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August 18, 2020

***VIA ELECTRONIC FILING***

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

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

Dear Secretary Chiavetta:

Attached please find the Main Brief on behalf of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company regarding the above-referenced matter. This document has been served on the all parties as shown in the Certificate of Service.

Please contact me if you have any questions.

Very truly yours,

Teresa Harrold

Enclosures

c: Administrative Law Judge Joel Cheskis (via e-mail and United Parcel Service delivery)
As Per Certificate of Service

**BEFORE THE**
**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

| | | |
|---|---|---|
| **INTERSTATE GAS SUPPLY, INC.** | **:** | |
| **D/B/A IGS ENERGY, DIRECT ENERGY** | **:** | |
| **SERVICES LLC AND SHIPLEY** | **:** | **Docket No. C-2019-3013805** |
| **CHOICE, LLC D/B/A SHIPLEY** | **:** | **C-2019-3013806** |
| **ENERGY** | **:** | **C-2019-3013807** |
| **v.** | **:** | **C-2019-3013808** |
| | **:** | |
| **METROPOLITAN EDISON COMPANY,** | **:** | |
| **PENNSYLVANIA ELECTRIC** | **:** | |
| **COMPANY, PENNSYLVANIA POWER** | **:** | |
| **COMPANY, AND WEST PENN POWER** | **:** | |
| **COMPANY** | **:** | |

# MAIN BRIEF ON BEHALF OF METROPOLITAN EDISON COMP ANY, PENNSYLVANIA ELECTRIC COMPANY, PENNSYLVANIA POWER COMPANY, AND WEST PENN POWER COMPANY


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Dated: August 18, 2020

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## I. INTRODUCTION

In this proceeding, Metropolitan Edison Company ("Met-Ed"), Pennsylvania Electric Company ("Penelec"), Pennsylvania Power Company ("Penn Power"), and West Penn Power Company ("West Penn") (individually referred to as "Company" and collectively as "Companies) are responding to the Formal Complaint of Interstate Gas Supply, Inc. d/b/a IGS Energy ("IGS"), Direct Energy Services LLC ("Direct") and Shipley Choice, LLC d/b/a Shipley Energy ("Shipley") (collectively, the "Joint Complainants") filed at the Pennsylvania Public Utility Commission ("Commission"), which alleges that the Companies' non-commodity product and service billing practice is contrary to Sections 1502 and 2804(6) of the Public Utility Code.[1] The Companies will demonstrate herein that the Joint Complainants' case improperly relies entirely on misplaced analogies to the Columbia Gas of Pennsylvania ("Columbia") case in alleging that the Companies' non-commodity billing practice runs afoul of the Public Utility Code.[2] In actuality, a significant factual distinction exists in this case which must control the outcome here. Unlike Columbia, the Companies do not permit any third parties to bill for their products and services on the Companies' bills at the exclusion of others. Due to this critical distinction, the Joint Complainants not only wholly fail to meet their burden of proof that the Companies' non-commodity product and service billing practice is inconsistent with the Public Utility Code, but their requested relief violates the Companies' Commission-approved Electric Generation Supplier ("EGS") Coordination Tariffs and represents a collateral attack on the Commission's Order in the Companies' most recent default service program ("DSP") proceeding in violation of Section 316 of the Public Utility Code. Accordingly, the Formal Complaint must be dismissed.

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[1] 66 Pa.C.S. §§ 1502, 2804(6).

[2] *See Pa. Pub. Util. Comm'n v. Columbia Gas of Pa.*, Docket No. R-2018-2647577 (Opinion and Order dated Dec. 6, 2018) (*Columbia*).

## II. PROCEDURAL HISTORY

On October 25, 2019, the Joint Complainants filed the Formal Complaint that began this proceeding at the Commission. The Companies filed their Answer and New Matter to the Formal Complaint on November 14, 2019. The Joint Complainants' Answer to New Matter was submitted on December 4, 2019.

Administrative Law Judge ("ALJ") Joel Cheskis was assigned to this proceeding and issued a Prehearing Order on December 26, 2019, which scheduled a prehearing conference for February 3, 2020.

On January 24, 2020, the Retail Energy Supply Association ("RESA") filed a petition to intervene in the above-referenced proceeding.

A prehearing conference was held on February 3, 2020, which established, among other things, a procedural schedule. On February 5, 2020, ALJ Cheskis issued a prehearing order setting forth the agreed upon procedural schedule.

On February 7, 2020, the OCA submitted its notice of intervention.

On March 24, 2020, the Joint Complainants submitted direct testimony in this proceeding. The Companies and the OCA submitted rebuttal testimony in this proceeding on May 13, 2020. On May 27, 2020, the Companies and the Joint Complainants filed surrebuttal testimony.

A telephonic hearing was held in this matter on June 30, 2020, where additional hearing exhibits were admitted into the record.

The Companies submit the following Main Brief consistent with the agreed upon procedural schedule.

## III. LEGAL STANDARDS AND BURDEN OF PROOF

Under Section 332(a) of the Public Utility Code, the Joint Complainants maintain the burden of proof in this proceeding.[3] The first step in carrying the burden of proof is establishing a *prima facie* case that the Companies violated the Public Utility Code, the Commission's regulations, or a Commission order. Only if the Complainant establishes a *prima facie* case does it become the responsibility of the respondent to provide rebuttal evidence.[4] In order to establish a *prima facie* case, more is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established.[5] Mere bald assertions, personal opinions or perceptions, when not substantiated by facts, do not constitute evidence.[6]

Although the factual burden may shift during the course of a proceeding, the Joint Complainants always maintain the overarching burden of proof in the proceeding. It is clearly established that a complainant's "burden of proof before administrative tribunals as well as before most civil proceedings is satisfied by establishing a preponderance of the evidence."[7] A preponderance of evidence is demonstrated where the evidence presented is more convincing, even by the smallest degree, than the evidence presented by the opposing party.[8]

In order for the Commission to sustain a formal complaint, the Complainant must demonstrate that an "act or thing done or omitted to be done by any public utility [is] in violation, or claimed violation, of any law which the Commission has jurisdiction to administer, or of any regulation or order of the commission."[9] The Joint Complainants allege that the

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[3] 66 Pa.C.S. § 332(a); *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa. Commw. Ct. 1990), alloc. den., 602 A.2d 863 (Pa. 1992) (*Lansberry*).
[4] *Waldron v. Phila. Elec. Co.*, 54 Pa. P.U.C. 98 (Order entered Mar. 14, 1980).
[5] *Norfolk and Western Ry. v. Pa. Pub. Util. Comm'n*, 413 A.2d 1037 (Pa. 1980).
[6] *Pa. Bureau of Corrections v. City of Pittsburgh*, 532 A.2d 12 (Pa. 1987).
[7] *Lansberry*, 578 A.2d at 602.
[8] *Pa. Pub. Util. Comm'n v. HIKO Energy, LLC*, 2015 Pa. PUC LEXIS 364 (I.D. entered Aug. 21, 2015).
[9] 66 Pa.C.S. § 701.

Companies' non-commodity product and service billing practice violates Sections 1502 and 2804(6) of the Public Utility Code. Section 1502 of the Public Utility Code states

> No public utility shall, as to service, make or grant any unreasonable preference or advantage to any person, corporation, or municipal corporation, or subject any person, corporation, or municipal corporation to any unreasonable prejudice or disadvantage. No public utility shall establish or maintain any unreasonable difference as to service, either as between localities or as between classes of service, but this section does not prohibit the establishment of reasonable classifications of service.[10]

In addition, Section 2804(6) provides, in relevant part,

> [T]he commission shall require that a public utility that owns or operates jurisdictional transmission and distribution facilities shall provide transmission and distribution service to all retail electric customers in their service territory and to electric cooperative corporations and electric generation suppliers, affiliated or nonaffiliated, on rates, terms of access and conditions that are comparable to the utility's own use of its system.

In order to satisfy their burden of proof, the Joint Complainants must demonstrate that a preponderance of the evidence indicates that the Companies violated Section 1502 or Section 2804(6) of the Public Utility Code.[11]

## IV. SUMMARY OF ARGUMENT

The Joint Complainants failed to satisfy their burden of proof in this proceeding. The Companies only bill customers for their own non-commodity products and services. Pursuant to the Companies' EGS Coordination Tariffs, which were approved by the Commission in the Companies' most recent DSP proceeding, EGSs are not permitted to utilize utility consolidated billing for their non-commodity products and services, which is the requested relief in this

[10] 66 Pa.C.S. § 1502.
[11] 66 Pa.C.S. § 2804(6).

proceeding.[12] The Formal Complaint represents a collateral attack on the Companies' most recent DSP Order.[13] In order to challenge the Companies' tariffs, which are deemed *prima facie* reasonable based on their Commission approval, the Joint Complainants must prove that the facts and circumstances have changed so drastically so as to render application of the tariff provisions unreasonable.[14] The Joint Complainants do not meet this high burden and fail to demonstrate why utility consolidated billing of EGSs' non-commodity product and service charges is necessary at this time.

The Joint Complainants rely heavily on the Commission's recent decision in *Columbia* as the basis for the allegations in their Formal Complaint.[15] However, their reliance on the Columbia case is misplaced due to numerous factual distinctions between the cases. The only similarity between the cases is that both Columbia and the Companies are billing for non-commodity products and services. In all other manners, the Columbia case is entirely distinguishable from this proceeding.

