



COMMUNITY LEGAL SERVICES
OF PHILADELPHIA

February 22, 2017

VIA ELECTRONIC FILING

Ms. Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
400 North Street
Harrisburg, PA 17120

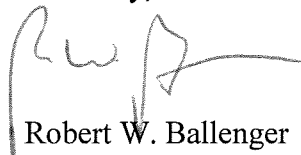
RE: Petition of NRG Energy, Inc. for Implementation of Electric Generation Supplier
Consolidated Billing, Docket No. **P-2016-2579249**

Dear Secretary Chiavetta:

Enclosed for electronic filing, please find the Reply Comments of Tenant Union Representative Network and Action Alliance of Senior Citizens of Greater Philadelphia (TURN *et al.*), in opposition to the above-captioned petition of NRG Energy, Inc.

A copy of the enclosed Reply Comments are being served pursuant to the enclosed Certificate of Service. Please contact me with any questions or concerns.

Sincerely,



Robert W. Ballenger

On behalf of TURN *et al.*

Enclosure

Cc: Service List

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CERTIFICATE OF SERVICE

I hereby certify that this day I served a copy of the Reply Comments of Tenant Union Representative Network and Action Alliance of Senior Citizens of Greater Philadelphia (TURN *et al.*) in the Matter of the Petition of NRG Energy, Inc. for Implementation of Electric Generation Supplier Consolidated Billing, Docket No. P-2016-2579249, upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code § 1.54.

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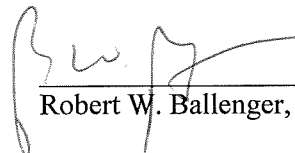
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Robert W. Ballenger, Esq.

On behalf of TURN et al.

Dated: February 22, 2017

**BEFORE THE PENNSYLVANIA
PUBLIC UTILITY COMMISSION**

PETITION OF NRG ENERGY, INC. : **Docket No: P-2016-2579249**
FOR IMPLEMENTATION OF ELECTRIC :
GENERATION SUPPLIER :
CONSOLIDATED BILLING :

**REPLY COMMENTS OF TENANT UNION REPRESENTATIVE NETWORK AND
ACTION ALLIANCE OF SENIOR CITIZENS OF GREATER PHILADELPHIA**

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I. INTRODUCTION

Tenant Union Representative Network and Action Alliance of Senior Citizens of Greater Philadelphia (collectively “TURN *et al.*”) submit these Reply Comments in further opposition to NRG Energy, Inc.’s Petition of NRG Energy, Inc. for Implementation of Electric Generation Supplier Consolidated Billing (“Petition”). As TURN *et al.* maintained in Comments submitted on January 23, 2017, the Commission should reject NRG’s Petition, and expend no further time or resources considering Supplier Consolidated Billing (SCB). In the alternative, as demonstrated almost universally in the parties’ comments to NRG’s Petition, significant factual questions have been raised regarding NRG’s Petition, and the legality of SCB has also been called into question by multiple commenting parties. If the Commission decides not to reject NRG’s Petition outright, TURN *et al.* maintain that the Commission must refer this matter to the Office of Administrative Law Judge for consideration in an on-the-record proceeding.

II. SIGNIFICANT FACTUAL DISPUTE EXISTS ABOUT SCB

As indicated in filed Comments, TURN *et al.* disagree with NRG’s submission that there are no facts in dispute related to SCB.¹ Other commenters raise a significant number of factual issues, in addition to those raised by TURN *et al.* In addition to the issues raised by TURN *et al.*, the Commission should give careful consideration to the observations of participants that NRG’s assertions about the competitive market in Pennsylvania are incorrect and/or misleading. As an example, the Office of Consumer Advocate (OCA) counters NRG’s incorrect characterization of Pennsylvania’s retail electricity market as stagnant. To the contrary, OCA

¹ TURN *et al.* Comments, at 4.

points out that impressive growth in the Pennsylvania competitive market following the 2014 Polar Vortex has been observed by the Commission's Chairman. Given this fact, OCA concludes: "There is no support for the argument that the number of customers switching suppliers has not increased."²

