



January 23, 2017

Via E-Filing

Secretary Rosemary Chiavetta
Pennsylvania 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:

Attached, please find the Petition to Intervene and Answer of the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA). Please note that CAUSE-PA has also filed separate Comments, as provided for in the Notice published on December 24, 2016 in the Pennsylvania Bulletin (42 Pa. B. 8154).

As indicated on the attached Certificate of Service, a hard copy of these filings was served on counsel for NRG Energy, Inc., pursuant to Notice in the Pennsylvania Bulletin, as well as the parties which were served with NRG's Petition.

Respectfully submitted,
PENNSYLVANIA UTILITY LAW PROJECT
Counsel for CAUSE-PA

A handwritten signature in blue ink, appearing to read "Elizabeth R. Marx".

Elizabeth R. Marx, Esquire

Enclosures

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

CERTIFICATE OF SERVICE

I hereby certify that I have this day served copies of the **Petition to Intervene and Answer of the Coalition for Affordable Utility Service and Energy Efficiency in Pennsylvania (CAUSE-PA)**, and the **Comments of CAUSE-PA** as set forth below in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

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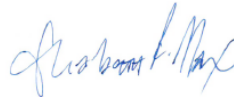
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PENNSYLVANIA UTILITY LAW PROJECT
Counsel for CAUSE-PA



Elizabeth R. Marx, Esquire

January 23, 2017

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**Petition to Intervene and Answer
of the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania**

INTRODUCTION

The Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA), through its counsel at the Pennsylvania Utility Law Project, hereby files this Petition to Intervene and Answer in the above-captioned proceeding, pursuant to the provisions of the Rules of Practice and Procedure of the Pennsylvania Public Utility Commission (PUC or Commission), 52 Pa. Code §§ 5.61-5.66 and 5.71-5.76, and in support, states as follows:

On December 8, 2016, NRG Energy, Inc. (NRG) filed a Petition for Implementation of Electric Generation Supplier Consolidated Billing (SCB). In the Petition, NRG seeks Commission approval for a legally unsound and factually fraught proposal to allow electric generation suppliers (EGSs) to perform the billing and credit activities for customers who receive electric generation service from EGSs. Notice of NRG’s Petition was published in the Pennsylvania Bulletin on Saturday, December 24, 2016, and provided that Answers and Comments could be filed by January

23, 2017 and Reply Comments by February 22, 2017.¹ In response, CAUSE-PA files this Petition to Intervene and Answer. Contemporaneously herewith, CAUSE-PA separately filed brief comments at this same docket, which incorporate by reference the averments contained here.

CAUSE-PA reviewed NRG's Petition and opposes NRG's request in its entirety. NRG's Petition lacks any permissible, clear, or comprehensive plan for compliance with and enforcement of critical consumer protections contained in Title 66, Chapter 14 of the Pennsylvania Consolidated Statutes and Title 52, Chapter 56 of the Pennsylvania Code; fails to understand, acknowledge, or resolve Universal Service program issues that would arise under SCB, contrary to the explicit provisions of the Electric Competition Act; makes incorrect legal conclusions and/or mischaracterizes applicable statutes, regulations, and Commission precedent with regard to SCB; and relies on wholly unsupported and disputed factual assertions. Each of these objections to NRG's Petition are explored more thoroughly in the Answer section below.

CAUSE-PA respectfully asserts that, based on the lack of legal or factual support for NRG's Petition, the Commission must reject the Petition on the pleadings. In the alternative, if the Commission believes it is prudent to proceed, it is absolutely critical that the Commission refer this matter to the Office of the Administrative Law Judge for a fully litigated proceeding and evidentiary hearings. CAUSE-PA disagrees with NRG's assertions that hearings are unnecessary or that there are no factual disputes. As illustrated more fully below, a hearing is necessary to resolve the substantial issues of material fact in dispute. Resolution of the underlying factual disputes is critical to allow the Commission to make substantiated findings with respect to whether SCB is in the public interest, is aligned with the law, and furthers policies which benefit the public.²

¹ 46 Pa. B. 8154.

² Chester Water Auth. v. Pa. PUC, 822 A.2d 146, 152 (Pa. Commw. Ct. 2003) (holding that "[w]here issues of material fact are raised . . . due process concerns require a hearing.").

In addition to the specific issues raised in this document, CAUSE-PA reserves the right to raise other issues that arise in the course of this proceeding.

STANDING TO INTERVENE AND PARTICIPATE

Rule 5.61(e) of the Commission’s regulations requires that in answering a Petition, like the one filed by NRG in the instant case, the answering party set forth the party’s standing to participate in the proceeding.³ CAUSE-PA is eligible to intervene in this proceeding because it meets the criteria established in Section 5.72, which provides in relevant part that “[a] petition to intervene may be filed by a person claiming a right to intervene or an interest of such nature that intervention is necessary or appropriate to the administration of the statute under which the proceeding is brought.”⁴ Section 5.72 further provides that the right or interest may be one “which may be directly affected and which is not adequately represented by existing participants, and as to which the petitioner may be bound by the action of the Commission in the proceeding.”⁵

Even though Section 5.72 speaks of the rights of a “person” to intervene, the Commonwealth Court has consistently stated that “an association may have standing as a representative of its members ...as long as an organization has at least one member who has or will suffer a direct, immediate, and substantial injury to an interest as a result of the challenged action, [i.e., is aggrieved, the organization] has standing.”⁶

CAUSE-PA is an unincorporated association of low-income individuals that advocates on behalf of its members to enable consumers of limited economic means to connect to and maintain

³ 52 Pa. Code § 5.61(e).

⁴ 52 Pa. Code § 5.72(a).

⁵ 52 Pa. Code. § 5.72(a)(2).

⁶ Energy Cons. Council of Pa. v. Pa. PUC, 995 A.2d 465, 476 (Pa. Commw. Ct. 2010) (alteration in original) (citing Tripps Park v. Pa. PUC, 415 A.2d 967 (Pa. Commw. Ct. 1980); Parents United for Better Schools v. School Dist. of Phila., 646 A.2d 689 (Pa. Commw. Ct. 1994)).

affordable water, electric, heating and telecommunication services. CAUSE-PA membership is open to moderate and low- income individuals residing in the Commonwealth of Pennsylvania who are committed to the goal of helping low-income families maintain affordable access to utility services and achieve economic independence. CAUSE-PA is located, c/o the Pennsylvania Legal Aid Network, at 118 Locust Street, Harrisburg, PA 17101.

CAUSE-PA has a significant interest in the impact that NRG's Petition would have on moderate and low income residential customers. These interests are not adequately represented by other participants. CAUSE-PA asserts that NRG's proposal for implementation of SCB must be thoroughly litigated to ensure that, under NRG's proposed billing paradigm, all customers are able to access safe, affordable electric service pursuant to the full range of applicable legal and regulatory standards. In particular, CAUSE-PA has an express interest in ensuring that the following questions are fully examined and a reviewable determination is made prior to any Commission approval for SCB:

- a. Whether NRG's SCB proposal is consistent with the legal requirements contained in sections 2807(c) and (d) of the Electric Generation Customer Choice and Competition Act (Choice Act),⁷ which pertain to the regulatory billing and collections responsibilities of EDCs.
- b. Whether NRG's SCB proposal is consistent with the legal requirements contained in section 2804(9) of the Choice Act which pertain to the obligation of the Commission and EDCs to ensure the availability of and access to Universal Service programs.

⁷ 66 Pa. C.S. §§ 2801 et seq.

- c. Whether NRG's SCB proposal is consistent with the billing, collection, and termination standards contained in Title 66, Chapter 14 of the Pennsylvania Consolidated Statutes and Title 52, Chapter 56 of the Pennsylvania Utility Code.
- d. Whether NRG's SCB proposal is in the public interest.

Because NRG's Petition seeks Commission approval for SCB on a statewide basis, and will affect residential customers in every regulated service territory across Pennsylvania, nearly every member of CAUSE-PA will be directly affected by the outcome of this proceeding. CAUSE-PA therefore has standing to intervene because its members have or will suffer a direct, immediate, and substantial injury to an interest as a result of this proceeding.⁸

ANSWER

CAUSE-PA has reviewed NRG's petition in full, and sets out a paragraph by paragraph Answer below.

