

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Interstate Gas Supply, Inc. d/b/a IGS	:	
Energy, Direct Energy Services LLC, and	:	
Shipley Choice, LLC d/b/a Shipley Energy	:	
Complainants	:	Docket Nos. C-2019-3013805
	:	C-2019-3013806
v.	:	C-2019-3013807
	:	C-2019-3013808
Metropolitan Edison Company,	:	
Pennsylvania Electric Company,	:	
Pennsylvania Power Company, and	:	
WestPenn Power Company	:	
Respondents	:	

**SURREBUTTAL TESTIMONY
OF ANTHONY CUSATI, III
ON BEHALF OF
INTERSTATE GAS SUPPLY, INC., D/B/A IGS ENERGY,
DIRECT ENERGY SERVICES LLC AND
SHIPLEY CHOICE, LLC D/B/A SHIPLEY ENERGY**

1 **I. INTRODUCTION**

2 **Q. Please state your name.**

3 A. Anthony Cusati, III.

4

5 **Q. Are you the same Anthony Cusati, III that presented Direct Testimony in this**
6 **proceeding?**

7 A. Yes.

8

9 **Q. What is the purpose of this Surrebuttal Testimony?**

10 A. To address the Rebuttal Testimony of three witnesses in this proceeding: 1) Ms. Barbara
11 Alexander on behalf of the Office of Consumer Advocate; 2) Ms. Kimberlie Bortz on
12 behalf of First Energy; and 3) Ms. Julia Enterline on behalf of First Energy.

13

14 **Q. Can you please summarize your response?**

15 A. Ms. Alexander's testimony agrees with me that First Energy's current billing of non-
16 commodity products and services while refusing to provide a similar service for EGSs on
17 its system is discriminatory, but we appear to disagree in the appropriate remedy. She
18 advocates for eliminating what is otherwise a legal service, while I believe the approach
19 the Commission adopted in the *Columbia* case is correct.¹ Ms. Bortz and Ms. Enterline
20 both suggest that because the First Energy EDC's tariffs prohibit on bill billing for EGSs
21 that the current practice is not discriminatory, which I believe is incorrect. They both

¹ *Pa. P.U.C., et al, v. Columbia Gas of Pennsylvania*; Docket No. R-2018-2647577 (Opinion and Order entered December 6, 2018)(“*Columbia*”).

1 present various technical reasons why they believe it would be difficult for First Energy to
2 provide on-bill billing for EGSs. None of their reasons persuades me that First Energy
3 should be permitted to continue with its current discriminatory conduct; either they provide
4 the same service for us or they stop providing it, much the same as the Commission ruled
5 in the Columbia Gas of Pennsylvania case.

6
7 **II. RESPONSE TO MS. ALEXANDER**

8 **Q. On page 3, line 12 to page 4, line 12, Ms. Alexander admits that there is a legitimate**
9 **issue with First Energy's refusal to allow EGSs to bill their non commodity products?**
10 **Do you agree with her comments?**

11 A. I agree with Ms. Alexander's contention that there is a serious issue with the fact that First
12 Energy presently bills for its affiliate's sales of products and services and yet refuses to
13 allow electric generation suppliers that are providing commodity service in its utility
14 service territories to bill for similar products and services on the utility bill. I disagree with
15 Ms. Alexander's discussion regarding harm to other parties, not EGSs, that provide similar
16 products in the market. She ignores the clear distinctions that EGSs are licensed by the
17 Commission, provide commodity services in the territories, have pre-existing billing
18 relationships with First Energy and currently trade electronic transactions with the First
19 Energy utility companies. These distinctions are significant and provide ample reason to
20 not include "everyone" with the ability to use "on-bill" billing. I am disturbed by Ms.
21 Alexander's assertion that customers would assume that such products and services are
22 regulated or supervised by the Commission, both because she cites to no evidence to
23 support her speculation, but also because, if true, it would indicate a lack of customer

1 education that can be readily addressed with additional disclosures. I do agree with Ms.
2 Alexander, however, that First Energy's present billing situation provides it with an unfair
3 competitive advantage over EGSs.

4
5 **Q. On page 4, lines 13-17, and in footnote 4, Ms. Alexander cites to the recent Columbia**
6 **case, do you agree with her characterization of the outcome of that case?**

7 A. No. Like Ms. Alexander, I too was a witness in that case so I find it troubling that she fails
8 to mention that the PUC's December 6, 2018 Order would have allowed Columbia to
9 continue on-bill billing for its two former affiliates, if Columbia would have allowed NGSs
10 to avail themselves of the same opportunity, and thus rectify the discrimination that the
11 Commission found existed.² If Columbia were not willing to provide the service without
12 discrimination, however, Columbia would have to cease providing on-bill billing for its
13 two former affiliates. Columbia chose to cease billing for all. When Columbia later
14 submitted its compliance plan, it proposed to continue providing on-bill billing service for
15 one of the parties well into the future and the Commission ordered them to cease the
16 discrimination immediately.

17
18 **Q. Beginning at the top of page 5, Ms. Alexander notes her disapproval of the EGS**
19 **Parties' proposal to allow for billing of non-commodity products and services. How**
20 **do you respond?**

21 A. I disagree with her recommendation because it runs contrary to what the PUC required to
22 remedy the discrimination it found in the Columbia case she cites. As I discussed above,

² *Columbia*, p. 50.

1 in response to an argument by the OCA that the NGS Parties in that case should not be
2 allowed to use on-bill billing, the Commission rejected OCA's position and concluded that
3 NGSs are legally able to engage in the service, if the utility is willing to provide it without
4 discrimination. I find it odd that Ms. Alexander would ignore the fact that the Commission
5 has regulations on the billing of such products and services that make it clear that they are
6 permitted.³ It would appear, based upon my layman's reading of the Columbia decision
7 that the Commission was satisfied that sufficient protections are in place. If that were not
8 that case, I would expect that the Commission would have expressed some concern, which
9 it did not do.

