

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17120**

Public Meeting held April 14, 2022

Commissioners Present:

Gladys Brown Dutrieuille, Chairman
John F. Coleman, Jr., Vice Chairman
Ralph V. Yanora

Interstate Gas Supply, Inc., *et al.*

v.

Metropolitan Edison Company,	C-2019-3013805
Pennsylvania Electric Company,	C-2019-3013806
Pennsylvania Power Company and	C-2019-3013807
West Penn Power Company	C-2019-3013808

OPINION AND ORDER

BY THE COMMISSION:

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is the Joint Petition for Reconsideration and/or For Reopening of the Record of the Proceeding (Petition) of the Commission’s Opinion and Order entered on August 26, 2021, (*August 2021 Order*) filed on September 10, 2021, by three Electric Generation Suppliers: (1) Interstate Gas Supply, Inc. d/b/a IGS Energy; (2) Direct Energy Services LLC; and (3) Shipley Choice, LLC d/b/a Shipley Energy (collectively, “Petitioners,” “the EGSs,” or “Interstate Gas Supply, *et al.*”). Answers to the Petition were filed on September 20, 2021, by the Retail Energy Supply Association

(RESA) and by four electric distribution companies: (1) Metropolitan Edison Company; (2) Pennsylvania Electric Company; (3) Pennsylvania Power Company; and (4) West Penn Power Company (collectively, “Respondents,” “the EDCs,” or “Metropolitan Edison Company, et al”). The EGSs seek reconsideration of the Commission’s *August 2021 Order*, which found that the EDCs’ billing practice of offering “on-bill billing” for its own non-commodity services is subject to the Commission’s jurisdiction, and conforms with Section 1502 of the Public Utility Code (Code), 66 Pa. C.S. § 1502, which prohibits discrimination in the provision of service.

For the reasons stated, *infra*, upon consideration of the Petition for Reconsideration and Answers thereto, finding no persuasive reason for reconsideration, we shall deny reconsideration of our *August 2021 Order*.¹ Accordingly, as discussed *infra*, per our *August 2021 Order*, we conclude that the EDCs’ billing practice of offering “on-bill billing” for its own non-commodity services is subject to the Commission’s jurisdiction, and conforms with Section 1502 of the Code, 66 Pa. C.S. § 1502, which prohibits discrimination in the provision of service.

¹ As a preliminary procedural matter, on February 23, 2022, the EGSs filed a Motion for Expedited Treatment of the Petition for Reconsideration (Motion), pursuant to 52 Pa. Code § 5.103. The EGSs argued that expedited treatment is warranted to prevent the “continuing discrimination in service and harm to the Joint Complainants.” Motion at 4. The EDCs filed an Answer to the Motion on March 15, 2022 (Answer to Motion). By their Answer, the EDCs assert, *inter alia*, that the EGSs’ alleged justifications for expedited treatment are “vague, unsubstantiated, and speculative and, therefore, should be rejected.” Answer to Motion at 8-9. Upon review, we agree with the EDCs that the alleged harm, *i.e.*, discrimination in service, is speculative in nature, based upon the EGSs’ allegation of conclusive evidence that the EDCs provide “on-bill billing” to third parties. Although the EGSs have provided basis for review for reconsideration, the allegations do not persuade us that expedited treatment is warranted to prevent continued discrimination in service. Accordingly, as a matter within our discretion, we shall deny the Motion, pursuant to 52 Pa. Code § 5.103.

I. Background

This case concerns a billing practice known in the utility industry as “on-bill billing,” whereby a company includes non-commodity goods and services on its monthly utility bills to its customers. In the present case, the EDCs offer their own non-commodity goods and services *via* “on-bill billing” to their customers. The EGSs are free to do the same *via* their own direct billing of customers. Here, however, the EGSs sought to require the EDCs, which are required by statute to provide customer billing for electric service provided by the EGSs, to also provide the EGSs with the same “on-bill billing” services for non-commodity (other than electric) for the EGSs’ customers as the EDCs were providing its own customers. The Administrative Law Judge’s (ALJ’s) Initial Decision sustained the EGSs’ Complaint averring that the EDCs’ provision of “on-bill billing” for the benefit of their own customers, and not to the EGSs’ customers, demonstrates that the companies do not provide the EGS with rates, terms of access and conditions that are comparable to the EDCs’ own use of the system.