In *Columbia*, Columbia allowed two third-party, former affiliates to bill for their non-commodity products and services on Columbia's bills.[16] In the present case, the Companies only include charges for their own non-commodity products and services on their bills.[17] This distinction is critical when applying Section 1502 of the Public Utility Code, which prohibits a

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[12] *Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company for Approval of a Default Service Program for the Period Beginning June 1, 2019 through May 31, 2023*, Docket Nos. P-2017-2637855, *et al.* (Order entered Sept. 4, 2018) (*DSP Order*), p. 61.
[13] *See* 66 Pa.C.S. § 316.
[14] *Shenango Township Board of Supervisors v. Pa. Pub. Util. Comm'n*, 686 A.2d 910, 914 (Pa. Commw. Ct. 1996) (*Shenago*); *see also Respond Power v. Metro. Edison Co., et al.*, Docket No. C-2016-2576287, *et al.* (Opinion and Order entered Jun. 13, 2019) (*Respond Power*).
[15] *See Columbia*.
[16] *See id.* at 48.
[17] Rebuttal Testimony of Kimberlie Bortz on behalf of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company, Met-Ed/Penelec/Penn Power/West Penn Statement No. 1 (hereinafter "Companies St. No 1"), p. 3.

utility from providing an unreasonable preference or advantage to one third party over another.[18] Unlike in *Columbia*, the Companies are not providing any preference or advantage to one third party over another. All EGSs are equally prohibited from utilizing the Companies' bills to bill for their non-commodity products and services. The Companies and EGSs receive corresponding bill treatment for these charges: both the Companies and the EGSs send their own bills for their own non-commodity products and services.[19] For these reasons, the Companies' non-commodity billing practice does not run afoul of Section 1502.

Even Section 1502 permits some level of discrimination among parties as long as such discrimination is reasonable and based on the facts. Because Columbia already developed a billing methodology for the non-commodity products and services of certain third parties, the Commission did not find that any reasonable justification existed for Columbia's difference in billing treatment between certain third parties and others.[20] By contrast, the Companies do not have any billing procedures established that would allow them to bill for the non-commodity products and services of third parties. As discussed further herein, significant implementation and policy concerns justify the Companies' continued prohibition on allowing EGSs from including their non-commodity products and services on the Companies' bills.[21]

The Joint Complainants also fail to establish that the Companies' non-commodity billing practice violates Section 2804(6) of the Public Utility Code. Section 2804(6) requires a utility to provide customers, cooperatives, and EGSs with non-discriminatory access to the Companies'

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[18] 66 Pa.C.S. § 1502.
[19] Surrebuttal Testimony of Kimberlie Bortz on behalf of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company, Met-Ed/Penelec/Penn Power/West Penn Statement No. 1-S (hereinafter, "Companies St. No. 1-S"), p. 3.
[20] *Columbia* at 48-49.
[21] Rebuttal Testimony of Julia Enterline on behalf of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company, Met-Ed/Penelec/Penn Power/West Penn Statement No. 2 (hereinafter, "Companies St. No. 2"), pp. 4-8.

transmission and distribution systems.[22] To the extent the Commission finds that Section 2804(6) is intended to create a general prohibition on discrimination, the Companies already established that their non-commodity product and service practice is reasonable and non-discriminatory. However, the Companies question the applicability of Section 2804(6) to this proceeding because it is part of the Electricity Generation Customer Choice and Competition Act ("Competition Act"), which was enacted to establish competitive electric generation service.[23] The Competition Act has no impact on non-commodity products and services and certainly does not require the Companies to bill for EGSs' non-commodity products and services. Because the Companies' non-commodity billing practice in no way precludes EGSs from offering generation service in the Companies' territories, the Companies' non-commodity billing practice is fully consistent with Section 2804(6) of the Public Utility Code.

Finally, the OCA raises a few challenges to the Companies' non-commodity billing practice that are without merit and clearly do not warrant the OCA's requested relief of prohibiting the Companies from continuing to bill for their own products and services. The Companies will demonstrate that their non-commodity products and services billing practice is consistent with Sections 1502 and 2804(6) of the Public Utility Code. The Joint Complainants failed to satisfy their burden of proof or demonstrate that the Companies' EGS Coordination Tariffs should be modified. Accordingly, the Formal Complaint must be dismissed.

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[22] 66 Pa.C.S. § 2804(6).
[23] *See* 66 Pa.C.S. § 2802(7) and (14).

## V. ARGUMENT

### a. Description of the Companies' and EGSs' current non-commodity product and service billing practices

The Companies have a long history of offering non-commodity products and services, such as surge protection and line repair programs, to their customers.[24] The billing capability for the Companies' products and services has been built into the Companies' SAP billing system for decades.[25] The Companies rely on their shared service company, FirstEnergy Service Company, to provide administrative support for the Companies' products and services, including billing.[26]

The Companies' non-commodity products and services themselves are considered non-utility services that are outside of the Commission's jurisdiction to regulate.[27] However, the Companies' monthly bills to customers, which may include a line item for products and services, are subject to Commission regulation.[28] The Commission's regulations and the Companies' retail Electric Service Tariffs authorize the Companies to offer and bill customers for their own products and services.[29] The Commission's regulations explicitly permit utilities to bill customers for "charges for other than basic service," which include, among other things, merchandise, appliance repairs, line repairs, and appliance warranty programs.[30] Consistent with the Commission's regulations, these charges are displayed as separate line items on customer bills, and a customer's

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[24] Companies St. No 1, p. 3.
[25] Companies St. No. 2, p. 2.
[26] *Id.*
[27] *See PPL Electric Utilities Corp. v. Pa. Pub. Util. Comm'n*, 912 A.2d 386 (Pa. Commw. Ct. 2006) ("The protection of an energy consultant's economic interests and competitive position, and of those similarly situated, was neither an objective of Section 1502 nor of the regulatory scheme of the Code in general.")
[28] *Columbia* at 45.
[29] 52 Pa. Code § 56.13; Electric Pa. P.U.C. No. 52, Rule 15 (Met-Ed Electric Service Tariff); Electric Pa. P.U.C. No. 81, Rule 15 (Penelec Electric Service Tariff); Electric Pa. P.U.C. No. 36, Rule 15 (Penn Power Electric Service Tariff); Electric Pa. P.U.C. No. 40, Rule 15 (West Penn Electric Service Tariff).
[30] 52 Pa. Code § 56.13.

failure to pay for these charges may not result in electric service termination.[31] All costs associated with the Companies' products and services are below-the-line and excluded from rate recovery.[32]

The Companies do not permit any EGS, affiliate, or other third party to include charges for their non-commodity products and services on the Companies' bills.[33] Under the Companies' EGS Coordination Tariffs, EGSs seeking to bill for non-commodity products and services must do so using dual billing, *i.e.*, sending their own separate bill for these items.[34] The Joint Complainants currently send their own bills for their non-commodity products and services, demonstrating that they are capable of continuing to offer and bill for their products and services without utility consolidated billing.[35]

**b. <u>The Formal Complaint represents a collateral attack on the Companies' default service program order and inappropriately challenges the Companies' EGS Coordination Tariffs, which warrants its dismissal.</u>**

The Companies' EGS Coordination Tariffs prohibit an EGS from utilizing utility consolidated billing for non-commodity products and services. The Companies' EGS Coordination Tariffs were approved as part of the Companies' last DSP proceeding.[36] Each of the Joint Complainants either participated in or were notified regarding the DSP filing, but they chose not to litigate this issue in that case. The Companies' tariffs, having been previously approved by the Commission, are considered *prima facie* reasonable and cannot be modified as part of a complaint proceeding without strong justification.[37] The Formal Complaint must be dismissed

[31] Companies St. No. 1-S, p. 4; 52 Pa. Code §§ 56.13, 56.23, 56.83 (3).
[32] Companies St. No. 1-S, p. 4.
[33] Companies St. No. 1, pp. 4-5; Companies St. No. 2, Appendix C.
[34] Companies St No. 1, pp. 5, 9-10; Electric Pa. P.U.C. 2S, p. 37 (West Penn Electric Generation Supplier Coordination Tariff).
[35] Companies St. No. 1, p. 5, Appendices A through CONFIDENTIAL C.
[36] *See DSP Order*, p. 61.
[37] *Shenango* at 914.

because it represents a collateral attack on the Companies' most recent DSP order and inappropriately challenges the Companies' EGS Coordination Tariffs.