As another example, NRG contends that SCB is necessary in order for it to forge relationships with customers.³ TURN *et al.* submitted that NRG's position lacked merit, and failed to consider the myriad tools available to EGSs to establish customer relationships.⁴ Startlingly, PECO's comments reveal that NRG's affiliates operating in the PECO service territory are not even taking full advantage of those tools made readily available to them through PECO's billing format, as approved by the Commission's Office of Competitive Market Oversight (OCMO).⁵ PECO also submits that NRG's contention that Utility Consolidated Billing (UCB) does not provide an avenue for customized EGS bill messaging is flatly untrue.⁶

Based on the Comments of OCA, it appears, on the one hand, that NRG's Petition mischaracterizes how the competitive market in Pennsylvania is functioning. On the other hand, based on the Comments of PECO, NRG's Petition similarly disregards and misstates the tools available to it and other EGSs to forge relationships with customers. Perhaps most importantly however, TURN *et al.*, observe that no party providing comments specifically endorsed NRG's foundational assertion that its Petition contained no contestable issues of material fact.⁷ Indeed, even those comments submitted by Direct Energy, RESA and WGL Energy, all of whom support

² Comments and Answer of OCA, at 12, 15 ("Pennsylvania's retail market continues to grow and in the OCA's view, there has been no showing of necessity to implement [SCB]."). See also, Petition to Intervene of Duquesne Light, at 14-15 (taking issue with NRG's characterization of Pennsylvania's competitive market, and concluding that market is "dynamic, vibrant and growing again at a modest pace.").

³ Petition, ¶9.

⁴ See Comments of TURN *et al.*, at 8-9.

⁵ Comments and Answer of PECO Energy Company, at 11-12.

⁶ Id at 12. See also Answer of Met-Ed, *et al.*, at 15 (disputing NRG's assertion that joint bills give prominence to EDC, as opposed to EGS, logos and noting that a negative assessment of joint billing is premature.).

⁷ Petition, ¶¶ 16, 69.

SCB to some extent, fail to specifically join with NRG in asserting that no material facts are raised by its petition. Accordingly, although NRG may wish the facts were actually as set forth in its Petition, they most certainly are not. NRG's Petition cannot be viewed favorably on the basis of what it mistakenly purports to be "facts."

III. RESA AND EGS COMMENTS IN SUPPORT OF NRG'S PETITION SHOULD NOT BE GIVEN SIGNIFICANT WEIGHT BY THE COMMISSION.

Comments by RESA, Direct Energy and WGL Energy, voicing support for SCB, rely upon fundamental mischaracterizations of the Electricity Generation Customer Choice and Competition Act (Choice Act), mistaken inferences and/or flawed analogies to other non-electricity products and services. TURN *et al.* believe these comments should not be given significant weight by the Commission, which should reject NRG's Petition for the reasons set forth in TURN *et al.*'s Comments.

RESA contends that SCB is "an important and necessary evolution of the retail electricity marketplace which will allow EGSs to begin to deliver on the original promises of technological and services-related innovation that were an integral part" of the Choice Act.⁸ RESA fails to identify the source of its belief that the Choice Act was intended to achieve "technological or services-related innovation," and cites to no section of the Choice Act for this proposition. In fact, the Choice Act's Statement of Policy includes no language which could reasonably be read to support RESA's view of the Choice Act's purposes.⁹ As TURN *et al.* previously commented:

First and foremost, as a threshold matter, it must be observed that the primary legislative purposes of the Electricity Generation Customer Choice and Competition Act (Choice

⁸ RESA Comments, at 1.

⁹ Although RESA may point to 66 Pa. C.S. §2802(3), it is clear that this section (citing advances in electric generation technology as one factor which supports making direct access to competitive generation available to retail customers) applies to advances in the *generation* of electricity, not in the products made available to consumers. The Choice Act does not contain the word "innovate" or "innovation."