The ALJ concluded that the EDC’s practice of offering “on-bill billing” for its own goods and services constitutes discrimination, *i.e.*, an unreasonable preference or advantage to itself over the EGSs and is in violation of the Code.

II. History of the Proceeding

On October 25, 2019, the EGSs filed a Formal Complaint (Complaint) against the Respondents alleging that the EDCs’ conduct of providing a billing service, known in the industry as “on-bill billing,” for non-commodity products and services that it provides for the benefit of their own electric distribution customers, while refusing to provide “on-bill billing” for the EGSs serving customers on its systems, violates Sections 1502 and 2804(6) of the Code, 66 Pa. C.S. §§ 1502; 2804(6), as well as a Commission Opinion and Order in a recent case involving the similar issue in the natural

gas industry.² For relief, the EGSs requested that the Commission sustain the Complaint and require that if the Respondents provide billing services for any provider of non-commodity services on its utility bills, that it provide the same service to similarly situated providers of those services on a non-discriminatory basis, or be prohibited from providing such billing service at all. *See* Complaint at 1-2.

On November 14, 2019, the EDCs filed an Answer and New Matter to the Complaint averring that they offer non-commodity products and services to their customers but have not authorized the EGSs to bill for non-commodity products and services on the EDCs monthly electric service bills. In their New Matter, which was accompanied by a Notice to Plead, the EDCs argued that their tariffs prohibit the relief requested in the Complaint. The EDCs further argued that these tariffs were recently approved as part of their default service plans (DSPs) in 2018 and the EGSs were served copies of those documents. The EDCs also addressed other issues raised by the EGSs in their Complaint and requested that the Complaint be dismissed with prejudice.

On December 4, 2019, the EGSs filed a reply to the EDCs' New Matter. In their answer, the EGSs denied the EDCs' claim to the extent they contended it was not appropriate or otherwise permissible to file a complaint regarding the legality of a service or tariff of a public utility. Additionally, the EGSs denied, *inter alia*, the EDCs' averment regarding their participation in the EDCs' DSPs proceedings in 2018 and its impact on the Complaint. The EGSs requested that their Complaint be sustained, and their requested relief be granted.

On January 24, 2020, RESA filed a Petition to Intervene in the proceeding.

² *See Pa. PUC, et al. v. Columbia Gas of Pennsylvania, Inc.*, Docket No. R-2018-2647577 (Opinion and Order entered December 6, 2018) (*Columbia*).

On February 3, 2020, ALJ Joel H. Cheskis convened an in-person prehearing conference at which Todd Stewart, Esquire, appeared on behalf of the EGSs; Teresa Harrold, Esquire, appeared on behalf of the EDCs; and Deanne O'Dell, Esquire, appeared on behalf of RESA.

A February 5, 2020 Scheduling Order memorialized the matters agreed upon at the prehearing conference. In addition, RESA's Petition to Intervene was granted and the Complaints filed by the EGSs against each EDC were consolidated. The Parties agreed to a litigation schedule.

On February 7, 2020, the Office of Consumer Advocate (OCA) filed a Notice of Intervention.

On March 24, 2020, the EGSs filed their direct testimony. On May 13, 2020, the EDCs and the OCA filed rebuttal testimony. On May 27, 2020, the EGSs and the EDCs filed surrebuttal testimony. RESA did not file any written testimony.

On June 9, 2020, the EDCs filed a Motion to Strike portions of the rebuttal testimony of the OCA. On June 26, 2020, the OCA filed an Answer to the EDCs' Motion to Strike. The Motion to Strike was denied by Order dated July 2, 2020.

On June 30, 2020, an evidentiary hearing was held wherein the Parties' preserved testimony and accompanying exhibits were admitted into the record. The Parties also affirmed their intent to submit main briefs. On July 1, 2020, a briefing order was issued. Pursuant to the procedural schedule, the EGSs, the EDCs and the OCA each filed Main Briefs on August 18, 2020 and Reply Briefs on September 11, 2020. RESA did not file any briefs. The record closed on September 11, 2020, upon the filing of reply briefs.