Under the EGS Coordination Tariffs, EGSs that adopt utility consolidated billing must participate in the Companies' purchase of receivables ("POR") programs.[38] However, the POR programs only apply to the receivables associated with basic electric supply and specifically exclude non-commodity products and services receivables of the EGS.[39] In other words, an EGS cannot utilize utility consolidated billing, which requires POR participation, for non-commodity products and service charges, which are prohibited from POR participation. The West Penn tariff specifically states that EGSs may be expected to certify that they only utilize utility consolidated billing for basic electric supply charges.[40]

The Commission traditionally reviews and approves the Companies' EGS Coordination Tariffs as part of the Companies' DSP proceedings. The EGS Coordination Tariffs were most recently approved as part of the Companies' DSP proceeding on September 4, 2018.[41] Direct intervened in the DSP proceeding. A Joint Petition for Partial Settlement was entered in the proceeding that stated all non-commodity product related issues should be raised as part of the generic Commission proceeding at Docket No. M-2018-2654254.[42] Direct did not object to the

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[38] "Participation in the Company's POR program will be mandatory for any EGS that does employ the Consolidated EDC Billing option." Electric Pa P.U.C. S-1, p. 38 (Met-Ed Electric Generation Supplier Coordination Tariff); Electric Pa P.U.C. S-1, p. 38 (Penelec Electric Generation Supplier Coordination Tariff); Electric Pa P.U.C. S-3, p. 38 (Penn Power Electric Generation Supplier Coordination Tariff); *see also* Electric Pa P.U.C. 2S, p. 35 (West Penn Electric Generation Supplier Coordination Tariff).

[39] *See id.* ("The Company will purchase only those receivables that are associated with basic electric supply services and not receivables associated with charges for other products or services"); *see also* Electric Pa P.U.C. 2S, p. 37.

[40] Electric Pa P.U.C. 2S, p. 37. ("Upon request, a Registered EGS shall provide a written certification to the Company that the Registered EGS is providing only Basic Electric Supply to Customers billed under Company Consolidated Billing.")

[41] *See DSP Order*, p. 61; *see also Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company for Approval of a Default Service Program for the Period Beginning June 1, 2019 through May 31, 2023*, Docket Nos. P-2017-2637855, *et al.* (Joint Petition dated Dec. 11, 2017), Exhibits KLB-25 to KLB-28.

[42] *DSP Order* at 9.

Joint Petition for Partial Settlement.[43] The Joint Petition for Partial Settlement did not provide a right for parties to file a subsequent complaint on the same subject matter covered in the DSP proceeding.[44] IGS and Shipley were served with the initial DSP filing on December 11, 2017, which satisfied the due process requirement.[45] Neither IGS nor Shipley intervened in the proceeding. However, both Direct and IGS are members of the Retail Energy Supply Association, which was an intervenor in the proceeding that signed on to the Joint Petition for Partial Settlement.[46]

Section 316 of the Public Utility Code precludes a collateral attack upon a Commission order that has not been reversed on appeal.[47] A prior order of the Commission has preclusive effect on all affected parties if they were provided due process prior to the entry of that order. However, due process is fully satisfied when parties are afforded notice and the opportunity to appear and be heard. In short, the party against whom Section 316 is invoked need not have been a participant in the proceeding that resulted in the final order being given preclusive effect so long as that party had notice and an opportunity to appear and be heard.[48]

Therefore, pursuant to Section 316 of the Public Utility Code, the Joint Complainants may not challenge the validity of the Companies' EGS Coordination Tariffs through this Formal

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[43] *Id.* at 8.
[44] *See Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company for Approval of a Default Service Program for the Period Beginning June 1, 2019 through May 31, 2023*, Docket Nos. P-2017-2637855, *et al.* (Joint Petition dated May 15, 2018).
[45] *Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company for Approval of a Default Service Program for the Period Beginning June 1, 2019 through May 31, 2023*, Docket Nos. P-2017-2637855, *et al.* (Joint Petition dated Dec. 11, 2017), pp. 10, 15 (Certificate of Service).
[46] *DSP Order*, p. 8.
[47] 66 Pa.C.S. § 316. *Schneider v. Pa. Pub. Util. Comm'n*, 479 A.2d 10, 12 (Pa. Commw. Ct. 1984); *Tillman* v. *Phila. Gas Works,* Docket No. C-2014-2445229 (R.D. issued Nov. 4, 2016); s*ee also Lehigh Vallev Power Comm. v. Pa. Pub. Util. Comm'n,* 563 A. 2d 557, 565 (Pa. Commw. Ct. 1989); *see also Wright v. Phila. Gas Works*, Docket No. C-2013-2368462 (Order issued Oct. 23, 2014), holding that a complainant is prohibited from raising the same issues he previously agreed to settle in a prior formal complaint proceeding.
[48] *See id.*; *Respond Power*, p. 56.

Complaint proceeding. The Joint Complainants were served with the Companies' DSP filing and participated in the proceeding. By opting not to challenge the Companies' EGS Coordination Tariffs that were approved as part of DSP proceeding, the Joint Complainants are precluded from challenging the same tariff requirements at this time.

Tariff provisions that were previously submitted and approved by the Commission are deemed *prima facie* reasonable.[49] The Joint Complainants maintain a heavy burden of proof when trying to challenge a tariff requirement. They must establish that the facts and circumstances have changed so drastically so as to render application of the tariff provision unreasonable.[50]

The Joint Complainants have not met this heavy burden in this proceeding. They opted not to challenge the Companies' EGS Coordination Tariffs as part of the Companies' last DSP proceeding and have not established that there are any new facts or circumstances that render the Companies' tariff provisions related to utility consolidated billing unreasonable. The fact that the Joint Complaints have now decided they are seeking a new billing procedure for their non-commodity products and services does not justify opening up the Companies' EGS Coordination Tariffs outside a DSP proceeding.

The Formal Complaint represents a collateral attack on the Commission's DSP order, which approved EGS Coordination Tariffs that prohibit the Companies from billing for EGSs' non-commodity products and services. Pursuant to Section 316 of the Public Utility Code, the Joint Complainants are precluded from challenging the validity of the Companies' EGS Coordination Tariffs in this proceeding. The Joint Complainants fail to establish any new facts or circumstances that render the Companies' current tariff provisions unreasonable. For these

[49] *Shenago* at 914; *see also Respond Power*, pp. 50-51.
[50] *Id.*

reasons, the Formal Complaint should be dismissed consistent with Section 316 of the Public Utility Code and related Commission precedent.

**c. <u>The Companies' non-commodity product and service billing practice comports with Section 1502 of the Public Utility Code.</u>**

The Companies' non-commodity product and service billing practice is wholly consistent with Section 1502 of the Public Utility Code. Pursuant to Section 1502, a utility is prohibited from granting any unreasonable preference or advantage to one person or corporation over another.[51] The Joint Complainants' reliance on Section 1502 in this proceeding is misplaced. In the context raised within this proceeding, Section 1502 only applies where a utility provides an unreasonable preference or advantage to one third party over another. The Companies prohibit all third parties from using the Companies' bills to bill for their non-commodity products and services. No third party receives any preference or advantage over any other third party.[52] The Companies cannot be found in violation of Section 1502 for offering their own billing service at the exclusion of all others. Moreover, the Companies' billing practice is not discriminatory because it treats all providers of non-commodity products and services the same, including the Companies. All providers, including the Companies, are permitted to send their own monthly bills to customers for their own products and services.[53]

A utility runs afoul of Section 1502 of the Public Utility Code when it provides an unreasonable preference or advantage to certain third parties, typically customers, over other third parties.[54] For example, in *Ultimate Sports Company*, the Commission held that PPL's disclosure

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[51] 66 Pa.C.S. § 1502.
[52] Companies St. No 1, pp. 4-5.
[53] *Id.*
[54] *See PPL Electric Utils. Corp. v. Pa. Pub. Util. Comm'n*, 912 A.2d 386 (Pa. Commw. Ct. 2006) ("Section 1502 protects customers of a public utility from being subjected to unreasonable discrimination or preferences concerning the establishment of different services for different classes of customers.").

of confidential account information about one commercial customer to another commercial customer provided an unreasonable preference or advantage to one customer over another in violation of Section 1502.[55] Similarly, in *Columbia*, the Commission held that Columbia's practice of allowing certain third parties to include their non-commodity product and service charges on Columbia's monthly bills while excluding others was unreasonable discrimination in violation of Section 1502.[56] Section 1502 only applies when a utility is providing a preference to a third party over another. Neither the Commonwealth Court nor the Commission has found that a utility can violate Section 1502 by offering its own service at the exclusion of others.

Accordingly, the Joint Complainant's position that the Companies are violating Section 1502 because they perform a billing service that is not available to third parties is entirely unsupported by case law and without merit. The Companies' treatment of all third parties is the same here: no third parties can bill customers for their non-commodity products and services on the Companies' monthly bills.

The Joint Complainants rely on *Columbia* as the basis for the Formal Complaint. However, this proceeding is clearly distinguishable from *Columbia* where Columbia was permitting two third parties, former Columbia affiliates, to bill for their non-commodity products and services on Columbia's monthly bills while also prohibiting natural gas suppliers from doing the same.[57] In that case, the Commission held as follows:

> Columbia has offered no reasonable justification for offering the benefit of the billing service to certain third parties, while denying the NGS Parties that same billing service. Therefore, the billing practice at issue discriminates by preferential treatment of the third parties, Columbia's former affiliates, when Columbia affords the option of "on bill" billing for goods and services offered by former affiliated third parties but denies the same billing option to the NGS

[55] *Ultimate Sports Co. v. PPL Electric Utils. Corp.*, Docket No. C-2017-2633651 (Order dated Aug. 29, 2019).
[56] *Columbia* at 50.
[57] *Id.*

> Parties. We conclude, under the given facts, that Columbia's billing practice is discriminatory.[58]

The Columbia case is inapplicable to the instant proceeding. Unlike in *Columbia*, the Companies are not offering any preference or advantage to any third party over any other. The Companies prohibit all third parties from using the Companies' bills to bill for their products and services, which is entirely consistent with Section 1502.