1. DENIED. CAUSE-PA denies NRG's conclusion that, in launching its Retail Market Investigation (RMI), the Commission "emphasiz[ed] the importance of customers having the ability to choose electricity and products and services tailored to their individual needs." (NRG Pet. at ¶ 1). The Commission did not even mention (much less emphasize) individually tailored products and services. The Commission did, however, explicitly premise its RMI on the Legislature's central finding within the Choice Act that "electric service is essential to the health and well-being of residents, the public safety and to orderly economic development, and electric service should be *available to all customers on reasonable terms and conditions.*"⁹

⁸ See Energy Cons. Council of Pa., 995 A.2d at 476.

⁹ Investigation of Pennsylvania's Retail Electricity Market, Order, Docket No. I-2011-2237952 (April 29, 2011) (hereinafter RMI Launch Order) (emphasis added).

2. ADMITTED.
3. ADMITTED.
4. DENIED. CAUSE-PA denies the importance NRG attaches to the Commission's comments in its End State Tentative Order. The Commission's observations about SCB there are of limited value, given its explicit recognition that "the issues [surrounding SCB] remain numerous and complex."¹⁰ The very nature of a tentative order is, of course, to gather input from the public prior to making a determination. CAUSE-PA notes that, in setting forth the topic of SCB for public comment *for the first time in its investigation*, the Commission's End State Tentative Order explicitly stated that – as a "guiding principal" – it is "always vigilant of the need to balance regulatory requirements aimed at consumer protection against policies designed to facilitate entry and participation in the market by EGSs."¹¹ Indeed, there was no evidence (and certainly not substantial evidence) before the Commission when it issued a Tentative Order on the topic of SCB. In other words, the Commission had not yet considered – in a public context – the impact that SCB would or could have on consumers. Thus, NRG's reliance on the Commission's pre-decisional assertions in its End State Tentative Order should be given no weight.
5. DENIED. NRG attempts to conflate the general initiatives approved by the Commission in its Final Order in the RMI: End State of Default Service proceeding (End State Final Order) to help bolster competition with the Commission's review of SCB. SCB was not one of the initiatives approved in the Commission's End State Final Order. In fact, the End State Final Order (issued in February 2013, less than four years ago) *rejected* SCB in favor

¹⁰ Investigation of Pennsylvania's Retail Electricity Market: End State of Default Service, Tentative Order, Docket No. I-2011-2237952, at 27 (Nov. 8, 2012) (hereinafter End State Tentative Order).

¹¹ End State Tentative Order at 8, § A – Guiding Principles.

of less costly and harmful changes to joint EDC/EGS bills.¹² Those joint bill changes were recently enacted pursuant to the Commission’s May 23, 2014 Final Order (Joint Bill Order), and have hardly been given time to take shape or evolve – much less afforded an opportunity to be evaluated for success.¹³

6. DENIED. NRG again attempts to conflate general Commission findings with the Commission’s findings related to SCB – which was ultimately rejected in the End State Final Order. The supplier’s *billing relationship* with customers generally – and NOT the absence of SCB – was one factor of many mentioned by the Commission as contributing to “customer confusion and hesitancy” with regard to EGSs. Ultimately, in reviewing possible amendments to the supplier/consumer billing relationship, the Commission decided against SCB and opted instead to implement less costly, consumer oriented changes to the joint bill. Indeed, whether or not SCB would help resolve customer confusion - or simply contribute thereto - is a question of fact which the Commission has not yet endeavored to explore – even in the RMI itself.
7. DENIED. NRG only partially describes the Commission’s rationale for rejecting SCB and, in the process, misrepresents the Commission’s End State Final Order. In particular, NRG conveniently left out the fact that the Commission’s rationale was also premised in large part on the likelihood of significant and unjustifiable costs in light of anticipated low SCB utilization by suppliers,¹⁴ as well as its recognition that prior to implementing SCB it would have to address the myriad number of consumer protections that would be impacted by

¹² Investigation of Pennsylvania’s Retail Electricity Market: End State of Default Service, Final Order, Docket No. I-2011-2237952, at 67-68 (Feb. 14, 2013) (hereinafter End State Final Order).

¹³ Investigation of Pennsylvania’s Retail Electricity Market: Joint Electric Distribution Company – Electric Generation Supplier Bill, Final Order, Docket No. M-2014-2401345 (May 23, 2014) (hereinafter Joint Bill Order).

¹⁴ End State Final Order at 67-68. (“**We are 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.**”).

SCB.¹⁵ In fact, the Commission never addressed, responded to, or made any findings with regard to the cost of SCB or the multitude of consumer issues raised by the public in response to SCB. The Commission simply explained:

We believe that [the joint bill] approach offers several advantages over creating an SCB environment at this time. As we have noted, we fully expect that this approach will require fewer resources than would be required to implement an SCB environment. In addition, this approach does not raise the consumer protections concerns expressed by OCA, PULP, PCADV and others, since we are not changing the entity that is billing and collecting from the consumers.¹⁶

As explained throughout this Answer, if the Commission moves ahead in considering NRG's Proposal, it must first refer SCB to a litigated proceeding to, at the very least, resolve the substantial unresolved and materially disputed issues of cost and the preservation of statutory and regulatory consumer protection.

8. ADMITTED.
9. DENIED. CAUSE-PA denies NRG's assertion that the Commission's efforts to reform joint billing have failed to achieve the desired result, and demands that NRG present strict proof at hearing. By way of further answer, the Commission's Joint Bill Order was issued less than three years ago, and has not yet been afforded sufficient time to take effect. NRG conveniently omits that at the same time the Joint Billing Order took effect in May 2014, there were other significant electric market developments which may be more likely to blame for any stagnation in the competitive market share: The price spikes as a result of the 2014 polar vortex caused for a mass exodus from the competitive market, and was followed by several high-profile class action suits brought against suppliers by the Office

¹⁵ Id. (“[T]his approach does not raise the consumer protections concerns raised by [consumer groups], since we are not changing the entity that is billing and collecting from consumers.”)

¹⁶ End State Final Order at 68.

of Attorney General for consumer pricing and marketing abuses.¹⁷ But even with these significant events, the Commission reported 14 months of consecutive growth in the competitive electric market share.¹⁸ The extent to which these market gains are attributable to joint billing and other market enhancements is a question of fact which is subject to material dispute.

Moreover, NRG's assertion that joint billing is to blame for its inability to "forge long-term relationships" with its customers is unsupported and speculative. There are a plethora of other ways – apart from SCB – in which companies can forge and nurture direct relationships with their customers: community events, direct mailing, social media campaigns, team sponsorship, etc. None of these common business strategies to forge long-term customer relationships would negatively impact the rights and protections of consumers the way that SCB threatens to do.

10. DENIED. CAUSE-PA denies NRG's assertion that settlements from 1998 have any bearing on whether to implement SCB now, in today's market. Title 66, Chapter 14 of the Pennsylvania Code, which sets forth the standards for residential customer billing, collections, and terminations, was not even passed until 2004 – 6 years after the 1998 settlements were entered. The appropriateness of SCB today must be scrutinized in the

¹⁷ See Daniel Moore, Really Cold Cases: PUC Still Working on Polar Vortex Issues, Pitt. Post Gazette (July 19, 2016), <http://powersource.post-gazette.com/powersource/consumers-powersource/2016/07/19/Electric-suppliers-polar-vortex-settlements-public-utility-commission-oversight/stories/201607190002>; see also Alex Wolf, Law 360, Respond Power Pays \$5.2M to Settle Pa. Price Spike Suits (Aug. 11, 2016), <https://www.law360.com/articles/827574/respond-power-pays-5-2m-to-settle-pa-price-spike-suits>; Emily Field, Law 360, HIKO Energy Paying \$1.6M to End Pa. Price Spike Suit (May 4, 2015), <https://www.law360.com/articles/651172/hiko-energy-paying-1-6m-to-end-pa-price-spike-suit>; Emily Field, Law 360, Pa. Utility to Pay \$2.3M to End Price Spike Suit (March 25, 2015), <https://www.law360.com/articles/635486/pa-utility-to-pay-2-3m-to-end-price-spike-suit>.

