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May 4, 2018

VIA ELECTRONIC FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, Filing Room
Harrisburg, PA 17120

RE: Notice of *En Banc* Hearing on Implementation of Supplier Consolidated Billing; Docket No. M-2018-2645254; **COMMENTS OF SHIPLEY CHOICE, LLC,**

Dear Secretary Chiavetta:

Enclosed for electronic filing with the Commission is the Comments of Shipley Choice, LLC d/b/a Shipley Energy ("Shipley") in the above-captioned proceeding. Copies of this document have been served in accordance with the attached Certificate of Service.

Shipley hereby requests that it be permitted to participate in the en banc hearing and to present the testimony of a witness.

Thank you for your attention to this matter. If you have any questions related to this filing, please do not hesitate to contact my office.

Very truly yours,

Todd S. Stewart
Counsel for
Shipley Choice, LLC d/b/a Shipley Energy

TSS/jld
Enclosure

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**COMMENTS OF
OF SHIPLEY CHOICE, LLC,
D/B/A SHIPLEY ENERGY**

In 1996, the General Assembly passed the landmark *Electricity Generation Customer Choice and Competition Act*.¹ The Act was revolutionary at the time, and Pennsylvania was one of the very first states to recognize that competitive market forces are better than regulation at controlling prices and providing customers with the products and services they desire.² The Commission has, over the 20 years or so since the act has been implemented, periodically reviewed and updated its regulations and policies around the Competitive market, to enhance the customer experience; and, because of the evolving nature of competitive markets, it is important that the Commission continue to do so.

Earlier this year, the Commission issued an order that denied the request of a solitary Electric Generation Supplier (“EGS”) to implement supplier consolidated billing (“SCB”) for EGSs.³ SBC is when an EGS sends a bill that includes all of a customer’s charges for electric service, including commodity charges due to the supplier as well as distribution charges due to the

¹ 66 Pa. C.S. § 2801, *et seq.* (“the Act”).

² 66 Pa. C.S. §§ 2802(5), (6) & (7).

³ *Petition of NRG Energy, Inc. for Implementation of Electric Generation Supplier Consolidated Billing*; Docket No. P-2016-2579249 (Opinion and Order entered January 31, 2018) (“Order”).

electric distribution company (“EDC”). The EGS collects the EDC charges and forwards them to the EDC, at no discount. In its Order denying the Petition, the Commission expressed some concerns about unanswered questions regarding the legality of SCB, and identified what it perceived to be some practical shortcomings of the proposed SCB plan. However, rather than simply deny the Petition, the Commissioners, on the Motion of Chairman Brown and Commissioner Kennard⁴, appear to recognize that SCB has potential to provide benefits to customers, and the market in general, and that public interest is served by having interested parties make the effort to figure out how to make it work. The purpose of the instant proceeding, which is the result of the Motion, is to explore various concerns raised by the Commissioners and Staff, and to seek workable solutions.

Shiple Choice, LLC d/b/a Shiple Energy (“Shiple”) is a licensed EGS in several EDC service territories in the Commonwealth. Shiple also is a Natural Gas Supplier and has several non-regulated businesses including sales and delivery of propane and heating oil. Due to its experience in operating a business where it bills customers on a regular basis, for what some might consider essential services, Shiple has substantial experience in many of the areas where concerns over practical issues were voiced. Shiple believes that allowing EGSs to bill for all services is necessary if Pennsylvania is to recognize the full benefit of a competitive energy marketplace.

Being in control of one’s relationship with one’s customer makes it far easier to provide customers with products and services that they may desire. In Shiple’s case that might be service for their furnace or an energy efficiency product like a smart thermostat. Regardless of the product or service, being in a position to market those services via the customer bill, and the trust that an

⁴ *Petition of NRG Energy, Inc. for Implementation of Electric Generation Supplier Consolidated Billing*; Docket No. P-2016-2579249 (Joint Motion of Chairman Gladys M. Brown and Commissioner Norman J. Kennard, dated January 18, 2018)(“Motion”).

ongoing relationship can create, provides an advantage currently monopolized by the utilities in the competitive energy markets. Shipley seeks a truly level playing field where the customer has the choice of who provides the bill, and where that prized relationship with the customer is not controlled by the utility simply because that is the way we have done it up till now. Shipley looks forward to a constructive dialogue and to the extent the Commission feels it would add to the conversation, will make itself available to participate in the upcoming *en banc* hearing. Shipley offers its comments below on what it considers to be the key points of concern raised in the Commission's Secretarial letter.

