



February 22, 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 for filing, please find the **Reply Comments of the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA)**.

As indicated on the attached Certificate of Service, this filing was served on counsel for NRG Energy, Inc., pursuant to Notice in the Pennsylvania Bulletin, as well as all known parties of record at the time of this filing.

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

CC: Certificate of Service
Office of Special Assistants, ra-OSA@pa.gov

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**Reply Comments
of the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania**

The Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA) files the following Reply Comments in response to Comments filed on January 23, 2017, pursuant to the December 24, 2016 Notice published in the Pennsylvania Bulletin.¹

As argued in its initial Comments and in its sworn Answer, CAUSE-PA asserts that NRG’s petition for approval of Supplier Consolidated Billing (SCB) must fail because it lacks legal or factual support, and is likely to cause significant damage to critical consumer protections and to the market as a whole.² If allowed to move forward for consideration by the Commission, NRG’s Petition must be referred to a full evidentiary proceeding before an Administrative Law Judge to resolve the substantial volume of materially disputed facts raised in NRG’s Petition and disputed in the Comments and/or sworn Answers of nearly every other party which responded thereto.

The need for close factual vetting, and an assessment of the appropriate weight to assign to various sworn and unsworn positions of parties, is underscored by the Comments of the Retail Energy

¹ 46 Pa. B. 8154.

² See CAUSE-PA Answer at 2 & ¶¶ 1-69, CAUSE-PA Comments at 2-3.

Supply Association (RESA). In its Comments, RESA presents its opinion as representative of the diverse supplier community – yet admits in a passing footnote that its position “may not represent” the position of its members.³ There is no “may” about it. Calpine Energy Solutions, LLC – a RESA member⁴ – filed comments in this proceeding which take NRG’s Supplier Consolidated Billing (SCB) plan to task over various aspects of its proposal which are anti-consumer and anti-competitive.⁵ Indeed, there are hundreds of other suppliers operating across the state which could have similar positions as those advanced by Calpine. The only way to decipher whether SCB is in the public interest – and will serve both consumers and the competitive marketplace – is to subject NRG’s Petition to discovery, sworn testimony, hearings, and a full legal briefing to resolve the substantial questions of material fact identified in CAUSE-PA’s Answer and Comments and in the Answers and Comments of the other parties to this proceeding.⁶

Moreover, full vetting through a litigated evidentiary proceeding will assist in separating rhetoric from fact. For example, RESA attempts to draw comparisons to Amazon and Uber as support for SCB in the electric market – claiming that SCB will “spur innovation” with “disruptive technology” the way that Amazon and Uber have done for consumer goods and transportation.⁷ While innovation in the delivery of goods and services can be exciting, it can also be harmful if adopted without full vetting of the likely consequences to the market and its participants. Indeed, innovation should never be blindly pursued at the expense of long-standing consumer protections – especially when a service as essential as electricity is at stake. The delivery of safe, stable, and affordable utility services is not equivalent to the delivery of consumer goods from an online retailer like Amazon – or a ride to the airport from an Uber driver. Utility service is the lifeblood of a healthy home: it cooks the food we feed our families, brings warmth to our living rooms, and powers the nightlight in each child’s bedroom. Indeed, electric service is an essential basic service, and the billing process and procedures for this service warrants vigilant

³ RESA Comments at n.2.

⁴ See <https://www.resausa.org/members>.

⁵ Calpine Comments at 3-4.

⁶ See CAUSE-PA Comments at 2-3; CAUSE-PA Answer at ¶¶ 1-69.

⁷ RESA Comments at 2, 5-6.

attention to detail to ensure that it remains universally available to all households under reasonable terms and at affordable prices, as promised by the Choice Act.⁸

RESA's reliance on Amazon and Uber as model industries with which to base radical changes to electric competition in Pennsylvania should be contextualized with the realities consumers face when interacting with these largely unregulated companies. Even a cursory look at the track record for these companies reveals credible allegations of discrimination, inadequate complaint handling, and a general disregard for consumer and employee protections.⁹

⁸ It is not a coincidence that these basic tenants of universal service are ingrained in the Choice Act. See 66 Pa. C.S. §§ 2802 (9), (10) & (17), 2804(9). As the Choice Act clearly states: "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." 66 Pa. C.S. § 2802(9). Notably, there is no mention of "technological or services-related innovation" being a priority – or even a consideration - in the Choice Act. Id.

⁹ Uber's service delivery has been widely criticized for the disparities in service to people of color and women. A recent study published by the National Bureau of Economic Research found that African American passengers – particularly African American men – waited 35% longer for an Uber ride, and that "the cancellation rate for African-American sounding names was more than twice as frequent compared to white sounding names." The study also found evidence that female passengers were taken for "longer, more expensive rides" compared to male passengers. Yanbo Ge et al., Nat'l Bureau of Econ. Research, Racial and Gender Discrimination in Transportation Network Companies, NBER Working Paper No. 22776 (Oct. 2016), <http://www.nber.org/papers/w22776>.

