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File #: 140056

January 24, 2017

***VIA ELECTRONIC FILING***

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

On January 23, 2017, PPL Electric Utilities Corporation ("PPL Electric") timely filed its Comments regarding NRG Energy, Inc.'s ("NRG") Petition for Implementation of Electric Generation Supplier Consolidated Billing, in the above-referenced proceeding. At NRG's request, enclosed for filing are the Comments of PPL Electric revised to address a concern raised by NRG. Copies will be provided as indicated on the Certificate of Service.

Respectfully submitted,



Devin Ryan

DTR/jl  
Enclosures

cc: 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 E-MAIL AND HAND DELIVERY**

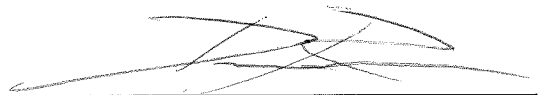
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Date: January 24, 2017



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Devin T. Ryan

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

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**COMMENTS OF  
PPL ELECTRIC UTILITIES CORPORATION**

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**TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:**

PPL Electric Utilities Corporation (“PPL Electric” or the “Company”) hereby submits these Comments to NRG Energy, Inc.’s (“NRG”) Petition for Implementation of Electric Generation Supplier Consolidated Billing (“Petition”) filed on December 8, 2016, in the above-captioned proceeding.<sup>1</sup> As explained herein, the Pennsylvania Public Utility Commission (“Commission”) should deny NRG’s Petition because supplier consolidated billing (“SCB”) raises several major legal, policy, and implementation issues that can only be adequately addressed through legislation or a Commission rulemaking. In support thereof, PPL Electric states as follows:

**I. INTRODUCTION**

NRG’s proposal for implementing SCB is factually and legally insufficient. In the absence of any direction from the Pennsylvania General Assembly, or even regulations adopted by the Commission, NRG seeks to implement SCB on a statewide basis. To the extent that SCB

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<sup>1</sup> Concurrent with the filing of these Comments, PPL Electric also is filing a Petition to Intervene and an Answer to NRG’s Petition.

is implemented in Pennsylvania, it should be accomplished only through legislation or a Commission rulemaking.

As explained below, PPL Electric has very significant concerns with NRG's proposal and has identified several legal, policy, and implementation issues that cannot be adequately addressed by the interested parties solely through comments. NRG seeks to put the proverbial "cart before the horse," asking the Commission to direct the parties to implement SCB by June 15, 2017, and relying on an SCB stakeholder group to address all implementation issues in a report submitted on September 30, 2017. NRG's proposed procedure only enables PPL Electric, and other interested parties, a single opportunity to express its concerns and identify the numerous gaps and problems in NRG's proposal, with no further opportunity for it to respond to NRG's Reply Comments, before the Commission instructs the parties to implement SCB on a statewide basis. (Petition ¶ 15) Such a procedure is wholly inadequate and would deny due process of law to the parties opposing NRG's Petition.

SCB would be a radical change to Pennsylvania's retail electric market and have major ramifications for electric distribution companies ("EDCs"), electric generation suppliers ("EGSs"), and retail electric customers. Therefore, if SCB is to be implemented, it should be mandated through legislation (as was done in Texas) or, at the very least, developed through a Commission rulemaking (as the Commission concluded in PPL Electric's Restructuring Order).<sup>2</sup> Notwithstanding, if the Commission desires to proceed with implementing SCB through the instant proceeding, it should hold statewide evidentiary hearings where all interested parties are

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<sup>2</sup> See *Application of Pa. Power & Light Co. for Approval of Restructuring Plan Under Section 2806 of the Public Utility Code*, Docket No. R-00973954, pp. 128-29 (Order Entered June 15, 1998) ("PP&L Restructuring Order")

provided a full, fair, and thorough opportunity to resolve issues of material fact and to investigate and challenge NRG's proposal.

## **II. COMMENTS**

### **A. PENNSYLVANIA LAW DOES NOT SUPPORT NRG'S PROPOSAL**

#### **1. NRG's Proposal Is Not Required under the Public Utility Code or the Commission's Regulations**

NRG's proposal for SCB is not required or authorized by the Public Utility Code or the Commission's regulations. Nothing in the Public Utility Code or the Commission's regulations mandates or even mentions SCB. Although the Commission did not accept this argument in PPL Electric's Restructuring Order<sup>3</sup> and the End of Default Service Order,<sup>4</sup> it is telling that the General Assembly did not direct the Commission, EDCs, and EGSs to implement SCB or even mention SCB. Moreover, the Commission's prior conclusion was in the context of Electric Restructuring Settlements where EDCs voluntarily agreed to implement EGS consolidated billing.<sup>5</sup> This is in stark contrast with Texas, the jurisdiction upon which NRG relies as support for its proposal, where the state legislature passed a law to implement SCB. *See* 1999 Tex. Gen. Laws 405; PURA § 39.107(c)-(d).

In Pennsylvania, the General Assembly's clear intent is for there to be two billing options: (1) EDC consolidated billing; or (2) dual billing by the EDC and EGS. *See* 66 Pa. C.S. § 2807(c). Furthermore, as explained herein, SCB would have major impacts on EDCs, EGSs, retail electric customers, and the retail electric market.<sup>6</sup> Given the lack of a legislative mandate

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<sup>3</sup> *PP&L Restructuring Order*, p. 128.