I. Is SCB Legal?

In the Motion and again in the Secretarial letter establishing this proceeding, the Commission seeks input on whether SCB is permissible under Chapters 14 and 28 of the Public Utility Code.⁵ The fundamental question is whether SCB is authorized, or at least permitted under the Act. The answer is that there is nothing in the Code generally, or the Act in particular, that would prohibit SCB. In fact, to the extent that EDCs are effectively in sole control of the billing of electric service, it is a violation of the requirement that EGSs be provided service on "terms of access and conditions that are comparable to utility's own use of its system."⁶ The disparity in the ability to bill customers for all the energy charges on a single bill impacts directly on a supplier's ability to provide competitive services that customers want; and not being able to provide that single bill for a customer is not "comparable to a utility's own use of its system."⁷

⁵ 66 Pa. C.S. §§ 1401, *et seq.* and 2801, *et seq.*

⁶ 66 Pa. C.S. § 2804(6).

⁷ *Id.*

It seems that the Commission may believe that there is a viable argument that the Code would prohibit SCB. That simply is not true. The framers of the Act clearly considered the issue of what entity would be responsible for billing customers, and they clearly left the door open for the Commission to allow SCB if it chooses to do so.⁸ While it may be true that in the Natural Gas Choice and Competition Act⁹ the General Assembly did require that the distribution company retain the monopoly right to provide a consolidated bill, the fact that the Legislature explicitly did so in the Natural Gas, makes it clear that it did not intend to do so in the electricity market.¹⁰ Accordingly, we submit that the Commission has the authority to issue requirements for suppliers to be permitted to issue consolidated bills and to prescribe the means by which that is accomplished.

⁸ 66 Pa. C.S. § 2807(c), which provides:

(c) Customer billing.--Subject to the right of an end-use customer to choose to receive separate bills from its electric generation supplier, the electric distribution company **may** be responsible for billing customers for all electric services, *consistent with the regulations of the commission*, regardless of the identity of the provider of those services.

(1) Customer bills shall contain unbundled charges sufficient to enable the customer to determine the basis for those charges.

(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.

(3) The electric distribution company shall not be required to forward payment to entities providing services to customers, and on whose behalf the electric distribution company is billing those customers, before the electric distribution company has received payment for those services from customers.

(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(c)&(d) (*emphasis added*)

⁹ 66 Pa. C.S. §§ 2201, *et seq.*

¹⁰The key components of these two sections are: 1) that statute says that the electric distribution company may be responsible for billing customers for all electric services, *consistent with the regulations of the Commission*. The use of the permissive “may”, as contrasted with the mandatory “shall” leaves little doubt that the General Assembly intended that the Commission could alter the then *status quo* if it chose to do so. This perspective is supported by 66 Pa. C.S. § 2205(c)(1), enacted several years later and which brought choice to the natural gas industry. Section 2205(c)(1) contains the word “shall” in a provision that is otherwise virtually the identical to Section 2807(c). Again, showing that the General Assembly knows the difference between *may* and *shall*.

Having concluded that the Commission may authorize SCB, we must next turn to the other statutory requirement that appears to have raised Commission concern, specifically Chapter 14, which largely concerns itself with payment troubled customer issues. The Commission queries whether specific requirements of Chapter 14¹¹ are mandated by the statute to be performed by the “public utility”. While Chapter 14 provides many restrictions on what a public utility can and cannot do, the only area where a public utility must perform a specific function, is in the actual termination of service.¹² However, even the termination provisions do not prohibit another entity from determining when to terminate service and simply passing an order on to the utility to do so, so long as the circumstances under which the termination is executed comply with the requirements.

In short, the Commission not only has the ability and authority to allow EGSs to provide a consolidated bill that includes charges for utility service, and the ability to order a termination of service when necessary, we believe it has the responsibility to do so to create the required level competitive playing field. While it is troubling that after 20 years, EGSs continue to compete primarily with default service provided by the utility, for reasons that are beyond the scope of these comments, it is nonetheless reality. The only way the balance can shift, and provide real customer choice, is if customers are empowered to choose not only who supplies their energy, but also how and whom they pay for it.