¹⁸ Pa. PUC, Press Release, 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, PAPowerSwitch (Dec. 8, 2016), http://www.puc.state.pa.us/about_puc/press_releases.aspx?ShowPR=3794.

context of today's realities that take into consideration both Chapter 14 and the Commission's regulations contained at Chapter 56. NRG cannot rely on the restructuring settlements as proof of Commission approval or advocate acquiescence to SCB. Rather, in the context of its Petition, NRG bears the burden of proof and persuasion in this case, and must present strict proof that SCB will not disrupt any of the consumer protections and/or universal services currently afforded to electric consumers in Pennsylvania.

11. DENIED. CAUSE-PA denies NRG's assertion that this Petition "is the appropriate vehicle to now advance SCB implementation." (NRG Pet. at ¶ 11). As support for its assertion, NRG points only to a suggestion made during a March 24, 2011 CHARGE conference call, on which it claims "OCMO reported that the Commission's preference was for an interested party or parties to file a formal Petition to move forward with SCB." (*Id.*) NRG omits that SCB was addressed and rejected in the electric RMI well over a year after the CHARGE call.¹⁹ The Commission's decision to address and reject SCB in the RMI supersedes any statement made by OCMO on a conference call in 2011 regarding its then-preference to address the issue through a Petition. Nonetheless, CAUSE-PA agrees that if the Commission is going to entertain SCB, it must do so through the examination of specific details provided in a petition that is subject to the scrutiny of evidentiary hearings.
12. DENIED. CAUSE-PA denies NRG's claim that the market is stagnant. The only support NRG gives for this claim is its inappropriate benchmarking of today's shopping figures against shopping figures from 2011. As noted in paragraph 9, the 2014 polar vortex resulted in a mass exodus of residential consumers from the competitive market, and was followed shortly thereafter by several high-profile lawsuits against abusive supplier

¹⁹ End State Final Order at 67-68.

practices. These substantial intervening facts undermine the sole support NRG cites for its claim that the market is stagnant. Furthermore, CAUSE-PA rejects the notion that the number of customers who are being served by an EGS at any given point in time is the sole metric to measure the vitality of the competitive market. It is a completely rational choice to shop, and decide not to buy EGS service and remain on competitively procured default service or to return to default service after switching to EGS-provided service.

13. DENIED. First, there are significant differences between the Pennsylvania and Texas electricity markets – not the least of which is that Pennsylvania has competitively-procured default service. Second, NRG’s representations of the Commission’s statements about Texas product offerings is misleading. In the RMI Launch Order II, the Commission cited testimony of one commentator, Direct Energy, but did not draw conclusions about the truth of that testimony:

Testimony at the June 8th en banc hearing described several innovative products now being offered to retail customers in Texas. Programs such as prepaid energy plans and customer access to real-time energy consumption information to enable usage control were described. Testimony of Janes Steffes, Direct at 2.²⁰

NRG’s assertion that prepaid service is an innovative or desirable product is also subject to significant debate, and CAUSE-PA demands that NRG present strict proof at hearing. Prepaid energy is not new or innovative: The technology has been around since the late 1800s.²¹ While there has been new interest in prepaid schemes with the advent of smart metering, the fact remains that prepay service is and always has been a second class service,

²⁰ RMI Launch Order II at 6.

²¹ Metering and Smart Energy International, The History of the Electricity Meter (June 28, 2006) (“As the use of electricity spread, the concept of the multi-tariff meter with local or remotely controlled switches, the maximum demand meter, the prepayment meter, and the maxigraph were quickly born, all by the turn of the [20th] century.”)

predominately targeted at financially vulnerable communities, and is an insufficient substitute for the service that Pennsylvanians are entitled to receive.²²

Peddlers of prepaid plans in Texas target low income populations, whose usage curtailment is a result of deprivation, not conservation.²³ Indeed, the list of consumer agencies, in addition to CAUSE-PA, which have voiced opposition to prepay service in PECO's service territory alone includes: AARP of Pennsylvania, the AIDS Law Project of Pennsylvania, CADCOM, the Clean Air Council, the Natural Resources Defense Council, the Tenant Union Representative Network and Action Alliance of Senior Citizens of Greater Philadelphia, the Earth Quaker Action Team, Neighborhood Energy Centers, and Philadelphia Workers Benefit Council.²⁴ CAUSE-PA's Comments in opposition to prepay metering in that proceeding are incorporated in its entirety by reference herein.²⁵

Of course, CAUSE-PA would be remiss if it did not point out that PECO – a regulated EDC – is seeking significant regulatory waiver of critical Chapter 56 provisions to implement a prepay meter pilot program, further undermining NRG's claims that its use of SCB to introduce “new” products and services would be compliant with the statutory and regulatory consumer protection obligations.

²² Nat'l Consumer Law Center, Rethinking Prepaid Electric Utility Service: Customers at Risk, at 8 (June 19, 2012), https://www.nclc.org/images/pdf/energy_utility_telecom/consumer_protection_and_regulatory_issues/report_prepaid_utility.pdf.

²³ See *id.*; see also Texas Ratepayers' Organization to Save Energy, Consumers Beware Prepaid Electricity Plans and Fees (Dec. 2, 2013), available at <https://liheapch.acf.hhs.gov/pubs/txrose-prepaidelectricreport.pdf>; see also Josie Garthwaite, Prepay Plans for Electricity Offer Alternative to the Usual Monthly Power Bill, Nat'l Geographic (June 6, 2014) (“[Prepay] is an issue of economic justice,” said Jennifer Miller, the Sierra Club's senior campaign representative for energy efficiency. “When they end up saving energy, its because of how difficult it is to pay. It's deprivation, not conservation.”).

²⁴ See PECO Energy Company's Pilot Plan for an Advance Payments Program Submitted Pursuant to 52 Pa. Code § 56.17 & PECO Energy Company's Petition for Temporary Waiver of Portions of the Commission's Regulations with Respect to that Plan, Comments of Various Parties, Docket No. P-2016-2573023 (Dec. 15, 2016).

²⁵ PECO Energy Company's Pilot Plan for an Advance Payments Program Submitted Pursuant to 52 Pa. Code § 56.17 & PECO Energy Company's Petition for Temporary Waiver of Portions of the Commission's Regulations with Respect to that Plan, Comments of CAUSE-PA, Docket No. P-2016-2573023 (Dec. 15, 2016); see also 52 Pa. Code. § 5.407 (records of other proceedings).

14. DENIED. CAUSE-PA denies NRG's assertion that the sweeping changes to the competitive market as a result of the Electric RMI have not impacted the number of customers shopping for electric service. CAUSE-PA further challenges NRG's ultimate conclusion that another radical shift in the market is necessary at this time to bolster competitive markets. CAUSE-PA demands strict proof of these assertions at hearing. Again, there are many reasons why consumers may be hesitant to enter or stay in the market, not the least of which are consumer abuses by suppliers which were the subject of several recent high profile lawsuits.

NRG has failed to set forth any evidence to support its contention that SCB is necessary or prudent. As the Commission found in its Tentative and Final RMI Orders, there are significant questions remaining about the cost and efficacy of SCB for consumers. Nothing has changed to alter that conclusion.

15. DENIED. NRG's "plan" for implementing SCB falls woefully short of the rigors of due process required to vet its proposal and resolve the multitude of critical and materially disputed facts at issue in this proceeding. CAUSE-PA asserts that implementation of SCB would significantly erode decades of work to develop strong consumer protections that promote billing transparency and ensure universal access to reasonably priced electric service. CAUSE-PA also denies that SCB would necessarily encourage investment in Pennsylvania. As the Commission noted in its End State Final Order, "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 to an SCB model where they assume the full burden of billing, collections and bad debt."²⁶

²⁶ End State Final Order at 67.