In the Initial Decision, issued on November 18, 2020, the ALJ sustained the Complaint finding that the EDCs do not provide the suppliers' rates, terms of access and conditions that are comparable to the EDCs' own use of the system. The ALJ found that the EDCs have, therefore, made an unreasonable preference or advantage, and established or maintained an unreasonable difference as to service in violation of the Code. Additionally, the ALJ recommended that the EDCs be given sixty (60) days from the date of a final order to report to the Commission's Bureau of Technical Utilities (TUS) their methodology for coming into compliance with Sections 1502 and 2804(6) of the Code and Chapter 56. *See* I.D. at 1; 22-23.

Exceptions to the Initial Decision were filed by the EDCs and the OCA on December 8, 2020.³ Replies to the Exceptions were filed by the EGSs on December 18, 2020.

The Commission's Opinion and Order entered August 26, 2021, concluded that the EDCs' billing practice of offering "on-bill billing" for its own non-commodity services is subject to the Commission's jurisdiction, and conforms with Section 1502 of the Code, 66 Pa. C.S. § 1502, which prohibits discrimination in the provision of service, and denied and dismissed the Complaints.

On September 10, 2021, the EGSs filed a Petition for Reconsideration and/or For Reopening of the Record of the Proceeding. On September 20, 2021, an Answer to the Petition was filed by the EDCs⁴ (EDCs Answer). Also on

³ A Letter RE: Not Filing Exceptions was filed by the EGSs on December 8, 2020. A Letter RE Not Filing Reply Exceptions was filed by the OCA and the EDCs, respectively, on December 18, 2020.

⁴ As discussed *supra.*, at *fn.* 1, on February 23, 2022, the EGSs filed a Motion for Expedited Treatment of the Petition for Reconsideration, pursuant to 52 Pa. Code § 5.103. The EDCs filed and Answer to the Motion on March 15, 2022.

September 20, 2021, RESA filed an Answer in Support of Reconsideration of the Commission's August 26, 2021 Order and/or For Reopening the Record (RESA Answer).

II. Legal Standards

We remind the Parties that any issue that we do not specifically delineate shall be deemed to have been duly considered and denied without further discussion. It is well settled that the Commission is not required to consider expressly or at length each contention or argument raised by the parties. *See Consolidated Rail Corp. v. Pa. PUC*, 625 A.2d 741 (Pa. Cmwlth. 1993); *also, see generally, University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).

The Code establishes a party's right to seek relief following the issuance of a final decision of the Commission. Pursuant to Subsections 703(f) and (g), of the Code, 66 Pa. C.S. § 703(f) and § 703(g), relating to rehearing, as well as the rescission and amendment of orders, such requests for relief must be consistent with Section 5.572 of our Regulations, 52 Pa. Code § 5.572, relating to petitions for relief following the issuance of a final decision.

As explained by the Pennsylvania Supreme Court, petitions to reconsider, clarify, amend, or rescind a final agency action may only be "granted judiciously" and "under appropriate circumstances" because such action results in the disturbance of final agency orders. *See City of Pittsburgh v. Pa. Dept. of Transp.*, 490 Pa. 264, 416 A.2d 461 (1980) (*City of Pittsburgh*); *West Penn Power v. Pa. PUC*, 659 A.2d 1055 (Pa. Cmwlth. 1995), *petition for allowance of appeal denied*, No. 576 W.D., Allocatur Docket (April 9, 1996) (*West Penn*).

The standard that is consistently applied by the Commission for reviewing a petition for reconsideration, rehearing, and clarification following a final order⁵ is set forth in the Commission’s Order entered in the case of *Duick v. Pa. Gas & Water Co.*, 56 Pa. PUC 553, 558-559 (1983); 51 PUR4th 284, 288-289 (1983) (*Duick*). In *Duick*, the Commission has held, *inter alia*, that petitions seeking reconsideration and/or clarification under Subsection 703(g) of the Code, 66 Pa. C.S. § 703(g), may properly raise any matter designed to convince us that we should exercise our discretion to amend or rescind a prior Order, in whole or in part. However, such petitions are likely to succeed only when they raise “new and novel arguments” not previously heard or considerations which appear to have been overlooked or not addressed by us. *See Duick*, at 559; also *AT&T v. Pa. PUC*, 568 A.2d 1362 (Pa. Cmwlth. 1990).