Expanding Section 1502 to apply to a utility as well as third parties would result in absurd applications of the statute. The Companies would be at risk of violating Section 1502 for situations like conducting their own tree trimming rather than permitting third parties to offer that service, or for maintaining their own information technology ("IT") systems when third-party vendors also have this capability. In order to effectively operate their business, utilities must have the ability to offer their own services at the exclusion of all others without the risk of violating Section 1502.

Although no violation of Section 1502 occurred here, it is worth noting that even if this statute were applicable, the Companies' practice does not provide the Companies with any unreasonable advantage over third parties. The Companies' non-commodity billing practice treats all providers of non-commodity products and services the same, including the Companies. The Companies bill their customers for their own products and services on their monthly bills. Likewise, EGSs in the Companies' service territories are permitted to bill their customers for their own products and services. All providers, including the Companies and all EGSs, are permitted to send their own monthly bills to customers for their own products and services.[59] In fact, the Joint Complainants are currently sending their own monthly bills to customers in Pennsylvania for their own products and services.[60] While the Joint Complainants may seek to use the Companies'

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[58] *Id.* at 48.
[59] Companies St. No 1, pp. 4-5.
[60] *Id.* at 5, Appendices A through CONFIDENTIAL C.

bills instead, the Companies' current non-commodity billing practice is entirely equitable, non-discriminatory, and consistent with Section 1502 of the Public Utility Code.

**d. <u>Significant implementation challenges, consumer protection concerns, increased risk to the Companies, and significant implementation costs justify the Companies' continued prohibition on utility consolidated billing for EGSs' non-commodity products and services.</u>**

As demonstrated in the prior section, the Joint Complainants' reliance on Sections 1502 of the Public Utility Code as part of the Formal Complaint is misplaced. However, even if the Commission were to disagree and determine that the Companies' current billing practice falls under the scope of Section 1502, the Joint Complainants failed to establish that the Companies' practice provides an *unreasonable* preference or advantage to the Companies over the Joint Complainants. To constitute a violation of Section 1502, the Commission must find not only that discrimination exists, but also that such discrimination is unreasonable.[61] The Commission articulated this standard as follows:

> In certain cases, the Commission has held that some level of discrimination is allowable so long as it is not undue. Discrimination between classes of customers is permissible, provided that it is reasonable and based on the facts. In order for the discrimination to be reasonable in the circumstances, the discrimination between the parties must be based on facts which warrant the distinction, and not simply preferential treatment.[62]

In this case, the difference in billing treatment between the Companies' and EGSs' non-commodity product and service charges is reasonable and justifiable based on the facts, and therefore fully consistent with Section 1502 of the Code. As discussed further below, significant implementation challenges, consumer protection concerns, increased risk to the Companies, and significant

[61] *Columbia* at 48; *Pa. Pub. Util. Comm'n v. Nat'l Fuel Gas Distribution Corp.*, 2000 Pa. PUC LEXIS 883, *13 (Opinion and Order entered Jun. 29, 2000) citing *United Natural Gas Co. v. Pa. Pub. Util. Comm'n*, 22 A.2d 752, 757 (Pa. Super. Ct. 1943).
[62] *Columbia* at 48.

implementation costs justify the Companies' continued prohibition on utility consolidated billing of EGSs' non-commodity product and service charges.

### 1. Significant Information Technology Changes Would Be Required to Implement the EGSs' Requested Relief, Which Justifies the Disparate Billing Treatment Between the Companies and the EGSs.

The Joint Complainants rely on the Columbia case as the central legal justification for the filing of the Formal Complainant. However, as discussed previously, the *Columbia* situation is distinguishable for multiple reasons. Because Columbia was permitting certain third parties to utilize Columbia's monthly bills to bill for their non-commodity product and service charges, Columbia already had billing procedures in place for this process with third parties. By contrast, the Companies do not have any processes in place to bill customers for third parties' non-commodity products and services.[63] The Companies' utilize their own internal SAP billing system to bill for their own products and services. There is no IT functionality in place that would allow the Companies' SAP system to bill for EGSs' products and services.[64]

After receiving the Formal Complaint, the Companies conducted a high-level estimate to determine the potential costs of modifying the Companies' billing system to allow the Companies to bill for EGSs' non-commodity products and services. Through this effort, the Companies determined that these system changes would cost approximately three million dollars.[65] However, the Companies have not developed a comprehensive IT solution for this new billing methodology and cannot accurately project the full scope of potential costs at this time.[66]

In order to develop a comprehensive IT solution, the Companies would need to conduct an extensive IT effort, including programming and configuration, modifying customer invoicing,

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[63] Companies St. No. 2, pp. 5-6.
[64] *Id.* at 4.
[65] *Id.* at 5-7, Appendix C.
[66] *Id.*

developing and modifying interfaces, scheduling processing routines, developing accounting changes, and developing modified daily payment file details.[67] The Companies also would need to develop or modify numerous additional procedures related to, at a minimum, the payment posting hierarchy, payment arrangements, budget billing, low-income customer impacts, customer communication, general ledger mapping, the settlement process, bill presentment, payment and collection requirements, purchase of receivables requirements, uncollectibles, and cost recovery.[68] A number of these procedures also involve threshold policy questions, some of which are discussed further below, that would need to be resolved before any procedure could be modified.

Clearly, the efforts to modify the Companies' systems and develop all new processes to implement non-commodity billing on behalf of EGSs would be a massive undertaking. The Joint Complainants have not offered any evidence indicating otherwise. The Companies project that a two- to three-year period would be required to develop and adopt all of these changes.[69] Given the significant IT effort and procedural changes required, the Companies' difference in billing treatment for the non-commodity products and services of the Companies versus EGSs is perfectly reasonable and does not run afoul of Section 1502.

**2. No cost recovery methodology exists for the system and procedural changes required to allow the Companies to bill for non-commodity products and services on behalf of EGSs.**

All costs related to the Companies' non-commodity products and services are excluded from rate recovery.[70] In addition, the billing functionality for the Companies' non-commodity products and services is already built into the SAP system with any products-related billing

[67] *Id.*
[68] *Id.*
[69] *Id.* at 6.
[70] Companies St. No. 1-S, p. 4.

upgrades also resulting in below-the-line expense.[71] In order to modify the Companies' billing system to accommodate billing for EGSs' products and services, the Companies would incur significant additional costs, currently estimated at approximately three million dollars.[72] In addition, the Companies expect there to be an ongoing cost associated with maintaining this billing functionality.[73] There is no current cost recovery mechanism in place that would allow for the Companies to recover these costs.

In addition, if the Companies are required to adopt this change, a threshold policy question exists related to how these costs should be recovered. When the Companies adopted electronic data interchange ("EDI") processes and procedures to allow for utility consolidated billing of EGSs' commodity charges, those costs were ultimately recovered from customers.[74] As a result, the Companies remain skeptical that EGSs would be willing to pay for all of the required implementation costs associated with EGSs' non-commodity product and service billing. In discovery responses, Shipley only indicated a willingness to pay for manual labor costs and administrative costs.[75] Such costs do not represent the full scope of potential costs associated with this change, which would also include development and implementation costs related to ongoing testing efforts, software updates, customer communications, and bill print and postage costs.[76] This lack of certainty regarding cost recovery provides another reasonable justification for the Companies' difference in billing treatment for the Companies' non-commodity products and services and EGSs' non-commodity products and services.

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[71] Companies St. No. 2, p. 3.
[72] *Id.* at pp. 5-7, Appendix C.
[73] *Id.* at 5.
[74] *See Standards for Electronic Data Transfer and Exchange Between Electric Distribution Companies And Electric Generation Suppliers*, Docket No. M-00960890F0015 (Final Order entered May 10, 2012), p. 18.
[75] Companies St. No. 2, p. 5, Appendix D.
[76] *Id.* at 5.

### 3. An EGS cannot participate in the Companies' POR program for its commodity charges while excluding its non-commodity product and service charges.

The Companies' EGS Coordination Tariffs provide that EGSs may only participate in utility consolidated billing with the Companies if they also participate in the Companies' POR programs. Under the POR construct, EGSs are paid for their commodity charges whether or not the customer who incurs those charges pays, which ultimately results in all customers bearing the burden of increased uncollectible expenses.[77] After receiving the Formal Complaint, the Companies initially were concerned that the Joint Complainants were requesting to include non-commodity charges as part of the POR program, which the Companies strongly opposed as other customers should not be responsible to pay for the uncollectibles associated with non-commodity products and services.[78] Through testimony, the Joint Complainants clarified that they are proposing that EGSs' non-commodity product and service charges would be excluded from the POR program.[79] Although this proposal clarifies the Companies' initial policy concern, it raises a number of additional implementation concerns for the Companies (in addition to the tariff-based issues raised in section V.b. above). The Companies do not have any IT procedures in place that would allow the Companies to differentiate between an EGS's commodity and non-commodity charges.[80] Because the Companies have never billed for EGSs' non-commodity product and service charges, the full extent of potential changes needed to the Companies' systems and procedures is unclear.[81] At a minimum, the Companies would

[77] Companies St. No. 1, p. 7.
[78] Companies St. No. 1, pp. 6-8.
[79] 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, Joint Complainants' Statement No. 1-SR, p. 21.
[80] Companies St. No. 1, p. 8.
[81] *Id.*; *see also* Companies St. No. 2, pp. 5-7.

expect that extensive changes would be required to the Companies' POR program, uncollectibles procedures, payment posting, and accounting methodologies.[82]

These challenges related to current POR requirements provide another example of why the Companies' current non-commodity billing practice is reasonable. The Companies' policy against billing for EGSs' non-commodity products and services is based on significant implementation concerns and complexities, which justify differing billing treatment. All of these issues are resolved by continuing the current policy of EGSs and the Companies sending their own bills for non-commodity products and services.