CAUSE-PA further denies NRG's claim that SCB is "the next natural step" in development of the competitive market, and asserts that the process requested by NRG to review SCB is wholly inadequate. NRG attempts to have the Commission refer SCB to the same work group that has already reviewed the issue, identified some but not all²⁷ of the many unresolved issues, and concluded that "SCB could not be effectively addressed using an informal process such as CHARGE."²⁸ The inability to resolve these complex and high-stakes issues in an informal process is what led to consideration of SCB in the RMI.²⁹ Nothing has changed to make those unresolved issues any less complicated or contentious, and NRG's requests to proceed now through an informal process must be rejected.

CAUSE-PA asserts that the only appropriate next step – if the petition is not rejected on its pleadings – is to refer this matter to a fully litigated proceeding before an Administrative Law Judge. A litigated proceeding before an ALJ is necessary to make factual and legal findings regarding the legality of SCB pursuant to the Choice Act, Chapter 14, Chapter 56, and other applicable laws, regulations and policies; the health of the marketplace; the need for SCB; the full impact that SCB would have on consumer protections and the delivery of universal services; and a complete assessment of the attendant costs and assignment of those costs to an appropriate entity.

16. DENIED. There are substantial issues of material fact raised by NRG's Petition, many of which have already been raised in the preceding paragraphs and/or are raised throughout this answer. Furthermore, there are policy determinations that the Commission cannot

²⁷ NRG repeatedly asserts that the list of policy questions identified by CHARGE represent all of the outstanding policy issues. This is patently false. As the "Discussion Document" (which NRG erroneously referred to in a Report in Appendix A to its Petition) clearly states in setting forth its list of open questions, "**It is not intended to be a comprehensive list of all the issues that need to be addressed re: SCB.**" See Supplier Consolidated Billing (SCB) Discussion Document: CHARGE Meeting of September 30, 2010,

²⁸ End State Final Order at 63.

²⁹ Id.

adequately address without the development of a complete record. Among the mixed questions of policy and fact that must be determined at a hearing are: Whether the current joint billing paradigm adequately meets the needs of EGSs and consumers? What are the costs associated with implementation of SCB? Who should pay? What provisions of Chapter 14 and Chapter 56 would be disrupted? Are there extenuating circumstances which would warrant waiver or alteration of regulations that may be impacted by SCB? How will consumers raise complaints before the Commission against suppliers for billing or collections-related activity? How will Universal Service programs be administered, and how will federal assistance programs like the Low-Income Home Energy Assistance Program (LIHEAP) be administered? These questions are illustrative, but not exhaustive, and each require the presentation of substantial evidence and findings of fact upon which the Commission can appropriately base its decision.

17. DENIED. CAUSE-PA's request for hearing is not to "delay" SCB implementation. NRG has set forth no evidence to address the substantial impacts that SCB would have to both consumer protections and universal service programs in Pennsylvania. Based on the evidence that is available to it, CAUSE-PA believes NRG's proposal is dangerous for consumers and must be rejected outright. If the Commission were to move forward with its consideration of SCB, a hearing is necessary to (1) require NRG to present actual evidence to support its many assertions about the marketplace and the need for SCB, and (2) to prevent the dilution and/or dissolution of statutory and regulatory rights to which consumers are entitled.

CAUSE-PA further denies that an expedited proceeding on this Petition is prudent or necessary. There is nothing sacred about NRG's timeline other than its own business

preferences. A decision of the magnitude requested by NRG should not be rushed given the critical consumer and cost issues at stake. Ironically, the language used by NRG is akin to a salesperson urging a consumer act now - before a “too good to be true” deal disappears. Just as a consumer should be wary of an offer of this sort, so too should the Commission be wary of a petitioning party requesting expedited review without it providing a coherent reason why such an expedited review is required.

18. DENIED. NRG’s Petition fails to set forth a clear proposal for how SCB “would be designed and implemented in a manner that preserves existing customer protections.” (NRG Pet. at ¶ 18). To the contrary, NRG’s Petition is sorely lacking details for how consumer protections will be addressed, much less upheld and enforced.

Tellingly, NRG proposes to address consumer protections *after SCB is approved* – through an informal stakeholder group that would “propose[] revisions, waivers, and interim guidelines that may be necessary.” (NRG Pet. at ¶15). NRG does not even suggest what regulations may be subject to waiver or revision, or what might justify revisions. It leaves those critical details for another day, sometime in the unspecified and uncertain future. NRG also proposes to “determine[] how to handle LIHEAP credits” in this same informal process (NRG Pet. at ¶ 15) – completely ignoring the very basic fact that the Department of Human Services, which administers LIHEAP, explicitly prohibits suppliers from receiving LIHEAP grants.³⁰ And, NRG relegates its entire discussion of EDC-

³⁰ LIHEAP is a federally funded block grant program administered on the Federal level by the United States Department of Health and Human Services Administration for Children and Families. In Pennsylvania, the block grant allocation is administered by the Pennsylvania Department of Human Services (DHS) pursuant to a State Plan that is submitted each year to HHS. The 2016-2017 LIHEAP State Plan submitted by DHS provides that LIHEAP grants will be paid directly to either the LIHEAP recipient’s primary or secondary heating provider, so long as the provider is a licensed LIHEAP vendor. See Commonwealth of Pennsylvania, Low-Income Home Energy Assistance Program, Fiscal Year 2017 Final State Plan, (hereinafter 2017 LIHEAP State Plan), available at http://dhs.pa.gov/cs/groups/webcontent/documents/document/c_241596.pdf.

required universal service programs – including, presumably, Customer Assistance Programs (CAPs), Low-Income Usage Reduction Programs (LIURP), CARES, and Hardship funds – to just two sentences later in its petition (NRG Pet. at ¶ 37d), and does not contemplate *any* further assessment of the issue through the informal stakeholder process (NRG Pet. at ¶ 15). Of course, the two sentences that NRG devoted to these issues are replete with far-ranging implications on the accessibility, affordability, and stability of core universal service programs, and demonstrate an ignorance of the complexity and significance of these programs. See paragraph 37d. Unfortunately for NRG, saying the equivalent of “bippity, boppity, boo” does not magically resolve these issues or make them uncontested. Even the most basic and critical question with regard to the preservation of consumer protections - whether EGSs would be subject oversight by the Bureau of Consumer Services in its adherence to Chapter 14 and Chapter 56 - goes unaddressed anywhere in NRG’s petition.

Delaying assessment of consumer protections and universal services issues until *after* approval of SCB is wholly inappropriate, and contrary to NRG’s assertion that its Petition sets forth a proposal for implementation that “preserves existing consumer

The 2017 LIHEAP State Plan defines “vendor” as:

An agent or company that directly distributes home-heating energy or service in exchange for payment. **The term does not include landlords, housing authorities, hotel managers or proprietors, rental agents, energy suppliers or generators,** or other parties who are not direct distributors of home-heating energy or service.

Under the restructuring statutes (66 Pa. C.S. § 2807, 66 Pa. C.S. § 2207), the distribution companies are the suppliers of last resort; they remain regulated, and must comply with the state’s winter termination rules in accordance with 66 Pa. C.S. § 1406(e). **The interests of the Commonwealth’s low-income customers are best served and protected by sending the LIHEAP payment to the distribution companies.**

Id. at Attachment B-3, § 601.3 (Definitions).

protections.” Indeed, NRG is plainly asking the Commission to withhold any actual assessment of the impact that SCB will have on consumers until it is too late.