Application of the considerations of *Duick* essentially require a two-step analysis. *See, e.g., SBG Management Services, Inc./Colonial Garden Realty Co., L.P. v. Philadelphia Gas Works*, Docket No. C-2012-2304183 (Order entered May 19, 2019) (*SBG Order*)⁶ (discussing *Application of La Mexicana Express Service, LLC, to transport persons in paratransit service, between points within Berks County*, Docket No. A-2012-2329717; A-6415209 (Order entered September 11, 2014)).

The first step is that we determine whether a party has offered new and novel arguments or identified considerations that appear to have been overlooked or not addressed by the Commission in its previous order. The second step of the *Duick*

⁵ The *August 2021 Order* is an adjudication and, as such, final and appealable. *Pa. Industrial Energy Coalition v. Pa. PUC*, 653 A.2d 1336 (Pa. Cmwlth. 1995), n. 9, *affirmed* 543 Pa. 307, 670 A.2d 1152 (1996), citing *Professional Paramedical Services, Inc. v. Pa. PUC*, 525 A.2d 1274 (Pa. Cmwlth. 1987), *petition for allowance of appeal denied*, 517 Pa. 627, 538 A.2d 879 (1988).

⁶ *Affirmed, Phila. Gas Works v. Pa. PUC*, ___ Pa. ___, 249 A.3d 963 (2021); No. 14 EAP 2020 (April 29, 2021); 2021 WL 1681311; *remand granted, in part* (June 15, 2021); 2021 WL 2697432 (Table).

analysis is to evaluate the new or novel argument, or overlooked consideration that is alleged, in order to determine whether to modify our previous decision. We will not necessarily modify our prior decision just because a party offers a new and novel argument or identifies a consideration that was overlooked or not addressed by the Commission in its previous order. *See SBG Order*.

III. Discussion

A. The *August 2021 Order*

In the *August 2021 Order*, the main issue presented was whether the EDCs' (*i.e.*, Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company) practice of providing "on-bill billing" for their own non-commodity goods and services, while refusing to provide the same "on-bill billing" to *any* third party, constitutes discriminatory provision of service under either Section 1502 (pertaining to prohibition on discrimination in service) and/or Section 2804(6) of the Code (pertaining to Standards for restructuring of electric industry).

The ALJ had concluded, based upon the general definition of "discrimination," and a reading of the applicable statutory language under Sections 1502 and 2804(6) of the Code, 66 Pa. C.S. §§ 1502 and 2804(6), that the EDCs' "on-bill billing" practice was discriminatory, as against the complaining EGSs. I.D. at 16, 26. The Commission, however, disagreed with that conclusion under the given facts. Accordingly, the Commission granted the EDCs' Exceptions, reversed the ALJ's Initial Decision, and denied and dismissed the EGSs' Complaints. *August 2021 Order* at 29-30.

The Commission agreed with the arguments presented by the EDCs in their Exceptions that, under the present facts, 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. The Commission further agreed with the EDCs' arguments that the holding in *Columbia* is materially distinguishable from the circumstances in the present case because the record reflects that the EDCs do not offer on-bill billing to any third parties. Finally, the Commission also agreed with the EDCs' arguments raised on Exceptions that the provisions of Section 2804(6) are inapplicable to the present case. *August 2021 Order* at 20-29.

The *August 2021 Order* concluded that, as the EDCs had argued before the ALJ and noted in their Exceptions, the facts in the present case and *Columbia* are distinguishable in several material respects. The Commission noted that in *Columbia*, the company's practice of providing "on-bill billing" for non-commodity goods and service to two third parties (two former Columbia affiliates), where Columbia refused to offer the same billing service to other third parties, was found to be in violation of Section 1502's prohibition on discrimination in service. The Commission concluded that, in contrast to *Columbia*, where the material fact was that Columbia treated other third parties differently than the third-party former affiliates of Columbia, in the present case, the EDCs are *not* providing "on-bill billing" of non-commodity goods and service to any third party. The Commission concluded that the EDCs provide their own customers "on-bill billing" of non-commodity goods and services offered by the EDCs themselves, which does not constitute discrimination in service. The Commission concluded that the EDCs' billing practice comports with Section 1502's prohibition on discrimination in service and has no implications under Section 2804(6).