In addition to these alleged discriminatory practices, there are widespread reports of Uber's dangerous and lax consumer privacy policies and subprime loan offerings. See Kurt Mueffelmann, Uber's Privacy Woes Should Serve as a Cautionary Tale for All Companies, Wired (2015), <https://www.wired.com/insights/2015/01/uber-privacy-woes-cautionary-tale/>; Kim Lyons, Surveillance Society: Uber's Use of Customer Data Raises Concerns (July 12, 2015), <http://www.post-gazette.com/business/tech-news/2015/07/12/Surveillance-Society-Uber-privacy-policy-allows-more-location-tracking/stories/201507120071>; see also Eric Newcomer & Olivia Zaleski, Inside Uber's Auto-Lease Machine. Where Almost Anyone Can Get a Car, Bloomberg Technology (May 31, 2016), <https://www.bloomberg.com/news/articles/2016-05-31/inside-uber-s-auto-lease-machine-where-almost-anyone-can-get-a-car>; Laura Bliss, Uber's Subprime Auto Leases Sound Awfully Predatory, The Atlantic (June 3, 2016), available at <http://www.citylab.com/commute/2016/06/uber-subprime-auto-leases/485480/>.

For its part, the opaqueness of Amazon's complaint and dispute resolution processes have come under fire, with Amazon users complaining of having little or no recourse to correct inequities. See Mary Beth Quirk, Amazon Completely Cuts Me Off for an Abuse of Policy of Unknown Origins, Consumerist (Feb. 21, 2012), <https://consumerist.com/2012/02/21/amazon-completely-cuts-me-off-for-an-abuse-of-policy-of-unknown-origins/>; see also Spencer Soper, Amazon Angers Mom-and-Pop Sellers with 'Arbitrary' Suspensions, Bloomberg Technology (Aug. 26, 2016), <https://www.bloomberg.com/news/articles/2016-08-26/amazon-angers-mom-and-pop-sellers-with-arbitrary-suspensions>.

Leading economists have also criticized Amazon for abusing its overwhelming market share to manipulate competition, and Amazon – like Uber – has fallen under intense scrutiny for its questionable privacy policies and employment practices. See M.A., Big Bad Amazon, The Economist (Oct. 24, 2014), <http://www.economist.com/blogs/freexchange/2014/10/market-power>; see also Jodi Kantor & Favid Streitfeld,

The sale of electricity is protected from similar abuses by long-standing statutory and regulatory protections governing billing, collections, termination, and complaint handling processes – all of which recognize the unique need and are designed to ensure universal accessibility to electricity service.¹⁰ The Commission should not pursue SCB in the hurried fashion suggested by NRG and RESA without first carefully assessing NRG’s Petition – through a fully litigated proceeding – to ensure that these strong consumer protections will be maintained at the same level and effectiveness as envisioned when the applicable laws were originally adopted. As CAUSE-PA pointed out in its Answer and Comments, NRG’s Petition contains no evidence that existing consumer protections will be enforceable against suppliers which offer SCB.¹¹ It also fails to even address – much less resolve – complex universal service issues presented by SCB, such as the integration of SCB with mandatory, EDC-administered Customer Assistance Programs¹² and the federal Low Income Home Energy Assistance Program (LIHEAP).¹³ As such, it is imperative that the Commission properly vet SCB through the legal process to protect and maintain universal access to safe, stable, and affordable utility services.

For the reasons above, and as explained thoroughly in both its Answer and Comments, CAUSE-PA asserts that the Commission must either reject NRG’s petition outright for failure to set forth sufficient legal or factual basis – or refer the matter for a fully litigated evidentiary hearings before an Administrative Law Judge.

Inside Amazon: Wrestling Big Ideas in a Bruising Workplace, NY Times (Aug. 15, 2015), <https://www.nytimes.com/2015/08/16/technology/inside-amazon-wrestling-big-ideas-in-a-bruising-workplace.html>.

¹⁰ See, e.g., 66 Pa. C.S. §§ 2807(c) & (d), 2802 (10) & (17), 2804(9); 66 Pa. C.S. Ch. 14; 52 Pa. Code §§ Ch. 56; 52 Pa. Code § 69.265.

¹¹ See CAUSE-PA Comments at 2-3; CAUSE-PA Answer at ¶¶ 10, 13, 15, 18, 26, 37, 42, 52, 55, 65, 67.

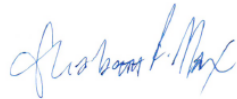
¹² See CAUSE-PA Comments at 2-3; CAUSE-PA Answer at ¶¶ 15, 18, 37; see also 66 Pa. C.S. §§ 2802(10), 2804(9); 52 Pa. Code § 69.265; 52 Pa. Code §§ 54.71 *et seq.*

¹³ See CAUSE-PA Comments at 2; CAUSE-PA Answer at ¶ 18; see also Commonwealth of Pennsylvania, Dep’t of Human Services, Low-Income Home Energy Assistance Program, Fiscal Year 2017 Final State Plan, Attachment B-3, § 601.3, available at http://dhs.pa.gov/cs/groups/webcontent/documents/document/c_241596.pdf (explicitly prohibiting electric generation suppliers from receiving LIHEAP grants).

Respectfully submitted,

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Date: February 22, 2017

**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 **Reply Comments 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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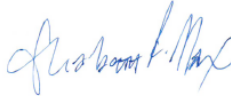
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