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May 4, 2018

Rosemary Chiavetta, Secretary
PA Public Utility Commission
Commonwealth Keystone Bldg.
400 North Street
Harrisburg, PA 17120

Re: *En Banc* Hearing on Implementation of Supplier Consolidated Billing
Docket No. M-2018-2645254

Dear Secretary Chiavetta:

Attached for electronic filing please find the Office of Consumer Advocate's Comments in the above-referenced proceeding. The OCA requests the opportunity to testify at the *En Banc* Hearing on June 14, 2018.

Copies have been served per the attached Certificate of Service.

Respectfully Submitted,



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Enclosure

cc: Office of Administrative Law Judge
Certificate of Service

CERTIFICATE OF SERVICE

En Banc Hearing on :
Implementation of Supplier Consolidated Billing : Docket No. M-2018-2645254

I hereby certify that I have this day served a true copy of the foregoing document, the Office of Consumer Advocate's Comments, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 4th day of May 2018.

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

En Banc Hearing on :
Implementation of Supplier Consolidated Billing : Docket No. M-2018-2645254

COMMENTS
OF THE
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Office of Consumer Advocates Response to Notice of *En Banc* Hearing on Implementation of Supplier Consolidated Billing, Docket No. M-2018-2645254.....Attachment A

I. INTRODUCTION

On March 27, 2018, the Pennsylvania Public Utility Commission (“PUC” or “Commission”) issued a Notice of En Banc Hearing (“Notice”) seeking comments from all interested parties regarding the legality and appropriateness of implementing electric generation supplier consolidated billing (“SCB”) in Pennsylvania. See, Notice of *En Banc* Hearing on Implementation of Supplier Consolidated Billing, Docket No.: M-2018-2645254. The Notice requests Comments by Friday May 4, 2018. Id. Under SCB, customers would receive a single, consolidated bill from their chosen Electric Generation Supplier (“EGS”) that would include both their Electric Distribution Company’s (“EDC”) distribution charges and their EGS’s generation and transmission charges. Id. Specifically, the Commission seeks comments in regard to (1) whether SCB is legal under the Public Utility Code and Commission regulations, (2) whether SCB is appropriate and in the public interest as a matter of policy, and (3) whether the benefits of implementing SCB outweigh any costs associated with implementation. Id.

The Office of Consumer Advocate (“OCA”) appreciates the opportunity to further comment regarding SCB. The OCA requests the opportunity to testify at the en banc hearing on June 14, 2018 and looks forward to the discussion.

In the Comments below, the OCA specifically responds to each of the Commission’s questions and in Attachment A, the OCA provides its responses to the more detailed questions attached to the Notice. The OCA does not support the implementation of SCB. SCB would introduce significant consumer protection concerns to utility service and would likely increase costs to consumers without any identifiable benefit. Moreover, SCB is not necessary to achieve the purposes for which it was advanced, is not necessary to the continued development of retail markets in Pennsylvania, and is not necessary to achieve the purpose of the Electricity

Generation Customer Choice and Competition Act. SCB is also inconsistent with the Public Utility Code in several key respects. As the Commission has recently concluded for both the retail electric market and the retail natural gas market, there is no basis to expend the considerable time and resources on the further exploration of an SCB initiative. If SCB is pursued (which the OCA does not support), the OCA submits that the Commission would need to ensure that all consumer protections in the Public Utility Code and the Commission's regulations must be maintained under the SCB structure and must be enforceable by the PUC. Additionally, the OCA submits that the incremental costs to implement SCB incurred by the EDCs, the Commission, and the OCA should be borne by EGSs.

II. COMMENTS

A. The OCA's Response To: whether SCB is legal under the Public Utility Code and Commission Regulations.

The Pennsylvania General Assembly passed the Electricity Generation Customer Choice and Competition Act ("Act" or "Restructuring Act") in 1996. 66 Pa. C.S. §§ 2801 – 2815. The Act allowed Pennsylvania ratepayers to have direct access to generation with the stated purpose of lowering the price of generation. *Id.* The General Assembly declared the purpose of the Act as follows:

(4) 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.

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

(6) The cost of electricity is an important factor in decisions made by businesses concerning locating, expanding and retaining facilities in this Commonwealth.

(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.

(10) The Commonwealth must, at a minimum, continue the protections, policies and services that now assist customers who are low-income to afford electric service.

(14) This chapter requires electric utilities to unbundle their rates and services and to provide open access over their transmission and distribution systems to allow competitive suppliers to generate and sell electricity directly to consumers in this Commonwealth. The generation of electricity will no longer be regulated as a public utility function except as otherwise provided for in this chapter. Electric generation suppliers will be required to obtain licenses, demonstrate financial responsibility and comply with such other requirements concerning service as the commission deems necessary for the protection of the public.

66 Pa. C.S. §§ 2802(4), (5), (6), (9), (10), (14).

Consistent with these purposes, the Commission in considering Chapter 28 recently concluded as follows:

The purpose was to lower electricity costs, which would directly benefit consumers in the form of lower prices and indirectly benefit the Commonwealth itself by improving its ability to compete for industry and jobs. 66 Pa. C.S. §§ 2802(6) & (7). [Emphasis added.]

Petition of NRG Energy, Inc. for Implementation of Electric Generation Supplier Consolidated Billing, Docket No. P-2016-2579249, Opinion and Order (entered January 18, 2018) at 21 (2016 NRG Order).

While the Act restructured the electric generation industry to obtain lower electric prices, it also mandated that the vital consumer protections for this essential utility service remained. The responsibility for maintaining the core functions of utility service and the core consumer protections was placed squarely on the regulated utilities, the EDCs that remained subject to full Commission authority and oversight. As to customer billing, the Act provides:

(c) Customer billing.— Subject to the right of an end-use customer to choose to receive separate bills from its [EGS], the [EDC] 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.

66 Pa. C.S. § 2807(c). The statute goes on to state as follows:

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

66 Pa. C.S. § 2807(c)(2). As can be seen from the language of the Act, the customer can choose a separate bill for the EGS charges, or a bill from the EDC that contains all charges. The obligation to bill customers, however, rests with the regulated EDC.¹

Furthermore, when the Public Utility Code addresses retail competition in relation to consumer protections and customer service, it places responsibility on the EDC:

(d) **Consumer protections and customer service.**--The electric distribution company shall continue to provide customer service functions consistent with the regulations of the commission, including meter reading, complaint resolution and collections. Customer services shall, at a minimum, be maintained at the same level of quality under retail competition.

66 Pa. C.S. § 2807(d). Chapter 28 is clear that these core consumer protection functions, all directly flowing from or related to the rendering of bills to customers, remains the responsibility of the regulated EDC.

The OCA would also note that since the passage of the Restructuring Act, Chapter 14 of the Public Utility Code was enacted in 2004, and re-enacted with amendments in 2014. Chapter 14 specifically addresses residential utility service regarding deposits, payment arrangements, termination, reconnection and collections activities. These functions are assigned to the regulated public utilities, and in the instance of electric service, to the EDC. In considering these provisions, the Commission recently recognized the importance of these provisions in the restructured electricity market when it stated as follows:

The provisions of Chapter 14 and Section 2807(d) make clear that the consumer protection function remains a core responsibility of the EDC. Under Section

¹ The OCA would also note that placing the billing and collection responsibilities with the EDC is consistent with other provisions of the Public Utility Code, particularly Section 1301. Section 1301 permits a public utility to charge or demand rates that are just and reasonable. 66 Pa.C.S. Section 1301.

2807(d), consumer protection and customer service are among the duties that are allocated to EDCs. 66 Pa. C.S. § 2807(d).

NRG 2016 Order at 34.

Placing these essential consumer protections and core functions with the regulated EDC ensures Commission authority and oversight for this essential utility service. As opposed to the EDCs, the EGSs are not regulated by the Commission to the same extent. Section 2809(e) regarding EGSs states as follows:

Form of regulation of electric generation suppliers.--The commission may forbear from applying requirements of this part which it determines are unnecessary due to competition among electric generation suppliers. In regulating the service of electric generation suppliers, the commission shall impose requirements necessary to ensure that the present quality of service provided by electric utilities does not deteriorate, including assuring that adequate reserve margins of electric supply are maintained and assuring that 52 Pa. Code Ch. 56 (relating to standards and billing practices for residential utility service) are maintained.