Accordingly, the Commission granted the EDCs' Exceptions and reversed the ALJ's application of the Commission's decision in *Columbia* and finding that the

EDCs' "on-bill billing" practice was in violation of Sections 1502 and 2804(6) of the Code. *Id.*

B. The Petition for Reconsideration and Answers to the Petition

The EGSs filed their Petition for Reconsideration, pursuant to 66 Pa. C.S. § 703(f) and 52 Pa. Code § 5.572. The grounds asserted for reconsideration is that following the close of the record, and subsequent to the issuance of the Commission's *August 2021 Order*, the EGSs discovered that the EDCs "do in fact,..., bill on their utility bills, for warranty and other services provided by a non-affiliated entity, after having represented and testified in this matter that they do not do so." Petition at 2.

The EGSs assert that they, the ALJ and the Commission were not aware of the EDCs provision of "on-bill billing" for a non-affiliated third party, HomeServe USA (HomeServe). The EGSs argue that this material fact controverts the EDC's position and the Commission's disposition of the main question before the Commission in the *August 2021 Order*. The EGSs assert that this fact was newly discovered subsequent to the Commission's *August 2021 Order*, *albeit* discovered from numerous documents provided to the EGSs by the EDCs in the course of discovery in the present case, in addition to independent sources. *Id.* at 2-4.

In support of its position the EGSs assert:

2. In paragraph 5 of the Complaint, the Joint Complainants alleged that the EDCs alone were providing the products and services being billed via the utility bill – not a third party:

While it is true that FE [First Energy Corporation] provides the non-commodity products and services, rather than a third party, even though SmartMart is a brand distinct from the FEOC's [First Energy

Operating Companies] individual identities, the holding from the Columbia decision applies in the same fashion because the FEOC's are discriminating in the manner in which they provide a regulated service, i.e., billing service, as between their own interest, and the interests of those EGSs operating on its system.

3. The EDCs' answer to these allegations admitted that the products were provided by them, or an affiliate, and not a third party and denied the allegation that the cost of modifying its "billing system to allow for non-commodity product and service charges for third parties would not be significant." (EDCs' Answer ¶ 5). There was no mention of the fact that a third party was providing products and services linked to the EDCs' website or that the EDCs were billing customers for those services under the third party's own brand.
4. Likewise, in multiple representations throughout the matter, the EDCs either misstated or omitted any mention of these facts, even though they argued before the ALJ and the Commission knowing that the Commission's decision would hinge on its representation that they billed only for their own products and services. Examples of these misrepresentations include:
 - a) New Matter, ¶ 20 (emphasis added) – "There are a number of implementation issues that only exist when offering non-commodity billing service to third parties. These issues were not present in the Columbia case, because Columbia was already providing non-commodity billing service to certain third parties. The Companies have no established billing methodology to charge customers for third party non-commodity products and services."
 - b) EDC No. 2, 3:14-4:6 – "The Companies utilize their SAP system to bill for their own products and services. This SAP system has been in

place for decades and is used for all charges to the Companies' customers. . . . there is no current IT functionality in place that would allow the Companies' SAP system to bill for EGSs' product and service charges. The system does not have the capability to invoice for non-Company products or services beyond basic generation service"

- c) EDC Statement No. 1-S, 3:16-17 – "Like all other providers, the Companies are simply billing their own customers for their products and services."
- d) EDCs' Main Brief, p. 1 (emphasis added) – "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."
- e) EDC's Main Brief, p. 4 – "The Companies only bill customers for their own non-commodity products and services."
- f) EDC's Main Brief, p. 6 – "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."
- g) EDC's Main Brief, p. 9 (emphasis added) – "The Companies do not permit any EGS, affiliate, or other third party to include charges for their noncommodity products and services on the Companies' bills."

Petition at 4-8.