<sup>4</sup> *Investigation of Pennsylvania's Retail Electricity Market: End State of Default Service*, Docket No. I-2011-2237952, pp. (Order Entered Feb. 15, 2013) ("*End of Default Service Order*")

<sup>5</sup> As explained in Section II.A.3, *infra*, PPL Electric's settlement term for SCB expired December 31, 2009.

<sup>6</sup> *See* Section II.B., *infra*.

as well as SCB's broad and drastic ramifications, SCB should only be implemented through comprehensive legislation.

NRG relies on certain provisions of the Public Utility Code to support its proposal. (*See* Petition ¶ 38) Section 2807(c) states that the EDC "may be responsible for billing customers for all electric services," "[s]ubject to the right of an end-use customer to choose to receive separate bills from" the EGS. NRG claims that the use of the word "may" opens the door for EGSs to be responsible for billing customers for all electric services. However, the use of the word "may" does not empower EGSs to issue a consolidated bill, as alleged by NRG. It merely accounts for the scenario when an EDC does not bill "for all electric services," *i.e.*, when an end-use customer exercises its right to receive a "separate" bill from the EGS.

Further, NRG observes that Section 2804(3) authorizes the Commission to "require the unbundling of other services." (Petition ¶ 38) NRG reads too much into the use of the words "unbundling of other services." If the General Assembly wanted EGSs to issue consolidated bills, it could have explicitly stated that in the Competition Act. As a creature of statute, the Commission only has those powers expressly delegated by the legislature. *See Norfolk S. Ry. Co. v. Pa. PUC*, 875 A.2d 1243, 1249 (Pa. Cmwlth. 2005) (citing *Peoples Natural Gas Co. v. Pa. PUC*, 664 A.2d 664 (Pa. Cmwlth. 1995)).

Finally, NRG contends that since Section 2802(16) "allows EGSs to serve in the default service role upon Commission approval," the EGSs serving in that role would have to issue consolidated bills. (Petition ¶ 38) Assuming for the sake of argument that NRG's reading of Section 28012(16) is correct, the comparison is inapposite. NRG is not seeking through its Petition for participating EGSs to assume the role of default service providers. Indeed, the responsibilities of default service provider, whether it is an EDC or another entity, differ greatly

from an EGS that is not providing default service. NRG's arguments, therefore, should be rejected.

## **2. NRG's Proposal Violates Provisions of the Public Utility Code**

NRG's proposal also violates provisions of the Pennsylvania Public Utility Code. First, Section 2807(d) requires EDCs to "continue to provide customer service functions," including "complaint resolution and collections." 66 Pa. C.S. § 2807(d). Under NRG's proposal, however, EGSs participating in SCB would assume those functions. (See Petition ¶¶ 27, 37(a)) Specifically, NRG proposes that EGSs be responsible for billing and collecting from the customer for the EGS's generation service and the EDC's distribution charges. (Petition ¶ 27) Moreover, the EGS would be responsible for handling all customer billing inquiries and complaints. (Petition ¶ 37(a)) Stated otherwise, the EGSs would be responsible for resolving complaints with customers and collecting all of the charges for electric service. Because EDCs are required to perform those functions under Section 2807(d), NRG's proposal violates the Public Utility Code.

Second, NRG's proposal to present all of the EDC's charges as a "single, combined price" for consumption on the bill violates Section 2807(c) of the Public Utility Code. (See Petition ¶ 37(c)) Section 2807(c) states that "[c]ustomer bills shall contain unbundled charges sufficient to enable the customer to determine the basis for those charges." 66 Pa. C.S. § 2807(c). The "single price for consumption" would simply be the total amount of the EDC's charges, with no further breakdown by price per kWh, rider, etc. (See Petition ¶ 37(c)) Therefore, presenting the EDC's charges as a single price for consumption would prevent the customer from determining the basis of those charges as required by Section 2807(c). Thus, NRG's proposal violates Section 2807(c) of the Public Utility Code.

### 3. NRG's Proposal Is Not Required under PPL Electric's Restructuring Settlement

In support of its proposal, NRG cites that several of the EDCs' restructuring settlements included provisions about implementing SCB and that these settlements were approved by the Commission. (See Petition ¶ 10) NRG fails to recognize that PPL Electric's Restructuring Settlement<sup>7</sup> no longer requires the implementation of SCB and is not controlling in this proceeding.

By way of background, PPL Electric's Restructuring Settlement initially enabled EGSs to voluntarily be the sole billing entity effective January 1, 2000. Specifically, Paragraph III.H.4 of the Settlement stated the following about "Residential Billing":

Effective January 1, 2000, a Commission-licensed EGS may (in addition to any other rights to act as agent for the customer set forth in PP&L's tariffs) act as agent to provide a single bill and provide associated billing and collection services to its residential customers located in PP&L's service territory, subject to the ability of the EGS to comply with Appendix C [*i.e.*, PECO Energy Co.'s rules for competitive metering and billing].

*Joint Petition for Full Settlement of PP&L, Inc.'s Restructuring Plan and Related Court Proceedings*, Docket No. R-00973954, p. 32 (Aug. 12, 1998). Further, Paragraph III.Q.1 of the Settlement stated, in pertinent part, that "this Settlement is made without admission against or prejudice to any factual or legal positions which any of the Joint Petitioners may assert . . . [in] other proceedings before the Commission or other fora [sic] as long as such positions are not in derogation of this Settlement." *Id.* at pp. 47-48.

