings for EDCs because other functions would be handled by EGSs is disingenuous. Under NRG's proposal, as an example, rather than handling issues like termination and billing inquiries/complaints internally, NRG proposes the following: EGSs offering SCB would instruct the EDC to institute the physical termination protocols in

accordance with Chapter 14 and Chapter 56, with the EDC executing termination protocols in accordance with those chapters. In addition, “to ensure that termination occurs timely, NRG proposes that a failure to terminate the customer would subject the EDC to non-payment of all delivery charges for subsequent service provided to the customer whose service was set for termination.”⁴¹ This proposal is unacceptable.

With regard to billing inquiries and complaints, NRG proposes that rather than EDCs handling these issues directly with the Commission as has always been done (and as is statutorily mandated in 66 Pa.C.S. §2807(d)), NRG suggests that “EDCs would provide information to the EGSs as necessary to respond to those inquiries and complaints.”⁴² What NRG fails to explain, however, is how this extra layer of information sharing is helpful to maintain efficiencies and confidentiality concerns for either the customer, the Commission, the EDC or the EGS. Right now, distribution issues, complaints and inquiries are the responsibility of 11 jurisdictional EDCs, not hundreds of unregulated EGSs. Complaints involving both EDCs and EGSs are properly bifurcated to pertinent issues for each entity. The Petition is silent as to how notification would be given to EDCs, what the response time would be, who has overall responsibility in contacting Commission, etc. A clear process needs to be understood and articulated before any procedure goes into effect. These issues also must include the jurisdictional authority of the Commission to enforce EGS reporting and other requirements as well as how those requirements could change or be implicated as a result of different billing schemes, which could necessitate numerous regulatory changes.

In addition, the Company is concerned that NRG’s proposal to include flat EDC charges as a single, combined price for all energy consumed and have the option of absorbing increases

⁴¹ Petition at 16, n. 50.

⁴² Petition at 17.

in distribution rates⁴³ lacks legal authority, violates Commission Orders that require certain charges to be listed as line items or specifically not combined with other charges and would create discriminatory rates between customers, which is a clear violation of the Public Utility Code.⁴⁴ This proposal goes well beyond the request to utilize SCB, which as explained above, is also illegal, but also creates a host of legal and policy considerations that need to be addressed prior to implementation.

Duquesne Light further takes issue with the lack of detail on how low-income programs would be administered and how those mechanisms would continue under a SCB construct. The Petition simply notes “Under SCB, EDCs should continue to administer low-income programs, calculate each low-income customer’s payment (and the resulting subsidy) and provide this information to the EGS via EDI to be included on the customer bill.”⁴⁵ The Company does not currently have this functionality or a clear estimate on the time, cost and scope to get this functionality. Equally as troubling, however, is the lack of explanation as to how LIHEAP and other credits would be incorporated, with NRG attempting to delay these issues until September, months after it purportedly would already receive an Order giving EGSs authority to have SCB. This proposal is unacceptable, delays needed answers to ensure that consumer protections are maintained and should not be approved until all of these issues (legal, technical, policy and operational) are addressed at the outset.

NRG’s proposal, if accepted as submitted, also recommends limits to a customer’s ability to switch suppliers (including returning to default service) that do not currently exist today. Arguing that “a tool is needed to permit EGSs to apply a block on a customer’s account to prevent

⁴³ Petition at 18.

⁴⁴ See 66 Pa. C.S. § 1304.

⁴⁵ Petition at 18.

a customer from switching to another EGS or the EDC until that customer has paid his or her past due bill in full,”⁴⁶ NRG proposes to do just that – block a customer’s ability to switch suppliers if there is an arrearage. This results in customers being held captive to EGSs, and makes no provision for customers that have been slammed – one of the precise reasons why accelerated switching was put in place. While understanding the desire for NRG to ensure collections for money owed, this proposal is potentially harmful to customers (as well as other EGSs), since it limits a customer’s ability to freely move around the market, even when slammed.

When explaining the necessity of changing regulations in relation to enhancing the retail electric market combined with the statutory charge to maintain consumer protections in the RMI Tentative Order, the Commission stated:

Any revision ... will always be in the context of our statutory charge found in Section 2807 of the Competition Act – that the quality of service provided does not deteriorate. Any such revision will result, at a minimum, in the maintenance or the current level of service or serve to enhance it.⁴⁷

Even though the requests by NRG in its Petition do not necessitate regulatory changes, the same test for any contemplated “retail market enhancement” should follow. Duquesne Light respectfully submits that NRG, who as Petitioner has the burden of proof in this proceeding, has failed to show that its proposal to provide SCB is legal, will maintain the current level of service or enhance it for anyone other than NRG. Accordingly, the Petition should be rejected in its entirety.