**4. If the Companies were responsible to bill customers for EGSs' non-commodity products and services, the Companies have no billing procedures in place and no ability to independently ensure that these charges are not the basis for service termination.**

Under 52 Pa. Code § 56.83, the Companies are prohibited from terminating customers' electric service for failure to pay for non-basic services, which include all non-commodity products and services.[83] In order to comply with this regulation, the Companies' IT system is programmed to exclude non-commodity product and service charges from the Companies' termination process.[84] The Companies maintain procedures throughout their billing system to ensure such charges do not appear as part of a customer's disconnect balance and a customer is not held responsible for such charges in order to avoid service termination.[85]

No similar procedures currently exist for EGSs' non-commodity product and service charges. Because the Companies are only responsible to bill for EGSs' commodity charges, all of those charges are subject to the termination process and the Companies' billing system is

[82] *Id.*
[83] 52 Pa. Code § 56.83(3).
[84] Companies St. No. 2, p. 7.
[85] *Id.*

configured accordingly. If a customer fails to pay for EGS charges, that past due balance will result in termination efforts. Once again, significant system changes would be required to develop a new category of EGS charges that are not subject to termination.[86]

The Companies do not have any IT methodology that can differentiate between EGSs' commodity and non-commodity charges.[87] Although such an IT solution may be theoretically possible, the Companies remain strongly opposed to adopting such a solution because they will be unable to police the EGS charges and independently confirm whether the charges are commodity or non-commodity based. In other words, when the EGS passes along a customer's charges to the Companies, the Companies are relying on the EGSs' classification of the charges as either commodity or non-commodity. If an EGS mistakenly includes some or all of its non-commodity product and service charges with its commodity charges, the Company could inadvertently initiate termination procedures against a customer for failure to pay for an EGS's non-commodity product and service charges in violation of the Commission's regulations.[88]

The Companies are currently only billing customers for their own non-commodity product and service charges, which permit the Companies to verify that no customer is subject to termination based on their failure to pay for these charges. By contrast, the Companies have no way to police whether the charges passed from an EGS are accurately characterized as commodity or non-commodity, which could result in the Companies unknowingly violating 52 Pa. Code § 56.83 by terminating service to a customer based on their failure to pay for an EGS's non-commodity product and service charges. This distinction provides another important justification

[86] *Id.* at 7-8.
[87] *Id.* at 8.
[88] *Id.*

for why the Companies bill for their own non-commodity product and service charges and not EGSs'.

**5. The Companies' billing of EGSs' non-commodity products and services would create significant customer confusion and increased litigation and risk for the Companies.**

If the Companies begin to bill for EGSs' non-commodity products and services, the Companies anticipate an increase in customer confusion, which will result in additional customer communications, complaints, and litigation risk. By having a presence on the Companies' bills, customers are likely to hold the Companies responsible for any questions or disputes related to EGSs' non-commodity products and services.[89] Despite providing utility consolidated billing of EGSs' commodity charges for years, the Companies still receive numerous calls and complaints in which customers have confused the Companies and their EGSs or are holding the Companies responsible for an action by their EGS.

This confusion is likely to be amplified if the Companies take on the billing responsibility for EGSs' non-commodity products and services. While the Joint Complainants recommend that the Companies refer all such customer calls to the EGSs, customers will expect the Companies to be able to provide information regarding all components of their bills.[90] The Companies will be unable to meet this customer expectation as it relates to EGSs' non-commodity products and services, because the Companies will have no information regarding these offerings.[91] Such customer confusion is likely to lead to an increased risk of litigation against the Companies and additional customer complaints.[92]

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[89] *Id.* at 6-7.
[90] *See id.*
[91] *Id.*
[92] *Id.*; Companies St. No. 1, p. 9.

Moreover, by billing for EGSs' products and services, the Companies may erode their relationships with their customers. Customers will assume that any products and services on the Companies' bills are related to the Companies. As a result, customers will attribute their experiences related to EGSs' products and services to the Companies, resulting in customers associating the products and services of third parties with the Companies. These associations will adversely impact the Companies' relationships with their customers particularly if a customer has a bad experience with an EGS product or service. [93]

Finally, the risk of slamming increases if the Companies are required to bill for EGSs' products and services. Currently, instances of slamming only occur for EGSs' commodity charges, but the Companies would expect these occurrences to rise if EGSs are also permitted to include non-commodity products and services on the Companies' bills.[94] Here again, the Companies would be unable to independently verify if a customer has enrolled in an EGS product or service and could unintentionally be charging customers for an EGS product or service which they never agreed to receive.

All of the concerns raised here, including customer confusion, increased risk of slamming, damage to the Companies' customer relationships, and increased risk of litigation and customer complaints, are avoided by continuing the Companies' current non-commodity billing practice, which only permits the Companies to bill for their own products and services. Section 1502 of the Public Utility Code prohibits utilities from demonstrating an *unreasonable* preference or advantage for one party over another. No violation of Section 1502 occurs if there is a reasonable justification based on facts for one party receiving a preference or advantage over another party. To the extent the Commission finds that the Companies' non-commodity billing practice offers a

[93] Companies St. No. 1, p. 9.
[94] Companies St. No. 2, p. 7.

preference or advantage to the Companies, this difference in billing treatment between the Companies and EGSs should be deemed reasonable and consistent with Section 1502 based on all the implementation concerns raised herein.

**e. <u>The Companies' non-commodity product and service billing practice comports with Section 2804(6) of the Competition Act.</u>**

Pursuant to Section 2804(6) of the Competition Act, a utility must provide transmission and distribution service to all customers, cooperatives, and EGSs, on rates, terms of access, and conditions that are comparable to the utility's own use of its system.[95] This statute was enacted as part of the Competition Act, and its purpose is to ensure that EGSs may provide generation service to retail customers along utilities' distribution and transmission systems on a non-discriminatory basis.[96] Section 2804(6) is inapplicable to this case which relates only to the billing of EGSs' unregulated, non-commodity products and services.

The Competition Act restructured the retail electric market in Pennsylvania to establish competition in the electricity generation market.[97] The Commonwealth Court explains that "the central objective of the legislation was to allow retail customers to purchase their electricity directly from an EGS, rather than rely on their local utility as the exclusive source for generation, transmission, and distribution."[98] Another section within the Competition Act clarifies that the purpose of this open access requirement is to allow EGSs to generate and sell electricity directly to customers because utilities previously provided this function.[99] In other

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[95] 66 Pa.C.S. § 2804(6).
[96] *Application of Pa. Power & Light Co. for Approval of Restructuring Plan Under Section 2806 of the Public Utility Code*, Docket No. R-00973954 (R.D. entered Apr. 1, 1998) (These standards are clear. Utilities are not prohibited from continuing to provide, or compete for, electric generating customers either through affiliates or divisions but 'rates and terms' of access to the transmission and distribution systems by other suppliers must be 'comparable to the utility's own use.'"); *see also Coalition for Affordable Util. Servs. & Energy Efficiency in Pa.* v. *Pa. Pub. Util. Comm'n*, 120 A.3d 1087, 1101 (Pa. Commw. Ct. 2015) (*CAUSE-PA*).
[97] *See* 66 Pa.C.S. § 2802(7).
[98] *CAUSE-PA* at 1100.
[99] 66 Pa.C.S. § 2802(14).

words, in order to comply with Section 2804(6), utilities may not adopt terms of access to their distribution and transmission systems that allow utilities to offer generation service to customers on a more favorable basis than EGSs.[100]

The Competition Act is irrelevant to the billing of non-commodity products and services offered by EGSs, which is entirely separate from EGSs' generation service. The Companies' practice of not billing customers for EGSs' non-commodity products and services in no way precludes EGSs from offering generation service in their territories. The Joint Complainants are not alleging that they do not have equitable access to the Companies' distribution or transmission systems or that they have any issue providing generation service to retail customers in the Companies' territories. Although the Joint Complainants argue that the Companies' non-commodity billing policy inappropriately hinders competition, the Competition Act is not intended to promote competition for EGSs' non-commodity products and services. The Competition Act does not regulate EGSs' non-commodity products and services and certainly cannot be used as the justification to require the Companies to take on this unregulated billing responsibility on behalf of EGSs.