Act), are to permit competitive forces to effectively control *the cost* of generating electricity, for the benefit of all classes of customers, while ensuring such service (essential to the health and well-being of residents) remains available to all customers on reasonable terms and conditions, and maintaining, at a minimum, the “protections, policies and services that now assist customers who are low-income to afford electric service.” The Choice Act was not intended simply to foster the provision of prepaid electricity at great consumer risk or to market so-called value-added products by EGSs, regardless of their impact on customer bills. Rather, the Choice Act’s primary purpose is to enable all customers to benefit from lower costs, while securing essential consumer protections.¹⁰

RESA’s comments are predicated on a fundamentally unsupportable reading of the Choice Act, and should be disregarded.¹¹

RESA, Direct Energy and WGL Energy share common views that SCB would assist them in forming better relationships with customers, and easing their ability to provide value-added or customized products, and facilitating their communications with customers.¹² Their position appears to rely on an inference that the market in Pennsylvania exists to serve EGSs, to make it easy for them to establish relationships and sell their products, rather than to serve customers, providing them with the choice of suppliers on favorable cost terms. In opposition to these mistaken beliefs, TURN *et al.* agree with the majority of other commenting parties that SCB is not necessary in order for an EGS to form a relationship with customers. Like NRG, RESA, Direct Energy and WGL Energy provide no evidence that EGSs are prohibited from establishing and maintaining customer relationships through direct mail, electronic mail, telephone contacts, newsletters, customer surveys, or any of the variety of voluntary activities

¹⁰ TURN *et al.* Comments, at 9-10 (citations omitted).

¹¹ See also Answer of Met-Ed, *et al.*, at 2 (observing that NRG is “out of step” with the primary focus of legislative intent in the Choice Act – price competition).

¹² RESA Comments at 4-7; Direct Energy Comments at 3-4; WGL Energy Comments at 3-4.

undertaken routinely by businesses seeking to establish relationships with new customers in every corner of Pennsylvania.¹³

Finally, RESA and WGL Energy analogize to other services, products, and even online retail powerhouse Amazon, to try to convince the Commission that SCB is the right next step for Pennsylvania's electric utility market to take. TURN *et al.* firmly disagree and find these analogies seriously flawed. The low-income Philadelphia tenants and seniors who are members of TURN and Action Alliance rely upon the basic consumer protections required to be available to them under the Public Utility Code, as core features of their relationship with EDCs. These customers do not establish a relationship with their electric utility in order to do holiday shopping on Amazon, book an overnight stay in New Orleans via AirBnB, or to book an Uber ride across town to take in a concert. Some even lack adequate resources to afford prepaid cell phones.

The relationship between low income customers, members of TURN *et al.*, and their EDC is one of necessity, rooted in the electric utility company's duty to serve. Their ability to shop for EGS supply, while relying upon the EDC to fulfill its statutory and regulatory customer service responsibilities, must not be eroded simply to provide EGSs with easier access to market non-essential products and services. No innovation or technological advancement obviates the necessity of maintaining the customer relationship with EDCs, for the health, safety and well-being of low-income Philadelphia electric customers represented by TURN *et al.*¹⁴ The Commission should completely disregard RESA's and WGL Energy's irrelevant statements

¹³ The Energy Association of Pennsylvania agrees: "NRG and all EGSs already have the ability to directly bill for products or services offered and have various means available to build the desired 'long-term relationship' with customers." See EAP Comments at 13 (concluding NRG lacks standing, fails to demonstrate harm, presents no case or controversy, and so its petition must be dismissed).

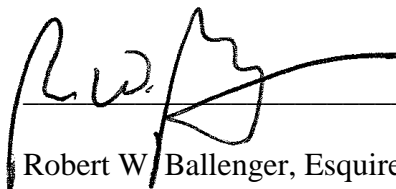
¹⁴ Notably, industrial users echo concerns about the need to preserve the direct customer-utility relationship: "The industrials' Members prefer to deal directly with the EDC for all distribution-related matters. They need to have direct access to the EDC for core functions related to connectivity and basic service reliability." MEIUG *et al.* Comments at 3.

concerning advancements in other industries, which have no bearing on life-essential utility service provided through a relationship of necessity which SCB would fundamentally, and in some cases possibly fatally, disturb.

IV. CONCLUSION

For the reasons set forth in these Reply Comments, and after review of the comments submitted by other parties, TURN *et al.* continue to urge the Commission to reject NRG's Petition in its entirety. In the alternative, TURN *et al.* maintain that significant factual disputes concerning the merits, or lack thereof, of SCB require this matter to be referred to the Office of Administrative Law Judge in order to commence an on-the-record proceeding.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'R. W. Ballenger', is written over a horizontal line.

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