19. CAUSE-PA has insufficient knowledge or information to form an opinion or belief about NRG’s business claims and demands strict proof of the same at a hearing.
20. CAUSE-PA has insufficient knowledge or information to form an opinion or belief about NRG’s Texas operations or their relevance to a petition filed by NRG in Pennsylvania. Furthermore, there are many questions about its Texas operations that must be answered to allow the Commission to make a fully informed decision regarding implementation of SCB in Pennsylvania.
21. CAUSE-PA has insufficient knowledge or information to form an opinion or belief about NRG’s Pennsylvania operations or its holdings, but asserts that this information must be subject to scrutiny along with NRG’s requests to implement SCB in the context of a fully litigated proceeding.
22. ADMITTED in part; DENIED in part. It is admitted the NRG participated in the Commission’s RMI and pursued implementation of SCB as a part of that process. The remainder of the paragraph is denied. Specifically, CAUSE-PA denies NRG’s unsupported conclusion that EDC billing systems are incapable of accommodating EGS billing needs. EDC billing systems were, of course, just updated *at ratepayer expense* to accommodate supplier billing needs.³¹ CAUSE-PA demands specific proof of NRG’s assertions at hearing.
23. DENIED. CAUSE-PA has insufficient information or knowledge to form an opinion or belief about NRG’s commitment to the Pennsylvania electric market. That said, CAUSE-

³¹ See Joint Bill Order at 35 (“We direct the EDCs to recover, on a full and current basis, the costs of implementation through a non-bypassable mechanism”).

PA specifically denies NRG's unsupported assertion that the existing billing paradigm "hinders the development" of Pennsylvania's electric market. CAUSE-PA further denies NRG's assertion that SCB would "create a valuable link between EGSs and their customers" or that it would "establish a solid foundation for long-term relationships." To the contrary, the limited information about SCB gleaned from the RMI reveals that SCB would be a costly endeavor, and its value to customers or to the development of Pennsylvania's electric market is undetermined.³² The risk to consumer protections posed by SCB also undermines NRG's assertions that SCB would bolster its relationship with customers. To the contrary, CAUSE-PA asserts that customer confusion and frustration over inadequate consumer protections, opaque billing practices, inaccessible assistance programs, and uncertain or nonexistent complaint handling processes (all of which are likely under NRG's proposal) are in fact more detrimental to supplier/customer relationships. CAUSE-PA demands strict proof of NRG's assertions at hearing.³³

24. DENIED. CAUSE-PA has insufficient knowledge or information to form an opinion or belief as to whether NRG is "willing ... [to] utilize [SCB] to improve its position in the retail market." (NRG Pet. at ¶ 24). By way of further response, NRG's conditional promise appears to belie its assertion in Paragraph 23 that it "remains committed to Pennsylvania's electric retail market." (NRG Pet. at ¶ 23). CAUSE-PA further denies and demands strict proof of NRG's claim that its use of SCB will in "enhance the services provided to retail

³² End State Final Order at 68.

³³ Decision in the Matter of PURA Review of the Billing of All Components of Electric Service by Electric Suppliers, Docket No. 13-08-15 (August 6, 2014), available at: [http://www.dpuc.state.ct.us/dockcurr.nsf/8e6fc37a54110e3e852576190052b64d/4a2f8ff062aae30d85257d2c005be6fb/\\$FILE/FINAL130815%20Revised%20Draft.docx](http://www.dpuc.state.ct.us/dockcurr.nsf/8e6fc37a54110e3e852576190052b64d/4a2f8ff062aae30d85257d2c005be6fb/$FILE/FINAL130815%20Revised%20Draft.docx)

electric consumers in Pennsylvania.” See paragraph 13. CAUSE-PA demands strict proof of NRG’s assertions at hearing.

25. DENIED. CAUSE-PA denies NRG’s claims that the Pennsylvania electric market is not “vibrant and robust.” It also denies NRG’s claim that SCB would enhance customer access to electric service. As discussed at length throughout this Answer, CAUSE-PA asserts that access to electric service – including access to critical and statutorily mandated universal service programs which enable low income access to basic electric service – will be severely curtailed by SCB. See, e.g., paragraphs 10, 18 and 37. CAUSE-PA demands that NRG produce strict proof at hearing to support its allegations.
26. DENIED. NRG’s repeated insistence that its proposal addresses – much less protects – consumer protections should be given no credence because NRG’s petition provides no information by which the veracity of its claims can be tested. Simply saying that something is true does not make it so. Before moving forward to even consider NRG’s proposal for SCB, NRG should be required to set forth an amended petition which *specifically addresses each and every affected statutory and regulatory consumer protection, and the impact that SCB may have on that provision*. It should then explain how each provision will be implemented without disruption or, in the alternative, should explicitly request a waiver of that regulation, identifying the unique circumstances required for regulatory waiver.³⁴ Short of that level of specificity, NRG’s petition fails because it does not set forth a proposal capable of full scrutiny or review.

³⁴ 52 Pa. Code § 56.222; see also Investigation into Financial and Collections Issues Regarding the Philadelphia Gas Works, Opinion and Order, Docket Nos. P-00042090, R-00049157, M-00021612, P-00042117 (Sept. 30, 2004) (explaining the applicable standards for waiver of Chapter 56 regulations).

27. DENIED. NRG’s proposal for EGSs to take responsibility “for billing and collecting from the customer” is in direct contravention of the Choice Act, which explicitly provides:

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.³⁵

Thus, contrary to NRG’s plan, suppliers cannot legally assume the collections responsibilities of an EDC without legislative change.

CAUSE-PA denies NRG’s assertion that the purchase of electric service should be treated comparably to the purchase of a light bulb. Electric service is a basic necessity, and is essential to the health and safety of Pennsylvanians. The loss of service – even for a few hours – can cause detrimental, life-threatening consequences for a consumer.³⁶ Billing and collections requirements, as a result, present a complex web of protections to ensure that consumers are adequately shielded from illegal, inappropriate, dangerous, or untimely loss of service.

28. DENIED. See paragraph 27.
29. DENIED. NRG’s Petition fails to set forth sufficient details to support the claim that its proposal will “preserve all existing protections enjoyed by Pennsylvania’s retail customers.” (NRG Pet. at ¶ 29). See paragraphs 18, 26, 37. CAUSE-PA further denies that NRG’s plan would allow for terminations to commence in accord with the applicable

³⁵ 66 Pa. C.S. § 2807(d).

³⁶ See Memphis Light, Gas & Water Division v. Craft, 436 U.S. 1, 18 (1978) (“Utility Service is a necessity of modern life; indeed, the discontinuance of water or heating for even short periods of time may threaten health and safety.”); 66 Pa. C.S. § 2802(9) (“Electric service is essential to the health and well-being of residents, to public safety and to orderly economic development, and electric service should be available to all customers on reasonable terms and conditions.”); see also Diana Hernandez, Understanding ‘Energy Insecurity’ and Why it Matters to Health, *Social Science & Medicine* 167, 1-10 (2016).

standards and regulations. In response to questions raised regarding an EGS's responsibilities for termination under SCB, NRG responds:

In order to manage their bad debt expense, EGSs that offer SCB may instruct the EDC to implement disconnection procedures consistent with the PUC's regulations contained in Chapter 56 and to terminate customers for non-payment. Upon notification from the EGS, EDCs will have 5 days to complete the disconnection.³⁷

NRG's proposed 5-day timeframe for EDCs to comply with an EGS request for termination is alarming, given the 10-day notice requirement contained in the regulations.³⁸ At a very basic level, this blatant disregard for one of the many consumer protection regulations illustrates NRG's complete failure to understand, acknowledge, or appreciate the consumer protections interlaced in the billing, collections, and termination standards. Indeed, NRG's Petition fails to set forth *any* evidence that would allow a reasonable person to conclude that consumer protections will be upheld to any degree – let alone current standards – under its proposed SCB paradigm.

30. DENIED. See response to paragraph 29.

31. DENIED. As noted above, it is questionable whether suppliers are statutorily permitted to engage in collections activities.³⁹ See paragraph 27. Notwithstanding this statutory prohibition, CAUSE-PA denies NRG's assertions here because it inappropriately conflates collections efforts with the ability to switch providers, and suggests that – contrary to Chapter 56 – EGSs should be allowed to terminate for nonpayment of nonbasic charges.

Contrary to NRG's assertion, consumers are not able to avoid collections activities or, ultimately, termination for nonpayment of *basic charges* from either an EDC or an EGS.

³⁷ See NRG Pet., App. A, Question 2.

³⁸ 52 Pa. Code § 56.91.

³⁹ 66 Pa. C.S. § 2807(d).