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<sup>7</sup> The Commission approved PPL Electric's (formerly PP&L) Restructuring Settlement in its Order entered August 27, 1998, at Docket No. R-00973954. See *Application of Pa. Power & Light Co. for Approval of Its Restructuring Plan under Section 2806 of the Public Utility Code*, Docket No. R-00973954 (Order Entered Aug. 27, 1998).



However, the Settlement no longer requires SCB for two reasons. First, the Settlement's terms expired on December 31, 2009, unless those aspects of the Settlement, Commission orders implementing the Settlement, or PPL Electric's tariff necessarily had to be completed beyond December 31, 2009. *See id.* at pp. 46-47 (Paragraph III.P.2 of the Settlement). Therefore, PPL Electric is no longer bound to implement SCB under the terms of its Restructuring Settlement.

Second, the Settlement explicitly stated that it "shall not constitute or be cited as controlling precedent in any other proceedings" before the Commission. *See id.* at p. 48 (Paragraph III.Q.1 of the Settlement). Thus, NRG cannot rely on the Settlement as establishing Commission precedent for implementing SCB.<sup>8</sup>

**B. NRG'S PROPOSAL RAISES NUMEROUS IMPORTANT IMPLEMENTATION, CUSTOMER SERVICE, AND PUBLIC POLICY ISSUES**

NRG's proposal also raises several implementation, customer service, and public policy issues, including:

1. No need exists to implement SCB at this time, as Pennsylvania has a robust and competitive retail electric market, the Commission recently touted the strength and growth of shopping in Pennsylvania, and dual billing already offers an opportunity to meet all of NRG's goals and address its concerns;
2. Billing, collection, and termination of service are fundamental utility services that cannot be safely severed, and NRG's proposed termination of service procedures could be inequitable and place customers at risk;
3. Under NRG's proposal, customers could be trapped in substantially higher rates, because they cannot switch to another EGS or back to default service before fully paying their past due bill to the participating EGS;
4. NRG's proposal fails to ensure that participating EGSs will provide adequate and reasonable customer service;

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<sup>8</sup> PPL Electric's arguments against SCB also are not in derogation of the Settlement because the arguments are against NRG's specific SCB proposal, not the implementation of SCB under the Company's supplier coordination tariff. Moreover, even if the arguments were in derogation of the Settlement, those Settlement terms expired December 31, 2009.

5. NRG has failed to properly address how its proposal will operate with EDCs' customer assistance programs;
6. NRG's proposal would produce bills that are less transparent to customers;
7. NRG's proposal is impractical given the Commission's accelerated switching procedures;
8. SCB, as proposed by NRG, could result in destructive competition in Pennsylvania's retail electric market;
9. NRG's proposal would result in wasted costs and duplication of services;
10. NRG's proposal would increase the Commission's regulatory burden, requiring an increase in funding and potentially staffing; and
11. NRG has failed to set forth specific and sufficient licensure requirements for EGSs to begin offering SCB.

For these reasons, and as explained in more detail below, the Commission should deny NRG's Petition.

#### **1. No Need Exists to Implement SCB**

NRG's proposal is unnecessary given the robust competition in Pennsylvania's retail electric market and the availability of dual billing. NRG cites an apparent "stagnation" in the retail electric market as a reason for implementing SCB. (Petition ¶ 12) However, the Commission recently noted in December that Pennsylvania had experienced 14 consecutive months of growth in the number of shopping customers. *See* "PUC Marks 20<sup>th</sup> Anniversary of Electric Competition in PA," Pennsylvania Public Utility Commission Press Release (Dec. 8, 2016), *available at* [http://www.puc.pa.gov/about\\_puc/press\\_releases.aspx?ShowPR=3794](http://www.puc.pa.gov/about_puc/press_releases.aspx?ShowPR=3794). Moreover, Chairman Brown related the results of a Commission survey that approximately 94% of respondents knew that they could shop for competitive electric generation supply service and that 40% of respondents stated that they had switched to an EGS. *See id.*

In addition, PPL Electric's service territory contains a high number of shopping customers. Indeed, 540,145 residential customers, 99,769 commercial customers, and 2,718

industrial customers shop for electricity as of January 6, 2017.<sup>9</sup> These figures equate to approximately 43.4% of residential customers, 56.6% of commercial customers, and 70.8% of industrial customers. Certainly these are not signs of a failing or stagnant retail electric market.

Moreover, NRG's Petition is devoid of any facts that implementing SCB would increase the number of shopping customers. NRG merely assumes without providing any supporting data that implementing SCB will boost the number of shopping customers in Pennsylvania. Assuming for the sake of argument that SCB would positively affect the number of shopping customers, the expected level of increase is necessary to determine whether it would be worthwhile for the EDCs, EGSs, and the Commission to incur enormous expense and devote substantial time to implement SCB as well as incur all of the potential problems and risks.

