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May 4, 2018

Efiled

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

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

Dear Secretary Chiavetta:

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

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

Sincerely,

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

Enclosure

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

COMMENTS OF
DUQUESNE LIGHT COMPANY

I. BACKGROUND

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

On January 18, 2018, the Commission adopted an Opinion and Order ("Opinion and Order") denying NRG's Petition and closing the docket.[3] In denying NRG's Petition, the Commission found that "NRG has not met its burden of proving that its proposal is in the public interest, or that it complies with the Public Utility Code and Commission regulations promulgated thereunder."[4] This was the correct result. Among the many questions raised by the Opinion and Order were those related to customer protection, namely: transferring the power to order termination of a customer's electric service to EGS firms; the block mechanism enabling EGSs to prevent supplier switching by customers on a payment plan; the ability of EGSs to properly

[1] Petition of NRG Energy, Inc. for Implementation of Electric Generation Supplier Consolidated Billing at 2 (FN 1), Docket No. P-2016-2579249 (Petition filed December 8, 2016) (NRG Petition).
[2] *See, e.g.,* Petition to Intervene, Answer in Opposition and Comments of Duquesne Light Company (Jan. 23, 2017); *see also* Reply Comments of Duquesne Light Company (Feb. 22, 2017), both at Docket No. P-20156-2579249.
[3] Opinion and Order, Docket No. P-2016-2579249 (Order entered Jan. 31, 2018)
[4] Id at 20-21.

account for value-added-service ("VAS") charges; the handling of customers receiving subsidies from low-income assistance programs; and the administration of POR programs.[5]

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

Further, the March 2018 Secretarial Letter summarized the Commission's intent that the purpose of the *en banc* hearing is to inform the PUC: (1) whether SCB is legal under the Public Utility Code and Commission regulations; (2) whether SCB is appropriate and in the public interest as a matter of policy; and (3) whether the benefits of implementing SCB outweigh any costs associated with implementation.[6] As will be made evident in these Comments, and consistent with the PUC's own findings in denying NRG's Petition and closing the docket, the answer to all three inquires is "No."

In addition to these three overarching goals, the Secretarial Letter also issued questions regarding six discrete areas related to SCB: legal authority, impact on the market, mechanics of SCB, collections and terminations, impact on low-income customers and assistance programs as well as possible alternatives, for a total of 29 separate questions. The Secretarial Letter directed interested parties to file comments on or before May 4, 2018.

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[5] *See* Petition of NRG Energy, Inc. for Implementation of Electric Generation Supplier Consolidated Billing Opinion and Order, Docket No. P-2016-2579249 (Jan. 31, 2018) at 21 (hereinafter "NRG Opinion and Order").
[6] *See Notice of En Banc Hearing on Implementation of Supplier Consolidated Billing*, Docket No. M-2018-2645254, (Secretarial Letter Mar. 27, 2018), at 1.

In accordance with this schedule, Duquesne Light Company ("Duquesne Light" or "Company") hereby files these comments for the Commission's consideration.

II. GENERAL COMMENTS

Duquesne Light is a public utility as that term is defined under Section 102 of the Public Utility Code, 66 Pa. C.S. § 102, certificated by the Commission to provide electric distribution service in the City of Pittsburgh and in portions of Allegheny and Beaver Counties in Pennsylvania. The Company is also an electric distribution company ("EDC") and a default service supplier as those terms are defined under Section 2803 of the Public Utility Code. 66 Pa. C.S. § 2803. Duquesne Light provides electric distribution service, which entails statutorily mandated responsibilities regardless of the identity of the provider of electric generation service including, among other things: billing for distribution service, meter reading, complaint resolution, and collections, for approximately 590,000 customers. *See* 66 Pa. C.S. §§ 2807(c), (d).

As indicated above, the Company steadfastly agrees with the Commission's ruling on the NRG Petition denying the Petition and closing the docket. In its Opinion and Order, while the PUC has yet to directly address the question of SCB's legality under Chapter 14 and 28 of the Public Utility Code, the Commission's ultimate findings that the Petition before them failed to establish legal authority are consistent with legal and policy considerations.