10
11 **Q. Beginning at the bottom of page 5 and through page 7, Ms. Alexander describes the**
12 **manner in which First Energy provides non-commodity products and services – do**
13 **you agree with her characterization?**

14 A. First, if Ms. Alexander believes that the manner in which non-commodity charges are
15 represented on the First Energy bill is confusing, that "problem" can be fixed, as I noted
16 above, even though she has not presented any evidence to support that view. With regard
17 to CAP customers, we are not aware of any regulation that prohibits marketing non-
18 commodity products and services to certain classes of customers – CAP customers for
19 instance. The unspoken and cynical subtext of Ms. Alexander's view that CAP customers
20 should not be eligible, is that our products are not a good value for the customer, which
21 simply is not supported or true. If you set aside Ms. Alexander's cynicism, the obvious
22 question is why would a CAP customer be different from any other customer in wanting a

³ 52 Pa. Code §§ 56.13, 56.23 and 56.83.

1 warranty product that covered their water and sewer lines, and natural gas service line
2 where it is the customer's responsibility? If there is a benefit, and we believe there is, why
3 should a CAP customer be denied that benefit? I will say however, that First Energy could
4 be more transparent about what is and is not regulated when presenting these options to
5 customers.

6
7 **Q. Do you agree with Ms. Alexander's characterization of your proposal at page 9, lines**
8 **1-12?**

9 A. I think the characterization in her testimony is accurate, but her footnotes are not correct.
10 Specifically, she attacks Shipley's proposal to bundle electricity and natural gas sales on
11 the electric bill as "radical". It is a completely legitimate business proposition to offer
12 customers a product that includes both natural gas and electricity sales. This is one of the
13 value-added products that competition is intended to provide. To suggest that seeking to
14 bill customers for this type of an "energy bundle" on a single bill is "radical" defies the
15 reality that customers may prefer to have them billed together and Shipley would like to be
16 able to satisfy that desire.

17
18 **Q. At the bottom of page 9 and on to page 10, Ms. alexander appears to take issue with**
19 **the manner in which suppliers enroll customers in non-commodity products – how do**
20 **you respond, particularly to her insinuation that not requiring a verification for such**
21 **enrollments is improper?**

22 A. Ms. Alexander appears to be purposefully confusing "consumer or customer verification"
23 with "third party verification". The Commission's regulations require the former, not the

1 latter for commodity sales and there is no requirement for either type of verification for
2 non-commodity sales. That does not mean, however, that suppliers do not verify non-
3 commodity product/service sales and enrollments. Our discovery responses, which Ms.
4 Alexander possesses, make it clear that we do verify the customer's selection of non-
5 commodity products at the time of sale, moreover, to the extent that non-commodity
6 products are bundled with Commodity, that sale would be subject to verification with
7 commodity.

8
9 **Q. On page 10, line 4 to page 11, line 10, Ms. Alexander describes the non-commodity**
10 **products that suppliers offer or intend to offer – how do you respond?**

11 A. Initially, I point out that Ms. Alexander continuously states that certain products do or do
12 not have any relationship to electric service, but she states no criteria on how she reached
13 that unilateral position, and more concerning is that she can cite to no regulation or
14 requirement that suggests that any such relationship be required. In fact, the regulations
15 seem to point to a much broader array of products and services than Ms. Alexander would
16 consider.⁴ First Energy's affiliate solicits customers to buy products such as a forklift and
17 have it charged to their First Energy electric bill. The fact is that we offer products that
18 customers want, and when we can make the purchase seamless for the customer by billing
19 it on the utility bill, that is something customers also want and desire. Ms. Alexander can
20 point to no requirement that speaks to the contrary.

⁴ For example, 52 Pa. Code § 56.13, provides a non-exclusive list of products and services that covers just about anything in the non-basic category: "Charges for other than basic service—that is, merchandise, appliances and special services, including merchandise and appliance installation, sales, rental and repair costs; meter testing fees; line extension costs; special construction charges and other nonrecurring charges."

1 **Q. At page 11, line 11 Ms. Alexander addresses the manner in which suppliers currently**
2 **bill customers, do you have a comment?**

3 A. I would say that Ms. Alexander's account is an attempt to once again confuse the issues.
4 We provide on-bill billing in Pennsylvania with Peoples Gas, in Maryland with BG&E,
5 and in Ohio with Columbia Gas of Ohio and Vectren Energy Delivery. Also, as Ms.
6 Alexander mentions, but downplays, that Ohio recently issued regulations that require all
7 utilities that provide non-commodity products and services to also bill for such products
8 for competitive suppliers and include the charges on the utility bill. To dismiss the Ohio
9 Order by saying the implementation status is "unknown" belies the importance of the
10 Order, since Ohio clearly is the home state of First Energy, which sells non-commodity
11 products and services in Ohio. The fact that this practice is so widespread, without
12 regulatory control over how it is provided, suggests that regulators are not concerned.