Finally, NRG's proposal is unnecessary because dual billing is already available as a billing option for customers. If NRG's major concern is about increased communication directly with the customer, dual billing provides EGSs that opportunity. EGSs can issue separate bills to their customers, thereby communicating directly with their customers. Further, to the extent that NRG wants EGSs to be able to bill for "value added services" on the same bill, EGSs could bill for those value added services on the separate EGS bill.<sup>10</sup> Therefore, dual billing can provide NRG exactly what it wants without EDCs, EGSs, and the Commission incurring substantial costs and devoting enormous amounts of time to accommodate SCB.

## **2. Billing, Collection, and Termination Are Fundamental to Electric Utility Service and Cannot Be Safely Severed under NRG's Proposal**

NRG's proposal attempts to split the integrated duties of billing, collection, and termination. Participating EGSs would assume the responsibility of billing and collecting and,

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<sup>9</sup> These numbers include active and pending shopping customers.

<sup>10</sup> To the extent that the EGSs need a waiver to bill for value added services on the separate EGS bill, NRG could seek such a waiver.

although the EDC would physically terminate service, participating EGSs would make the critical decision of whether to terminate service. (See Petition ¶¶ 27-30)

These duties are fundamental to electric service and are best entrusted to a certificated utility that is legally required to provide adequate, efficient, safe, and reasonable service. See 66 Pa. C.S. § 1501. Moreover, to abandon service to a customer, an EDC must obtain Commission approval that the proposed abandonment is in the public interest. See *id.* § 1102(a)(2). As a result, whether or not they shop, customers will remain distribution customers of the EDCs unless the Commission directs otherwise. This influences how PPL Electric and other EDCs interact with their customers, particularly in situations of nonpayment and termination of service. In contrast, an EGS can abandon its license after giving 90 days' notice to the Commission, customers, and the affected EDCs.<sup>11</sup> See 52 Pa. Code § 54.41(b). Therefore, participating EGSs may not take a similar approach as the EDCs and may seek to reduce their bad debt and collect from customers by threatening to terminate service.

In addition, electric service is vital to the health and well-being of residents in Pennsylvania. See 66 Pa. C.S. § 2802(9). The General Assembly also stressed that when moving to a more competitive market, electric service should remain reasonable, safe, and reliable. See *id.* § 2802(9), (11)-(12). It is important that the entity deciding to terminate that service have detailed procedures in place that protect customers. Unfortunately, NRG's proposed procedures for terminating service are substantially inadequate for several reasons.

First, NRG's proposal fails to ensure that participating EGSs will only direct the EDC to terminate service in appropriate situations. Terminating electric service can have grave

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<sup>11</sup> This distinction further demonstrates the wide gap in the Commission's authority over the actions of EDCs and EGSs. If SCB is to be properly implemented in Pennsylvania, the Commission's jurisdiction over the participating EGSs' actions should be clearly defined through legislation.

consequences, particularly in the winter months. As a result, EDCs utilize a termination checklist to help ensure that service is terminated only in proper circumstances. Moreover, for winter terminations, PPL Electric manually checks the home's circumstances before terminating service. Nothing in NRG's proposed termination procedures address whether the participating EGSs will utilize this checklist or manually check a home circumstance's before terminating service. Nor has NRG proposed to provide any type of verification (written or electronic) to the EDC attesting that it utilized the termination checklist or manually checked the home.<sup>12</sup>

The lack of adequate safeguards is especially troubling considering that, under NRG's proposal, EDCs would effectively be forced to terminate service even if they have concerns about terminating service to a customer. Indeed, an EDC's failure to terminate service would subject the EDC to non-payment of all delivery charges for subsequent service provided to that customer.<sup>13</sup> (Petition ¶ 30 n.50) Moreover, NRG has not proposed a process by which the EDC can consult with the EGS about the EGS's decision to terminate service. NRG simply states that an EDC must terminate service within five days upon notification by the EGS. (*See* Petition, Appx. A, p. 1) Thus, NRG's proposal would not adequately protect customers from improper terminations of service.

Second, NRG's proposal fails to explain what would happen if an EGS improperly directs the EDC to terminate service. For example, NRG does not address whether the EGS would indemnify the EDC should the customer or the Commission file a complaint against the EDC for the improper termination of service. Nor does NRG address whether the EGS would face any consequences for failing to instruct the EDC to reconnect service in a timely fashion.

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<sup>12</sup> Further, to the extent that NRG agrees to a verification process, NRG's proposal still presents significant and troubling issues regarding termination of service, as explained in this Section.

<sup>13</sup> In contrast, under EDC consolidated billing, the EDC purchases the EGS's receivables regardless of whether the EDC ultimately collects from the customer.

Third, NRG's proposal fails to address several aspects of terminating service. NRG does not detail what occurs when the EDC receives a medical certification after terminating service (see 66 Pa. C.S. § 1407(b)(1) and 52 Pa. Code § 56.112), who will perform the three-day termination notice (see 52 Pa. Code § 56.93), or whom the customer will contact about the termination.

Fourth, nothing in NRG's Petition addresses whether participating EGSs may charge reconnection fees before restoring service and, if so, what limits there may be on such fees. Currently, EDCs are permitted to charge reconnection fees prior to reconnecting service after a lawful termination. *See* 66 Pa. C.S. § 1407(a). These fees are "based upon the public utility's cost" and set forth in the EDCs' Commission-approved tariffs. No such restrictions would apply to the reconnection fees of a participating EGS.