The Petitioners assert that the proffered attached exhibits A-D demonstrate that the EDCs have had a relationship with HomeServe since 2006 and have allowed

HomeServe to bill customers on the EDCs' utility bills. For example, the Petitioners assert that Exhibit B illustrates that HomeServe uses a FirstEnergy bill on its website as an example to guide customers to use their FirstEnergy account number as their payment method. Petition at 8, fn. 10.

The Petitioners argue that reconsideration and/or reopening of the record is warranted under the circumstances, since both the criteria for reconsideration under *Duick* have been satisfied. The Petitioners assert they have raised a new or novel argument and factual considerations which are critical to the decision. In addition, the Petitioners assert that the critical facts and arguments were overlooked or not considered by the Commission's *August 2021 Order*. Based on the alleged newly discovered fact that the EDCs authorize on-bill billing for HomeServe, a nonaffiliated third party, the Petitioners assert that the Commission's prior holding in *Columbia* directly applies in the present case, "... because it is now known that the EDCs are in-fact billing for third party, non-commodity products and services." Petition at 10.

The Petitioners note that in the Commission's *August 2021 Order*, the Commission expressly held that *Columbia* does not apply to the facts of this case because the EDCs are providing service to themselves. The Petitioners expressly noted the Commission's reasoning that:

...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.

Petition at 10, citing *August 2021 Order* at 22.

The Petitioners argue that the fact that the EDCs are providing billing service for a third party is a substantial fact that was not considered by the Commission,

which under the applicable holding in *Columbia*, requires a finding that the EDCs are in violation of the Code. Accordingly, the Petitioners assert they have satisfied the standard for reconsideration and submit that the facts compel a different result than that reached by the Commission in its *August 2021 Order*. Petition at 11, citing *August 2021 Order* at 22-24.

In summary, the Petitioners assert that application of the analysis in the *Columbia* decision to newly discovered facts requires the conclusion that the EDCs' are providing "on-bill" billing service for a third party, not affiliated with the EDCs. As such, the EDCs' provision of regulated billing service for HomeServe while refusing to provide it for EGSs serving customers on its system, constitutes discrimination in service in violation of Sections 1502 and 2804(6) of the Code.

In the Answer in support of the Petition, RESA asserts, *inter alia*, that the EGSs have asserted new facts not previously considered which warrant reconsideration. RESA asserts that where the material fact found in the underlying proceeding, that the EDCs do *not* provide on-bill billing to a non-affiliated third party, is refuted by the facts raised in the Petition, *i.e.*, that HomeServe is afforded on-bill billing by the EDCs, reconsideration is warranted, and the *August 2021 Order* should be reversed. RESA Answer at 2-4.

In the Answer in opposition to the Petition, the EDCs assert that the EGSs' Petition is legally and factually flawed and should be denied. The EDCs assert that: (1) the EGSs fail to establish that the alleged "new facts," are based upon evidence which did not exist or was not discoverable before the close of the record; and (2) the EGSs' alleged new evidence does not warrant reconsideration or reopening the record because the EDCs in fact do not offer on-bill billing for HomeServe's own non-commodity products and services. EDCs Answer at 6-9.

The EDCs assert that the EGSs cannot claim that their alleged evidence about HomeServe is “recently discovered information.” The EDCs assert that both RESA and the EGSs were aware that the EDCs contract with HomeServe to provide certain of the EDCs’ non-commodity products and services, where the information was provided to the EGSs during discovery for the present proceeding as well as in separate proceedings involving the same parties. EDCs Answer at 7-9. Therefore, the EDCs argue that, under *Duick*, the EGSs’ request for reconsideration, reopening of the record, or both must fail because it is based on evidence that existed or was discoverable, through an exercise of due diligence, prior to the close of the record in the present proceeding. *Id.* at 9.

Further, the EDCs assert that the EGSs’ assertion that, the EDCs provide on-bill billing for the non-commodity goods and services of third party, *i.e.*, HomeServe, is factually incorrect. To the contrary, the EDCs assert that:

In actuality, the Companies contracted with HomeServe to provide certain *of the Companies’ non-commodity products and services*, such as electrical line and water heater protection plans, as thoroughly explained in the Companies’ DSP V proceeding. The Companies *do not, as alleged by the Joint Complainants, allow HomeServe to bill for its own non-commodity products and services on the Companies’ bills.*

EDCs Answer at 10 (emphasis added, citations omitted).

