

800 North Third Street  
Suite 203  
Harrisburg, PA 17102  
Tel (412) 393-6231  
Fax (717) 525-7460



Shelby A. Linton-Keddie  
Manager, State Regulatory Strategy and Senior Legal Counsel  
[slinton-keddie@duqlight.com](mailto:slinton-keddie@duqlight.com)

August 23, 2018

**Efiled**

Ms. Rosemary Chiavetta, Secretary  
Commonwealth Keystone Building  
2nd Floor, Room-N201  
400 North Street  
Harrisburg, PA 17120

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

Dear Secretary Chiavetta:

Enclosed please find Duquesne Light Company's Reply Comments in the above-referenced proceeding.

Upon receipt, if you have any questions regarding the information contained in this filing, please contact the undersigned.

Sincerely,

A handwritten signature in black ink, appearing to read 'S. A. Linton-Keddie', written in a cursive style.

Shelby A. Linton-Keddie  
Manager, State Regulatory Strategy  
And Senior Legal Counsel

Enclosure

cc (w/ enc.): Dan Mumford, Director, Office of Competitive Market Oversight

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

---

**REPLY COMMENTS OF  
DUQUESNE LIGHT COMPANY**

---

**I. BACKGROUND**

On December 8, 2016, NRG filed a Petition requesting the Commission issue an Order implementing supplier consolidated billing (“SCB”) as a billing option available to customers of EGSs by the second quarter of 2018.<sup>1</sup> In response, numerous parties filed answers and reply comments opposing NRG’s proposal as lacking legal authority and public interest benefits.<sup>2</sup>

On January 18, 2018, the Commission adopted an Opinion and Order (“Opinion and Order”) denying NRG’s Petition and closing the docket.<sup>3</sup> In denying NRG’s Petition, the Commission found that “NRG has not met its burden of proving that its proposal is in the public interest, or that it complies with the Public Utility Code and Commission regulations promulgated thereunder.”<sup>4</sup> This was the correct result. Among the many questions raised by the Opinion and Order were those related to customer protection, including: the legal authority for such a mechanism; transferring the power to order termination of a customer’s electric service to EGS

---

<sup>1</sup> *Petition of NRG Energy, Inc. for Implementation of Electric Generation Supplier Consolidated Billing* at 2 (FN 1), Docket No. P-2016-2579249 (Petition filed December 8, 2016) (NRG Petition).

<sup>2</sup> *See, e.g.*, Petition to Intervene, Answer in Opposition and Comments of Duquesne Light Company (Jan. 23, 2017); *see also* Reply Comments of Duquesne Light Company (Feb. 22, 2017), both at Docket No. P-20156-2579249. The only parties that submitted comments in support of NRG’s proposal were other EGSs.

<sup>3</sup> Opinion and Order, Docket No. P-2016-2579249 (Order entered Jan. 31, 2018)

<sup>4</sup> *Id.* at 20-21.

firms; the ability of EGSs to properly account for value-added-service (“VAS”) charges; and the administration of POR programs.<sup>5</sup>

At the same Public Meeting where the Commission adopted that Order, Chairman Gladys M. Brown and Commissioner Norman J. Kennard sponsored a Joint Motion that directed the Office of Competitive Market Oversight (“OCMO”) and the Commission’s Law Bureau to organize an *en banc* hearing on or before June 14, 2018, to discuss various issues raised by the NRG Petition. Consistent with this direction, on March 27, 2018, the Commission issued a Secretarial Letter (“March 2018 Secretarial Letter”) setting the date, time and location for an *en banc* hearing.

Further, the March 2018 Secretarial Letter summarized the Commission’s intent that the purpose of the *en banc* hearing is to inform the PUC: (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.<sup>6</sup> As has been made evident in previously submitted comments, testimony given at the June 14, and July 12, 2018, *en banc* hearings, and consistent with the PUC’s own findings in denying NRG’s Petition and closing that docket, the answer to all three inquires remains “No.” Accordingly, the PUC should reach the same conclusion here – SCB is neither legally authorized nor in the public interest for the Commonwealth.

Upon receiving Comments from various stakeholders on May 4, 2018 regarding the 29 PUC issued directed questions on this topic, by Secretarial Letter dated May 14, 2018, the

---

<sup>5</sup> See *Petition of NRG Energy, Inc. for Implementation of Electric Generation Supplier Consolidated Billing Opinion and Order*, Docket No. P-2016-2579249 (Jan. 31, 2018) at 21 (hereinafter “NRG Opinion and Order”). Notably, all of these issues remain unresolved and underdeveloped in this proceeding as well.