13
14 **Q. Beginning at the bottom of page 12, Ms. Alexander presents her reasons for opposing**
15 **allowing suppliers to use on-bill billing from First Energy for non-commodity**
16 **products, do you have a general response?**

17 A. I do. While I understand that Ms. Alexander's motivation may be to "protect" customers,
18 I think her efforts in this case are misguided. Her entire approach to this matter is to assume
19 that competitive suppliers lack any sort of integrity and that their intention is to take
20 advantage of customers. I disagree. To the contrary, we compete every day, with each
21 other, and with utilities like First Energy, to provide both commodity and non-commodity
22 products and services that customers actually want and which they will purchase, when
23 given an easy opportunity. What we seek here is fairness, which is achievable. We do not

1 seek the “take my ball and go home” approach advocated by Ms. Alexander. Competition
2 among retail companies brings benefits to consumers that are not readily provided through
3 traditional utility regulation. These benefits include the setting of efficient prices, the
4 development of innovative products and services, and the ability to efficiently meet clean
5 energy policy objectives.

6
7 **Q. How do you respond to Ms. Alexander’s contention that the discrimination caused by**
8 **First Energy’s refusal to allow others to access its bill for on-bill billing, applies to**
9 **many providers in the market who provide the same sort of products and service, who**
10 **are not EGSs?**

11 A. I think there are several reasons why Ms. Alexander is incorrect. As I noted above, there
12 are other entities in the market that provide warranty products, for instance, yet they are
13 not EGSs. They do not have a license from the PUC under the Electricity Customer Choice
14 and Competition Act⁵, they don’t provide commodity service on the First Energy system,
15 they don’t bill those customers on First Energy’s utility bill, they don’t trade electronic
16 transactions with the First Energy utility companies as the EGS Parties do, and they don’t
17 compete with First Energy for customers like EGSs do. In short, the position of an
18 independent HVAC firm, for example, is vastly different, *vis a vis* First Energy, than an
19 EGS. Many of those entities are local and may have years of presence in the areas in which
20 they operate, unlike the EGSs. I am not aware of any of these entities having come to the
21 Commission seeking to bill on the utility bill. But that does not stop Ms. Alexander from

⁵ 66 Pa. C.S. §2809.

1 suggesting that because they have not been included, nobody should be able to receive the
2 billing service. I fail to see any justification for her position.

3
4 **Q. How do you respond to Ms. Alexander's second contention regarding First Energy's**
5 **current practice of on bill billing?**

6 A. Ms. Alexander suggests banning First Energy from engaging in what is now a permitted
7 and regulated practice of billing for non-commodity products and services, as a cure to
8 First Energy's use of its monopoly status in marketing those products. This is throwing
9 out the baby with the bathwater. The best cure for First Energy's monopolistic behavior is
10 to require it to stop discriminating against suppliers providing similar products and services
11 and to bill for our products on their bill in the same way they bill for their own (i.e. to level
12 the playing field rather than destroy it). If the Commission believes that there is deception
13 in the manner in which the charges are presented on the bill, that can easily be addressed,
14 but it clearly is not a sufficient reason to eliminate on-bill billing. Moreover, Ms.
15 Alexander presents no empirical evidence, other than her own self-serving and unsupported
16 opinion, to support the notion that customers focus on the total amount billed and fail to
17 examine the details of their utility bills. My own practices and my experience dealing with
18 customer issues convinces me that most customers look beyond the total. Just listening to
19 consumer calls coming into our customer service centers supports the notion that customers
20 do in fact look beyond the "total amount billed."

1 **Q. How do you respond to Ms. Alexander's third contention regarding the range of**
2 **products we would propose to provide?**

3 A. I think Ms. Alexander's approach is to create a categorization – “non-electric services” –
4 that is not defined in her testimony, and then to assign as many of the services and product
5 offerings suggested by the EGS Parties as “non-electric” in an effort to suggest that these
6 products and services are not worthy of being included on the utility bill. The fact is, short
7 of selling the commodity itself, nothing is “electric”. However, if you assume that
8 whatever is sold, to be “electric” must consume electricity, that would mean that household
9 appliances, refrigerators, clothes washers and dryers, hair dryers and blenders would all be
10 on the table along with HVAC equipment, and a host of other products. Without belaboring
11 the point, it should suffice to say that I disagree with Ms. Alexander's esoteric “non-
12 electric” category. The limitation on what can be billed should not be artificially imposed,
13 but rather, allowed to be driven by what customers want. If residential customers do not
14 buy forklifts, it is safe to say that suppliers will not offer them for sale. With regard to Ms.
15 Alexander's assault on Shipley's suggestion that it would like to offer bundled gas and
16 electric products, I fail to see a good policy reason for condemning such an offer, one that
17 many customers may desire. If there is a convenient manner of billing for such a bundled
18 product on one bill, as opposed to two, I can certainly understand why customers would
19 find that to be attractive and very well could be cost efficient for them to do so. If it can
20 be done from a technical perspective, that complies with applicable regulations, then there
21 is no good reason to oppose it. Ms. Alexander's suggestion that Shipley's expression of
22 interest in billing such “bundled” products is radical or not conditioned on technical
23 feasibility or compliance with regulations, is unfounded and should be disregarded.

1 **Q. Do you have any response to Ms. Alexander's fourth contention that the volume of**
2 **different products that suppliers could potentially offer is problematic?**

3 A. Yes. Ms. Alexander suggests, without evidence, that because a supplier providing
4 commodity service to a customer may also provide a range of other products or services
5 that a customer might desire and purchase, that customer might be confused about what
6 they have purchased. This is pure speculation. She also suggests that because the EGS
7 Parties have not proposed that First Energy "regulate" the types of products or the number
8 of products that the proposal is fatally deficient. If, as requested, First Energy lists each
9 product or service on the bill, along with the cost for each, it is difficult to understand how
10 customers could be confused. If First Energy were to feel it necessary, due to technical
11 requirements, to impose some reasonable limitation on the number of products or services
12 a supplier could place on the First Energy bill, that could be addressed and certainly is not
13 fatal in any fashion to the EGS Parties' proposal. It is telling of Ms. Alexander's approach
14 that in order to suggest that there is any rational basis to oppose the EGS Parties, she must
15 "presume" multiple unsupported scenarios, i.e., invent out of thin air, to make her point.