In *Columbia*, the Commission held that Columbia's practice of billing for the non-commodity products and services of certain third parties but not others violated both Sections 1502 and 2203(4) of the Public Utility Code.[101] The Commission stated that both sections "broadly prohibit discrimination in the provision of service."[102] To the extent the Commission believes Section 2804(6) of the Competition Act provides this same broad prohibition against

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[100] *Application of Pa. Power & Light Co. for Approval of Restructuring Plan Under Section 2806 of the Public Utility Code*, Docket No. R-00973954 (R.D. entered Apr. 1, 1998) (These standards are clear. Utilities are not prohibited from continuing to provide, or compete for, electric generating customers either through affiliates or divisions but 'rates and terms' of access to the transmission and distribution systems by other suppliers must be 'comparable to the utility's own use.'").
[101] *Columbia* at 50.
[102] *Id.* at 47.

discrimination, the substantial differences between *Columbia* and the instant proceeding warrant a different resolution here, which are articulated in detail in sections V.c. and V.d. above.

The Competition Act requires that the Companies do not adopt policies that hinder EGSs' ability to offer generation service. It is wholly silent regarding EGSs' non-commodity products and services. Accordingly, the Companies' non-commodity billing practice has no relationship to, and is therefore fully consistent with, Section 2804(6) of the Public Utility Code. Even if the Commission were to hold that Section 2804(6) establishes a broad prohibition against discrimination similar to Section 1502 of the Public Utility Code, the Companies clearly have established why the Companies' non-commodity product and service practice is reasonable and non-discriminatory.

**f. <u>The OCA's claim that the Companies should be prohibited from continuing their non-commodity product and service billing practice is unsupported by the record of this proceeding and should be disregarded.</u>**

The OCA also opposes the Companies taking on billing responsibility for EGSs' non-commodity products and services raising a number of policy and implementation concerns related to, among other things, customer confusion, product bundling, and low-income impacts.[103] However, rather than advocate in favor of maintaining the status quo, the OCA is seeking for the Commission to prohibit the Companies' continued billing of their own products and services.[104] This requested relief inappropriately expands the scope of the Formal Complaint. The Formal Complaint seeks to require the Companies to bill for the Joint Complainants' non-commodity products and services, but it does not request to prohibit the Companies from continuing to bill for

[103] Rebuttal Testimony of Barbara Alexander on behalf of the Office of Consumer Advocate, Statement No. 1R (hereinafter, "OCA St. No. 1R"), pp. 13-15.
[104] *Id.* at 17.

their own non-commodity products and services. Therefore, the OCA's arguments seeking to prohibit the Companies' billing for non-commodity products and services are outside the scope of the Formal Complaint and should not form the basis for the decision in this case.[105] Although the Companies remain concerned regarding the relevance of the OCA's position, the Companies will respond to each of the OCA's arguments below.

First, the OCA argues that because the Companies' products and services are not regulated by the Commission, they should not be included on the Companies' monthly electric service bills to customers.[106] This position is undermined by the Commission's Chapter 56 regulations, which were recently reviewed and reauthorized by the Commission and explicitly permit utilities to include charges for non-commodity products and services on their bills.[107] The Companies also comply with all Commission regulations related to non-commodity product and service charges, including their bill presentment, partial payment rules, and the service termination prohibition.[108] Considering that the Commission's regulations themselves authorize the Companies' non-commodity billing practice, this OCA position is without merit.

Second, the OCA specifically challenges the Companies' bill presentment of these charges, alleging that the Companies do not appropriately separate out a customer's product and service charges from a customer's delivery charges.[109] However, the Companies fully satisfy the bill

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[105] *Interstate Gas Supply, Inc., et al. v. Metro. Edison Co., et al.*, Docket Nos. C-2019-3013805, *et al.* (Order Denying Motion to Strike dated Jul. 20, 2020) ("It is noted, however, that the OCA rebuttal testimony will ultimately be viewed in light of the EGS complaint. The OCA cannot introduce new issues into this proceeding beyond the scope of the EGS complaint. Doing so would deny the EDCs the due process they are entitled to when defending the complaint. To the extent that the OCA sought to pursue issues separate from those raised by the EGSs, the OCA could have raised those issues in direct testimony or in their own complaint. Furthermore, the extent to which the issues raised in the OCA's rebuttal testimony are relevant to the EGSs' complaint will be weighed when disposing of the EGSs' complaint.").

[106] OCA St. No. 1R, pp. 3, 4, and 6.

[107] 52 Pa. Code § 56.13; Companies St. No. 1-S, pp. 3-4; *see also Rulemaking to Amend the Provisions of 52 Pa. Code, Chapter 56 to Comply with the Amended Provisions of 66 Pa. C.S. Chapter 14*, Docket No. L-2015-2508421 (Final Rulemaking Order entered Feb. 28, 2019).

[108] Companies St. No. 1-S, p. 4; 52 Pa. Code §§ 56.13, 56.23, 56.83 (3).

[109] OCA St. No. 1R, p. 13.

presentment requirements within 52 Pa. Code § 56.13. Consistent with the Commission's regulations, all non-commodity product and service charges appear as distinctly separate line items that follow the Companies' delivery charges on the Companies' bills.[110]

Third, the OCA claims that the Companies' ability to bill for their own non-commodity products and services provides an unfair advantage to the Companies over other providers of non-commodity products and services. As stated earlier, the Companies' practice keeps all providers of non-commodity products and services on an equal footing, because all providers are responsible to bill for their own products and services.[111] Similar to all other providers, the Companies are utilizing their own bills for their own products and services.[112]

Fourth, the OCA suggests that the Companies should not be permitted to use their monopoly status to market, communicate, and bill for their non-commodity products and services.[113] Although the Companies use the same bill for their delivery charges and their non-commodity product and service charges, the Companies do not use their public utility status to increase their product and service sales.[114] All costs associated with delivering the Companies' products and services are below-the-line and excluded from rate recovery.[115] The Companies do not discuss any non-commodity products and services with customers when the customers call for other utility or service-related matters.[116] The Companies make every effort to keep

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[110] Surrebuttal Testimony of Julia Enterline on behalf of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company, Met-Ed/Penelec/Penn Power/West Penn Statement No. 2-S (hereinafter, "Companies St. No. 2-S"), pp. 3, Appendix A.
[111] Companies St. No 1, pp. 4-5; Companies St. No. 1-S, p. 3.
[112] *Id.*
[113] OCA St. No. 1R, p. 12.
[114] Companies St. No. 1-S, p. 4.
[115] *Id.*
[116] *Id.*

communications with customers related to traditional utility matters separate from communications related to their non-commodity products and services.[117]

Fifth, the OCA posits that the Companies should be suggesting the removal of non-commodity product and service charges from a customer's bill if a customer contacts the Companies seeking a payment arrangement.[118] Customers typically contact the Companies to request a payment arrangement after receiving a past due or termination notice. Any past due non-commodity product and service charges would be irrelevant, because customers are not eligible for termination based on their failure to pay for these charges. Of course, if a customer were to contact the Companies to discuss all of their past due charges, the Companies would discuss any past due product and service charges and the customer's options related to ending enrollment.[119]

The Companies' non-commodity product and service billing practice is implemented in a manner consistent with the regulations, maintains a number of customer protections to ensure these charges have no impact on a customer's regulated distribution service, and does not provide the Companies with any unfair advantage over other providers of these non-commodity products and services. Accordingly, the OCA's arguments against the Companies' non-commodity billing practice should be disregarded. If the Commission agrees that the Companies' non-commodity billing practice does not violate Section 1502 or Section 2804(c) of the Public Utility Code, then the Formal Complaint would be dismissed and there should be no question that the Companies would be permitted to continue their non-commodity product and service billing practice.

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[117] Companies St. No. 2-S, p. 4.
[118] OCA St. No. 1R, pp. 7-8.
[119] Companies St. No. 2-S, p. 4.

## VI. CONCLUSION

WHEREFORE, Interstate Gas Supply, Inc. d/b/a IGS Energy, Direct Energy Services LLC, and Shipley Choice, LLC d/b/a Shipley Energy failed to satisfy their burden of proof that the non-commodity product and service billing practice of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company violates Sections 1502 and 2804(6) of the Public Utility Code. The Formal Complaint represents a collateral attack on the Companies' last default service order and challenges the Companies' Commission-approved EGS Coordination Tariffs without proper cause. For all the foregoing reasons, the Companies respectfully request that the Formal Complaint be dismissed.

Respectfully submitted,

Dated: August 18, 2020

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## APPENDIX A

## PROPOSED FINDINGS OF FACT

1. The Companies have a long history of offering non-commodity products and services, such as surge protection and line repair programs, to their customers.[120]
2. All costs related to the Companies' non-commodity products and services are excluded from rate recovery.[121]
3. The billing capability for the Companies' products and services has been built into the Companies' SAP billing system for decades with any products-related billing upgrades resulting in below-the-line expense.[122]
4. All non-commodity product and service charges appear as distinctly separate line items that follow the Companies' delivery charges on the Companies' bills.[123]
5. The Companies rely on their shared service company, FirstEnergy Service Company, to provide administrative support for the Companies' products and services, including billing.[124]
6. The Joint Complainants currently send their own bills for their non-commodity products and services, demonstrating that they are capable of continuing to offer and bill for their products and services without utility consolidated billing.[125]
7. The Companies do not permit any EGS, affiliate, or other third party to include charges for their non-commodity products and services on the Companies' bills.[126]

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[120] Companies St. No 1, p. 3.
[121] Companies St. No. 1-S, p. 4.
[122] Companies St. No. 2, pp. 2-3.
[123] Companies St. No. 2-S, pp. 3, Appendix A.
[124] Companies St. No. 2, pp. 2-3.
[125] Companies St. No. 1, p. 5, Appendices A through CONFIDENTIAL C.
[126] Companies St. No. 1, pp. 4-5; Companies St. No. 2, Appendix C.