<sup>6</sup> See *Notice of En Banc Hearing on Implementation of Supplier Consolidated Billing*, Docket No. M-2018-2645254, (Secretarial Letter Mar. 27, 2018), at 1.

Commission scheduled two *en banc* hearings<sup>7</sup> seeking input from EGSs, EDCs and consumer advocates on the merits of SCB (“May 18 Secretarial Letter”). In addition, the May 2018 Secretarial Letter set a deadline for written reply comments on or before August 24, 2018.

Consistent with the schedule in this proceeding, Duquesne Light Company (“Duquesne Light” or “Company”) hereby files these Reply Comments for the Commission’s consideration, once again urging the PUC to reject suppliers’ proposals (particularly the Electric Generation Supplier Coalition for Supplier Consolidated Billing (“EGS Coalition for SCB” or “Coalition”)) for SCB as legally insufficient, unnecessary, and harmful to customers’ existing consumer protections.<sup>8</sup> Instead of blindly endorsing the concept of SCB, the Company recommends that further effort be made for EGSs to utilize currently available (and legally authorized) dual billing before the PUC recommends any additional changes to the current retail market.

## II. REPLY COMMENTS

Duquesne Light is a public utility as that term is defined under Section 102 of the Public Utility Code, 66 Pa. C.S. § 102, certificated by the Commission to provide electric distribution service in the City of Pittsburgh and in portions of Allegheny and Beaver Counties in Pennsylvania. The Company is also an electric distribution company (“EDC”) and a default service supplier as those terms are defined under Section 2803 of the Public Utility Code. 66 Pa. C.S. § 2803. Duquesne Light provides electric distribution service, which entails statutorily

---

<sup>7</sup> On June 14, 2018 the Commission held the first of two *en banc* hearings. At the June 14, 2018 hearing the Commission heard comments from an EGS coalition comprised of representatives from ENGIE Resources LLC, Just Energy Group, Inc., Interstate Gas Supply, Inc., Direct Energy, Inc. and NRG Retail East. The Commission also heard from representatives from Stream Energy, TXU Energy, Retail Energy Supply Association (“RESA”), Shipley Energy, WGL Energy, Drift Marketplace Inc., and Advanced Energy Management Alliance as well as consumer advocates from the Office of Consumer Advocate, CAUSE-PA and TURN and Action Alliance. On July 12, 2018 the second hearing was held with testimony from representatives of the Energy Association of Pennsylvania, PECO, First Energy, Duquesne Light and from an EGS coalition comprised of Eckert, Seamans, NRG, WGL Energy and RESA/TXU Energy and from Shipley Energy.

<sup>8</sup> Duquesne Light is a member of EAP and, in addition to the positions expressed herein, the Company supports the positions articulated in EAP’s Reply Comments in the above-captioned proceeding.

mandated responsibilities regardless of the identity of the provider of electric generation service including, among other things: billing for distribution and transmission service, meter reading, complaint resolution, and collections, for approximately 590,000 customers. *See* 66 Pa. C.S. §§ 2807(c), (d).

The Company steadfastly agrees with the Commission's ruling on the NRG Petition denying that Petition and closing the docket. The PUC was correct in finding that the proposal to implement SCB failed to show that it was either legal or in the public interest. Despite receiving more information in this docket, inclusive of approximately twenty sets of Comments and more than five hours of testimony in two *en banc* hearings, the result in this proceeding should be the same – any proposal to implement SCB should be denied and this docket should be closed.

As the PUC is aware, there are serious legal and policy issues over the Commission's lack of jurisdiction and enforceability over EGSs and their operations under the current law. This is because, quite simply, EGSs are not regulated to the same extent as EDCs, nor should they be.<sup>9</sup> Electric Generation Suppliers are not public utilities. As such, they are not given the same rights, responsibilities, or regulatory authority. Identifying this reality does not mean that one entity has an advantage over the other; it simply recognizes the fact that public utilities are held to higher (and sometimes different) standards, because they are fully regulated by this Commission and retain the obligation to serve all customers.

While the Commission has, on occasion, begun the process to consider issues attendant to SCB if such a mechanism were ever legally permissible in Pennsylvania, the PUC has never found express legal authority for SCB in the Electricity Generation Choice and Competition Act, because it does not exist. In order to ensure that certain consumer protections remain in place after

---

<sup>9</sup> *See* Calpine Comments at 4.

restructuring, the Pennsylvania Legislature mandated that billing functions for distribution and transmission service, as well as meter reading, complaint resolution, and collections would remain with EDCs, regardless of the identity of the provider of those services,<sup>10</sup> because EDCs remain fully regulated and under the “jurisdiction and active supervision of the commission.”<sup>11</sup> This was the intended result for the Commonwealth. Just because this is not the way Texas operates does not make it wrong, stifling, or inapposite to either the goals of the Competition Act or the Retail Markets Investigation.