Fifth, the Public Utility Code sets forth specific provisions governing the amount that customers must pay to restore service. *See* 66 Pa. C.S. § 1407(c)(2). The payback periods outlined in Section 1407(c)(2) differ depending on the customer's income level and whether the customer experiences a "life event." *Id.* However, since the participating EGS is not a public utility, these provisions would be inapplicable. NRG does not state explicitly that EGSs would be bound by the same requirements.

Sixth, NRG's termination procedures would be confusing to customers and subject to potential error. PPL Electric's understanding is that the EDC would provide notice of termination to the customer. The customer would then contact the EDC (as required by 52 Pa. Code § 56.91(b)(6)), who would direct the customer to the EGS about resolving the matter. Indeed, as a public utility, the EDC must inform the customer of where the customer can make payment to restore service. *See* 66 Pa. C.S. § 1407(c)(1). Conversely, the customer may contact

the EGS first, provided that NRG obtains a waiver of Section 56.91(b)(6). If the customer and EGS resolve the issue, the EGS would then contact the EDC about reconnecting service. Finally, the EDC would direct its personnel to reconnect the service.

Customers may be confused about whom to contact about the termination, even if the termination notice directs the customers to contact the EGS first. It may be difficult to understand that the EGS ordered the termination and is the only entity that can authorize the reconnection of service, even though the EDC is the entity that physically terminated service. Moreover, after initially contacting the EDC, the customer may be slow in contacting the EGS or may not contact the EGS at all. When dealing with terminating electric service, which can have substantial effects on a person's health and well-being, there should be no room for error or confusion.

For all of these reasons, the entity that is best entrusted with determining whether to terminate service is and should continue to be the EDC.

### **3. NRG's Proposal Could Trap Customers in Substantially Higher Rates**

NRG's proposal to prevent customers from switching to another EGS or back to default service before paying their account balance in full to the participating EGS would be highly inequitable. A participating EGS could effectively trap customers, including low-income customers, into remaining enrolled with the EGS, even if its rate is substantially higher than another EGS's offerings or the EDC's Price to Compare ("PTC").

This issue should be of great concern to the Commission, considering its experience during the Polar Vortex in 2014. Many residential and small commercial customers quickly saw their variable rates spike and ended up owing hundreds, sometimes thousands, of dollars to certain EGSs. The inability of these customers to quickly switch to another EGS or back to default service was the impetus for the Commission's accelerated switching regulations.

However, under NRG's proposal, a customer would be prevented from switching until his or her entire balance is paid in full, resulting in an exorbitant amount of money owed to the participating EGS in such a situation. (See Petition ¶ 37(e))

Notably, NRG's affiliates currently have a substantial amount of customers in PPL Electric's service territory and still offer variable rates. If another extreme event like the Polar Vortex happens and NRG's or any participating EGSs' variable rates spike, the Commission's measures to help insulate customers from being locked in to high rates will be of no help. All of those customers will be unable to switch to default service or another EGS while their rates skyrocket. Therefore, NRG's proposal should be rejected because it could trap customers in substantially higher rates.

#### **4. NRG's Proposal Fails to Ensure that Participating EGSs Will Provide Adequate and Reasonable Customer Service**

SCB would shift many of the customer service responsibilities from the EDCs to participating EGSs. NRG's proposal, however, fails to ensure that the participating EGSs will provide customer service at the same level as EDCs.

First, NRG's proposal contains no standards of conduct for its customer service personnel. Nothing in its proposal guarantees that the participating EGS's personnel are adequately trained to answer all questions about utility service, including termination, an EDC's charges, budget billing, customer assistance programs, energy efficiency and conservation ("EE&C") programs, and smart meters. Moreover, it is important to recall that a participating EGS likely would be operating in many service territories across Pennsylvania. Therefore, the EGS would have to train its personnel to answer all of those questions for each applicable EDC. Considering each EDC has its own tariff and policies, such training would need to be particularly long and thorough.



In the absence of any standards of conduct, PPL Electric would expect that the participating EGS would refer many of a customer's inquiries and questions back to the EDC. This would confuse the customer, as he or she would not know whom to contact about a specific issue. In fact, customers often are already confused when the EDC instructs them to contact the EGS if they have questions about the EGS's rates. Thus, NRG's proposal would further complicate customers as to the roles and responsibilities of EDCs and EGSs.

Second, NRG's proposal fails to detail whether participating EGSs would be subject to the Commission's billing and service metrics and would face consequences for performing poorly. Currently, the Commission has bill and service metrics for EDCs and requires EDCs to survey customers who have had interactions with the EDCs. *See* 52 Pa. Code §§ 54.153-.154. The Commission uses such information to prepare an annual summary report on the EDCs' performance. *See* 52 Pa. Code § 54.156. The Bureau of Consumer Services ("BCS") also: (1) prepares a report on the residential informal consumer complaints and payment arrangement requests filed with the Commission; and (2) calculates an "infraction rate" for each EDC. *See* 52 Pa. Code § 54.155. NRG's proposal fails to address whether participating EGSs would be subject to any of these requirements or be subject to any consequences for failing to provide adequate customer service.