Despite this clear result, the fact that the Commission is now seeking comment on 29 separate questions illustrates the complexities associated with SCB, should this mechanism ever be statutorily allowed in Pennsylvania. Duquesne Light appreciates the Commission's efforts to investigate purported mechanisms that could further promote retail electric shopping but respectfully notes that the paramount concerns in this *en banc* process should be ensuring that any changes to billing and collections by EGSs are:

(1) Consistent with the General Assembly's plain language directives in Chapter 14 and 28, as well as the rest of the Public Utility Code;

(2) At the current level of customer service, consumer protections and universal service programs as available today; and

(3) In the public interest.

As explained more fully in this filing, SCB fails each of these attributes.

Since SCB is not a legal option in Pennsylvania and, therefore, not in use, it is impossible to definitively determine if wholesale benefits would occur (other than an alleged increase in retail EGS sales for companies like NRG) that could justify the costs to implement and evaluate the potential harm to customers, including jeopardizing the current level of service they receive. However, if the Commission considers more than just monetary costs, the answer is clearly no.

As the PUC is aware, through review of the pleadings in the NRG proceeding, there are serious legal and policy issues over the Commission's lack of jurisdiction and enforceability over EGSs and their operations under the current law. With SCB, EGSs are attempting, without statutory authority or demonstrated need, to have the Commission endorse the types of activities beneficial to their operations, while flying in the face of clear statutory limitations as well as the intent of the General Assembly that billing and collections for distribution service would remain with EDCs after restructuring. In addition, this request is made without asking for increased responsibility of added consumer protection, increased assessments based on their level of annual intrastate revenue or certification (and therefore regulation) equal to that of public utilities. This result should not be encouraged or rewarded.

As noted in the Opinion and Order, NRG's alleged benefits for customers would be more innovative products and services, which would in turn lower prices, encourage more EGSs to enter

the retail market, and thereby enhance competition.[7] It is not clear from either past history in the Commonwealth or comparison in other jurisdictions that offering different types of EGS products and services have resulted in any sustained impact on price, much less the reductions in price that NRG avers. Conversely, it is far more likely that any effects on the price of a kWh would be driven more by the costs of the fuel used to generate electricity or the weather than the number of EGS product offerings. The level of competition certainly helps drive price in any free market but competition, by itself, is not always a guarantee of better prices. Instead of blindly endorsing the concept of SCB, the Company suggests that further effort be made for EGSs to utilize currently available dual billing before the PUC implements any additional changes to the current retail market.

NRG, as well as other suppliers, attempt to convince the PUC that they are unable to maximize the value and potential of Pennsylvania's retail electric market if using anything less than SCB, because customers do not like to receive two bills instead of one. While this argument may have had weight in 1996, before the advent of smart phones, apps, in-store purchases and digital/online banking, this argument is not only disingenuous but also unpersuasive today. With widespread use of technology and multiple payment options, consumers likely have more direct interactions, direct contacts, and direct bills from retailers either on a monthly, daily or instantaneous basis than at any other point in history. As the Commission (and suppliers) are well aware, there are currently two statutorily authorized billing methods available to retail electric customers in the Commonwealth: (1) dual billing and (2) utility consolidated billing.[8] There has been no adequate showing that EGSs would fail to establish the direct relationship with consumers they crave when using a dual bill. More importantly, use of a dual bill, at a customer's discretion,

[7] NRG Opinion and Order at 2.
[8] NRG Opinion and Order at 1

is consistent with the law and intent of the General Assembly, and avoids many of the potentially complex (and needless) issues which result from trying to force SCB within the context of the currently existing Public Utility Code.

Accordingly, nothing further should be done at this time on the topic of SCB by the PUC. At a minimum, and in order to truly understand the supposed shortcomings of an EGS dual bill option prior to making any recommendation on the use of SCB going forward, the Commission should encourage or require EGSs to vastly increase the use of dual bills and provide information to the PUC in the form of a report as to their limitations.[9] Without widespread use of dual bills, this information does not exist today.

