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September 20, 2021

**Via Electronic Filing**

Rosemary Chiavetta, Secretary  
PA Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105-3265

Re: Interstate Gas Supply, Inc. et al., 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; C-2019-3013808

Dear Secretary Chiavetta:

Enclosed for electronic filing please find the Retail Energy Supply Association's ("RESA") Answer in Support of the Joint Petitioners' Petition for Reconsideration of the Commission's August 26, 2021 Order and/or for Reopening of the Record with regard to the above-referenced matter. Copies to be served in accordance with the attached Certificate of Service.

Sincerely,



Deanne M. O'Dell

DMO/lww  
Enclosure

cc: Hon. Joel H. Cheskis w/enc.  
Cert. of Service w/enc.

**CERTIFICATE OF SERVICE**

I hereby certify that this day I served a copy of RESA's Answer in Support of the Joint Petitioners' Petition For Reconsideration of the Commission's August 26, 2021 Order and/or For Reopening of the Record upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54.

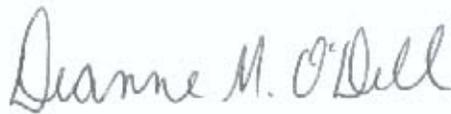
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Dated: September 20, 2021

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Deanne M. O'Dell, Esq.

**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
Complainants	:	C-2019-3013806
v.	:	C-2019-3013807
	:	C-2019-3013808
	:	
Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company	:	
Respondents	:	

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**ANSWER OF RETAIL ENERGY SUPPLY ASSOCIATION  
IN SUPPORT OF THE JOINT PETITIONERS’ PETITION FOR  
RECONSIDERATION OF THE COMMISSION’S AUGUST 26,  
2021 ORDER AND/OR FOR REOPENING OF THE RECORD**

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The Retail Energy Supply Association (“RESA”)<sup>1</sup> submits this Answer in support of the Petition of Interstate Gas Supply, Inc. d/b/a IGS Energy, Direct Energy Services LLC, and Shipley Choice, LLC d/b/a Shipley Energy (collectively, “Joint Petitioners”) for Reconsideration of the Commission’s August 26, 2021 Order and/or Reopening of the Record (“Petition for Reconsideration”) in this proceeding.<sup>2</sup> The new facts brought to light in the Petition for Reconsideration present issues that the Commission did not consider and that undermine the very basis for the Commission’s August 26, 2021 Order (“Order”). As such, reconsideration is both

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<sup>1</sup> The comments expressed in this filing represent the position of the Retail Energy Supply Association (RESA) as an organization but may not represent the views of any particular member of the Association. Founded in 1990, RESA is a broad and diverse group of retail energy suppliers dedicated to promoting efficient, sustainable and customer-oriented competitive retail energy markets. RESA members operate throughout the United States delivering value-added electricity and natural gas service at retail to residential, commercial and industrial energy customers. More information on RESA can be found at [www.resausa.org](http://www.resausa.org). The February 5, 2020 Scheduling Order granted PWSA’s Petition to Intervene.

<sup>2</sup> In its Opinion and Order entered September 15, 2021, the Commission granted the Petition for Reconsideration pending further review of, and consideration on, the merits.

warranted and necessary in this proceeding and the complaint of Joint Petitions should be sustained. The new material facts make clear that the Commission's Order runs afoul of precedent of the Commission and the Electricity Generation Customer Choice and Competition Act ("Competition Act").<sup>3</sup> It also ignores how this decision (in consideration other recent decisions of the Commission) further erodes the ability of consumers to have more full access to the innovation that could be available from a competitive market. For these reasons, RESA respectfully requests that the Petition for Reconsideration be granted and the complaint sustained.

#### **I. Petition for Reconsideration Should Be Granted**

The facts considered in the Commission's Order only established that Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company (collectively, "FirstEnergy") were providing "on-bill billing" service to themselves, not to any unaffiliated third party. On this basis, the Commission found that the prohibitions against unreasonable discrimination in Sections 1502 and 2804(6) of the Public Utility Code do not apply.<sup>4</sup> However, the previously undisclosed information raised in the Petition for Reconsideration shows that FirstEnergy does, in fact, provide "on-bill" billing services to HomeServe USA ("HomeServe"), a third party that is not affiliated with FirstEnergy but that is permitted to include charges for non-commodity products and services on FirstEnergy's customer bills, while other third parties are not offered this service.<sup>5</sup> This new information was not considered by the Commission and undermines the factual basis for the Commission's Order.