II. How will SCB impact the competitive market?

It is difficult looking forward to even imagine what innovations in products and services will be offered to customers in the future, given a more level playing field that includes the ability of customers to choose who bills them for energy and on what terms they are billed. One can look

¹¹ 66 Pa. C.S. §§ 1401, *et seq.*

¹² 66 Pa. C.S. § 1406.

at innovative products in other states, such as the flat bill, or service that includes Internet of Things (“IOT”) technology that allows the supplier to control heating and cooling and perhaps other home appliances in exchange for lower time of use rates. Or it could be on the bill financing for a new furnace or an annual service contract. The possibilities are endless. The “market” will be impacted when suppliers -- those that are positioned to take advantage of the ability to “own” the bill, and to use that relationship to provide products and services the customers desire – thrive. A result will be a market where suppliers are less driven to create margin solely on the commodity. That will allow energy to be priced to more competitively with default service and will lead to a more stable commodity market, where customers are in command.

Unfortunately, utility billing systems are generally not flexible enough to allow for development and implementation of the new and innovative products that suppliers wish to provide. Only pure energy charges can be included on the bill under the current POR programs. Products like time-of-use simply or flat bill are not permitted. We do not believe that utilities should be required to invest in developing billing solutions for EGSs that want to provide innovative products, nor should suppliers be forced into using the utility as their billing services provider. Requiring that their competitors “need-to-know” what new products and services they are developing, and how they are being provided, is unfair and should be foisted upon EGSs.

Any compromise on SCB, in the form of requiring utilities to provide a list of “extra” billing services is not workable. No list written today can contemplate the products that will be developed in the future – thus requiring changes that necessarily delay products and unnecessarily complicate roll-out, particularly if an EGS must wend its way through a process that involves the utility and/or Commission to “approve” a new product. That is not a competitive market! To the contrary, it empowers some entity other than customers and suppliers to decide what products are

offered in the marketplace. Moreover, it would appear, based upon a recent Commission Policy Statement¹³, that it the Commission prepared to allow utilities to innovate in the way customers are charged for utility service in light of advances in technology that directly impact how commodity products can be delivered in a more reliable and sustainable manner. Why should customers be deprived of similar advances that EGSs can bring, simply because they cannot bill for them? It is clear that failing to engage in SCB would further exacerbate the current and probably future competitive disadvantage experienced by EGSs and will deprive customers of the full benefits of the technology that being brought to bear on the marketplace.

It also is unfair because utilities will undoubtedly seek to recover the costs of any system improvements: either from customers through adding the cost of the billing system changes/improvements to rate base, or by charging some fee to the EGS. If the former, it would be yet another cost that is not fully unbundled from distribution rates paid for by all customers and which serve to make the price to compare more attractive by recovering supplier of last resort expenses from all customers instead of those who exclusively use the service -- pointing out the need for further unbundling. If the latter, EGSs could be subjected to non-market-based fees for services that otherwise are generally available in the market. In other words, they would be forced to pay the utility to improve its own billing system at a price that is not competitive. Neither of these options is even close to optimal. The Code simply does not give the utility a monopoly control over who bills customers and seeking to interject some third party or other form of control, does not solve the problems. The system needs to be fair and the change needs to be complete, half-way workarounds will benefit no-one.

¹³ 52 Pa. Code §§ 69.3301, *et seq.*

III. CONCLUSION

It should go without saying, but the need for SCB is to provide customers with what they want – options. Options to pay their utility bill with an App on their phone, to have time-of-use rates, or free weekend plans, or . . . whatever the competitive marketplace produces next. When suppliers have the means to connect directly with customers on a monthly basis through a bill, whether it be paper, electronic or otherwise, suppliers will be on a similar footing with customers as the utilities enjoy today. Customers may not even realize at this moment what options are available to them because suppliers don't have an easy way to not only communicate, but to build their relationship with the customer. It is that relationship that brings value to the customer and the supplier. Until suppliers have the same ability to engage with customers through the bill and otherwise, the market will remain the default supplier's game and choice will only be that thing that some customers do. This is a momentous opportunity enhance the market in a powerful way. It would be a shame to waste it.

Respectfully submitted,



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