III. ANSWERS TO DIRECTED QUESTIONS

The Joint Motion and March 2018 Secretarial Letter specifically set forth a number of questions and requested interested parties to provide comments. In the interest of time and in a desire to not repeat word for word the pleadings submitted in the NRG proceeding, the Company submits the following for the Commission's review and consideration:

A. **LEGAL**

Is SCB legally permissible under Chapters 14 and 28 of the Public Utility Code? If so, what limits, if any, are imposed by the Public Utility Code? In particular, does the language in Section 2807(c) limit the Commission to only (1) dual billing and (2) EDC consolidated billing? Does the statutory language in Chapter 14 require that customer billing functions, especially those related to service connections, payment arrangements, terminations of service and reconnection of service, are functions that are to be performed solely by the EDC?

Duquesne Light, consistent with its position on SCB in the 2011 Retail Market Investigation (Docket No. I-2011-2237952) and in comments filed in response to the NRG Petition, does not believe that SCB is legally permissible or even contemplated by §2807(c) and

[9] Interestingly, despite having a number of accounts in Duquesne Light's territories through a number of affiliates, NRG only uses dual billing in a few cases.

(d) of the Public Utility Code ("Code"). Respectfully, before answering the above questions on this topic, the Company notes that the answer to whether SCB is authorized by 2807(c) cannot be addressed in a vacuum without analyzing this Section's interplay with the following Section, §2807(d), as well as the Declaration of the General Assembly in §2802(16). In short, the use of the word "may" instead of "shall" in 2807(c) does not, by itself, give the authority to EGSs to issue SCB.[10]

In the past, parties have gone to great lengths to claim that there is no question of SCB's legality, due to part of one line in 66 Pa. C.S. § 2807(c) that uses the word "may" instead of "shall,"[11] a general "belief" in the RMI Tentative Order that "SCB should be made available … as part of vibrant, competitive market,"[12] and a broad interpretation of the RMI Final Order claiming that the PUC "did not reject the lawfulness [of SCB]."[13] Duquesne Light vociferously disagrees with this conclusion as well as the notion that "the legal authority for an order directing the implementation of SCB is clear, and it has been endorsed by the Commission." NRG Petition at 21. In fact, the opposite is true: the Public Utility Code does not provide authority for SCB, the Competition Act mandates that electric distribution utilities are to retain certain functions

[10] This result and legal interpretation, that SCB is not currently authorized for EGSs in the Public Utility Code, is even more evident by the recent submittal of amendments to HB 1412 that would allow for SCB. It is an interesting contradiction when an argument is made here, at the PUC, that legal authority for SCB for EGSs already exists and yet at the legislature these entities seek specific authorization for SCB. Some suppliers may argue that this statutory authorization is sought merely to clarify their existing ability to offer SCB; however, as explained in these Comments, that argument fails, as SCB is neither statutorily authorized for EGSs or NGSs nor consistent with the General Assembly's clearly articulated intent.

[11] *See* 66 Pa. C.S. § 2807(c), which states: "Subject to the right of an end-use customer to choose to receive separate bills from its electric generation supplier, the electric distribution company may be responsible for billing customer for all electric services, consistent with the regulations of the commission, regardless of the identity of the provider of those services." Moreover, while NRG attempts to further state its belief (with no legal authority cited) that if the Commission permits an EGS to serve in the default service role that would also include consolidated billing (Petition at 19), Duquesne Light disagrees. Such a conclusion ignores that fact that electric distribution companies retain responsibility for billing for all electric services, **regardless of the identity of the provider of those services,** which includes default service. *Id.* (emphasis added).

[12] RMI Tentative Order at 28.

[13] NRG Petition at 19.

including billing for distribution service, collections and complaint resolution after generation service is available elsewhere, and the Commission has never squarely addressed the legality of SCB because where a statute is unambiguous, no explanation is necessary.