The same collections and termination procedures apply for basic charges, regardless of supplier. At the same time, there is no prohibition on consumers in collections or facing termination from switching to a new supplier or remaining with default service. Consumers are free to choose their supplier irrespective of the collection and termination process. This freedom to move to a new supplier – even if the consumer is in arrears – is critically important, as the consumer’s inability to make payments is often directly linked to a supplier’s pricing, and switching may bring the financial relief necessary to allow the consumer to avoid ultimate termination of their service. Indeed, NRG’s suggestion here is, in all actuality, anti-competitive.

32. DENIED. See paragraph 27.
33. DENIED. CAUSE-PA denies that SCB would do anything to “enhance consumer protections.” See paragraph 18, 26, 37. NRG has not answered the most critical question with regard to the preservation of consumer protections: Whether and to what extent suppliers could or would be subject to oversight and enforcement by the Commission of existing consumer protections if allowed to conduct the billing activities. Short of a complete assessment and plan for implementation of all existing consumer protections – as well as an explicit acceptance of PUC jurisdiction to oversee billing activities and enforce consumer complaints, NRG’s proposal falls woefully short of preserving – much less enhancing – consumer protections. NRG’s proposal to simply have “more stringent financial requirements” is a hollow protection without Commission jurisdiction over billing and termination disputes.
34. CAUSE-PA has insufficient knowledge or information to form an opinion or belief about NRG’s assertion that it “would not charge EDCs any fees for providing billing services.”

That said, NRG’s attestation does not mean that other suppliers would not attempt to levy charges for SCB. The costs associated with implementation of SCB have yet to be explored in any detail, but must be identified and assigned to an appropriate place before approval of the convention. As the Commission noted in its End State Final Order, “all parties appear to be in agreement that SCB could only be implemented after extensive work and *expense by many entities.*”⁴⁰ In any event, consumers should in no way be asked to shoulder the potentially significant costs to employ SCB.

35. ADMITTED. CAUSE-PA agrees that suppliers should bear the responsibility for educational efforts, and that it would be appropriate to include supplemental information on the Commission’s papowerswitch.com website. By way of further response, CAUSE-PA notes that NRG fails to acknowledge that changes to papowerswitch.com are not free. Any costs associated with making changes to the Commission’s website should be paid by suppliers, and under no circumstances should those costs be recovered from consumers or the public.
36. ADMITTED. CAUSE-PA admits that – if NRG’s Petition is not rejected outright – these questions should be answered by the Commission in a final order on the matter. That is, *after* evidence on each is presented before an ALJ to make findings of fact and conclusions of law, and to issue a Recommended Decision. That said, the list of questions in NRG’s Appendix A, which were excerpted from a Discussion Document appended to a 2010 CHARGE call, are only a *partial* list of the open questions contemplated by EDEWG in its exploration of SCB. As stated in the Discussion Document, the list of 15 questions presented by NRG was “not intended to be a comprehensive list of all the issues that need

⁴⁰ End State Final Order at 67 (emphasis added).

to be addressed re: SCB.”⁴¹ The Commission must do more than simply answer this list of 15 questions. It must consider evidence regarding all issues – those identified in 2010, as well as those raised in the context of a litigated proceeding on the matter.

37. DENIED. CAUSE-PA asserts that NRG’s proposed resolution of certain operational issues are wholly inadequate to support implementation of SCB.

a. DENIED. In asserting that “the Commission already applies the standards in Chapter 56 and other applicable provisions to EGSs,” NRG cites to 52 Pa. Code §§ 56.153, .154, .155, which are not even promulgated regulations. But more importantly, the provisions of Chapter 56 apply only to public utilities, which by definition does not include EGSs.⁴² Chapter 14 also excludes EGSs from its purview by definition.⁴³ Simply stating that suppliers will comply with Chapter 56 requirements – without ensuring any means of oversight and enforcement – is inadequate to ensure consistent service quality required under applicable statutes and regulations to which suppliers are not legally bound. At the very least, statutory and regulatory changes are necessary to ensure proper oversight and enforcement of the principles contained in Chapters 14 and 56 – which will come at a significant cost to the Commission and, ultimately, to ratepayers. See paragraph 67.

b. DENIED. NRG should only be allowed to collect security deposits consistent with both Chapter 56 AND Chapter 14. NRG makes no mention of security deposit requirements contained in the most recent version of Chapter 14, which are not yet

⁴¹ Supplier Consolidated Billing (SCB) Discussion Document: CHARGE Meeting of September 30, 2010, http://www.puc.pa.gov/electric/pdf/OCMO/CHARGE_Issues093010.pdf.

⁴² 52 Pa. Code § 56.2.

⁴³ 66 Pa. C.S. § 1403.

incorporated into Chapter 56 regulations.⁴⁴ Low income consumers, for example, are afforded a security deposit waiver: “[N]o public utility may require a customer or applicant who is confirmed to be eligible for a customer assistance program to provide a cash deposit.”⁴⁵ Again, the prohibition applies only to public utilities, which does not include suppliers. NRG makes no mention of whether – or how – suppliers will comply with this important statutory protection. If SCB were approved, suppliers must comply with both the Chapter 14 statutes and Chapter 56 regulations, and there must be a mechanism to allow for strict oversight of the supplier’s compliance thereto.

- c. DENIED. NRG’s assertion that it should be allowed to display all charges, in a single line item, is anti-competitive. Consumers who enroll with a supplier offering SCB would no longer be able to reasonably assess the portion of their bill which is for supply, frustrating their ability to compare pricing and reasonably assess offers. This of course begs the question of whether suppliers offering SCB would be required to publish the EDC’s current PTC. Collapsing charges “for all energy consumed during the billing period” into a single line would also grossly undermine the consumer’s ability to shop and compare prices or challenge various aspects their bill, thereby complicating the consumer’s ability to exercise their right to dispute their bill pursuant to the standards enumerated in Chapters 14 and 56.
- d. DENIED. Simply asserting that universal service programs will continue to be administered by the EDC is grossly inadequate to address the factually complex issues that would arise as a result of SCB. Indeed, universal service program issues

⁴⁴ 66 Pa. C.S. § 1404 (Cash deposits and household information requirements).

⁴⁵ 66 Pa. C.S. § 1404(a.1).

raise a plethora of materially disputed factual issues which must be resolved prior to any determination by the Commission to move forward with SCB.

CAUSE-PA is not required nor will it endeavor to list here all of the many open questions and disputed issues which arise with respect to universal service administration under SCB. CAUSE-PA nonetheless feels compelled to present some of the issues here to provide additional depth to its opposition to NRG's proposal. With respect to the Customer Assistance Program, which utilities are statutorily required to provide and the Commission is statutorily required to oversee to ensure adequate funding and accessibility,⁴⁶ the calculation of a consumer's discount or credit varies with each EDC. Under a rate discount model (just one of several approved CAP program structures, but the only one NRG references in its brief dismissal of universal service issues), a customer receives a discount off of their full bill.⁴⁷ NRG's solution would only allow the discount to be calculated and applied for the transmission and distribution portions of the CAP customer's bill, leaving the CAP customer to pay full rates for their supply. This result is unacceptable, given the explicit mandate in the Choice Act that "[t]he Commonwealth must, at a minimum, continue the protections, policies and services that now assist customers who are low-income to afford electric service."⁴⁸ This is just the tip of the iceberg with regard to CAP/SCB integration.

⁴⁶ Coalition for Affordable Util. Servs. & Energy Efficiency in Pa. et al. v. Pa. Pub. Util. Comm'n, 120 A.3d 1087 (Pa. Commw. 2015), appeal denied, 2016 WL 1383864 (Pa. Apr. 5, 2016); see also 66 Pa. C.S. §§ 2802 (10), (17), 2804(9).

⁴⁷ 52 Pa. Code § 69.265(2)(iii).

⁴⁸ 66 Pa. C.S. § 2802 (10), (17).