16

17 **Q. How do you respond to Ms. Alexander's fifth contention that because the EGS Parties**
18 **differ on how they would prefer the non-basic charges for the non-commodity**
19 **products and services to be labeled on the First Energy bill, the proposal must be**
20 **rejected?**

21 A. My reaction is that if each of the three suppliers that make up the EGS Parties had exactly
22 the same views, that would be far more concerning. The fact that one supplier has a
23 different view is the very basis of competition. Questions over implementation are

1 speculative and simply not fatal to the required outcome. That is, if such varied approaches
2 cannot be executed for whatever reason, it does nothing to weaken the ultimate point that
3 what First Energy does now is discriminatory, and that such discrimination can best be
4 remedied by requiring First Energy to provide the same billing service for customers on
5 similar terms and conditions. Nothing in Ms. Alexander's argument refutes that premise.
6

7 **Q. How do you respond to Ms. Alexander's last contention regarding the manner in**
8 **which First Energy presently displays non-basic charges on its bills to customers?**

9 A. I believe that transparency in billing is the best means of avoiding customer confusion and
10 customer complaints in the long run. If Ms. Alexander has specific recommendations on
11 how non-commodity products and services are represented on the bill, to provide greater
12 transparency and less potential for confusion, such recommendations should be given
13 consideration. However, such concerns address only the implementation of the required
14 result; that First Energy be required to bill for EGS non-commodity products and services
15 if it is providing that opportunity for its affiliate. Ms. Alexander's inflated "concerns"
16 provide no good reason not to follow the precedent the Commission recently established
17 in *Columbia*.

18
19 **Q. What about Ms. Alexander's contention at top of page 15, line 5 regarding sales to**
20 **CAP customers?**

21 A. The fact that First Energy does not sell non-commodity products and services to CAP
22 customers or those with poor credit scores appears to be a business decision related to the
23 fact that it is not permitted to terminate service for non-payment of such charges and its

1 lack of tolerance for the financial risk such customers present. The EGS Parties do not
2 believe that a blanket elimination of these customers from the eligible pool of customers
3 makes sense. As I discussed earlier, there is no reason that a CAP customer would not
4 desire the same sort of products and services that other customers desire. Suppliers may
5 wish to make such products available to as broad a spectrum of customers as possible and
6 may have their own means of determining the level of risk each customer presents.
7 However, to impose a blanket prohibition on providing such products to CAP customers is
8 to hinder the marketplace. If a customer's utility service cannot be interrupted for non-
9 payment of these charges, the risk of non-payment falls squarely on the supplier willing to
10 take on that risk. If a CAP customer desires a warranty to protect against the high and often
11 sudden costs of a plumbing failure for example, why should they not be able to purchase a
12 warranty product like anyone else? CAP customers should not be denied the ability to
13 financially protect their assets, such as a sewer line breakdown, at the risk of not having
14 such protection because they are deemed not eligible to purchase such products and
15 services. The answer is that they should not be prevented. Simply stated, CAP customers
16 have the same ability to choose such products and services as non-CAP customers and that
17 ability should not be impacted by a billing option and nor should CAP status deprive a
18 customer of a particular billing option.

19
20
21
22

1 **Q. Do you have any response to Ms. Alexander's argument at the bottom of page 15 that**
2 **it would be better if everyone just issued separate bills?**

3 A. First, I would argue that there is no evidence that First Energy has terminated a customer
4 for failure to pay non-basic charges.⁶ This fact squarely addresses Ms. Alexander's
5 suggestion that billing for non-commodity products and services could impact a customer's
6 access to electric service. I reiterate that my experience and the information that my
7 company has gathered lead me to conclude that customers do desire fewer bills and that if
8 we are providing them with electricity, they would prefer that the warranty we also provide
9 be billed on the same bill. Ms. Alexander's insistence that the only fair way to remedy
10 First Energy's discrimination is to disallow any non-commodity product and service
11 billing, is based solely on her presumption of concern for parties who have not complained,
12 who are not parties, and who do not share the same statutory protections against
13 discriminatory use of a distribution system.

14

15 **Q. Do you have any response to Ms. Alexander's discussion concerning application of**
16 **partial payments on page 16?**

17 A. Yes. I agree that charges for non-commodity products and services are and should be last
18 in the payment hierarchy, when customers make a partial payment, as required by the
19 Commission's regulations. See 52 Pa. Code § 56.23. I also agree that such charges must
20 appear separately from charges for basic services, See, 52 Pa. Code § 56.13, and that such
21 charges cannot be the basis of the termination of utility service, 52 Pa. Code §56.83(3).

⁶ See First Energy's response to EGS Parties Set I, No. 5, attached hereto.

1 Ms. Alexander presents no evidence to support her opinion that customers will be confused
2 if non-basic charges appear on their bill.

3
4 **Q. Do you have a response to Ms. Alexander's characterization of supplier motivations
5 at top of page 17?**

6 A. I do. Unfortunately, Ms. Alexander takes the cynical and incorrect view that suppliers'
7 primary intention is to take advantage of customers. The so-called "consumer protection"
8 issues she discusses in her testimony fall into two categories, either they are "speculative"
9 issues that should have no bearing on the outcome of this proceeding, such as the argument
10 that because other businesses provide similar services the solution proposed by the EGS
11 Parties is not fair to them and should be discarded. Those parties are notably
12 distinguishable from EGSs as I discussed and the solution to First Energy's discrimination
13 does not necessarily involve them. The other so called "issues" are minor implementation
14 issues that can be addressed, but which present no good reason to ignore the discrimination
15 and the appropriate remedy which is to allow suppliers the same access to on-bill billing
16 as First Energy's affiliate enjoys.