In this proceeding, a subset of the 148 currently certificated EGSs are again attempting to have the Commission endorse a type of billing mechanism beneficial to their business models and revenue potential without demonstrating any need or customer benefits and flying in the face of clear statutory limitations. The express intent of the General Assembly in 1996 was that billing and collections for distribution and transmission service would remain with EDCs after restructuring. This fact is why Section 2807(c) articulates only two billing options: separate bills from EGSs and EDCs or a bill, from an EDC, which includes charges for all electric services. This reality, that, at all times, collections and terminations are to remain with EDCs, also explains why Chapter 14 does not mention EGSs. Specifically, since Chapter 28 expressly mandates that some form of billing and all collections are to remain with EDCs, it follows that Chapter 14, which gives tools to better effectuate collections and reduce uncollectible accounts, would only apply to utilities.

Counter to the EGS Coalition’s claims that the Commission has “implied” authority to implement SCB despite its omission in the Competition Act, basic rules of statutory construction dictate instead that “the mention of a specific matter in a statute implies the exclusion of other

---

<sup>10</sup> 66 Pa. C.S. §§ 2807(c),(d).(emphasis added).

<sup>11</sup> 66 Pa. C.S. §2802(16).

matters.” See *Popowsky v. Pa. Pennsylvania Public Utility Commission*, 869. A.2d 144, 1159 (Pa. Commonwealth 2005). Section 66 Pa. C.S. §2807(c), related to the Duties of Electric Distribution Companies, is limited in scope. As pointed out numerous times by various parties in this proceeding, Section 2806(c) specifically articulates two billing options – either dual billing or utility consolidated billing.

As such, a court would likely find that the legislature intended to limit billing options, and that the only consolidated bill, which includes charges for all electric services, would be provided by EDCs. There is no evidence that it was ever contemplated that electric generation suppliers were to use a consolidated bill for all electric services, as the EGS Coalition contends. In fact, because the General Assembly specifically called out use of separate bills by electric generation suppliers in the beginning of the section, and did not mention EGSs again, it suggests instead that the Legislature specifically excluded electric generation suppliers from having the ability to provide consolidated bills, instead deliberately giving this ability only to EDCs.<sup>12</sup> As such, the EGS Coalition’s legal interpretation of Section 2807(c) should be rejected outright.

Similarly, the absence of the term EGS or billing agent in Chapter 14 of the Public Utility Code does not mean that EGSs have implied legal authority to either initiate or effectuate a termination, as they claim. The Commission recognized certain EDC statutorily delegated duties, including termination, in the NRG Order, when stating:

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 2807(d), consumer protection and customer service are among the duties that are allocated to EDCs. And each of the key provisions in Chapter 14 regarding the connection, termination and reconnection of service are obligations placed on

---

<sup>12</sup> A similar result can be found in Chapter 22 of the Public Utility Code, where Section 2205(c)(1) provides either dual billing or NGDC consolidated bills for gas customers. “Subject to the right of a retail gas customer to choose to receive separate bills from its natural gas supplier for natural gas supply service, the natural gas distribution company shall be responsible for billing each of its retail gas customers for natural gas distribution service, consistent with the orders or regulations of the commission, regardless of the identity of the provider of natural gas supply services.”

public utilities. And just as an EDC may not delegate its statutory obligation to offer time-of-use rates to third-parties, the 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.<sup>13</sup>

Despite this clear interpretation by the Commission in the NRG Order, the EGS Coalition, in its May 4 Comments, inexplicably submitted a nearly identical proposal and legal analysis that was denied by the full Commission earlier this year. The similarities between the two proposals are many:

- EGSs would bill and collect from customers both the EGS's generation service and the EDC's distribution charges;
- There would be purported preservation of existing consumer protections;
- An establishment of enhanced qualifications for qualifying EGSs;
- The full purchase of EDC accounts receivable by EGSs; and
- The ability of the EGS to initiate termination for non-payment.<sup>14</sup>

The three major differences between the denied NRG Petition and the current proposal by the EGS Coalition are: (1) there are more EGSs that joined in this proposal; (2) the removal of the blocking mechanism;<sup>15</sup> and (3) the removal of SCB applicability for customers that either receive LIHEAP or participate in CAP. Additionally, the hours of testimony at the *en banc* hearings did little to expound on the proposal.