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<sup>3</sup> 66 Pa. C.S. §§ 2801-2811.

<sup>4</sup> 66 Pa. C.S. §§ 1502, 2804(6).

<sup>5</sup> Petition for Reconsideration at ¶ 5; Exhibits A through D.

In its Order, the Commission stated that:

We agree with the arguments presented by the EDCs in their Exceptions that, in the present case, to find a violation of the Section 1502 prohibition on discrimination in service, **the EGSs would be required to show that the EDCs provide the billing services in question to a third party (i.e., a party other than the EDCs themselves) while refusing to provide the same service to the EGSs.**

Order at 22 (emphasis added). The new facts contained in the Petition for Reconsideration show exactly that – that FirstEnergy is providing “on-bill” billing services to a third party, other than the EDCs themselves, while refusing to provide this same service to the EGSs. These facts are directly contradictory to the Commission’s Order in *Pa. PUC v. Columbia Gas of Pa. Inc.*, Docket No. R-2018-2647577 (Opinion and Order entered Dec. 6, 2018) (“*Columbia*”), in which the Commission determined that Columbia’s practice of providing “on-bill” billing of non-commodity goods and services to a third party while denying the same service to other third parties was unreasonable and discriminatory in violation of Section 1502 of the Public Utility Code. In the Order here, the Commission distinguished the instant proceeding from *Columbia* because “[i]n the present case, the EDCs are *not* providing ‘on-bill billing’ of non-commodity goods and service to any third party.”<sup>6</sup> However, the facts raised by the Petition for Reconsideration clearly show that this statement is inaccurate and FirstEnergy does, in fact, provide “on-bill” billing to an unaffiliated third party, while denying such service to other third parties, including the EGSs.

As discussed in the Petition for Reconsideration, these new facts raise significant issues and clearly meet the standard for granting a Petition for Reconsideration as set forth in *Duick v. Pennsylvania Gas and Water Co.*<sup>7</sup> Under the standards set forth in *Duick*, such Petitions for

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<sup>6</sup> Order at 24 (emphasis in original).

<sup>7</sup> Docket No. C-R0597001 *et al.*, 56 Pa. P.U.C. 553, 559 (1982).

Reconsideration should succeed when they raise “new and novel arguments” not previously heard or considerations that appear to have been overlooked or not addressed by the Commission or in the record.<sup>8</sup> There are clearly material facts raised by the Petition for Reconsideration that were not considered or heard by the Commission, and which show that the Order turned on an understanding of the facts that is inaccurate. As a result, the Commission’s Order is directly contradictory to the existing case law. Therefore, granting reconsideration is absolutely necessary in this proceeding and the Commission should sustain the complaint of the Joint Petitioners on the basis that the new facts contained in the Petition for Reconsideration show that this case is directly on point with *Columbia*.

## **II Complaint Should Be Sustained**

The fact that FirstEnergy provides on-bill billing services to other companies to enable customers to pay for the other companies’ services through the FirstEnergy bill runs afoul of the Competition Act, other precedent of the Commission and ignores how this decision further erodes the ability of consumers to have more full access to the innovation that could be available from a competitive market.

First, the Commission’s Order attempts to analogize the EDC’s provisioning of non-commodity billing services to customers with the EGS’s provisioning of non-commodity billing services to customers to conclude that Section 2804(6) does not require EDCs to bill the EGS non-commodity billing services to customers on the basis that the Competition Act establishes no obligation on the part of EDCs to extend this to EGSs.<sup>9</sup> However, as the new facts in the

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<sup>8</sup> *Id.*, 56 Pa. P.U.C. at 559.

<sup>9</sup> Order at 28 (“the definition of ‘direct access’ describes the EGSs’ specific right to nondiscriminatory access...”).