Third, the Public Utility Code and the Commission's regulations contain several customer protections that are inapplicable to EGSs. For example, certain statutes govern payment agreements and the information that is to be provided to customers seeking payment agreements, and many of the Commission's consumer protection regulations only apply to EDCs. *See, e.g.*, 66 Pa. C.S. §§ 1405, 1410.1; 52 Pa. Code Ch. 56. Currently, these statutes and

many of these regulations only apply to EDCs.<sup>14</sup> Although the participating EGSs could voluntarily submit themselves to these statutes and regulations, there would be a great burden on the Commission to oversee the EGSs' conduct and enforce these statutes and regulations against the EGSs.<sup>15</sup> Furthermore, the question of the Commission's jurisdiction under the Public Utility Code to enforce such EGS commitments should be carefully considered and resolved before SCB is implemented.

#### **5. NRG Fails to Properly Address Customer Assistance Programs**

NRG's proposal also fails to properly address how it will operate with customer assistance programs, such as PPL Electric's Low Income Heating Energy Assistance Program ("LIHEAP") and Customer Assistance Program ("CAP"), otherwise known as "OnTrack." In its Petition, NRG simply proposes that EDCs continue to calculate the subsidies to the total bill and pass the subsidies through the EDI transaction for inclusion of the bill. (Petition ¶ 37(d)) However, PPL Electric has concerns about how SCB will interact with those programs.

First, the subsidies are credits to the total bill, not only an EDC's charges. NRG fails to explain how the EDC will calculate the appropriate charges when the EGS is not providing its charges to the EDC for the relevant billing period.

Second, the majority of LIHEAP and OnTrack participants were referred by PPL Electric's customer service representatives. NRG's proposal does not require the participating EGS to refer customers to such programs if it believes that they may qualify.

Third, although NRG has proposed that EDCs "continue to administer low-income programs," the participating EGSs would overtake many of the customer service responsibilities

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<sup>14</sup> The lack of such customer safeguards further demonstrates the need for there to be legislation in place governing EGSs' conduct if SCB is implemented.

<sup>15</sup> See Section II.B.9, *infra*.

under NRG's proposal. However, NRG does not delineate the line between the EDC's and EGS's customer service duties regarding LIHEAP and CAP. For example, would the EGS also assume the duty of informing the customer when he or she is about to exceed or has exceeded the CAP credit maximum? Currently, PPL Electric sends three letters to the CAP customers to inform them of their CAP credit usage: (1) a letter when the customer has exhausted 50% of his or her CAP credits; (2) a letter when the customer has exhausted 80% of his or her CAP credits; and (3) a letter when the customer reaches the CAP credit maximum, at which point PPL Electric also informs the customer about budget billing, payment arrangements, and the date the customer can reapply for OnTrack. NRG fails to address whether participating EGSs would assume any of these responsibilities or even be prepared to respond to any customer questions about the programs.

#### **6. NRG's Proposal Would Produce Less Transparent Bills**

NRG's proposal also would produce less transparent bills for customers. As mentioned previously, NRG has proposed to present all EDC charges as a single price for consumption on the bill. (Petition ¶ 37(c)) However, doing so would make the EDC's charges less transparent to the customer. The EGS's bill would display the EDC's charges as "a single, combined price for all energy consumed during the billing period." (Petition ¶ 37(c)) This would simply be the total amount of the EDC's charges, with no further breakdown by price per kWh, rider, etc. All customers should be able to know that they are being charged in compliance with the EDC's tariff, which unlike the EGS's charges for competitive electric generations supply, are regulated by the Commission. Indeed, the customers' bills would no longer enable them to compare their EGS's supply charges to the EDC's PTC.

**7. NRG's Proposal Is Impractical Given the Commission's Accelerated Switching Procedures**

NRG's proposal is impractical given the Commission's accelerated switching procedures, because of the mismatch between the billing cycle and the switching timeframe. With three-day switching, a customer could switch from the EDC's default service or a non-participating EGS's service (with the EDC providing the consolidated billing) to a participating EGS's service (with the EGS providing the billing) and back and forth multiple times in the same billing period. This would produce enormous amounts of confusion for the EDC, EGSs, and customers about how to bill the customer for the services he or she received. Such confusion increases the risk that a customer will not be billed properly.

Furthermore, if the customer switches multiple times in the same billing cycle, the customer would not have made payment yet. NRG has proposed to restrict switching until the customer's outstanding balance is paid in full to the participating EGS. NRG fails to explain whether its proposal would prevent a customer from switching to another EGS or back to default service in such a situation.

In addition, if a customer files a billing complaint for this billing cycle, the informal and formal complaint processes would be complex. Indeed, the EDC would not have access to the bills that are sent to the customer by an EGS. Therefore, the EDC and perhaps multiple EGSs would need to exchange information and respond to the BCS about informal complaints. Likewise, formal complaint proceedings would be complex, since the billing records of multiple entities would be needed to provide a complete record.

Thus, NRG's proposal for SCB is impractical considering the Commission's accelerated switching procedures.

## **8. NRG's Proposal Could Result in Destructive Competition**

Collectively, NRG's four affiliated EGSs serve a substantial number of customers in PPL Electric's service territory. Further, as noted in NRG's Petition, it "serve[s] nearly three million customers across more than a dozen states." (Petition ¶ 19)

Under NRG's proposal, participating EGSs would be allowed to bill for other "value-added services" in the same electric bill and could absorb distribution rate increases by EDCs. (Petition ¶¶ 37(c), 46 n.79, 48, 55) Although entities the size of NRG and its affiliates may be able to take advantage of these proposals, smaller EGSs may not be able to offer competing products or absorb distribution rate increases.