8. The Companies' EGS Coordination Tariffs were most recently approved as part of the Companies' DSP proceeding on September 4, 2018.[127]

9. A Joint Petition for Partial Settlement was entered in the proceeding that stated all non-commodity product related issues should be raised as part of the generic Commission proceeding at Docket No. M-2018-2654254.[128]

10. Direct intervened in the DSP proceeding and did not object to the Joint Petition for Partial Settlement.[129]

11. The Joint Petition for Partial Settlement did not provide a right for parties to file a subsequent complaint on the same subject matter covered in the DSP proceeding.[130]

12. IGS and Shipley were served with the initial DSP filing on December 11, 2017, which satisfied the due process requirement.[131]

13. Neither IGS nor Shipley intervened in the DSP proceeding. However, both Direct and IGS are members of the Retail Energy Supply Association, which was an intervenor in the proceeding that signed on to the Joint Petition for Partial Settlement.[132]

14. The Companies' billing practice is not discriminatory because it treats all providers of non-commodity products and services the same, including the Companies. All providers, including

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[127] *See DSP Order*, p. 61; *see also Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company for Approval of a Default Service Program for the Period Beginning June 1, 2019 through May 31, 2023*, Docket Nos. P-2017-2637855, *et al.* (Joint Petition dated Dec. 11, 2017), Exhibits KLB-25 to KLB-28.
[128] *DSP Order* at 9.
[129] *Id.* at 8.
[130] *Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company for Approval of a Default Service Program for the Period Beginning June 1, 2019 through May 31, 2023*, Docket Nos. P-2017-2637855, *et al.* (Joint Petition dated May 15, 2018).
[131] *Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company for Approval of a Default Service Program for the Period Beginning June 1, 2019 through May 31, 2023*, Docket Nos. P-2017-2637855, *et al.* (Joint Petition dated Dec. 11, 2017), pp. 10, 15 (Certificate of Service).
[132] *DSP Order*, p. 8.

the Companies, are permitted to send their own monthly bills to customers for their own products and services.[133]

15. There is no IT functionality or processes in place that would allow the Companies' SAP system to bill for EGSs' products and services.[134]

16. The Companies conducted a high-level estimate to determine the potential costs of modifying the Companies' billing system to allow the Companies to bill for EGSs' non-commodity products and services and determined that these system changes would cost approximately three million dollars.[135]

17. The Companies have not developed a comprehensive IT solution for this new billing methodology and cannot accurately project the full scope of potential costs at this time.[136]

18. In order to develop a comprehensive IT solution, the Companies would need to conduct an extensive IT effort, including programming and configuration, modifying customer invoicing, developing and modifying interfaces, scheduling processing routines, developing accounting changes, and developing modified daily payment file details.[137]

19. In order to provide non-commodity billing service on behalf of the Joint Complainants, the Companies would need to develop or modify numerous additional procedures related to, at a minimum, the payment posting hierarchy, payment arrangements, budget billing, low-income customer impacts, customer communication, general ledger mapping, the settlement process, bill presentment, payment and collection requirements, purchase of receivables requirements, uncollectibles, and cost recovery.[138]

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[133] Companies St. No 1, pp. 4-5; Companies St. No. 1-S, p. 3.
[134] Companies St. No. 2, pp. 4-6.
[135] *Id.* at 5-7, Appendix C.
[136] *Id.*
[137] *Id.*
[138] *Id.*

20. The Companies project that a two- to three-year period would be required to develop and adopt all of these changes.[139]

21. No current cost recovery mechanism exists for the system and process changes needed for the Companies to provide non-commodity billing service on behalf of the Joint Complainants.[140]

22. Shipley only indicated a willingness to pay for manual labor costs and administrative costs.[141]

23. Such costs do not represent the full scope of potential costs associated with this change, which would also include development and implementation costs related to ongoing testing efforts, software updates, customer communications, and bill print and postage costs.[142]

24. Under the POR construct, EGSs are paid for their commodity charges whether or not the customer who incurs those charges pays, which ultimately results in all of the Companies' customers bearing the burden of increased uncollectible expenses.[143]

25. Customers should not be responsible to pay for the uncollectibles associated with EGS non-commodity products and services.[144]

26. The Companies do not have any IT procedures in place that would allow the Companies to differentiate between EGSs' commodity and non-commodity charges.[145]

27. Because the Companies have never billed for EGSs' non-commodity product and service charges, the full extent of potential changes needed to the Companies' systems and procedures is unclear. At a minimum, the Companies would expect that extensive changes would be

[139] *Id.* at 6.
[140] *Id.* at 5.
[141] *Id.* at 5, Appendix D.
[142] *Id.*
[143] Companies St. No. 1, p. 7.
[144] *Id.* at 6-8.
[145] *Id.* at 8.

required to the Companies' POR program, uncollectibles procedures, payment posting, and accounting methodologies. [146]

28. The Companies' IT system is programmed to exclude the Companies' non-commodity product and service charges from the termination process.[147]

29. The Companies maintain procedures throughout their billing system to ensure such charges do not appear as part of a customer's disconnect balance and that a customer is not held responsible for such charges in order to avoid service termination.[148]

30. Because the Companies are only responsible to bill for EGSs' commodity charges, all of those charges are subject to the termination process and the Companies' billing system is configured accordingly.

31. No procedures currently exist to prevent EGSs' non-commodity product and service charges from being subject to the termination process.[149]

32. Significant system changes would be required to develop a new category of EGS charges that are not subject to termination.[150]

33. The Companies do not have any IT methodology that can differentiate between EGSs' commodity and non-commodity charges.[151]

34. When the EGS passes along a customer's charges to the Companies, the Companies are relying on the EGSs' classification of the charges as either commodity or non-commodity.[152]

35. If an EGS mistakenly includes some or all of its non-commodity product and service charges with its commodity charges, the Company could inadvertently initiate termination procedures

[146] *Id.*; *see also* Companies St. No. 2, pp. 5-7.
[147] Companies St. No. 2, p. 7.
[148] *Id.*
[149] *Id.* at 7-8.
[150] *Id.*
[151] *Id.* at 8.
[152] *Id.*

against a customer for failure to pay for an EGS's non-commodity product and service charges.[153]

36. By having a presence on the Companies' bills, customers are likely to hold the Companies responsible for any questions or disputes related to EGSs' non-commodity products and services.[154]

37. The Companies will be unable to meet this customer expectation as it relates to EGSs' non-commodity products and services, because the Companies will have no information regarding these offerings.[155]

38. The customer confusion created by the Companies' billing for EGSs' non-commodity products and services is likely to lead to an increased risk of litigation against the Companies and additional customer complaints.[156]

39. The risk of slamming increases if the Companies are required to bill for EGSs' products and services. [157]

40. The Companies do not use their public utility status to increase their product and service sales.[158]

41. The Companies do not discuss any non-commodity products and services with customers when the customers call for other utility or service-related matters.[159]

42. Customers typically contact the Companies to request a payment arrangement after receiving a past due or termination notice. Any past due non-commodity product and service charges

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[153] *Id.*
[154] *Id.* at 6-7.
[155] *Id.*
[156] *Id.*; Companies St. No. 1, p. 9.
[157] Companies St. No. 2, p. 7.
[158] Companies St. No. 1-S, p. 4.
[159] *Id.*

are irrelevant when customers contact the Companies seeking payment arrangements, because customers are not eligible for termination based on their failure to pay for these charges. [160]

43. If a customer were to contact the Companies to discuss all of their past due charges, the Companies would discuss any past due product and service charges and the customer's options related to ending enrollment.[161]

44. The Companies make every effort to keep communications with customers related to traditional utility matters separate from communications related to their non-commodity products and services.[162]

[160] Companies St. No. 2-S, p. 4.
[161] *Id.*
[162] *Id.*

## APPENDIX B

## PROPOSED CONCLUSIONS OF LAW

1. Under Section 332(a) of the Public Utility Code, the Joint Complainants maintain the burden of proof in this proceeding.[163]

2. In order for the Commission to sustain a formal complaint, the Complainant must demonstrate that an "act or thing done or omitted to be done by any public utility [is] in violation, or claimed violation, of any law which the Commission has jurisdiction to administer, or of any regulation or order of the commission."[164]

3. The Commission's regulations and the Companies' Electric Service Tariffs authorize the Companies to offer and bill customers for their own products and services.[165]

4. The Companies comply with all of the Commission's regulations related to non-commodity product and service billing.[166]

5. The Companies' bill presentment of non-commodity product and service charges is consistent with 52 Pa. Code § 56.13.[167]

6. The Commission recently reviewed and reauthorized its regulations that permit the Companies' non-commodity billing practice.[168]

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[163] 66 Pa.C.S. § 332(a)
[164] 66 Pa.C.S. § 701.
[165] 52 Pa. Code § 56.13; Electric Pa. P.U.C. No. 52, Rule 15 (Met-Ed Electric Service Tariff); Electric Pa. P.U.C. No. 81, Rule 15 (Penelec Electric Service Tariff); Electric Pa. P.U.C. No. 36, Rule 15 (Penn Power Electric Service Tariff); Electric Pa. P.U.C. No. 40, Rule 15 (West Penn Electric Service Tariff).
[166] 52 Pa. Code §§ 56.13, 56.23, 56.83(3).
[167] 52 Pa. Code § 56.13.
[168] *Rulemaking to Amend the Provisions of 52 Pa. Code, Chapter 56 to Comply with the Amended Provisions of 66 Pa. C.S. Chapter 14*, Docket No. L-2015-2508421 (Final Rulemaking Order entered Feb. 28, 2019).