66 Pa. C.S. § 2809(e). While it has been established that pursuant to Section 2809(e), the Commission may impose requirements on EGSs to maintain quality of service, the boundaries of the Commission's authority have not been fully tested, particularly in the billing and collection context. See, 66 Pa. C.S. § 2809(e) and Delmarva Power & Light Co. v. Pa. PUC, 870 A.2d 901, 909-10 (Pa. 2005).

In Delmarva, the EGSs successfully argued that they could not be considered public utilities for purposes of the assessments that support the Commission's operations under Section 510 of the Public Utility Code. Delmarva Power & Light Co. v. Pa. PUC, 870 A.2d 901, 909-10 (Pa. 2005) (Delmarva). The Pennsylvania Supreme Court concluded, however, that while the Commission may forbear from applying the requirements of the Public Utility Code "which it determines are unnecessary due to competition" among EGSs, the Commission must "impose requirements necessary to ensure that the present quality of service provided by electric utilities

does not deteriorate, including assuring ... that 52 Pa. Code Ch. 56 (relating to standards and billing practices for residential utility service) are maintained.” Id.; See also 66 Pa. C.S. § 2809(e). While suggesting that some regulation could be considered appropriate, the boundaries of the Commission’s authority over EGSs was not established in Delmarva. The Commission has since concluded that it does have the authority to enforce its regulations regarding marketing and advertising by EGSs as well as its regulation requiring EGS prices billed to customers to match the advertised price. See Commonwealth of Pennsylvania, et al. v. IDT Energy, Inc., Opinion & Order (entered December 18, 2014) Docket No. C-2014-2427657 at 24. This conclusion did not address the billing relationship with the customer or the core customer care functions of collection of the bill, termination, reconnection, and handling customer disputes and complaints on these vital policies that are critical to the health and welfare of residential customers for their essential electric service.

In Cause Pa. v. Pa. PUC, though, the Commonwealth Court discussed the roles and obligations of EDCs and EGSs in the restructured electricity market. The Commonwealth Court stated as follows:

Under the Choice [*1101] Act, public utilities are required to open their jurisdictional transmission and distribution facilities to EGSs chosen by the public utility's retail customers. Id. § 2804(6). Moreover, while the chosen EGS is obligated to provide the contracted supply, the public utility, or EDC, remains the direct contact with the consumer on matters relating to billing and customer service. Id. § 2807(c) [**35] , (d). If a customer contracts for electric supply and it is not delivered or if a customer does not choose an alternative EGS, in most cases the public utility is required to purchase electric energy at prevailing market prices to service that customer—i.e., default service. Id. § 2807(e).

Coal. for Affordable Util. Servs. & Energy Efficiency in Pa. v. Pa. PUC, 120 A.3d 1087, 1100-01 (Pa. Commw. Ct. 2015) (Cause PA). As the Commonwealth Court notes, the “direct contact” with the customer remains with the EDC.

The OCA respectfully submits that given the purpose of Chapter 28, the specific billing mechanisms provided for in the statute, and the assignment of responsibility for customer billing and consumer protection to the regulated EDCs, the Public Utility Code does not support a conclusion that the Commission could order supplier consolidated billing. While some may argue that the Commission has previously allowed SCB on a voluntary basis and could do so again if an EDC would willingly agree, the OCA submits that the changes that have occurred since those settlements were put in place make them inapposite to today's Public Utility Code and legal requirements.

As mentioned above, since the time when SCB was initially considered, the General Assembly adopted Chapter 14 of the Public Utility Code that requires certain customer billing functions to be performed by the public utility, which for electric service is defined as the EDC. In 2004, and again in 2014, the General Assembly enacted Chapter 14, placing the obligation for collections and consumer protections on public utilities. Chapter 14 clearly states that the responsibility for reconnection, billing, termination, collection, and notice is with the public utility. See, 66 Pa. C.S. §§ 1406, 1407(c)(1), 1410.1(3). In regard to Chapter 14, the Commission recently stated as follows:

The Chapter 14 provisions regarding cash deposits to initiate service, payment arrangements to avoid termination of service, lawful grounds for termination of service, and standards for reconnection of service are applicable specifically to “public utilities.” 66 Pa. C.S. §§ 1404, 1405, 1406 and 1407. These requirements are binding on public utilities, which includes EDCs, but not EGSs.

2016 NRG Order at 33. Furthermore, the Commission stated that “each of the key provisions in Chapter 14 regarding the connection, termination, and reconnection of service are obligations placed on public utilities.” 2016 NRG Order at 34. Placing this obligation on public utilities in

Chapter 14 is of significance. See, Dauphin Cty. Indus. Dev. Auth. v. Pa. PUC, 123 A.3d 1124, 1134-35 (Pa. Commw. Ct. 2015) (DCIDA).

DCIDA involved the obligation of the EDC serving as the default service provider to offer a time of use rate plan. The Development Authority successfully argued that EDCs serving as the default service provider were not authorized to pass along the obligation to offer time-of-use rates to EGSs. Dauphin Cty. Indus. Dev. Auth. v. Pa. PUC, 123 A.3d 1124, 1134-35 (Pa. Commw. Ct. 2015) (DCIDA). The Commonwealth Court stated as follows:

The legislature's unqualified use of the words "shall offer" in Section 2807(f)(5) places the burden on the default [**26] service provider, in this case PPL, to offer Time-of-Use rates to customer-generators. The legislature knows the difference between a default service provider and an Electric Generation Supplier. Its decision to place the onus on default service providers was neither accidental nor arbitrary. Simply, Section 2807(f)(5) does not authorize a default service provider to pass along this obligation to an Electric Generation Supplier.

DCIDA at 1134. Similarly, the OCA submits that the General Assembly did not act in an arbitrary fashion when passing the requirements of Chapter 14 and did not intend the EDC to pass along its obligations under Chapter 14 to EGSs.

The Commission's analysis in its 2016 NRG Order recognized this important point. The Commission found:

[T]he EDC may not delegate its consumer protection obligations to EGS firms, especially as to the connection, termination and reconnection of electric service. Moreover, in the Commission's judgment, adequate protection against an unjust, unreasonable or erroneous termination of electric service is the ultimate metric for consumer protection under the Public Utility Code.

2016 NRG Order at 34-35. The Commission further recognized that if an EGS were not to follow the Public Utility Code and Commission regulations, the Commission may not be able to enforce any violations, putting customers at risk of harm from a delayed reconnection or improper termination. 2016 NRG Order at 33.

At this juncture, the OCA submits that supplier consolidated billing is not supported by the provisions of the Public Utility Code. Even if the Commission had the authority to allow supplier consolidated billing, as discussed further below, such would not be in the public interest and would not have benefits that exceed the costs.

B. The OCA's Response To: whether SCB is appropriate and in the public interest as a matter of policy.

1. Introduction

In the OCA's view, SCB is not in the public interest as a matter of policy. SCB introduces significant consumer protection issues, attenuates the Commission's ability to oversee critical standards for maintaining essential electric service, obscures the responsibilities of EDCs and EGSs, and could constrain the competitive marketplace.

The current POR programs advance the goals of a competitive marketplace and were designed to ensure an equal playing field for EGSs that sought to avoid the risk of nonpayment and the additional expenses of dual billing. The EDCs have developed protocols over the years to ensure that the retail market meets the requirements of the Public Utility Code and Commission regulation. Introducing SCB to the retail environment could lead to unintended anti-competitive consequences and is not in the public interest.

2. SCB Is Not Necessary To The Retail Market

In 1998, the stakeholders engaged in significant efforts to develop SCB protocols. Despite developing extensive and detailed protocols, a number of significant policy issues remained. It also became clear that meeting the requirements of Chapter 56 required extensive training and conformed billing systems that raised concerns with the cost of SCB in a

competitive market. After considerable effort in 1998 to develop the protocols to ensure that each of these requirements is met in a SCB format, several significant policy issues remained to be resolved by the Commission. See EDEWG Report (Sept. 2010).² After this effort, no supplier sought to use SCB for its customers.

The EGSs subsequently recommended the utility POR programs as a more efficient and effective method of billing customers in the retail choice environment. See e.g. Petition of PPL Utilities Corp. Requesting Approval of a Voluntary Purchase of Accounts Receivables Program and Merchant Function Charge, Docket No. P-2009-2129502, RESA and Direct Energy Services, LLC Main Brief at 2 (Oct. 30, 2009) (A functioning POR program is crucial for the facilitation of competition). The OCA agrees that the POR programs provide a more efficient and cost-effective means to bill customers and retain the responsibility for consumer protections for essential utility service with the regulated utility, as is contemplated by the Act and other provisions of the Public Utility Code. Furthermore, EDCs incurred significant costs to implement POR and include EGS charges on their customer bills, costs that were imposed on ratepayers.