Moreover, not all EGSs will be required to offer SCB, nor would they all have the personnel, customer service infrastructure, capital investment, and technical experience necessary to qualify for SCB. Therefore, smaller EGSs operating in Pennsylvania may be unable to compete with the larger EGSs and be forced out of the market. Thus, NRG's proposal could negatively affect competition in Pennsylvania's retail electric market and, ultimately, consumers.

## **9. NRG's Proposal Would Result in Wasted Costs and Duplication of Services**

NRG's proposal also would result in wasted costs and duplication of services by EDCs and EGSs. Establishing a hybrid system where EDCs and some EGSs issue consolidated bills is highly inefficient. For example, if NRG's Petition is approved, PPL Electric would still be the default service provider for customers in its service territory, unlike in Texas (relied upon by NRG) where retail electric providers are the default service providers. Therefore, the Company would have to stand ready to serve and provide billing and collection services for all 1.4 million of its distribution customers. In case any of those customers switched back to default service or to a non-participating EGS, PPL Electric would have to assume all of the customer service and

billing responsibilities. Consequently, PPL Electric likely would not reduce its staffing or otherwise reduce its operating expenses to provide these services. Thus, NRG's proposal would produce wasted costs and duplication of services by EDCs and EGSs.

#### **10. NRG's Proposal Would Increase the Commission's Regulatory Burden**

NRG's proposal would increase the Commission's burden to regulate the conduct of EDCs and EGSs operating in Pennsylvania. If SCB is implemented, the Commission must have the necessary capabilities to police participating EGSs' conduct. Currently, over 400 EGSs are licensed to operate in Pennsylvania,<sup>16</sup> and the Commission has limited authority over their conduct. NRG's proposal, however, would require the Commission to oversee all of the EDCs and any participating EGSs and to ensure that they are complying with their duties regarding SCB. Therefore, instead of overseeing the customer service, billing, and service termination practices of a handful of EDCs, the Commission would have to oversee many more entities' conduct. As a result, SCB would make the Commission's regulatory oversight of more complex and time-consuming.

In addition, the Commission would need an increase in funding and perhaps staffing to ensure EDCs and EGSs are in compliance. *See PURA Review of the Billing of All Components of Electric Service by Electric Suppliers*, Connecticut Public Utilities Regulatory Authority, Docket No. 13-08-15 (Aug. 6, 2014) (finding that oversight of SCB compliance "would likely require an increase in the Authority's staff and thus, increased costs"). The Commission should consider whether such costs of regulating SCB are worth the alleged benefits SCB will provide to consumers.

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<sup>16</sup> A list of all licensed EGSs is available on the Commission's website at the following address: [http://www.puc.state.pa.us/consumer\\_info/electricity/suppliers\\_list.aspx](http://www.puc.state.pa.us/consumer_info/electricity/suppliers_list.aspx).

Moreover, it is important to recall any costs associated with regulating the EGSs' conduct would be passed on to non-participating EGSs through their annual assessments. *See* 66 Pa. C.S. § 2809(g). Thus, not only would the Commission need to expend additional resources to regulate EGSs' conduct, but non-participating EGSs' finances would be negatively affected by NRG's proposal as well.

**11. NRG's Proposal Does Not Contain Specific and Sufficient Licensure Requirements**

NRG's proposal fails to offer detailed and sufficient licensure requirements. NRG merely recommended that "EGSs offering SCB would be obligated to meet more stringent financial requirements than are currently imposed on EGSs to maintain their licenses and to demonstrate the technical expertise to perform billing and related functions." (Petition ¶ 33) NRG suggests a "registration process similar to that utilized for conservation service providers" in Pennsylvania "to ensure that these additional standards are met." (Petition ¶ 33) According to NRG:

Such standards could include pre-defined financial requirements or posting necessary minimum financial guarantees; a minimum number of years of serving customers in Pennsylvania and other competitive electricity markets; a condition that the EGS has not defaulted on a power supply contract over a certain number of years; documentation of an on-going risk management policy; maintaining a local office in Pennsylvania; experience serving a minimum number of residential electric customers, experience with call center/complaint handling functions; and experience with billing/credit and collections.

(Petition ¶ 33 n.54) Although NRG has provided some ideas for the new licensure requirements for EGSs that want to offer SCB, NRG fails to take a position on specific proposals. As the party with the burden of proof in this proceeding, NRG should be tasked with proposing specific requirements for EGSs to obtain Commission approval for SCB. *See* 66 Pa. C.S. § 332(a).

Notwithstanding, if SCB is to be implemented, PPL Electric agrees that EGSs seeking to offer SCB should be subject to rigorous financial and technical requirements. The Commission should undertake a full and thorough investigation into the technical and financial fitness of the EGS to provide these services, as well as require the EGS to post a substantial bond that is well in excess of the Commission's current requirements. *See* 52 Pa. Code § 54.40(c)-(d). Further, the bond should be available to cover any harm caused to customers for wrongful termination, including consequential damages, as well as the EDCs' charges if the EGS fails to remit payment for the EDC's receivable. Moreover, the participating EGSs should be subject to fines, penalties, or suspension of its license for violating the Commission's rules for SCB. *See* 52 Pa. Code § 54.42(a)(7) (stating that the Commission may impose fines on an EGS or suspend the EGS's license for "[a] violation of applicable provisions of the code, this title and lawful Commission orders.")