Section 1921(a) of the Statutory Construction Act, 1 Pa. C.S. § 1921(a) provides that the object of all statutory interpretation is to determine the General Assembly's intent based on the express words used in the statute. In making that determination, courts and agencies must apply the express words in the statute and cannot ignore them. *See* 1 Pa. C.S. § 1921(b). When the words of statute may not be viewed as explicit, courts and agencies may consider other matters such as the occasion and necessity for the statute, the object to be obtained, the consequences of a particular interpretation and administrative interpretations. 1 Pa. C.S. § 1921(c)(2). Unless a statute falls under the strict construction rules, all statutory provisions "shall be liberally construed to effect their objects and promote justice." *See* 1 Pa. C.S. § 1928(c).

In addition, courts and agencies must interpret individual provisions in a statute in a way that gives effect to all the provisions in the statute. *Consulting Engineers v. Licensure Bd.*, 522 Pa. 204, 560 A.2d 1375 (1989) (explaining that individual provisions of a statute are to be interpreted, whenever possible, in a manner that gives effect to the entire statute). Similarly, when separate provisions in a statute deal with the same subject matter, they should be construed as one statute and consistent with one another. 1 Pa. C.S. § 1932(a)(b) ("Statutes or parts of statutes are *in pari materia* when they relate to the same person or things or to the same class of persons or things."; "Statutes *in pari materia* shall be construed together, if possible, as one statute.").

Finally, neither the courts nor agencies may insert exceptions to statutory provisions that are not there. *Pa. School Bds. Ass'n, Inc. v. Cmwlth., Public School Employees' Retirement Bd.*, 863 A.2d 432 (Pa. 2004) ("It is not this Court's function to read a word or words into a statute that

do not actually appear in text where, as here, the text makes sense as it is, and the implied reading would change the existing meaning or effect of the actual statutory language.").

Restating the argument that the Company has made numerous times as to the legality of SCB, Duquesne Light submits that mandated Supplier Consolidated Billing is not permitted under the Competition Act. Section 2807(c) of the Competition Act provides as follows:

> **Customer billing.** – Subject to the right of an end-use customer to choose to receive separate bills from its electric generation supplier, the electric distribution company may be responsible for billing customer for all electric services, consistent with the regulations of the commission, regardless of the identity of the provider of those services.

Further, section 2807(c)(2) defines the procedure for conducting consolidated billing:

> If services are provided by an entity other than the electric distribution company, the entity that provides those services shall furnish to the electric distribution company billing data sufficient to enable the electric distribution company to bill customers.

There are no provisions in the Competition Act that authorize the Commission to mandate SCB or require EDCs to provide data to EGSs to conduct SCB.

Further, Section 2807(d) of the Competition Act provides clarity as to the entity that is authorized to provide customer services related to billing, including collections:

> **Consumer protections and customer service.** – The electric distribution company shall continue to provide customer service functions consistent with the regulations of the commission, including meter reading, complaint resolution and collections. Customer services, shall, at a minimum, be maintained at the same level of quality under retail competition.

These provisions read together make it clear that the General Assembly intended that billing and related activities for collection and termination were to remain with the EDC. Suppliers in favor of SCB have failed to explain how the notion of SCB squares with the fact that EDCs, per 2807(d) shall continue to provide customer service functions, including collections. Under

previous proposals by EGSs before the Commission, the EGS would do a reverse POR, pay EDCs and then collect money from customers, thereby assuming the risk of uncollectible amounts. However, there is no statutory authority for this ability, nor any mechanism for EDCs to be relieved of the level of consumer protections and customer service clearly delegated to them by the General Assembly in 2807(d).

The General Assembly recognized that there are certain functions that should remain with the transmission and distribution utility for that service, such as billing, even upon the ability for a customer to choose and be billed for generation service by EGSs.[14]

Section 2802(16), when read in combination with Sections 2807(c) and (d) of the Public Utility Code, plainly shows the General Assembly's recognition that there are situations such as billing for distribution service, collections, and complaint resolution where electric distribution companies can and should retain direct customer contact even if a customer can elect an EGS bill for their generation supply service. This intention is made even clearer when looking at a similar provision in the Natural Gas Choice and Competition Act that was passed three years after the Competition Act was enacted.[15] Further, this result serves the public interest, because electric distribution in the Commonwealth remains "regulated … [and] subject to the jurisdiction and active supervision of the commission."[16] The understanding of the General Assembly's intent that distribution companies would retain customer contact (including billing for distribution service) is further illustrated by reviewing legislative history from the House associated with the Competition Act, specifically with reference to consumer protections:

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[14] In addition, see n. 12, *supra*, explaining that these consumer protection and billing functions would similarly remain with EDCs even if, at some point in the future, EDCs were not default service suppliers.