One of the key consumer protection provisions of all the Pennsylvania POR programs is the requirement that EGSs that choose to sell their receivables to the EDC must agree not to implement credit screening and/or require deposits from their residential or small commercial customers. This feature of all the POR programs was designed to ensure that all residential and small commercial customers could participate in the retail choice market, even if they were in arrears or credit challenged.

It is important to note that the POR program is voluntary. The Commission is without authority to order an EDC to have a POR program in that the Commission cannot require an

² http://www.puc.pa.gov/electric/pdf/OCMO/SCB_EDEWG.pdf

EDC to forward payment to an EGS before the EDC has received payment from the customers. 66 Pa.C.S. Section 2807(c)(3). The EDCs agreed to implement POR programs. These POR programs provide a significant benefit to participating EGSs, who are no longer responsible for the credit and collection costs that other unregulated businesses must incur, allows all customers to participate in the retail choice market regardless of credit status, and retains the essential consumer protections provided by statute and Commission regulations with the regulated EDC remaining responsible for consumer protections under Commission oversight.

Since the development of the POR programs, SCB was again raised as an issue and the Commission Staff determined in 2014 that there was limited interest from EGSs in this billing option. Investigation of Pennsylvania's Retail Electricity Market: End State of Default Service, Docket No. I-2011-2237952, Final Order at 67 (Order Feb. 15, 2013) (Electric RMI Final Order). After reviewing the extensive work and expense that would be required to implement SCB, and the successful POR programs, the Commission was concerned with developing a billing option that would not be sufficiently utilized to justify the costs. In the Electric RMI Final Order, the Commission reasoned:

We have substantial concerns that use of an SCB process may be even more unlikely now since POR programs are available. It is unclear how many suppliers would be willing to forgo the ease and convenience of utility consolidated billing under POR, where they have no bad debt risk, to opt for an SCB model where they assume the full burden of billing, collections and bad debt. We also point out that suppliers do currently have the option of issuing a separate bill to the customer (dual billing option) if they find utility consolidated billing not conducive to their offerings or business model.

Electric RMI Final Order at 67. The Commission, however, was cognizant of the EGSs' desires to establish brand identity with their customers and have more of a presence on the customers' bills. The Commission determined to implement joint billing as a further step to foster the existing relationship between EGSs and their customers. Id. The Commission further

recognized that, in addition to the joint bill, EGSs have numerous other methods to have a direct relationship with their customers. As the Commission stated in the 2014 RMI Consolidated Bill Order, EGSs should:

communicate directly with their customers, via call centers, telephonic messaging, mail and/or electronic mail contact mechanisms, as appropriate, regarding potential offers, issues, changes, etc. that they feel are important. While this proceeding is focused to develop a more supplier-oriented utility-consolidated bill, the Commission encourages EGSs to do their own outreach to customers to develop stronger relationships.

See, See Investigation of Pennsylvania's Retail Electricity Market: Joint Electric Distribution Company - Electric Generation Supplier Bill, Docket No. M-2014-2401345, Final Order at 28 (May 23, 2014) (2014 RMI Consolidated Bill Order) (Emphasis added). EGSs also have the option of communicating directly with their customers by using dual billing. All of these methods can be utilized without the significant policy, legal, and practical difficulties associated with supplier consolidated billing.

The OCA submits that SCB is unnecessary under the current POR environment. The POR programs, with the development of the joint bill, foster a competitive marketplace while ensuring that consumer protections are retained. The purpose of the Act was to provide for a competitive marketplace in order to lead to lower generation supply prices. Introducing another billing layer to the competitive market through the utilization of SCB does not further the General Assembly's goal of low cost electricity or enhance the public interest in the retail market.

3. SCB Could Constrain the Retail Market Rather Than Enhance the Market

In addition to being unnecessary, supplier consolidated billing could constrain the competitive market. The OCA expects that before assuming billing responsibility and potential

uncollectible accounts, an EGS will seek to credit check the consumer before serving the consumer through a supplier consolidated bill and may even request additional deposits. One of the key features of the existing POR programs is that all customers can be served by an EGS, regardless of credit score or income level. This policy expands the pool that can participate in retail choice, rather than for a more limited group of customers that can pass the EGS credit screening.

Equally concerning is that with SCB, harmful and anti-competitive practices such as blocking mechanisms could arise to deal with the issue of uncollectibles, and additional fees could be imposed on consumers, thus increasing the price for electricity. A blocking mechanism would prevent EGS customers with a payment arrangement from switching to another EGS or to the EDC default service until their past due bills are paid in full. The OCA submits that utilizing a blocking mechanism would be against the public interest and would go against the General Assembly's intentions in introducing retail choice.

Blocking ratepayers from switching in a competitive market is anti-competitive. The Commission has previously stated as follows:

There is no evident justification for allowing EGSs to prevent customers from switching suppliers considering the harm it could do to those customers and the retail electric market in general. 2016 NRG Order at 37. The purpose of the Act was to give ratepayers an option to choose between different electricity suppliers instead of from one EDC, or to choose default service. A blocking mechanism would trap customers with one EGS and prevent the ratepayers from shopping for other options or switching to the EDC as the default service provider. 2016 NRG Order at 36. A blocking mechanism would have a negative effect on the competitive retail market as ratepayers would not be permitted to take advantage of other options and would harm consumers with payment problems if they are not permitted to take advantage of lower cost

options. See, Id. Furthermore, there are other viable options to collect outstanding debts besides allowing the EGSs to utilize a blocking mechanism.

It is questionable how EGSs could shoulder the burden of the additional costs of expanded billing and customer call centers to comply with Pennsylvania requirements and still remain competitive with EGSs who remain on POR. One possible answer would be the imposition of fees imposed by EGSs for handling customer service functions, a method that has been employed in Texas.³ By imposing such costs on customers for services that are provided to EDC customers pursuant to regulated distribution rates, it is likely that the EGS fees will increase the price of electricity by charging for services already embedded in EDC distribution charges. Finally, the imposition of such charges will make it impossible to educate customers about the “price” for generation supply service and compare and shop for service. The Act requires that information “be provided to consumers in an understandable format that enables consumers to compare prices and services on a uniform basis” or in other words, allow for apples-to-apples comparisons of offers. See, 66 Pa. C.S. § 2807(d)(2). See also, 52 Pa. Code § 54.1. It can be reasonably presumed that EGSs implementing SCB would recover the costs to do so by adding the costs to their per kWh price or via additional fees on customers’ bills. If added as an increase to the per kWh price, the offer would likely appear less than competitive with other supplier offers but adding it through fees would result in such EGS pricing not being able

³ The OCA notes that in Texas, it is common for retail electric providers (REPs) to charge fees for most services. Specifically, NRG’s licensed EGS, Green Mountain Energy Company, charges, *inter alia*, a \$5.95 payment processing fee (telephone), \$5 per period for bill copies, \$15 for making five or more payments per month on an account, \$5 per call to remind of past due amounts. See <https://signup.greenmountain.com/files/0901751880d225fb.pdf> . NRG’s Reliant subsidiary in Texas charges, *inter alia*, a \$5.95 fee for payment processing. See <https://www.reliant.com/files/0901751880c5cea5.pdf> . It is reasonable to expect these same types of fees from EGSs in Pennsylvania providing SCB.

to be compared “apples-to-apples” to non-SCB EGS pricing or the EDC price to compare. Neither option appears to advance Pennsylvania’s retail choice market.

SCB also calls into question the viability of the retail enhancement programs that are already in place to support market development such as the requirement for EDC customer service representatives to provide neutral information on retail choice and to inform customers contacting the EDC of the availability of the Standard Offer Program. In performing the customer service functions, EDC representatives are required to inform customers calling about retail choice and the Standard Offer Programs. This requirement extends to customers calling with questions about retail competition or calling an EDC Call Center with billing questions or high bill complaints, even if the customer is currently served by an EGS. The EDC customer service representatives have been trained to provide full and neutral information about retail choice and the Standard Offer Programs. This initiative has facilitated customer shopping and switching. If a customer’s main point of contact is now their current EGS under SCB, the supportive and neutral provision of information to facilitate shopping and switching will not be available to the customer. Also, the Standard Offer Program may not be available to the customer. This could introduce barriers to entry for other potential EGSs that do not exist at this time.