In addition, a registration process similar to EE&C conservation service providers ("CSPs"), as suggested by NRG, is not sufficient. Although those entities are registered by the Commission, the process is very simple and not difficult for companies to complete. For example, the entities do not have to post a bond or reveal details about their finances. *See* "Application Form for Registration as a Conservation Service Provider ("CSP") in the Commonwealth of Pennsylvania," *available at* [http://www.puc.state.pa.us/general/onlineforms/pdf/CSP\\_Registry\\_App](http://www.puc.state.pa.us/general/onlineforms/pdf/CSP_Registry_App). Indeed, EDCs hiring the CSPs ultimately bear the responsibility of those CSPs' qualifications and performance and continue to handle all customer service disputes.

**C. THE COMMISSION SHOULD REJECT NRG'S PROPOSED PROCEDURE FOR IMPLEMENTING SCB**

Given the many legal, policy, and implementation issues identified by PPL Electric and, expectedly, other commenters, the Commission should deny NRG's Petition. SCB would have



major ramifications for EDCs, EGSs, retail electric customers, and the Pennsylvania retail electric market. Therefore, Pennsylvania should only implement SCB through legislation adopted by the General Assembly.

Alternatively, if the Commission maintains that it has authority to implement SCB, the Commission should undertake a rulemaking to develop the proper regulatory framework for SCB. As stated previously, nothing in the Public Utility Code or the Commission's regulations mandates or even mentions SCB, which raises different billing and customer service issues than EDC consolidated billing or dual billing by EDCs and EGSs. To protect customers and ensure that the appropriate mechanisms are in place, the Commission should address SCB through a full and thorough rulemaking proceeding. In fact, this was the position of the Commission during restructuring. *See PP&L Restructuring Order*, Docket No. R-00973954, pp. 128-29 (declining to address SCB based on the record in that proceeding because the Commission intended to examine the issue in the context of a rulemaking proceeding).

Notwithstanding, if the Commission chooses to proceed with implementing SCB through this proceeding, it should hold statewide evidentiary hearings so that the parties are afforded a full and fair opportunity to resolve issues of material fact and investigate NRG's proposal. Providing all interested parties only 30 days to comment on this wide-sweeping proposal that would fundamentally change billing services provided to customers in this Commonwealth is grossly insufficient to address all of the regulatory, technical, equitable, and customer service concerns raised by NRG's Petition. Evidentiary hearings are the only way that the parties can complete a full and thorough investigation of NRG's proposal.

Further, contrary to NRG's contention, several material issues of fact exist. First and foremost, the costs of each utility to implement SCB need to be examined. The costs of

implementing SCB will be high and were not included in the stranded costs previously recovered by the EDCs, as contended by NRG. (See Petition ¶ 67) Stranded costs are defined as an EDC's:

[K]nown and measurable net electric generation-related costs, determined on a net present value basis over the life of the asset or liability as part of its restructuring plan, which traditionally would be recoverable under a regulated environment but which may not be recoverable in a competitive electric generation market and which the commission determines will remain following mitigation by the electric utility.”

66 Pa. C.S. § 2803. Here, the costs of implementing SCB are not “generation-related costs,” nor were they “known and measurable” during restructuring. Therefore, contrary to NRG’s argument, the EDCs have not recovered the incremental costs of implementing SCB.

In addition, the implementation costs are likely to be high and are directly tied to whether SCB should be implemented as proposed by NRG. Since these costs would be recovered from the EDCs’ ratepayers, the parties need to develop a record examining whether the benefits of SCB outweigh the costs of its implementation. Moreover, any estimated costs developed and presented by the parties are likely to be contested and difficult to develop. Thus, evidentiary hearings are necessary to examine these costs.

Second, the parties should be given an opportunity to investigate the alleged “stagnation” of the competitive electric market and whether SCB is needed to remedy it. Although NRG alleges that the shopping numbers today are equivalent to the shopping numbers five years ago (Petition ¶ 12), it has failed to account for other factors, including the 2014 Polar Vortex’s impact on customer enrollments. Moreover, the impact of recent improvements, such as accelerated switching and EDCs’ standard off programs, may not be fully realized and could encourage more customers to enter the competitive market. Further, the Commission recently

touted 14 consecutive months of growth in the retail electric market. NRG has failed to present any facts that such growth will end.

Third, parties should investigate the differences between Pennsylvania's retail electric market and the retail electric markets of other states that have implemented SCB, and determine whether those differences justify a different approach to SCB. Each of these states has different statutory and regulatory schemes, most notably Texas, where the retail electric providers operate as providers of last resort.

Fourth, NRG claims that its billing systems are "state of the art" and produce "More customer friendly bills that are simpler and easier to understand." (Petition, p. 2) NRG should be required to present evidence and develop a record supporting such a claim.

**III. CONCLUSION**

WHEREFORE, PPL Electric Utilities Corporation respectfully requests that the Pennsylvania Public Utility Commission deny NRG's Petition for Implementation of Electric Generation Supplier Consolidated Billing, as set forth in its Answer and these Comments.

Respectfully submitted,



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