17
18 **III. RESPONSE TO MS. BORTZ**

19 **Q. Beginning at the bottom of page 2, line 17 to page 3, line 2, Ms. Bortz "summarizes
20 your testimony", do you agree with it?**

21 A. While not complete, her summary does capture a few of the points I raise in my Direct
22 Testimony.

1 **Q. What is your layman's view of the company's argument on page 3 lines 4-8 that**
2 **because they don't allow any entities other than their own affiliate to bill for non-**
3 **commodity products and services, there is no discrimination?**

4 A. I think the Companies' argument is obfuscation at best. The fact that the companies do not
5 allow any EGS to use the regulated bill for non-commodity products and services, while
6 allowing its affiliate to do so, just means that First Energy is discriminating against ALL
7 suppliers on its system, not just the EGS Parties. The discrimination is not between
8 suppliers, it is perpetrated on suppliers by First Energy.

9
10 **Q. Do you have any reaction to the admission on page 3, lines 11-14 that First Energy**
11 **has been providing a billing service through its affiliates for decades?**

12 A. Yes, I view this as an admission that First Energy has been abusing its monopoly power to
13 discriminate against suppliers at least since the beginning of competition. First Energy's
14 discrimination allows it to use its favored position of default biller, to provide customers
15 the convenience of having non-commodity products and services billed on their utility bill
16 and refusing to do the same for suppliers who use its distribution system, including the
17 billing function, to deliver commodity to the same universe of customers. This provides a
18 competitive advantage to First Energy and hurts competition generally.

19

20

21

1 **Q. Ms. Bortz notes at page 3 lines 15-25, that the company's tariffs allow the company**
2 **to provide on bill billing but do not allow suppliers to do the same. Do you have a**
3 **reaction?**

4 A. My reaction is that enshrining discrimination in one's tariffs should not protect it from
5 scrutiny as being a discriminatory service. If it were otherwise there would be no point to
6 making discrimination illegal, because to avoid that claim all a utility would need to do
7 would be to put it in its tariff. The whole point of this proceeding is that First Energy's
8 tariffs and practices are discriminatory and therefore illegal. I think the same response
9 applies to Ms. Bortz' testimony on page 4 regarding the requirements of the Company's
10 supplier tariffs.

11
12 **Q. Beginning on page 4, line 16 and on to page 5, Ms. Bortz argues that not allowing**
13 **suppliers the same opportunities as First Energy to bill for non-commodity products**
14 **is not harmful to competition – how do you respond?**

15 A. Again, Ms. Bortz is purposefully raising and addressing the wrong issue. She ignores First
16 Energy's illegal discrimination of allowing its affiliate to provide on-bill billing of non-
17 commodity products and services on the regulated utility bill and how that harms
18 competition for those products and for commodity service as between First Energy as the
19 default provider and the EGS Parties as competitive suppliers, and instead focuses on
20 whether such an arrangement harms competition between suppliers. The latter competition
21 argument is NOT the basis of the complaint, while the former clearly is. The "concerns"
22 she alludes to regarding implementation are not reasons why the discrimination should be
23 allowed to continue.

1 **Q. Ms. Bortz makes the argument at page 5, line 6 that the lack of on bill billing does not**
2 **prevent suppliers from offering non commodity products and services – how do you**
3 **respond?**

4 A. In her argument, Ms. Bortz alleges that suppliers already provide these products and
5 services, even where we don't have on-bill billing as support for her contention that no
6 discrimination exists. The fact that we are able to bill them separately does not mean there
7 is no harm and no discrimination, to be remedied. The test for whether there is
8 discrimination should not be whether the victim can overcome the discrimination in some
9 less than ideal manner, it is whether the perpetrator is providing an advantage that cannot
10 be justified. In this case, First Energy offers an advantage solely to its corporate affiliate
11 solely because it wants to advantage itself at the expense of its competitors. The facts are
12 undeniable; customers prefer the convenience of having such products or services billed
13 on the utility bill, otherwise, why would First Energy be doing it in the first instance, while
14 refusing to provide the same opportunity for us? The answer is that it is a competitive
15 advantage that the Companies desire to reserve for their affiliate. First Energy's ability to
16 piggyback onto an existing billing platform used for regulated billing, rather than create a
17 new billing system from scratch, its ability to pay only the incremental costs of sending
18 and collecting bills, as opposed to the entire cost, is a clear competitive advantage. When
19 you consider the additional marketing advantage of allowing customers to pay for the
20 products and services along with energy charges on a single bill, the advantage is too clear
21 to ignore, yet that is what Ms. Bortz clearly does.

22

1 **Q. How do you respond to Ms. Bortz' argument on page 5, line 22 to page 6, line 5 that**
2 **the suppliers could use dual billing and bill for commodity and non-commodity on**
3 **their own bills to customers?**

4 A. As I stated above, in order to show that First Energy is discriminating against the suppliers,
5 the EGS Parties should not be required to show that they have no alternative to remedy the
6 obvious discrimination. The Commission made it clear in *Columbia* that doing what First
7 Energy is doing is illegal and will not be permitted. The speculation that the EGS Parties
8 might be able to use another, less advantageous method of billing customers does not
9 change that fact.