Pennsylvania prepared for SCB but when it became clear that the option would not be used, and indeed seemed less efficient, Pennsylvania pursued a robust POR program that provided a level and fair playing field for all participants and all consumers. It also allows for a platform of supportive and neutral information to be provided to all consumers, allows for the implementation of retail market enhancement programs that the Commission has pursued and the continuation of all consumer protections under the oversight of the Commission.

4. SCB Raises Significant Consumer Protection Issues

As discussed in Section II.A, Chapter 14 of the Public Utility Code and Chapter 56 of the Commission regulations place affirmative obligations on the EDC when dealing with customers regarding the essential billing and collection functions. SCB places an EGS between the customer and the EDC that is responsible for meeting these obligations to customers. In the initial consideration of SCB in 1998, after considerable work by stakeholders and the EDEWG group, significant policy issues around consumer protections remained. See EDEWG Report (Sept. 2010).⁴ Since that time, Chapter 14 of the Public Utility Code further addressed billing, collection, and termination. The consumer protection issues that arise under Chapter 14 are significant.

These issues were appropriately raised by the Commission in its 2016 NRG Order. By way of example, in regard to service connections, Section 1407(c) states as follows:

A public utility shall provide for and inform the applicant or customer of a location where the customer can make payment to restore service.

66 Pa. C.S. § 1407(c)(1). The Commission identified the concern regarding reconnection under SCB as follows:

Questions also remain regarding how quickly EGSs and EDCs will be able to coordinate reconnection efforts once payment is received from a customer. Given the harm that improper termination would cause to consumers, the Commission would require more detail regarding the speed and accuracy with which information will be passed along to EDCs.

2016 NRG Order at 28.

As to medical certification, Chapter 14 provides:

Medical certification—A public utility shall not terminate service to a premises when a customer has submitted a medical certificate to the public utility.

⁴ http://www.puc.pa.gov/electric/pdf/OCMO/SCB_EDEWG.pdf

66 Pa. C.S. § 1406. The Commission aptly noted the potential problems and stated as follows:

A customer making a payment or providing a medical certification to prevent a threatened termination of service would have to communicate with the EGS. The EGS would then have to take that information and provide it to the EDC. This extra step—compared to the current situation where the EDC would be in direct contact with the customer—could cause communication delays, increasing the risk that customers would be subjected to an improper termination of service or delay in reconnection.

2016 NRG Order at 29.

The language of Chapter 14 explicitly places responsibility with the public utility in regard to vital utility functions. The implementation of SCB could result in the unnecessary interruption of electric service if Chapter 14 rules are not enforced. The OCA submits that even the temporary interruption of electric service carries with it a risk of a dangerous situation and can lead to public harm.

SCB could also result in confusion for customers as the roles and differing responsibilities of EGSs and EDCs would be obscured by SCB. This concern is also shared by the Commission:

Customers are presently accustomed to directing distribution service related complaints and inquiries including those for billing, payment, and termination issues—to their EDCs. Under NRG's proposal, customers' bills would come from their EGSs and payment arrangements would be made with their EGSs, but termination notices and actual termination would be handled by their EDCs. This division of responsibility could confuse customers.

2016 NRG Order at 29. As it is reasonable to assume that not all EGSs will offer SCB, granting EGSs with SCB the power to direct termination would lead to further confusion.

SCB is also being forwarded for the purpose of selling additional products and services to consumers. Some examples that have been discussed would include the addition of home security systems and HVAC services, prepaid service and flat bills for some or all of the utility charges. Each of these examples comes with its own set of issues regarding the appropriate

consumer protections. When including these additional charges on the utility bill, these non-basic services must appear separately and cannot serve as the basis for termination. See 52 Pa. Code §§ 56.13, 56.23, 56.24, and 56.83(3).

Even with this protection regarding non-basic service, however, the research shows that consumers go to great lengths to pay their utility bill. To a consumer, it is the total bill, the “pay this amount” line that matters. Adding a long list of additional charges, some not even tangentially related to electric service, could become problematic, particularly when the total bill includes regulated utility charges.⁵ If a customer was prevented from switching due to unpaid charges, this would result in the use of the utility bill as a means of collection for non-regulated charges.

The example of prepaid service and flat billing raises significant questions as to consistency with Pennsylvania law. Prepaid service is currently the subject of a Petition by PECO Energy which is pending before the Commission. PECO Pilot Plan for an Advance Payments Program and Petition for Temporary Waiver of Portions of the Commission’s Regulations with Respect to that Plan, Docket No. P-2016-2573023 (PECO Pilot Plan). Numerous legal issues and consumer protection issues with prepaid service have been raised in that proceeding. These issues would also need to be resolved in the supplier consolidated billing context. The OCA also submits that flat billing of tariffed distribution charges and generation charges without specifying the per unit charge, is not permitted in Pennsylvania. See, e.g. 52 Pa. Code §§ 56.15 and 54.4. Regulated, tariffed charges must be billed at the tariffed amount. Flat billing could result in a different per unit charge being assessed each month, either higher or

⁵ EGSs wishing to sell such value added service could do so through the dual bill approach without compromising regulated utility service.

lower than the tariffed amount, depending on usage and the flat bill amount.⁶ Flat billing would also separate usage from the price charged, thus introducing a disincentive to energy efficiency programs that may be offered by the EDC.

Pennsylvania has worked for decades to establish a balanced system of consumer protections for essential utility service. Any gaps that would develop in this system from SCB can jeopardize essential utility service at great risk to both health and safety.⁷

5. SCB Does Not Appropriately Address Low Income Customer Issues.

In its NRG 2016 Order, the Commission recognized that SCB raises significant issues regarding service to low income customers and the proper administration of the Customer Assistance Programs operated by the EDCs. In considering NRG's Petition, the Commission addressed low-income issues surrounding SCB as follows:

Issues not adequately addressed by NRG include (1) how the programs would be administered by EDCs when EGSs are responsible for billing customers; (2) how EGSs would ensure that protections to assist low-income customers remain in place; (3) how the EDCs—which will not have access to EGS generation charges—will calculate CAP credits that are based on the customer's total bill; (4) how EGSs will receive LIHEAP grants when DHS expressly prohibits suppliers from doing so; (5) the portability of CAP credits; (6) dealing with CAP arrearages; and (7) which entity would be responsible for warning customers as they approach subsidy limits.

Further, the Commission agrees with CAUSE PA and Duquesne that we cannot—as NRG initially proposed—deal with the issue of LIHEAP credits after SCB has been implemented. Given the importance of electric service, particularly in cold

⁶ Flat billing is not the same as budget billing. Budget billing is based on a customer's usage and while billing the same monthly amount, the bill shows the usage and charges and is eventually reconciled to actual usage and charges.

⁷ Some may suggest that consumers can decide on consumer protections themselves by simply leaving the EGS if they are dissatisfied. This begs the question of ensuring that rights are secured. It also begs the question of whether a consumer can effectively waive a consumer protection that has been established by the General Assembly to protect the health and safety of the consumer and the community. Brooklyn Sav. Bank v. O'Neil, 324 U.S. 697, 704 (1945) (“[i]t has been held in this court and other courts that a statutory right conferred on a private party, but affecting the public interest, may not be waived or released if such waiver or release contravenes the statutory policy.”). In addition, it ignores the fact that one of the fundamental proposals that arises with SCB is the use of blocking mechanisms that do not allow a customer to switch to another supplier if in arrears, even if the customer is dissatisfied.

weather, any issues regarding LIHEAP must be addressed before SCB could be implemented.

2016 NRG Order at 46-47.

As recent cases have shown, an alarming percentage of CAP customers incur higher bills when served by an EGS. See Retail Energy Supply Ass'n v. Pa. PUC, No. 230 C.D. 2017 (May 2, 2018) at 7; Petition of PPL Electric Utilities Corporation for Approval of a Default Service Program and Procurement Plan for the Period June 1, 2017 Through May 31, 2017, Docket No. P-2016-2526627 at 26-27. As discussed in Section II.C.2, SCB is likely to result in higher monthly bills for consumers as EGSs offering SCB will need to recover the costs of billing, cover uncollectible expense, and collect for additional value-added services. These additional costs will necessarily impact affordability for low income customers, whether on CAP or not, if they select an EGS with SCB.