In summary, therefore, the EDCs assert that the material facts in this case are not controverted by the EGSs’ Petition, and therefore, the EGSs fail to assert any basis for relief under *Duick*, to grant reconsideration or reopen the record. EDCs Answer at 10-11.

C. Disposition

Based on our review of the record, the Petition, and the Answers thereto, we will deny the request for reconsideration of the Commission's *August 2021 Order*.

As previously noted, petitions for reconsideration are likely to succeed only when they raise “new and novel arguments” not previously heard or considerations which appear to have been overlooked or not addressed by us. *See Duick*, at 559; *also AT&T v. Pa. PUC*, 568 A.2d 1362 (Pa. Cmwlth. 1990).

In the present case, the EGSs raise facts related to the EDCs billing practices involving HomeServe which may have been “overlooked” but which were readily available to the Parties, however, not raised by the EGSs prior to the close of the record. While we agree with the EDCs that the failure to raise such facts in a timely manner weighs against the grant of reconsideration, we do not conclude that the failure to raise such facts precludes our grant of reconsideration under *Duick*. To the contrary, under *Duick*, if persuaded that the facts, heretofore overlooked, are material and sufficient to warrant reconsideration of the matter, it is within our discretion under *Duick* to grant reconsideration and/or reopen the record to consider those facts. *See Duick*, at 559.

However, we are not persuaded that the facts alleged by the EGSs warrant reconsideration or reopening of the record. As explained by the EDCs, the relationship with HomeServe is not one which demonstrates that the EDCs provide “on-bill billing” to non-affiliated third parties. Rather, the EDCs contracted with HomeServe to serve as the program administrator for certain of the EDCs’ own non-commodity products and services. *See EDCs Answer* at 9-11.

As explained by the EDCs, the EDCs contracted with HomeServe to provide certain of the EDCs' *own* non-commodity products and services, such as electrical line and water heater protection plans, which the EDCs noted was thoroughly explained in the EDCs' DSP V proceeding. *See, id.* We find that the EDCs do not, as alleged by the EGSs, allow HomeServe to bill for its own non-commodity products and services on the EDCs' bills.

We conclude that, as asserted by the EDCs, the material facts in the present case:

remain unchanged—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.”

EDCs Answer at 10, citations omitted. Given that the facts remain unchanged, the conclusion reached in the Commission's *August 2021 Order*, that the circumstances of the EDCs' billing practice is distinguishable from the facts as found in *Columbia*, and, therefore, comports with the Section 1502 prohibition on discrimination in service.

Accordingly, finding that the EGSs have presented no persuasive evidence which warrants the exercise of our discretion under *Duick*, in granting reconsideration or reopening the record, we shall deny the Petition.

IV. Conclusion

Based on the foregoing discussion, we shall deny the EGSs' Petition for Reconsideration and/or For Reopening of the Record, and, consistent with the discussion in our Opinion and Order entered August 26, 2021, deny and dismiss the Complaints; **THEREFORE,**

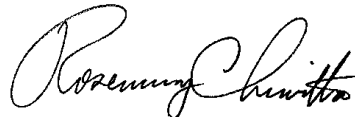
IT IS ORDERED:

1. That the Motion for Expedited Treatment of the Petition for Reconsideration and/or For Reopening of the Record, filed on February 23, 2022, by Interstate Gas Supply, Inc. d/b/a IGS Energy, Direct Energy Services LLC, and Shipley Choice, LLC d/b/a Shipley Energy is hereby denied.

2. That the Petition for Reconsideration and/or For Reopening of the Record filed by Interstate Gas Supply, Inc. d/b/a IGS Energy, Direct Energy Services LLC, and Shipley Choice, LLC d/b/a Shipley Energy on September 10, 2021, is hereby denied.

3. That the proceeding at this docket be marked closed.

BY THE COMMISSION,

A handwritten signature in black ink, appearing to read "Rosemary Chiavetta", with a stylized flourish at the end.

Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: April 14, 2022

ORDER ENTERED: April 14, 2022