7. Section 316 of the Public Utility Code precludes a collateral attack upon a Commission order that has not been reversed on appeal.[169]

8. The party against whom Section 316 is invoked need not have been a participant in the proceeding that resulted in the final order being given preclusive effect as long as that party had notice and an opportunity to appear and be heard.[170]

9. The Companies' EGS Coordination Tariffs prohibit an EGS from utilizing utility consolidated billing for non-commodity products and services.[171]

10. Under the Companies' EGS Coordination Tariffs, EGSs seeking to bill for non-commodity products and services must do so using dual billing, *i.e.*, sending their own separate bill for these items.[172]

11. Pursuant to Section 316 of the Public Utility Code, the Joint Complainants are precluded from challenging the validity of the Companies' EGS Coordination Tariffs through this Formal Complaint proceeding.

12. Tariff provisions that were previously submitted and approved by the Commission are deemed *prima facie* reasonable.[173]

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[169] 66 Pa.C.S. § 316. *Schneider v. Pa. Pub. Util. Comm'n*, 479 A.2d 10, 12 (Pa. Commw. Ct. 1984); *Tillman* v. *Phila. Gas Works,* Docket No. C-2014-2445229 (R.D. issued Nov. 4, 2016); s*ee also Lehigh Vallev Power Comm. v. Pa. Pub. Util. Comm'n,* 563 A. 2d 557, 565 (Pa. Commw. Ct. 1989); *see also Wright v. Phila. Gas Works*, Docket No. C-2013-2368462 (Order issued Oct. 23, 2014), holding that a complainant is prohibited from raising the same issues he previously agreed to settle in a prior formal complaint proceeding.

[170] *See id.*; *Respond Power*, p. 56.

[171] Electric Pa P.U.C. S-1, p. 38 (Met-Ed Electric Generation Supplier Coordination Tariff); Electric Pa P.U.C. S-1, p. 38 (Penelec Electric Generation Supplier Coordination Tariff); Electric Pa P.U.C. S-3, p. 38 (Penn Power Electric Generation Supplier Coordination Tariff); *see also* Electric Pa P.U.C. 2S, p. 35 (West Penn Electric Generation Supplier Coordination Tariff).

[172] Companies St. No. 1, pp. 5, 9-10; Electric Pa. P.U.C. 2S, p. 37 (West Penn Electric Generation Supplier Coordination Tariff).

[173] *Shenago* at 914; *see also Respond Power*, pp. 50-51.

13. To prove that a tariff should be modified, the Joint Complainants must establish that the facts and circumstances have changed so drastically so as to render application of the tariff provision unreasonable.[174]

14. The Joint Complainants fail to establish any new facts or circumstances that render the Companies' current tariff provisions unreasonable.

15. Section 1502 of the Public Utility Code requires that

> No public utility shall, as to service, make or grant any unreasonable preference or advantage to any person, corporation, or municipal corporation, or subject any person, corporation, or municipal corporation to any unreasonable prejudice or disadvantage. No public utility shall establish or maintain any unreasonable difference as to service, either as between localities or as between classes of service, but this section does not prohibit the establishment of reasonable classifications of service.[175]

16. Section 1502 only applies where a utility provides an unreasonable preference or advantage to one third party over another.[176]

17. Neither the Commonwealth Court nor the Commission has found that a utility can violate Section 1502 by offering its own service at the exclusion of others.

18. In *Columbia*, the Commission held as follows

> Columbia has offered no reasonable justification for offering the benefit of the billing service to certain third parties, while denying the NGS Parties that same billing service. Therefore, the billing practice at issue discriminates by preferential treatment of the third parties, Columbia's former affiliates, when Columbia affords the option of "on bill" billing for goods and services offered by former affiliated third parties but denies the same billing option to the NGS Parties. We conclude, under the given facts, that Columbia's billing practice is discriminatory.[177]

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[174] *Id.*
[175] 66 Pa.C.S. § 1502.
[176] *See PPL Electric Utils. Corp. v. Pa. Pub. Util. Comm'n*, 912 A.2d 386 (Pa. Commw. Ct. 2006) ("Section 1502 protects customers of a public utility from being subjected to unreasonable discrimination or preferences concerning the establishment of different services for different classes of customers."); *see also Ultimate Sports Co. v. PPL Electric Utils. Corp.*, Docket No. C-2017-2633651 (Order dated Aug. 29, 2019).
[177] *Id.* at 48.

19. *Columbia* is inapplicable to the instant proceeding. Unlike in *Columbia*, the Companies are not offering any preference or advantage to any third party over any other. The Companies prohibit all third parties from using the Companies' bills to bill for their products and services, which is entirely consistent with Section 1502.

20. Expanding Section 1502 to apply to a utility as well as third parties would result in absurd applications of the statute.

21. The Companies' non-commodity billing practice does not violate Section 1502 of the Public Utility Code because it does not offer any unreasonable preference to one party over another.

22. To constitute a violation of Section 1502, the Commission must find not only that discrimination exists, but also that such discrimination is unreasonable, undue, and not based on facts.[178]

23. The difference in billing treatment between the Companies' and EGSs' non-commodity product and service charges is reasonable and justifiable based on the facts, and therefore fully consistent with Section 1502 of the Code.

24. Section 2804(6) of the Public Utility Code requires that

> a public utility that owns or operates jurisdictional transmission and distribution facilities shall provide transmission and distribution service to all retail electric customers in their service territory and to electric cooperative corporations and electric generation suppliers, affiliated or nonaffiliated, on rates, terms of access and conditions that are comparable to the utility's own use of its system.[179]

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[178] *Columbia* at 48; *Pa. Pub. Util. Comm'n v. Nat'l Fuel Gas Distribution Corp.*, 2000 Pa. PUC LEXIS 883, *13 (Opinion and Order entered Jun. 29, 2000), citing *United Natural Gas Co. v. Pa. Pub. Util. Comm'n*, 22 A.2d 752, 757 (Pa. Super. Ct. 1943).
[179] 66 Pa.C.S. § 2804 (6).

25. Section 2804(6) was enacted as part of the Competition Act, and its purpose is to ensure that EGSs may provide generation service to retail customers along utilities' distribution and transmission systems on a non-discriminatory basis.[180]

26. Another section within the Competition Act clarifies that the purpose of this open access requirement is to allow EGSs to generate and sell electricity directly to customers because utilities previously provided this function.[181]

27. The Commonwealth Court explains that "the central objective of the [Competition Act] was to allow retail customers to purchase their electricity directly from an EGS, rather than rely on their local utility as the exclusive source for generation, transmission, and distribution."[182]

28. The Competition Act is irrelevant to the billing of non-commodity products and services offered by EGSs, which is entirely separate from EGSs' generation service.

29. Section 2804(6) is inapplicable to this case which relates only to the billing of EGSs' unregulated, non-commodity products and services rather than the Joint Complainants' commodity service.

30. To the extent the Commission finds that Section 2804(6) of the Competition Act provides the same broad prohibition against discrimination as Section 1502 of the Public Utility Code, the Companies have established that their non-commodity billing practice is non-discriminatory and consistent with Section 1502.

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[180] *Application of Pa. Power & Light Co. for Approval of Restructuring Plan Under Section 2806 of the Public Utility Code*, Docket No. R-00973954 (R.D. entered Apr. 1, 1998) (These standards are clear. Utilities are not prohibited from continuing to provide, or compete for, electric generating customers either through affiliates or divisions but 'rates and terms' of access to the transmission and distribution systems by other suppliers must be 'comparable to the utility's own use.'"); *see also CAUSE-PA* at 1101.
[181] 66 Pa.C.S. § 2802(14).
[182] *CAUSE-PA* at 1100.

## APPENDIX C

## PROPOSED ORDERING PARAGRAPHS

1. Interstate Gas Supply, Inc. d/b/a IGS Energy, Direct Energy Services LLC, and Shipley Choice, LLC d/b/a Shipley Energy fail to meet their burden of proof that Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company violated Sections 1502 and 2804(6) of the Public Utility Code.
2. The Formal Complaint is dismissed.

**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** | : | **Docket No. C-2019-3013805** |
| **v.** | : | **C-2019-3013806** |
| | : | **C-2019-3013807** |
| | : | **C-2019-3013808** |
| **METROPOLITAN EDISON COMP ANY, PENNSYLVANIA ELECTRIC COMPANY, PENNSYLVANIA POWER COMPANY, AND WEST PENN POWER COMPANY** | : | |

## CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the Main Brief of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company upon the individuals listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

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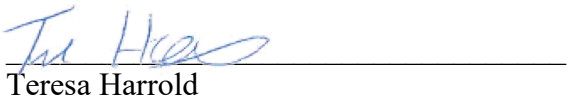

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