Additionally, if EGSs are to assume the billing and collection functions, and to absorb the uncollectible expense, EGSs will likely engage in credit checking customers before accepting them for service with a supplier consolidated bill. This could, in effect, limit the shopping opportunities for low income customers or result in a situation where default service and the POR program become burdened with the higher uncollectible expenses associated with customers that cannot meet the credit screening requirements of the EGSs. The current POR reflects the full mix of customers and the utility's overall uncollectible ratio, thus moderating the impact of uncollectibles across the customer base.

6. Conclusion

The OCA submits that the current POR programs are responsive to the purposes of the Act and the other provisions of the Public Utility Code. In the electric generation retail market,

shopping customers can choose from a wide array of suppliers without concern that consumer protections will be forfeited as a result of shopping. The OCA submits that SCB neither encourages shopping nor lowers the cost of electricity. On the contrary, SCB could lead to anti-competitive practices and can add to the cost of electricity. As such, the OCA submits that SCB is not in the public interest.

C. The OCA's Response To: whether the benefits of implementing SCB outweigh any costs associated with implementation.

1. Introduction

The Commission has already found that SCB “could only be implemented after extensive work and expense by many entities,” which “could result in a feature that will not be utilized sufficiently to justify the costs” Electric RMI Final Order at 67. Nothing has changed in this regard. Furthermore, the OCA submits that the Commission’s prior consideration may not have fully recognized the additional costs for Commission oversight, consumer education and the potential for “stranded” or unrecovered costs associated with new billing systems that could result from SCB. The OCA respectfully submits that there is no basis for the Commission to consider SCB or to change its recent conclusion that the cost of implementing SCB would not be justified, particularly in light of the well-developed POR programs that are now in place. Investigation of Pennsylvania’s Retail Electricity Market: End State of Default Service, Docket No. I-2011-2237952, Final Order at 67 (Order Feb. 15, 2013) (Electric RMI Final Order).

2. The Costs of SCB

a. Compliance Costs and Commission Oversight

In 2004, Chapter 14 of the Public Utility Code was enacted. Chapter 14 established rules on essential aspects of utility service regarding billing and collection. These changes were

subsequently included in Chapter 56 but have not been examined in the SCB context. An EGS offering SCB would be required to follow Chapter 56, and would be required to have billing systems and protocols fully compliant with Chapter 56 as well as Call Center staff fully trained in all of the requirements. It is difficult to assess the amount of time and resources that would be necessary in order to ensure that EGSs choosing to use SCB comply with these requirements and consumer protections. One thing is clear, however, it is not simply a matter of importing billing systems and protocols from other states. It is Pennsylvania statutory and regulatory requirements that must be met. As discussed above, it is reasonable to assume that EGSs implementing SCB will incur costs to comply with Pennsylvania statutory and regulatory requirements and will need to recover the costs of the billing systems and compliance from customers.

Equally important, the Commission's oversight burden will be increased as a result of SCB. To protect the public, the Commission would be required to establish requirements and protocols, consuming both time and resources in order to ensure appropriate consumer protections and to ensure that all statutory and regulatory requirements are being met. The Commission staff also oversees the provision of customer care functions by EDCs and other regulated public utilities to ensure that all requirements are being met, that Call Centers are appropriately staffed, and that Call Center representatives are appropriately trained.⁸ Commission staff would now be required to engage in these functions for additional billing entities. While there is no information at this time as to how many EGSs would engage in SCB, if even six suppliers chose this option, it would practically double the number of electric company Call Centers that the Commission staff must work with in meeting the requirements of

⁸ One of the troubling aspects of the experience with the Polar Vortex was that the EGS Call Centers quickly became overwhelmed with the volume of calls. Call Center staffing as well as training in specific Pennsylvania requirements is essential to providing appropriate consumer protections.

Chapter 14 and Chapter 56.⁹ In addition, one mechanism that the Commission utilizes to ensure reasonable service and appropriate customer care functions is the management audit. See, 66 Pa. C.S. §516. The Commission, and consumers, would incur additional costs related to these management audits if they are able to be performed.¹⁰

As can be seen, SCB will result in increased costs related to this additional billing function. Customers have already paid the incremental costs to establish the POR program and would not be faced with supporting an additional billing mechanism if SCB is adopted.

b. Unrecovered Billing System Costs

EDCs have been dealing with Pennsylvania's Standards and Billing Practices for Residential Utility Service (52 Pa. Code §56.1 et seq.) for decades. The EDCs have designed their billing systems to implement the Pennsylvania requirements. Recently, EDCs have engaged in smart meter deployment pursuant to the requirements of Act 129 of 2008. The smart meter deployment has been accompanied by significant expenditures to update and upgrade the EDCs' billing systems to both modernize the systems and address the smart meter data that will become available to the Company and its customers. These billing systems have also been enhanced at ratepayer expense to support retail choice. Some of the changes include those to establish the POR, and to meet the requirements of the three-day switching rule, the instant connect procedure, the seamless move procedure, and the joint bill. These costs are being recovered from ratepayers and are not avoided or avoidable simply because a customer selects an EGS offering SCB.

⁹ It is the OCA's understanding that there are four major electric utilities operating call centers – the FirstEnergy Companies, PECO Energy, PPL Electric Utilities and Duquesne Light Company.

¹⁰ It is questionable whether this tool is available to the Commission for an EGS engaged in billing even if billing regulated utility charges. The mechanisms for ensuring essential consumer protections in an SCB environment are not at all clear.

Moreover, additional extensive changes to billing systems would likely be required to implement SCB. Pike County Light & Power Company (PCL&P), with 4,700 residential and commercial customers, estimated a cost of \$2.9 million to \$3.7 million with a 36 month implementation timeline. See, Investigation of Pennsylvania's Retail Electricity Market: End State of Default Service, Docket No. I-2011-2237952, Comments of Pike County Light & Power Company at 9. PCL&P noted that since there are relatively few customers in their service territory, the costs would be especially onerous. Id. PPL, in its Comments to NRG's 2016 Petition for SCB also concluded that implementing SCB would be costly to the EDC billing system. Petition of NRG Energy, Inc. for Implementation of Electric Generation Supplier Consolidated Billing, Docket No. P-2016-2579249, Comments of PPL Electric Utilities Corporation (January 24, 2017) at 24.

Simply put, SCB would either result in "stranded" costs for the EDC (the recovery of which is not provided for in the Act) or would require customers to pay twice for billing service. This unnecessary cost does not advance the competitive retail market and certainly does not contribute to lowering costs for consumers.

Some may suggest that customers using an EGS with SCB could avoid these EDC billing costs. The EDC, though, must always stand ready to serve the customer with billing services whether the customer returns to default service or switches to another supplier that does not provide consolidated billing. The OCA does not foresee that EDCs will be able to substantially trim any resources from their billing functions and customer care services since it is the EDC that is ultimately responsible for the provision of these services in the event of market participant migration. Unlike the EDCs, the EGSs have the ability to respond to market conditions as their business plan may dictate. In the not too distant past, for example, FirstEnergy Solutions chose

to completely withdraw from the residential market in Pennsylvania. If customers did avoid these costs, this would result in “stranded” costs for the EDC, the recovery of which is not provided for in the Act. As can be seen, SCB simply adds costs.¹¹

c. Consumer Education

In addition to the costs already identified, the OCA submits that the costs for consumer education would need to be addressed. Customers would need to be educated about basic issues relative to the provision of public utility service in this sector that have, largely, been in place for decades. Consumers would need to have clear direction on issues such as outages, emergencies, bill complaints, meter issues, general service quality concerns and questions relative to shopping and participation in the competitive market to name but a few. The OCA submits that it is not appropriate to expect EGS salespeople to be able to provide such complex consumer education or that such education would be uniform from EGS to EGS.

d. Conclusion

The costs of implementing SCB could be significant. EGS billing systems and customer call center protocols would need to be upgraded to comply with Pennsylvania law, EDC billing systems would need to be modified to accommodate SCB, and the cost of Commission’s oversight burden would increase in order to ensure that all statutory and regulatory requirements are met. Moreover, if SCB results in reduced recovery by the EDC of its own billing system costs, this issue would need to be addressed.