10

11 **Q. Do you have a response to the assertion on page 6, lines 8-15 that you have not**
12 **demonstrated that customers want fewer bills?**

13 A. My first reaction is to repeat what the Commission said in the Columbia Order in response
14 to a similar argument that Columbia made.⁷ The Commission said that there must be some
15 value or else the Company would not charge its former affiliates for the opportunity and
16 more importantly, those former affiliates would not be willing to pay for the service. The
17 value comes not solely in not needing to build and operate a billing system, but mostly in
18 meeting the desire of customers to make the transactions simple and convenient. My
19 experience and that of my company in dealing with customers makes this clear.

20

21

⁷ Columbia, slip. Op. at p.48.

1 **Q. On pages 6 and 7 Ms. Bortz contends that suppliers have zero risk when they use FE's**
2 **POR program, is that correct?**

3 A. While it is irrelevant to the issue of discrimination, and it may be true that First Energy
4 does not charge a discount rate on purchased receivables, it cannot be truthfully said that
5 First Energy's POR program eliminates all risk from suppliers. First Energy retains the
6 ability to claw back receipts for suppliers that experience significant uncollectibles.⁸ If a
7 supplier desires to participate in utility consolidated billing, they must also participate in
8 POR, suppliers are not given a choice other than to bill for themselves, which they don't
9 do because customers don't like it since they would be receiving two bills.

10

11 **Q. Ms. Bortz goes so far as to contend on page 7, line 11 that there is a "regulatory**
12 **barrier" to the EGS Parties' request because the Company's tariffs don't allow**
13 **supplier consolidated billing and POR. How do you respond?**

14 A. The relief sought in this case is premised on the notion that First Energy's tariffs are
15 discriminatory in intent and effect and therefore are illegal. I understand that First Energy
16 does not agree, but it is difficult to understand how they can conscionably cite these tariffs
17 as the reason they will not provide the service. The regulatory barrier that is the tariffs,
18 when found to be discriminatory, must and should be modified to allow for supplier's non-
19 basic charges to appear on First Energy bills. The barrier Ms. Bortz speaks of is not a
20 regulatory barrier, it is a monopolistic enshrinement of an unfair advantage and it must be
21 changed. It is notable that Ms. Bortz is "concerned" that charges for EGS products and

⁸ See, for example, Metropolitan Edison Company, Tariff Electric Pa.P.U.C. No. S-1 (Supp. 7), First Revised Page No. 40, Section 12.9(g).

1 services could end up in the POR program and yet in a discovery response the company
2 claims that none of its product or service charges ever were included with commodity
3 charges for collection purposes.⁹ She offers no explanation on how such charges would be
4 mixed, and no evidence to support this “concern”.

5
6 **Q. Ms. Bortz contends on page 7, line 20 to page 8, line 2 that unpaid consumption**
7 **charges are included in the companies’ uncollectibles and that any uncollectibles**
8 **associated with non-commodity products would likewise flow into the uncollectible**
9 **bucket.**

10 A. The answer is that Ms. Bortz is dissembling. First Energy has made it clear that it does not
11 include uncollectible amounts for their own non-commodity products into the uncollectible
12 expense bucket, but suddenly now, Ms. Bortz claims supplier non-commodity
13 uncollectibles must go there. I made it clear in my testimony that uncollected balances
14 would be written off to the supplier and would not be part of POR or considered an
15 uncollectible expense. It seems implausible to me that First Energy would be unable to
16 address this via an information technology (IT) change. The “Electronic Data Exchange
17 Standards for Electric Deregulation in The Commonwealth of Pennsylvania” already have
18 write-off transactions that allow utilities to remove balances for uncollected charges and
19 send to the supplier to write off.

20

⁹ See First Energy responses to Set I, Nos. 5 & 6, attached hereto.

1 **Q. Ms. Bortz claims on page 8, lines 3-14 that there are a number of technical issues that**
2 **would need to be resolved to allow for billing of non-commodity products and services**
3 **- are these difficult problems to address?**

4 A. Utilities in other service territories use the same name brand billing system used by First
5 Energy and they are able to successfully bill for non-commodity products and services.
6 Therefore, I am confident that because these other utilities have addressed the issues, First
7 Energy can also do it. This is not a question of re-inventing the wheel. The logic for the
8 payment hierarchies noted by Ms. Bortz should already be in their system because they
9 must apply the same process to short payments for their own customers who presently
10 purchase non-basic services from First Energy. There is no good reason why First Energy
11 cannot adapt the existing billing logic to account for EGS Parties charges.

12

13 **Q. Ms. Bortz also contends on page 8, line 17 to page 9, line 7 that there will be customer**
14 **confusion over billing issues, and that the Company should not be required to engage**
15 **in a process to allow them to bill for EGS non-commodity charges - how do you**
16 **respond?**

17 A. Ms. Bortz has taken a twofold position in this proceeding. First, she makes the untenable
18 claim that what First Energy does in regard to non-commodity billing is not discriminatory,
19 which is patently false. Then, the fallback position is, even though we bill for our own
20 affiliate's unregulated non-commodity products and service, we just can't figure out how
21 to do it for the EGSs. This latter approach is likewise without merit. For example,
22 customer service representatives should not address questions about supplier non-
23 commodity products and services, they should refer the customer to the supplier. First

1 Energy raises the specter of “long term” regulatory proceedings yet ignores the vary narrow
2 nature of the issues. This is not the same as implementing the new world that was
3 competition in the late 1990’s, it is much more focused, and they already do it.
4

5 **Q. Ms. Bortz speculates on page 9, lines 9-17 that customers may seek to hold the First**
6 **Energy companies responsible for disputes, how does this work elsewhere?**