4. The Issues in this Proceeding are too Important and Complex to be Decided on an Expedited Basis.

NRG, after stating the purported “lack of legitimate downsides to [SCB] implementation” suggests dusting off work product from more than five years ago to move forward. *See* Petition at

⁴⁶ Petition at 18

⁴⁷ RMI TO at 20-21.

29. Moreover, NRG posits that, while answers will likely focus on complexities, potential costs and policy issues (many of which NRG knows have not been answered to date), these are “red herrings” designed to discourage the Commission from moving the competitive retail market forward. *See* Petition at 29-30.

While Duquesne Light believes that the legal question at issue is so clear that the entire Petition can and should be dismissed in its entirety by Commission order, the Company is filing a Petition to Intervene to ensure its full party status should this matter somehow go to hearing or follow the aggressive and unrealistic schedule as produced below:

- Publication of Petition in *Pennsylvania Bulletin* on December 24, 2016, soliciting comments by January 23, 2017 and reply comments by February 22, 2017;
- Issuance of an Order by the Commission on June 15, 2017 announcing that SCB should be available as an option for EGS customers in all EDC territories by the second quarter of 2018; setting forth policy guidance on the questions previously posed by EDEWG; addressing various operational issues impacting SCB, directing the development of necessary EDI protocols; and forming a SCB Stakeholder Work Group led by OCMO;
- Submission of a Report by the SCB Stakeholder Work Group by September 30, 2017 which: (i) develops model supplier tariff language; (ii) develops a model agreement between EGSs and EDCs relating to SCB; (iii) identifies Commission regulations that may be impacted by SCB and proposes revisions, waivers and interim guidelines that may be necessary; (iv) recommends the additional financial security and technical requirements that should be imposed on EGSs offering SCB; (v) determines how to handle LIHEAP credits; (vi) addresses consumer education; (vii) describes the components of each EDC’s compliance filing; and (viii) establishes a certification and compliance process for EGSs offering SCB;
- Submission of EDI protocols by EDEWG by September 30, 2017;
- Issuance of Implementation Order by December 31, 2017, which approves or otherwise resolves all issues addressed by the SCB Stakeholder Work Group Report, approves with or without modifications the EDI protocols submitted by EDEWG, and directs the filing of compliance plans by the EDCs by January 31, 2018;

- Approval of EDCs' compliance filings by March 31, 2018; and
- Implementation during second quarter of 2018.

Petition at 10.

This schedule contemplates no less than a twenty different actions, most of which would be forced on the Commission and EDCs. Notably, contemplation of these issues do not exist today, because the Public Utility Code, which only includes utility consolidated billing or the option of a dual bill for generation service, does not necessitate action on these issues.

Regardless, if these issues associated with SCB must be considered, Duquesne Light strongly cautions the Commission against predetermining the amount of time it will take to address these issues. The schedule as contemplated above includes: Commission Orders, EDEWG protocols, Stakeholder Working Groups, Regulation changes, serious policy issues including consumer education and LIHEAP treatment which, as NRG concedes, must be addressed prior to implementation. This amount of work, which in reality spans years, not months, cannot and should not be given an artificial time limit because the moving party requests it. The same applies to any hearings that may be scheduled in this proceeding. NRG has not given any reason, other than its self-described lack of "legitimate downsides" that justifies expediting anything related to this proceeding. Accordingly, this request should similarly be denied.

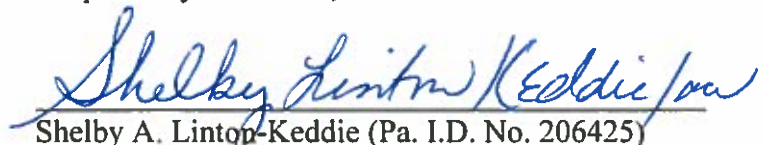
CONCLUSION

While the Commission has, on occasion, begun the process to consider issues attendant to Supplier Consolidated Billing if such a mechanism were permissible in Pennsylvania, the PUC has never found actual legal authority for Supplier Consolidated Billing in the Electricity Generation Choice and Competition Act, because it does not exist. In order to ensure that certain consumer protections remain in place, the Pennsylvania Legislature continued billing functions for

distribution services, as well as meter reading and collections with EDCs in the Competition Act, regardless of who provides generation service, because distribution companies remain regulated and under the “active supervision of the commission.” This was the intended result. There is no need to grant NRG’s Petition that seeks to resurrect SCB – something the Commission itself has chosen not to pursue.

Duquesne Light has supported and continues to support development of the retail electric market. In this regard, the Company notes it was the first EDC in Pennsylvania to offer consolidated billing to EGSs with a POR program, and has historically had some of the highest levels of shopping in the Commonwealth. However, Duquesne Light cannot support any Petition that proposes a mechanism that is illegal, counter to ratepayer interests and threatens the maintenance of consumer protections. Accordingly, NRG’s Petition should be dismissed in its entirety.

Respectfully submitted,



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