¹¹ The use of the term “stranded costs” is not technically correct under the Public Utility Code. Stranded Costs are defined by the Public Utility Code as “[a]n electric utility’s known and measureable net electric generation-related costs,” The term refers only to generation-related costs and does not extend to distribution facilities or costs. If an EDC was unable to recover its full billing system costs as a result of SCB, there is no provision of the Public Utility Code that would address or expressly permit such recovery.

3. The Purported Benefits of SCB Do Not Outweigh the Costs

The primary benefit espoused by EGSs for implementing SCB is to further the customer relationship and sell a wider array of products and services to the customer. If a direct customer relationship is desired to sell other products, such a relationship can be gained in other ways without introducing the complexity, confusion and consumer protection issues that could result with a move to SCB.¹²

It is important to remember that the electric generation industry was restructured in order to lower electric costs to consumers. While the OCA does not object to the sale of value added services that meet a customer's needs if the customer is fully informed about those services, it was not the purpose of the Act to simply have electric service be the hook for the sale of other profit-making products. There is no obligation to support these sales through SCB.

Moreover, SCB is not a prerequisite for value added services. Indeed, an avenue does exist for the EGS to provide those value added services through either a dual bill approach (consistent with the Commission's regulations) or through separate billing for the value added services. What is not proper is for the utility bill to become the vehicle for collecting costs associated with non-regulated services, many of which have nothing to do with essential electric service. Surely customers and the Commission would not entertain a suggestion by ADT that it be permitted to place charges for its home security system on a utility bill, yet SCB could result in a home security system offered by an EGS or EGS affiliate being placed on the utility bill.¹³

¹² Not all EGSs have similar business models and seek to sell other products and services to their customers.

¹³ The OCA would also note that some EDCs may add non-regulated charges provided by the EDC or its affiliate on the utility bill. This practice raises several concerns, one of which is the anti-competitive impact of these procedures. This is particularly the case where the EDC is selling the same type of non-regulated products as the EGS. The answer, however, is not SCB.

These additional costs added to the utility bill—which customers go to great benefits to pay to retain essential utility service—are not what was intended by the Act.

Another purported benefit of SCB claimed by its supporters is that the customer will receive one bill and customers like to have all of their electricity charges come in one bill rather than the dual bill arrangement. While the OCA certainly recognizes the convenience of a single bill, this “benefit” is speculative and certainly does not outweigh the increased costs or the potential loss of consumer protections. The OCA would also note that customers pay many bills during the course of the month, and with a move to electronic billing, the convenience and cost savings of a customer from a single bill are not as substantial as in the past.

The additional purported benefits espoused for SCB, such as flat billing, prepaid metering and value added services, come with their own set of issues regarding appropriate consumer protections. The OCA discussed these services in Section II.B.4 above and will not repeat that discussion here. The OCA would note, however, that even under SCB, suppliers would still have to follow the Chapter 56 and Chapter 54 requirements.

The identified benefits accrue to the EGSs that wish to engage in SCB as a means of forging a more direct relationship with their customers. The cost for this more direct relationship comes in the form of billing system upgrades, the need for further Commission oversight, and the need for further consumer education regarding SCB. SCB does not further the development of the retail choice market in Pennsylvania and may simply add another layer of confusion that would deter customers from considering the retail market.

III. CONCLUSION

As discussed herein, the OCA does not support the implementation of SCB. SCB cannot be reconciled with the Public Utility Code or current Pennsylvania law. SCB is also not in the

public interest as it introduces significant consumer protection concerns to utility service and would likely increase costs to consumers without any identifiable benefit. SCB is not necessary to achieve the purposes for which it was advanced and is not necessary to the continued development of retail markets in Pennsylvania. As the Commission recently concluded for both the retail electric market and the retail natural gas market, there is no basis to expend the considerable time and resources on a SCB initiative.

Respectfully Submitted,



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DATE: May 4, 2018

ATTACHMENT A

In the Notice, the Commission posed specific questions to interested parties. See, Notice of En Banc Hearing on Implementation of Supplier Consolidated Billing, Docket No. M-2018-2645254. In this section of its Comments, the OCA responds to those direct questions in the order they were presented by the Commission in the Notice.

LEGAL

1. Is SCB permitted under Chapters 14 and 28 of the Public Utility Code, 66 Pa. C.S. §§ 1401-1419, 2801-2815? If so, what limits, if any, are imposed by the Public Utility Code? In particular, does the language in Section 2807(c) limit the Commission to only (1) dual billing and (2) EDC consolidated billing? Does the statutory language in Chapter 14 require that customer billing functions, especially those related to service connections, payment arrangements, terminations of service and reconnection of service, are functions that are to be performed solely by the EDC?

SCB is inconsistent with Chapter 14 and 28 of the Public Utility Code and the Commission is without authority to order SCB. The purpose of the Act was to lower electricity costs by introducing a competitive market for generation service. Pa. C.S. §§ 2802(6) & (7). The Commission has wisely determined that public utilities are responsible for ensuring consumer protections. See, 2016 NRG Order at 34-35. The language in 2807(c) limits the Commission to dual billing and EDC consolidated billing as the EDC is specifically identified as the entity that bills customers. 66 Pa. C.S. § 2807(c). This conclusion is further supported by the context of 2807(c) as 2807(d) requires that the EDC continue to provide customer service functions including collections. See, 66 Pa. C.S. § 2807(d). As noted in the above Comments, the statutory language of Chapter 14 specifically requires that customer billing functions, especially those related to service connections, payment arrangements, terminations of service, and reconnection of service remain with the regulated public utility.

2. Would a purchase of receivables (POR) program where the EGS purchases the EDC's receivables be permitted under the Public Utility Code and Commission regulations?

A POR program where the EGS purchases the EDC's receivables is inconsistent with the Public Utility Code and Commission regulations. In the event that an EDC's receivables are purchased by an EGS, then the protections of the Public Utility Code could be bypassed by the EGSs since EGSs are not defined as public utilities. Chapter 14 has been carefully developed over decades and EDCs have developed detailed programs and embedded training and oversight protocols to comply with the consumer protection requirements, specifically in regards to credit and application of service, billing and bill collection, and the specific rights and responsibilities related to customers who have temporary or chronic inability to pay the current bill in full, including payment plans,

internal assistance programs, external assistance programs, and documentation of essential requirements prior to initiating termination of service. These rights and remedies embodied in Chapter 14 of the Public Utility Code and the Commission's regulations are closely monitored by the Commission and implemented in close coordination with Commission precedent and ongoing enforcement tools.

3. Given that POR programs are voluntary and the Commission could not require an EGS to purchase an EDC's receivables, what effect would that have on the viability of SCB if an EGS does not include a POR program in its SCB plan?

The OCA submits that it is highly unlikely that any such billing mechanism could be implemented in a practical sense and would result in inefficiencies if an EGS with SCB were not to include a POR program in its SCB plan. Without a POR program, the SCB would contain distribution charges but would not remit payment to the utility in the event that the distribution portion of the bill is not collected. If there is no POR program in an SCB environment, it is unclear how the EDC will be paid. An EGS offering SCB without a POR program would not result in any efficiencies or benefits. More to the point, it is the OCA's view that the Commission lacks the authority to direct an EDC to sell its receivables to an EGS even under a SCB POR program.

4. If the Commission decides to explore these topics further, what are the preferred procedural methods for doing so?

The OCA submits that these topics should not be further explored. As set forth in Section II.B.2 of the Comments, the Commission has recently considered these issues and determined not to move forward. No new information has been presented to change this conclusion.

IMPACT ON THE MARKET

1. How would implementation of SCB affect Pennsylvania's retail electric market?

There is no basis for concluding that the implementation of SCB would have any impact on the retail electric market from the perspective of consumers. Nor is there any evidence associated with what changes in products or services that EGSs might offer to customers as a result of SCB. One key feature of the existing POR programs is that all customers can be served by an EGS, regardless of income or credit levels. This program has resulted in a wide variety of EGSs participating in the current POR programs. It is not clear that a wide variety of EGSs would be able to replicate the billing and customer service system currently provided by EDCs. It is more likely that only a smaller subset of EGSs would be able to offer SCB. The current competitive environment provides retail choice for all, rather than for a limited group of customers that can comply with legal and credit requirements under SCB. Moreover, SCB calls into question the viability of the retail enhancement programs that are already in place such as the requirement for EDC customer service representatives to provide neutral information on retail choice and to inform customers contacting the EDC of the availability of the Standard Offer Program. Not all EGSs would utilize SCB given the ease and convenience of utility

consolidated billing under the POR programs thus adding confusion in the market for consumers and additional costs for consumers.