Beyond the impact to CAP, SCB would impact many of the other assistance programs, too – yet NRG did not even so much as mention these programs. CARES, for example, is a customer referral program which assists vulnerable households that are in crisis. CARES participants are identified through the utility’s call center, and are provided intensive case management assistance and referrals to appropriate community agencies for assistance. If suppliers become the billing agent, and field calls from consumers, CARES would no longer be an accessible option available to consumers facing an acute hardship. Again, this violates the Choice Act. The Low Income Usage Reduction Program and the Hardship Fund program would also be impacted by SCB– the full extent of which would need to be assessed before the Commission can approve SCB.

If NRG’s Petition is allowed to move forward, the Commission must allow parties to create a full record assessing the impact of SCB on *each* of these statutorily mandated programs.

- e. DENIED. NRG’s assertion that a “tool is needed to permit EGSs to apply a block on a customer’s account to prevent a customer from switching to another EGS or the EDC until that customer has paid his or her past due bill in full” underscores NRG’s complete lack of reverence for consumer protections. As noted above (see paragraph 31), under the current paradigm, consumers are free to choose their supplier irrespective of the collection and termination process. This freedom to move to a new supplier – even if the consumer is in arrears or has an existing payment agreement – is critically important, as the consumer’s inability to make payments is often directly linked to a supplier’s pricing, and switching may bring

the financial relief necessary to allow the consumer to avoid ultimate termination of their service. NRG's desire to hold customers hostage until bills are paid in full is not in the public interest, is anti-competitive, and is inconsistent with the default service paradigm envisioned by the Choice Act.

f. DENIED. NRG fails to set forth any evidence or support for its assertion that EDC-run market enhancement programs, such as the Standard Offer Program, should be unaffected by SCB. Strict proof in support of NRG's claim is demanded at hearing. Based on the limited information available to it at this time, however, CAUSE-PA asserts that SCB would likely complicate administration of programs such as SOP, given the supplier – not the EDC – would provide the bill and field billing inquiries, leaving EDCs without any ability to oversee the program to ensure compliance with program terms.

38. DENIED. A response to NRG's legal conclusions is not required. To the extent that a response is required, however, CAUSE-PA denies NRG's conclusion that 2807(c) of the Choice Act allows for SCB. Quite the contrary, that section contemplates that shopping customers may choose to receive "separate bills" from an EGS – and that EDCs are authorized to conduct utility consolidated billing – but it does not contemplate that suppliers may bill for transmission and distribution services:

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 customers for all electric services, consistent with the regulations of the commission, regardless of the identity of the provider of those services.⁴⁹

⁴⁹ 66 Pa. C.S. § 2807(c).

Indeed, this provision contemplates only two options: EDC consolidated billing or separate billing from an EGS and an EDC.

39. DENIED. See paragraph 4 and 38 above.
40. DENIED. See paragraph 10 above.
41. DENIED. See paragraph 10 above.
42. DENIED. CAUSE-PA asserts that the work performed by EDEWG in 1999 and 2000, in relation to the 1998 restructuring settlements of some EDCs, is of little relevance to the implementation of SCB today. As noted above, Title 66, Chapter 14 of the Pennsylvania Consolidated Statutes was not passed until 2004. See paragraph 9. Indeed, the stated purpose of the Commission’s April 13, 2000 Order cited by NRG was “to develop a standard set of data transactions” to allow for compliance with provisions of certain restructuring settlement agreements⁵⁰ – not to resolve the numerous open policy questions surrounding implementation of SCB. These open policy questions were taken up later in the RMI proceeding and, after reviewing comments from the public, the Commission ultimately rejected SCB based on a plethora of complex policy and cost-related issues – opting instead to implement less costly and risky alternatives.⁵¹
43. DENIED. See paragraphs 5-7, 9, 11, and 12 above. By way of further answer, CAUSE-PA asserts that the fact nearly two-thirds of retail customers are receiving competitively procured generation service from their EDC is not a market failure. Shopping does not mean switching. It means assessing an offer and making a decision, a decision which could include remaining on default service.

⁵⁰ Standards for Electronic Data Transfer and Exchange Between Electric Distribution Companies and Electric Generation Suppliers, Order, Docket M-00960890, F.0015, at 1-2 (April 13, 2000). Notably, the only commenting parties in the proceeding were PPL and GPU Energy (now First Energy). Id.

⁵¹ End State Final Order at 67-68.

44. DENIED. See paragraphs 6, 9, 12, 13, and 14 above.
45. DENIED. CAUSE-PA has insufficient knowledge or information with which to form an opinion or belief in response to NRG’s claims regarding a 2015 JD Power Survey. The Survey is not publically available for CAUSE-PA to review. That said, CAUSE-PA denies NRG’s conclusion that building a “direct relationship” requires direct, consolidated billing by a supplier. See paragraph 9.
46. DENIED. CAUSE-PA denies NRG’s assertion that SCB is to blame for lack of market innovation or participation, and demands strict proof at hearing. Contrary to NRG’s assertions, it is wholly appropriate and rational for the price of electricity to be the “predominant factor” driving the competitive electric market. The desire for competitive pricing of *electricity* is at the heart of the Electric Competition Act – not the availability of other nonenergy commodities, services, or products. The legislature stated quite plainly:

Rates for electricity in this Commonwealth are on average higher than the national average, and significant differences exist among the rates of Pennsylvania electric utilities.⁵²

...

Competitive market forces are more effective than economic regulation in controlling the cost of generating electricity.⁵³

...

The purpose of this chapter is to modify existing legislation and regulations and to establish standards and procedures **in order to create direct access by retail customers to the competitive market for the generation of electricity while maintaining the safety and reliability of the electric system for all parties.**⁵⁴

⁵² 66 Pa. C.S. § 2802(4).

⁵³ 66 Pa. C.S. § 2802(5).

⁵⁴ 66 Pa. C.S. § 2802 (12); see also 66 Pa. C.S. § 2802 (13), (14).

The Choice Act is predicated on creating “direct access” to the market “for the generation of electricity” – not for the availability of other consumer goods. It defines “direct access” as:

The right of electric generation suppliers and end-use customers to utilize and interconnect with the electric transmission and distribution system *on a nondiscriminatory basis* at rates, terms and conditions of service comparable to the transmission and distribution companies’ own use of the system *to transport electricity* from any generator of electricity to any end-use customer.⁵⁵

In turn, the term “retail customer” is defined as: “A direct purchaser of *electric power*.”⁵⁶

CAUSE-PA is concerned that the very products and services NRG seeks to offer in the name of the Choice Act will curtail low income consumer’s ability to access safe, reliable *electric service* at non-discriminatory rates, which the Legislature – through the Choice Act – swore it would uphold. See paragraph 13.

As noted above, there are many ways for a company to create good will with its customers that do not involve a direct billing relationship: community event sponsorship, direct mailing, social media campaigns, team sponsorship, etc. None of these common business strategies to forge long-term customer relationships would negatively impact the rights and protections of consumers the way that SCB threatens to do. See paragraph 9.

47. The referenced JD Power study is unavailable for public review, so CAUSE-PA is unable to form an opinion or position in response thereto. By way of further response, CAUSE-PA submits that Texas – a state in which there is no EDC-

⁵⁵ 66 Pa. C.S. § 2803 (emphasis added).

⁵⁶ 66 Pa. C.S. § 2803 (emphasis added).

provided default service – and Pennsylvania – which has this service – are incomparable.

48. DENIED. NRG fails to produce any evidence that supplier billing is “state of the art” – or, for that matter, capable of performing the many functions necessary to perform billing or collections protocols in compliance with applicable statutes, regulation, and Commission policy. CAUSE-PA demands strict proof at hearing of NRG’s assertion. Further, CAUSE-PA explicitly denies NRG’s assertion that a “simplified summary bill for such combined services” is superior to a detailed bill – or for that matter allowed under the current statutes and regulations. See paragraph 31.
49. DENIED. Prepaid service promotes deprivation, not conservation, and is currently prohibited for low-income customers. In Pennsylvania, low-income consumers are also statutorily protected from security deposit requirements, and are not required to resort to prepaid service – which is laden with extra fees and forces consumers to forgo critical termination protections, such as the winter moratorium, as a condition for receiving basic and essential electric service.⁵⁷ See paragraph 13.
50. DENIED. NRG fails to set forth any evidence to explain what a flat bill product is, how it is beneficial to customers, or how it would interact with statutorily required universal service programs. Strict proof is demanded at hearing. Moreover, CAUSE-PA denies that SCB is required for it to offer flat bill products. In fact, NRG contradicts its own assertion just a few paragraphs later, explaining that “at least one of NRG’s retail affiliates is piloting a flat bill offer in Pennsylvania today.” (NRG Pet. at 57).