Petition for Reconsideration make clear, the EDCs are offering the non-commodity billing services of another entity. Therefore, an EGS's desire to include on the bill the non-commodity services of another entity is not appropriately dismissed under the Competition Act just because it is through an EGS. Rather, such result is contrary of a specified goal of the Competition Act to "provide open, fair and nondiscriminatory access to all [EGSs]."<sup>10</sup> When the EDC is the only entity permitted to provide on-bill services for the non-commodity services of third parties of its choosing without permitting the billing of services for the non-commodity services of third parties working with EGSs, customers are being denied access to EGSs. Such result runs directly contrary to a core purpose of the Competition Act.

Second, the Commission's Order concludes – without any factual record support – that the EGSs' right of direct access is "limited to the transmission and distribution facilities necessary to transport electricity, and does not encompass billing services and facilities, which are not necessary to/for the transport of electricity."<sup>11</sup> The "billing services," however, are necessary to/for the transport of electricity for mass market customers given the current structure of the market in Pennsylvania today. More specifically, for residential customers, billing on the EDC bill (i.e. Utility Consolidated Billing "UCB") is the only viable billing option available for EGSs. Most EDCs require EGSs wishing to participate in the Purchase of Receivables ("POR") program to utilize UCB for all EGS residential customers.<sup>12</sup> This means that if EGSs want to utilize the POR program for any residential customer, then they are required to utilize UCB for all residential customers. Thus, the structure of the market today is such that EGSs wanting to

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<sup>10</sup> 66 Pa. C.S. § 2805(b)(1).

<sup>11</sup> Order at 28.

<sup>12</sup> See, e.g., PECO Supplier Tariff Page 96, Billing Service Options, Section 19.

serve residential customers are effectively required to utilize UCB so the Commission erred in concluding that the “billing services” of the EDC are not needed for the transport of electricity to the end-use customers.

Third, in a Tentative Order entered May 24, 2021, the Commission stated that “while not often thought of traditional ‘distribution facilities,’ we posit that an [EDC’s] metering and billing system may fall into the nexus of distribution facilities.”<sup>13</sup> In contrast the Order here concludes that “billing is not the subject of the 2804(6) which is expressly limited to the narrower category of services and facilities (*i.e.* transmission and distribution service and facilities).”<sup>14</sup> While admittedly the Commission’s May 24, 2021 determination is a tentative conclusion subject to change, in the context of EGS licensing the Commission has offered a different interpretation than what is reached in the Order here, *i.e.* that the billing system may be considered a distribution facility under the Competition Act.

Finally, with the Commission’s decision on June 21, 2021 to discontinue consideration of Supplier Consolidated Billing,<sup>15</sup> the Commission’s Order hamstring the innovation available to consumers through the competitive market (which may include non-commodity services provided through the EGSs). The foundation of the Competition Act is a recognition that consumers benefit from competition.<sup>16</sup> Importantly, the General Assembly recognized that true innovation occurs in a competitive market where private entities are competing against one

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<sup>13</sup> *License Application of Enerwise Global Technologies, LLC d/b/a CPower for Approval to Offer, Render, Furnish, or Supply Electricity or Electric Generation Services*, Docket No. A-2019-3009271, Tentative Order entered May 24, 2021 at 6.

<sup>14</sup> Order at 26.

<sup>15</sup> *Re: Closing Docket No. M-2018-2645254, re: Supplier Consolidated Billing, without further action*, Secretarial Letter dated June 21, 2021.

<sup>16</sup> 66 Pa.C.S. § 2802(7).

another to acquire and maintain customers. In such an environment, companies are incented to innovate and fine-tune their products and services in response to customer demands. These companies are competing against each other and, as a result, need to constantly evolve and enhance their products in order to be successful. The end result benefits consumers because they are able to select from a variety of products and services developed with the intent of serving their individual needs. Preventing EGSs from offering their customers the convenience of billing non-commodity services on the EDC consolidated bills (which EGSs must use for residential customers) is not in furtherance of the Competition Act nor does it provide Pennsylvania consumers with the full opportunity to avail themselves of the innovation available from the competitive market.

**WHEREFORE**, RESA supports the Joint Petitioners' Petition for Reconsideration and respectfully requests that the Commission grant the Petition for Reconsideration and sustain the complaint.

Respectfully submitted,



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