2. What are the benefits to consumers associated with implementation of SCB?

The OCA submits that there are no benefits to consumers associated with the implementation of SCB. Since not all EGSs would choose SCB, the cost of developing and administering SCB could be borne by the consumer without any benefit to consumers, including consumers that shop and switch. There is no evidence that SCB would enhance the “generation supply” market that is the specific service that is identified in the Act or result in lower prices for generation supply service if SCB was implemented or allowed for those EGSs that chose to make use of that option.

3. Is implementation of SCB necessary to facilitate the introduction of products and services to retail electric customers in Pennsylvania and to boost competition in the electric generation market? Is SCB needed to facilitate the provision of smart-meter related products like Time-of-Use (TOU)?

SCB is not needed to facilitate introduction of products and services to retail electric consumers. Products and services are now routinely offered and can be addressed through a dual bill option or a separate bill for the products and services, thus allowing EGSs to bill and collect for non-basic and non-energy services in the same manner as the competitors for those services must bill and collect from their customers. In addition, the provision of smart-meter related products like Time of Use rates do not require SCB since such options are generation supply services that can be purchased under the current POR program. It is possible, though, that some EGSs would offer non-energy or non-basic services with an SCB option. Such a bill carries the potential that customers would be solicited for payment of the total bill that includes basic and non-basic or non-energy charges. Indeed, EGSs have historically promoted their desire for SCB in order to offer non-basic and non-energy services bundled with generation supply service. The OCA opposes the development of a billing option that has the potential for confusing customers or seeking to link payment for essential basic services with non-basic or non-energy programs and services.

4. What effect would implementation of SCB have on standard offer programs (SOP) and how would they interact, if at all?

Implementation of SCB would have a negative impact in regards to the viability of the SOPs. EDC customer service representatives are required to provide neutral information on retail choice and inform customers contacting the EDC of the availability of the SOP. This requirement extends to customers calling with questions about retail competition or calling an EDC call center with billing questions or high bill complaints, even if the customer is currently served by an EGS. The EDC customer service representatives are trained to provide full and neutral information about the Standard Offer Programs. If a customer’s main point of contact is their current EGS under SCB,

the neutral provision of information to facilitate shopping and switching will not be available to the customer. This could introduce barriers to entry for other potential EGSs that do not engage in SCB.

MECHANICS – HOW IT WOULD WORK

1. Should an EGS be required to meet more stringent financial/bonding requirements, demonstrate that it possesses the technical expertise to perform billing and customer service functions, or make any other showing before being permitted to offer SCB? If so, what should those requirements be and what process should the Commission use to review an EGS's eligibility?

If EGSs are permitted to offer SCB, the EGS should be required to meet stringent financial/bonding requirements. The Commission recently noted that, in order to ensure that EDCs are paid, the establishment of a higher level of financial security for EGSs offering SCB would be required. 2016 NRG Order at 60. Financial/bonding requirements would need to be significant since EGSs would be handling a very significant amount of ratepayer dollars. EGSs offering SCB should be required to demonstrate upgraded billing systems, adequate staffing, and training to make it so that EGS staff would be capable of following all of the requirements of Chapter 56 and relevant Commission orders. Nevertheless, it should be noted that even with heightened financial requirements for an EGS offering SCB, there could be a risk faced by EDCs for misconduct, fraud, or program failures.

2. Would a pilot program involving an EDC working with an EGS or group of EGSs to design and implement a SCB platform be appropriate?

No, a pilot program would not be in the public interest. In order to provide useful information, a pilot program would have to evaluate not merely the mechanics of transmitting information from the EDC to the EGS, but consider the format of the EGS bill, the nature and extent of the EGS billing and customer service performance, the customer response and acceptance of such a program, and the exploration of whether sufficient EGSs would seek to make use of such an option to justify the costs and oversight required to implement SCB. It is not evident that any such pilot could be implemented to gather this type of information at a reasonable cost or that any pilot could resolve the significant legal and policy concerns associated with this initiative.

3. What steps would the Commission need to take to ensure that EDCs receive payment according to the terms of the POR program in a timely fashion?

To ensure that EDCs receive payment according to the terms of the POR program in a timely fashion, the Commission should establish enforceable protocols and be able to execute timely on any financial security instruments.

4. What type of costs may be incurred by EDCs and EGSs when implementing SCB in Pennsylvania's retail electric market? Would the costs of implementation outweigh the potential benefits? Who should be responsible for paying those costs?

As discussed in greater length in Section II.C.1 of the above Comments, the costs incurred by both EDGs and EGSs could be significant. The EDCs and the EGSs will need to provide more specific information. Furthermore, the EDCs should be required to identify the significant stranded costs associated with their investments in upgraded billing systems to accommodate the deployment of smart meters and more detailed interval usage data, as well as outage management information. It is highly likely that the costs of implementing SCB would greatly outweigh the limited benefits that have been identified by EGSs that seek SCB to date.

5. Is it feasible/appropriate to designate an EGS offering SCB as default service provider? *See* 66 Pa. C.S. §§ 2803 (definition of default service provider), 2807(e) (relating to obligation to serve) and 52 Pa. Code § 54.183 (relating to default service provider).

It is inappropriate to designate an EGS offering SCB as a default service provider. The role of the default service provider is to provide vital electric utility service to the consumer. SCB does not further the goal of providing this essential service but instead provides an avenue for the EGS to offer additional products or services to the consumer. The EDC is the best positioned to serve as the default service provider in the most cost-effective manner. The EDC always retains the obligation to connect all customers and must continually stand ready to ensure that a safe, adequate and reliable system is maintained. Ultimately, it is the EDC that has the responsibility of ensuring that energy is delivered to its system in a manner that preserves the reliability and integrity of the system. 66 Pa. C.S. §2807(a) to (d). Section 2806 of the Public Utility Code also establishes that the EDC retains the obligation to provide all billing, collection and customer service functions associated with the provision of electric service. Each EDC has an obligation to maintain its distribution system in accordance with good utility practice and in accordance with the requirements of PJM and NERC. As a result, each EDC is in the best position to ensure that electricity powers all clients at all times, regardless of any generation supplier. The OCA submits that utilizing SCB to allow an EGS to become a default service provider is unsound public policy.

COLLECTIONS – TERMINATION

1. Does an EGS offering SCB need the power to order termination of a customer's service?

An EGS participating in an SCB program typically seeks the right to order the EDC to terminate service for nonpayment. Even assuming that the EGS should be given this right, the EDC would incur significant risks in terminating service (either at the meter or remotely) if the termination was not done in compliance with Chapter 14 of the Public Utility Code and the Commission's regulations and would not have the means to determine the validity of the termination prior to the actual termination itself. The Commission has a duty to closely monitor EDC termination practices as a result of the potential harm to the health and welfare of the adults and children in the dwelling subject

to the termination order. The expansion of this oversight to multiple EGSs to determine that their customer service representatives and managers implement these detailed policies and requirements properly will significantly increase the burden on the Commission and the OCA due to the customer disputes, complaints, enforcement investigations, and enforcement proceedings that are likely to result. The likelihood that expanding the right to order termination to EGSs participating in SCB will result in a higher incidence of violation and harm to consumers is great.

2. Would allowing an EGS to order an EDC to terminate a customer's service comply with Chapter 14 of the Public Utility Code, 66 Pa. C.S. §§ 1401-1419, and Chapter 56 of the Commission's regulations, 52 Pa. Code §§ 56.81-56.83, 56.91-56.101, 56.111-56.118?

As discussed in greater length in the above Comments, allowing an EGS to order an EDC to terminate a customer's service does not comply with Chapter 14 of the Public Utility Code and Chapter 56 of the Commission's regulations. The Code and Commission regulation requires the public utility to authorize termination. See, 66 Pa. C.S. § 1406; 52 Pa. C.S. § 56.81. There is no statutory language or Commission regulation which would allow the EGS to order termination of service. Additionally, there are multiple consumer protection concerns that would arise should an EGS be permitted to order the termination of service, including but not limited to, proper notice, medical certification, and payment timing issues. The Commission has recently stated as follows:

The Commission finds that NRG's proposal regarding EGSs' power to authorize the termination of service does not adequately address the consumer protection concerns raised by the commenters, may be unnecessary for EGSs to collect on debts owed by customers, and may not comply with the Public Utility Code.