7 A. We made it clear in our discovery responses and I made it doubly clear in my direct
8 testimony that supplier non-commodity charges are not subject to collection by the utility
9 and that if the customer disputes or does not pay the charges, they would be written off to
10 the supplier. Yet again, I disagree with the notion that customers would seek to hold First
11 Energy responsible for our charges. As for the contention that billing for supplier products
12 and services increases the likelihood that First Energy would inadvertently terminate a
13 customer for non-payment of supplier charges, when held up to the light of First Energy’s
14 response to discovery stating that they have no record of having terminated a customer for
15 non-payment of non-commodity product or service charges, the contention seems
16 implausible at best.¹⁰
17

18 **Q. How do you respond to Ms. Bortz’ contention on page 9, line 20 to page 10, line 2 that**
19 **dual billing would resolve all of our concerns?**

20 A. I do agree that suppliers billing for their own products and services would certainly solve
21 First Energy’s immediate problem, but it is hardly an appropriate solution for First
22 Energy’s discriminatory conduct. In Columbia, the Commission gave the utility a choice;

¹⁰ See First Energy Response to EGS Parties’ Set I, No.5, attached hereto.

1 provide the on-bill billing for everyone or provide it not at all. While we have no desire to
2 see First Energy be deprived of its ability to provide its own product and service billing,
3 we also have no desire to precluded from enjoying the same benefit.
4

5 **IV. RESPONSE TO MS. ENTERLINE**

6 **Q. Ms. Enterline testifies on page 4, line 1-6 that First Energy's billing system is not**
7 **capable of billing for EGS product and service charges, how do you respond?**

8 A. While I find that her testimony stretches the limits of credulity, I must nonetheless consider
9 her answer. I can understand that First Energy is not presently capable of billing non-
10 commodity products for EGS, because it presently does not do so. However, this is only
11 half the question. The other half is based on the fact that First Energy presently bills for
12 its own non-commodity products and services, and because they are non-basic services,
13 the payment processing logic from those charges would apply. The issue is how much
14 effort would be required and what would it reasonably cost to modify the system. It does
15 not appear to me to be a herculean task. As to the suggestion that I should have made a
16 proposal on how First Energy should accomplish this task, I find it incredible that they
17 make such a suggestion after labeling the majority of information about their system as
18 highly confidential so I could not see it. We did provide some solutions, but they
19 apparently were rejected as not being "comprehensive" which again, makes me wonder
20 what exactly First Energy would want in a proposal from us other than general points.
21
22

1 **Q. Do you have any response to Ms. Enterline's comment on page 4, line 19 to page 5,**
2 **line 2 regarding the expected cost of any necessary upgrade?**

3 A. It is curious that Ms. Enterline defends with such vehemence the "high level estimate" of
4 the costs to reconfigure its IT system to accommodate billing supplier products and
5 services, and yet she admits that no significant analysis of the costs was made. What that
6 means is that First Energy is not really certain what the changes will cost.

7

8 **Q. At page 5, line 22 to page 6 line 16, Ms. Enterline discusses the estimated costs of the**
9 **system upgrades and contends that the EGSs should pay for all of it and that it will**
10 **be complicated and expensive. How do you respond?**

11 A. I have a few comments. First, if the EGS Parties are expected to bear the cost we must
12 have a seat at the table to design the system. Second, it seems like First Energy has chosen
13 to overlook the recent order in Ohio that will require it to provide billing for non-
14 commodity products and service offered by suppliers in that state. Presumably, First
15 Energy is going to be in the position very soon of needing to upgrade the very same system
16 it claims can't provide that service. The costs should therefore be shared with Ohio as well,
17 thus reducing the overall burden. As to the complexity of any needed changes, I cannot
18 comment other than to reiterate that First Energy has yet to explain why the changes would
19 be so difficult when it already has an affiliate billing non-commodity products and services
20 on its bills.

21

22

23

1 **Q. Ms. Enterline notes several “concerns” with the EGS Parties’ proposal at page 6, line**
2 **21 to page 7, line 12: 1) charges unrelated to those of the companies on the bill; 2) call**
3 **center trying to answer questions about our products; 3) bill complexity; 4)**
4 **slamming; and, 5) electric service termination for failure to pay these charges? How**
5 **do you respond?**

6 A. I respond that these “concerns” are repetitive and overstated. Ms. Enterline has already
7 testified that she does not want to include supplier charges on the bill, so this is not a
8 surprise. But there is not a shred of evidence offered that supports the probability of any
9 of these concerns becoming an actual problem and clearly, they cannot thwart the remedy
10 for First Energy’s discrimination. I reiterate that First Energy’s call center should be
11 capable of determining if a billing question relates to a non-commodity product and should
12 be capable of transferring such questions directly to the responsible supplier.¹¹ In the
13 number of years that IGS has been performing non-commodity billing with People’s Gas
14 of PA and Baltimore Gas & Electric in Maryland, we are not “aware of any significant
15 customer service issues where the utility couldn't simply refer (or warm transfer) the
16 customer to us to investigate.” Bill complexity will be no different from the complexity of
17 a customer that now receives multiple non-commodity products or services from First
18 Energy, and yet Ms. Enterline expresses no concern about that. Slamming is when
19 someone switches a customer without the customer’s consent, in that light it is difficult to
20 understand what she means when Ms. Enterline suggests that on bill billing could lead to
21 slamming. Without any explanation of how that might happen because a supplier is
22 providing a customer with additional products and services, this suggestion is nonsensical.

¹¹ See First Energy’s Response to OCA Interrogatory, Set V, No. 9, attached hereto.

1 Ms. Enterline also suggests a concern about customers being terminated for failure to pay
2 EGS product or service charges even though First Energy claims that it never accidentally
3 terminated one of its own customers for failure to pay similar charges. This argument is
4 simply a red herring.