---

<sup>13</sup> NRG Order at 34-35 (internal citations and footnotes omitted).

<sup>14</sup> See EGS Coalition Comments at 16-17.

<sup>15</sup> The blocking mechanism would have prevented a customer from switching suppliers or going back to default service while any bills remain unpaid/outstanding to an EGS.

To that end, rather than going through the failings of each aspect of this proposal ad nauseam,<sup>16</sup> Duquesne Light notes that the PUC need look no further than its decision in the NRG Petition for the basis to render a similar finding here: the EGS proposal should be dismissed for failure to satisfy its burden of proof. Moreover, the Company agrees with the Commission's previous determination that the SCB proposal before the PUC "leaves many critical issues unaddressed, and could be harmful to Pennsylvania's electric consumers and retail electric market in general."<sup>17</sup> Where the Company disagrees with the Commission's earlier findings, however, is regarding the ability of the PUC to make a legal determination as to whether there is statutory authority for SCB in the Public Utility Code. Through Comments, testimony and Reply Comments, there is more than enough information on the record here for the PUC to definitively make a legal finding on this issue, if it so chooses.

The Coalition, as well as other suppliers, attempt to convince the PUC that they are unable to maximize the value and potential of Pennsylvania's retail electric market if using anything less than SCB, because customers do not like to receive two bills instead of one. Beyond anecdotal claims, there has been no adequate showing that EGSs would fail to establish the direct relationship with consumers they crave when using a dual bill. In fact, what has been shown instead is that EGSs have failed to utilize dual billing for the residential class in a statistically significant way since at least 2012.<sup>18</sup> While suppliers initially claimed this lack of use had to do with customer preference, suppliers stated at the July 14, 2018, *en banc* and in comments that the real failure of dual bills is because suppliers lack the ability to terminate service for nonpayment.<sup>19</sup> Use of a dual

---

<sup>16</sup> Voluminous responses can be found in the NRG proceeding. In addition, please incorporate by reference the Company's May 4 filing, as well as its testimony (including exhibits) from the July 14, 2018, *en banc* hearing.

<sup>17</sup> See NRG Order at 20-21.

<sup>18</sup> See *Duquesne Light Exhibit 1* from the July 14, 2018, *en banc* hearing.

<sup>19</sup> See EGS Coalition for SCB Comments at 19-20.

bill, at a customer's discretion, is consistent with the law and intent of the General Assembly, and avoids many of the potentially complex (and needless) issues which result from trying to force an illegal mechanism (SCB) within the context of the currently existing Public Utility Code.

Accordingly, nothing further should be done at this time on the topic of SCB by the PUC, other than denying the proposal and making the finding that SCB is not legally authorized by the Competition Act. At a minimum, and in order to truly understand the supposed shortcomings of an EGS dual bill option prior to making any recommendation on the use of SCB going forward, the Commission should encourage or require EGSs to vastly increase the use of dual bills for the residential class and provide information to the PUC in the form of a report as to its limitations. Without widespread use of dual bills, this information does not exist today.

### **III. CONCLUSION**

Duquesne Light appreciates the opportunity to provide these comments on the issues first raised by NRG's denied Petition for SCB, echoed in the March 27, 2018 Secretarial Letter and further explored in two *en banc* hearings. However, it should not be ignored that despite giving suppliers yet another bite at the proverbial apple, there has yet to be a showing that SCB is legal, needed, or in the public interest.

Suppliers currently have a statutorily authorized mechanism, dual billing, that addresses their ability to "offer innovative products and services" while establishing a long-term, direct relationship with their customers. It is the EGSs that choose not to use it.

Duquesne Light has supported and continues to support the development of the retail electric market when proposed changes demonstrably benefit customers. In this regard, the Company notes that it was the first EDC in Pennsylvania to offer consolidated billing to EGSs with a POR program, and has historically had some of the highest levels of shopping in the

Commonwealth. However, Duquesne Light cannot support any proposal that attempts to include a mechanism that is illegal, counter to ratepayer interests, damaging to the competitive market as a whole, and threatens the maintenance of consumer protections. Accordingly, the PUC should reject suppliers' proposals to implement SCB in their entirety.

Respectfully submitted,



---

Shelby A. Linton-Keddie (Pa. I.D. 206425)  
Manager, State Regulatory Strategy  
Sr. Legal Counsel  
Duquesne Light Company  
800 North Third Street  
Suite 203  
Harrisburg, PA 17102  
[slinton-keddie@duqlight.com](mailto:slinton-keddie@duqlight.com)  
Tel. (412) 393-6231

DATE: August 23, 2018