2016 NRG Order at 27.

3. If an EGS purchases an EDC's receivables and the EDC is no longer owed any money, does the EDC (or EGS) have the authority under the Public Utility Code and Commission regulations to terminate service for nonpayment of distribution charges?

The EGS does not have authority under the Public Utility Code and Commission regulations to terminate service for nonpayment of distribution charges in this scenario. Under § 1406(a), an EDC is authorized to terminate utility services under specific circumstances. See, Pa. C.S. 1406(a). The Public Utility Code makes no mention of an EGS purchasing of receivables from an EDC. The EDC, however, is authorized to terminate in the event of a nonpayment of an undisputed delinquent account owed to the EDC. Thus, the distribution charges are no longer owed to the EDC. See, Pa. C.S. 1406(a)(1). Therefore, the OCA submits that the question posed illustrates the complexity of SCB and the public harm that may result from SCB.

4. What safeguards should an EGS employ to ensure proper termination and reconnection of service by the EDC (e.g., steps to ensure timely sharing of data with EDCs; use of termination checklists; steps to promote customer understanding regarding the functions handled by the EGS versus those handled by the EDC)? What role, responsibility, and discretion does the EDC have in executing the termination process?

It is the view of the OCA that it is highly unlikely that a reasonable set of criteria could be developed or implemented to ensure that multiple EGSs employ the “proper termination and reconnection of service” policies and procedures. The use of “checklists” and other mechanical implementation programs do not replicate the long-standing internal training and operational oversight relied upon by the Commonwealth’s EDCs over many years.

5. Would a blocking mechanism to prevent switching by customers who have made payment arrangements with the EGS be permitted under the Public Utility Code and Commission regulations, and prudent from a public policy perspective?

Utilizing a blocking mechanism would be against the public interest and would go against the General Assembly’s intentions of enacting the Act. The Commission has recently stated that there is no evident justification for preventing EGS customers from switching suppliers given the harm to customers and the competitive market. 2016 NRG Order at 37. Blocking ratepayers from switching in a competitive market is inherently anti-competitive. A blocking mechanism would prevent ratepayers from shopping for other options or switching to the EDC as the default service provider.

6. What consumer protections, if any, should be implemented by an EGS if a blocking mechanism is permitted?

The OCA submits that a blocking mechanism should not be permitted. In no event, however, should a blocking mechanism be used to prevent a consumer from returning to statutory default service and EGSs should be required to inform customers of the right to return to default service without penalty.

7. What steps should EGSs take to ensure proper accounting for value-added service (VAS) charges pursuant to Chapter 56 of the Commission’s regulations, 52 Pa. Code §§ 56.23, 56.24, including allocation of customer payments to accounts with past due balances? Does the Commission have authority under the Public Utility Code to require an EGS to follow these regulations with respect to accounting for VAS charges? Should procedures be put in place to ensure that nonpayment of VAS not lead to termination of service? If so, what procedures should be implemented?

An EGS participating in SCB should be required to follow all the Commission’s requirements for the allocation of partial payments between basic and non-basic services that are implemented by EDCs at this time. In no case, should the EGS be allowed to bundle generation supply service with non-basic charge or no-energy charges since allowing such a policy would eviscerate the long-standing public education campaign

implemented by the Commission and the EDCs at ratepayer expense to shop and compare an EGS offer with the Price to Compare.

LOW-INCOME CUSTOMERS / ASSISTANCE PROGRAMS

1. Should EGSs offering SCB be permitted to include LIHEAP and CAP customers? If so, how would SCB and these programs interact, especially with regard to customer notification and education?

EGSs offering SCB should not be permitted to include LIHEAP and CAP customers. Electric service is critical to public health and safety, especially during the winter months. In order to receive LIHEAP funds, an EGS would be required to enter into a vendor agreement with DHS. To the best of the OCA's knowledge, this issue has not been explored with DHS and would need to be fully addressed. Furthermore, CAP programs operate in different manners. An alarming percentage of CAP customers incur higher bills when served by an EGS. The OCA submits that SCB would not further the goal of CAP, which is the reduction of cost for the low-income ratepayer.

2. If EGSs offering SCB are permitted to include LIHEAP and CAP customers, how would these programs interact and what changes (statutory, regulatory and programmatic) would be necessary?

The OCA submits that to implement changes, the state's LIHEAP plan would have to be altered to allow for SCB. Additionally, collaboration with DHS would be required. As noted in the above Comments, the obligation for universal service and consumer protection rests with the public utility. Moreover, the Act specifically states in Section 2804(9) that low-income programs must be funded by nonbypassable, competitively neutral cost-recovery mechanisms to fully recover the costs of universal service.

3. How would EGSs ensure that programs to assist low-income customers remain in place in accordance with the policy established in 66 Pa. C.S. § 2802(17) (relating to declaration of policy)?

Section 2802(17) states as follows:

There are certain public purpose costs, including programs for low-income assistance, energy conservation and others, which have been implemented and supported by public utilities' bundled rates. The public purpose is to be promoted by continuing universal service and energy conservation policies, protections and services, and full recovery of such costs is to be permitted through a nonbypassable rate mechanism.

66 Pa. C.S. § 2802(17). Section 2802(17) is structured to indicate that it supported by public utilities and public utility distribution rates in order to promote universal service

through a nonbypassable rate mechanism. Splitting functions between EDCs and EGSs provides no efficiencies or benefits and does not ensure that these programs and cost recovery will continue to operate as contemplated by the Act.

4. How would EGS-implementation of SCB affect existing universal service billing procedures?

EGS-implementation of SCB could negatively affect existing universal billing procedures. The portability of CAP credits under various program designs has not been fully resolved, nor has the question of the appropriate consumer protections for CAP customers in a retail choice environment. EGSs would need billing systems which would enable them to bill in accordance with the CAP programs which differ throughout the Commonwealth. Each public utility has a CAP bill and the EGS would be required to put in place a billing system capable of meeting the EDC service territory obligations. Splitting these billing functions would provide no efficiencies or benefits.

5. Would an EGS with SCB have an obligation to answer or refer to the EDC questions regarding low-income programs and to educate customers on the options and programs available?

An EGS with SCB would have an obligation to answer questions regarding low-income programs and educate consumers on the options and programs available since the EGS would become the point of contact when the customer becomes payment troubled. It is likely though that the customer would also have to speak to the EDC customer service representative, thus increasing the time and cost of properly resolving questions regarding CAP.

POSSIBLE ALTERNATIVES

1. Changes to utility consolidated billing (UCB) to allow for additional flexibility needed to bill for smart-meter related services like Time-of-Use (TOU) and the addition of charges for EGS value-added services.

The OCA submits that EDCs should have the capability to bill reasonable TOU programs through either a bill ready or rate ready program. If the rate structure is too complex for the utility billing system, the bill ready function can be utilized to support TOU programs.

The OCA does not agree that it would be appropriate for EDCs to bill for EGS non-basic or non-energy services. These services cannot be purchased pursuant to the POR programs since those charges cannot be collected in the same manner as the EGS generation charge, i.e., through a threat of termination of service and actual termination of service. The OCA suggests as well that the Commission should address the right of the EDC to include their own non-basic services on the regulated utility bill, as documented in our testimony in the pending FirstEnergy Default Service proceeding at Docket Nos.: P-2017-2637855, P-2017-2637857, P-2017-2637858, and P-2017-2637866.

Research has shown that customers go to great lengths to pay their utility bill. To many consumers, it is the total bill line that matters. Adding additional charges could become problematic, particularly when the total bill includes regulated utility charges. Any EGS value-added service would require transparent billing in order to fully inform the consumer.

2. Unbundling of billing services. Possible models include providing open, non-discriminatory access to the EDC's billing system to EGSs and other billing entities at tariffed prices. What other unbundling models are possible?

The OCA submits that there should be no further unbundling of billing services. The POR program covers basic utility services and offers a reasonable approach to EGS billing for the EGSs that do not use dual billing.

3. Unbundling of other related and specified services.

The OCA submits that there has been no identification of any related services that would need to be unbundled from an EDC's distribution charges.

4. Allowance of third-party billing agents, such as EGSs, or an independent billing agent in place of UCB or SCB.

The OCA submits that there should be no allowance of third-party billing agents such as EGSs or an independent billing agent in place of UCB or SCB. These third-party agents would not further the Act's goal of lowering electricity costs for consumers and it is likely to lead to higher costs and further inefficiencies.

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