5
6 **Q. On page 8 of her testimony, Ms. Enterline suggests that development of a method to**
7 **ensure that customers electric service is not terminated for failure to pay non-**
8 **commodity charges would be difficult and expensive and is a good reason for not**
9 **ending the current discrimination. What is your response?**

10 A. Rather than address the Companies' discrimination in any meaningful manner, Ms.
11 Enterline has offered testimony that First Energy's billing system, the same billing system
12 that it recently upgraded for non-commodity products and services, is not capable of billing
13 for the EGS products and services without expensive upgrades, and even then might fail.
14 She claims that Direct Energy, one of the EGS Parties, "has a history" of offering bundled
15 products. If there is an implementation issue that requires suppliers to identify what is
16 commodity and what is non-commodity, that can be addressed, but to cite this minor
17 system issue as a reason for not complying with the law is beyond the pale.

1 **V. CONCLUSION**

2 **Q. Has the testimony addressed above altered your conclusions regarding First Energy's**
3 **continued use of on-bill billing for its own purposes while refusing to provide the same**
4 **service to EGSs?**

5 A. No. My fundamental response is the same – First Energy must either provide the service
6 for us or stop providing it for itself. Nothing any of the witnesses have stated in their
7 testimony convinces me that First Energy's behavior is not discrimination. In fact, Ms.
8 Alexander agrees with me on this point. I disagree with her conclusion that the best remedy
9 is that no party be allowed to engage in on-bill billing, since it clearly is a service that the
10 Commissions Regulations permit and regulate. However, I also disagree with Ms. Bortz
11 and Ms. Enterline's reasons why First Energy should not be required to provide the service
12 for us on an equivalent basis.

13
14 **Q. Does this conclude your Surrebuttal Testimony?**

15 A. Yes, it does.

EXHIBIT AC-4

Metropolitan Edison Company, Pennsylvania Electric Company,
Pennsylvania Power Company and West Penn Power Company
Response to Interstate Gas Supply, Inc, Direct Energy Services, LLC
and Shipley Choice, LLC Interrogatory Set I, No. 5

Interstate Gas Supply, Inc, Direct Energy Services, LLC and Shipley Choice, LLC

v.

**METROPOLITAN EDISON COMPANY, PENNSYLVANIA ELECTRIC COMPANY,
PENNSYLVANIA POWER COMPANY, AND WEST PENN POWER COMPANY
Docket No. C-2019-3013805, C-2019-3013806, C-2019-3013807, and C-2019-3013808**

**Interstate Gas Supply, Inc, Direct Energy Services, LLC and Shipley Choice, LLC
Interrogatory Set I, No. 5**

With regard to FirstEnergy's Answer and New Matter ¶ 22, has FirstEnergy or any of its affiliates ever terminated electric service to a customer for failing to pay non-commodity charges on their utility bill? Describe each and every incident in the most recent 5 years including the date of any termination, the service territory and the duration of the termination.

REVISED RESPONSE (1/24/2020):

Neither the Companies nor their affiliate utilities in other states terminate electric service to a customer for failing to pay the Companies' or affiliate utilities' non-commodity charges and have no record or knowledge of any such occurrence.

ORIGINAL RESPONSE (12/30/2019):

Consistent with the Companies' objections, no information will be provided related to the Companies' parent company, FirstEnergy Corp., or the Companies' affiliate utilities in other jurisdictions. The Companies do not terminate electric service to a customer for failing to pay the Companies' non-commodity charges and have no record or knowledge of any such occurrence.

Interstate Gas Supply, Inc, Direct Energy Services, LLC and Shipley Choice, LLC
v.
METROPOLITAN EDISON COMPANY, PENNSYLVANIA ELECTRIC COMPANY,
PENNSYLVANIA POWER COMPANY, AND WEST PENN POWER COMPANY
Docket No. C-2019-3013805, C-2019-3013806, C-2019-3013807, and C-2019-3013808

Interstate Gas Supply, Inc, Direct Energy Services, LLC and Shipley Choice, LLC
Interrogatory Set I, No. 6

Does FirstEnergy or any of its affiliates allow charges for non-commodity products and services to be paid using budget billing? If the answer is anything but "No", explain how such charges are separated from regulated charges, and describe the mechanism for ensuring that customers are not terminated for failing to pay charges for non-commodity charges in that context?

REVISED RESPONSE (1/24/2020):

No.

ORIGINAL RESPONSE (12/30/2019):

Consistent with the Companies' objections, no information will be provided related to the Companies' parent company, FirstEnergy Corp., or the Companies' affiliate utilities in other jurisdictions. Regarding the Companies, the answer is no.

EXHIBIT AC-5

Interstate Gas Supply, Inc, Direct Energy Services, LLC and Shipley Choice, LLC

v.

**METROPOLITAN EDISON COMPANY, PENNSYLVANIA ELECTRIC COMPANY,
PENNSYLVANIA POWER COMPANY, AND WEST PENN POWER COMPANY
Docket No. C-2019-3013805, C-2019-3013806, C-2019-3013807, and C-2019-3013808**

Office of Consumer Advocate Interrogatory Set V, No. 9

Identify each type of customer call for which the EDCs' customer service representatives are trained to introduce or discuss non-commodity services offered by FirstEnergy after the purpose of the original call is completed.

RESPONSE:

In general, customer service representatives do not discuss non-commodity services with customers who contact the Companies regarding other matters. If a customer contacts the Companies and affirmatively asks for information about non-commodity products and services, the customer service representative would refer or transfer the customer to a different call center that is dedicated to addressing products and services issues. In addition, at the end of a move-in call, customer service representatives may transfer the customer to a different call center to discuss the Companies' connections program, which includes services specifically of interest to customers who recently moved.