⁵⁷ 52 Pa. Code § 56.17(3)(i).

51. DENIED. NRG fails to set forth any evidence to explain how, specifically, it is “stymied” in its ability to innovate by the lack of SCB – or why SCB is a prerequisite to offering “competitive demand reduction and energy efficiency programs.” CAUSE-PA asserts that SCB is likely not necessary for these products to be offered, and demands strict proof of NRG’s assertions at hearing.
52. DENIED. The lack of SCB in no way prevents suppliers from making frequent contact with customers. See paragraph 9. Moreover, NRG is clearly not seeking to provide customers with “more information upon which to base their purchasing decisions,” as it claims. (NRG Pet. at ¶ 52). It is unabashedly seeking to restrict the information provided to consumers about their electricity purchase – requesting to collapse detailed billing into single line-items and eliminate free movement between suppliers. See paragraph 37(c), (d), (e).
53. DENIED. See paragraph 9.
54. DENIED. The Choice Act explicitly reserves collections activities for EDCs. See paragraph 27. This is for good reason. As discussed above, EGSs are not subject to the mandates of Chapter 14 or 56, which set forth a web of complex protections for consumers from abusive credit and collections tactics.
55. DENIED. As the Commission stated in its End State Final Order, and quoted throughout this Answer, “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.”⁵⁸ CAUSE-PA asserts that NRG’s desire to place non-commodity charges on the UCB – to the extent it is *clearly separate* from basic charges

⁵⁸ End State Final Order at 67.

and *not subject to the termination of service*⁵⁹ – would be more appropriately addressed through a proposal for further changes to the joint bill or dual billing.

56. DENIED. See paragraph 13.
57. DENIED. NRG presents no evidence to support its claim that the flat bill products offered today are somehow less “robust” because they do not allow suppliers to lump in EDC costs into one line-item. As explained above, a single charge – with no explanation of costs – obfuscates the ability for a consumer to make a reasonable comparison of costs. This is yet another area where there are substantial questions of material fact which must be determined based on substantial evidence presented in a record proceeding. See paragraphs 37c and 52.
58. DENIED. NRG fails to present any evidence with which to support its claims, and strict proof is demanded at hearing.
59. DENIED. See paragraphs 5, 7, and 9.
60. DENIED. CAUSE-PA denies NRG’s conclusion that UCB is “useless for the purpose of communicating directly with individual customers about a specific product that they may be purchasing.” Suppliers could use the additional space on the UCB to drive their customers to a web-portal, online interface, social media site, or alternative platform with which they could present customized offers – or even sign the customer up to receive

⁵⁹ Section 56.83 of the Pennsylvania Code provides:

Unless expressly and specifically authorized by the Commission, service may not be terminated nor will a termination notice be sent for any of the following reasons: ...

(3) Nonpayment, in whole or in part, of nonbasic charges for leased or purchased merchandise, appliances or special services including, but not limited to, merchandise or appliance installation fees, rental and repair costs; meter testing fees; special construction charges; and other nonrecurring or recurring charges that are not essential to the delivery or metering of service, except as provided in this chapter.

52 Pa. Code § 56.83.

regular communications about alternative products. NRG fails to assert why this type of communication is “useless”. Strict proof of NRG’s assertion is demanded at hearing.

61. DENIED. See paragraphs 5, 7, and 9.
62. DENIED. See paragraphs 5, 7, and 9.
63. DENIED. See paragraphs 1-62.
64. DENIED. See paragraph 42.
65. DENIED. There is no evidence on the record to even suggest that Texas has comparable billing, collection, and termination laws and regulations. Indeed, there is not a shred of evidence that SCB in Pennsylvania should or could be modeled after protocols and processes for SCB in Texas.
66. DENIED. As explained in paragraph 36, the list of open questions presented by NRG is only a partial list of the many open questions and issues – both of law and of fact – presented by SCB. All open issues must be resolved through a litigated proceeding – wherein all relevant evidence can be explored and presented for consideration by the Commission – *prior* to any Commission approval of SCB.
67. DENIED. NRG uses its Petition as a bludgeon, labeling any party’s efforts to raise legitimate costs concerns as a fraudulent attempt to undermine the marketplace. The basis of NRG’s assertion that SCB is cost-free – restructuring settlements from 1998 – is at best questionable. As explained above, significant intervening events have occurred over the last 19 years which have altered the assessment of costs today. See paragraph 10. Indeed, the cost of SCB to the Commission alone is likely substantial – necessitating increased staff to oversee and enforce the provisions of Chapters 14 and 56, review mandatory reporting, investigate and prosecute complaints, and ensure compliance with various

quality standards. Strict proof of NRG's assertions with regard to cost – beyond the statements of parties to a settlement from 19 years ago – are demanded at hearing.

68. DENIED. See paragraphs 1-68. Legitimate questions raised about consumer protection and billing are not “red herrings” and NRG's assertion that they are belies their frequent promise that they will adhere to such protections.
69. DENIED. There are substantial issues of material fact which have been pointed out in detail throughout the preceding 68 paragraphs of this Answer. A record hearing is necessary to allow for the exchange of discovery, the submission of evidence (including expert testimony and relevant data), briefing, and the issuance of a recommended decision that includes pertinent findings of fact and conclusions of law.
70. The averments contained here are not the kind that can be admitted or denied.
71. DENIED. See paragraphs 15, 16 and 37. The Commission should not acquiesce to NRG's requests to make a predetermination to approve SCB before fully vetting the necessary legal and factual consequences that are likely to result.
72. DENIED. See paragraphs 15-18, 69, 71.
73. DENIED. See paragraphs 15-18, 69, 71.
74. DENIED. See paragraphs 15-18, 69, 71.
75. DENIED. See paragraphs 15-18, 69, 71.

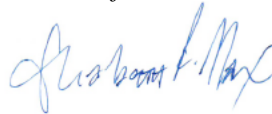
CONCLUSION

WHEREFORE, CAUSE-PA respectfully requests that the Commission deny, in full, NRG's Petition for approval of SCB, as it is contrary to the public interest. If it nonetheless determines that it is prudent to proceed with consideration of NRG's Petition, CAUSE-PA respectfully submits that the Commission must:

- (1) Refer this proceeding to the Office of Administrative Law Judge for a fully litigated, non-expedited proceeding so that evidence can be taken and NRG's plan can be scrutinized for its factual basis and compliance with all applicable laws and regulations; and
- (2) Enter an order granting CAUSE-PA full status as an intervener in this proceeding with active party status.

Respectfully submitted,

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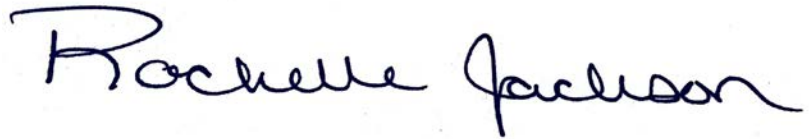
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Date: January 23, 2017

Verification

I, **Rochelle Jackson**, a member of the Executive Committee of the Coalition for Affordable Utility Services and Energy Efficiency (“CAUSE-PA”), on behalf of CAUSE-PA, hereby state that the facts contained in the foregoing pleading are true and correct to the best of my knowledge, information and belief, that I am duly authorized to make this Verification, and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 10 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).

A handwritten signature in black ink that reads "Rochelle Jackson". The signature is written in a cursive style with a large initial 'R' and a long, sweeping tail on the 'n'.

Rochelle Jackson

On behalf of the Executive Committee of the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA)

Date: January 23, 2017