[15] 66 Pa. C.S. § 2205(c)(1). "Subject to the right of a retail gas customer to choose to receive separate bills from its natural gas supplier for natural gas supply service, the natural gas distribution company shall be responsible for billing each of its retail gas customer for natural gas distribution service, consistent with the orders or regulations of the commission, regardless of the identity of the provider of natural gas supply services."

[16] 66 Pa C.S. § 2802(16).

> Mr. THOMAS. Thank you. Now, if we can turn to that section on consumer protections, section 2807. You had mentioned earlier that this bill provides the same myriad of protections that exist in the current law. This section seems to imply that there are changes being made to the traditional obligation which has existed between utility companies and the customer. Is that correct, or am I interpreting this wrong?
>
> Mrs. DURHAM. The same protections are still in the bill; that is correct.
>
> Mr. THOMAS. So I should not give any credence to this language which says that the traditional obligations are being changed?
>
> Mrs. DURHAM. Mr. Speaker, could you give me specifically the line and page you are referring to?
>
> Mr. THOMAS. Well, I am reading from, I guess, the analysis or out of the presession report, and it says that section 2807 changes the traditional obligation-to-serve requirement to an obligation to deliver for the electric distribution companies, and it talks about a modified obligation.
>
> Mrs. DURHAM. Mr. Speaker, the difference is, you are going to have generation and you are going to have transmission and distribution. **The consumer will be dealing directly with the transmission and distribution, and that stays the same, and that is also still regulated**. And the duty to serve is still there.
>
> Mr. THOMAS. Thank you.

House Journal page 2566 (November 25, 1996). (emphasis added)

As shown above, the Competition Act clearly mandates that electric distribution utilities are to retain certain functions including billing for distribution service, collections and complaint resolution after generation service is available elsewhere.

Similarly, Chapter 14 of the Public Utility Code is unambiguous that it relates to protecting responsible customers of public utilities. *See* 66 Pa. C.S. §§ 1401. The Chapter then goes on to state the declaration of policy and the General Assembly's intent to "provide public utilities with an equitable means to reduce their uncollectible accounts by modifying the procedures for delinquent account collections and by increasing timely collection**s**. At the same time, the General Assembly seeks to ensure that service remains available to all customers on reasonable terms and conditions." *See* 66 Pa. C.S. §§ 1402(3). This limitation on Chapter 14's applicability to public

utilities (not EGSs) makes sense when read with 2807(d), which, as shown above, only contemplates (and mandates) that collections shall be done by EDCs.

The scope of Chapter 14 is to protect customers of public utilities – all distribution customers. It is illustrative to note that Chapter 14 and its protections, as well as its collection tools for utilities, was passed in 2004, and reauthorized in 2014 by Act 155, well after the inception of Chapter 28 and the implementation of additional competitive retail market enhancements. Through this reauthorization, the General Assembly, along with the various interested parties, had a recent opportunity to evaluate the proper applicability of the law that would provide for additional rights or applicability to EGSs if collections by these entities were contemplated. Other than adding a section authorizing the PUC to assess EGSs, there were no changes that suggest, in any way, that EGSs would have a role in collections. As such, this result is certainly consistent with 2807(d)'s mandate and further evidence of the intent by the General Assembly that these functions – credit, collection, and termination activities - are to remain with EDCs, regardless of supplier. There is no shown statutory authority (because none exists) or efficiency to be gained by splitting either billing or the billing system from these functions.

Would a purchase of receivables (POR) program where the EGS purchases the EDC's receivables be permitted under the Public Utility Code and Commission regulations? Given that POR programs are voluntary and the Commission could not require an EGS to purchase an EDC's receivables, what effect would that have on the viability of SCB if an EGS does not include a POR program in its SCB plan? If the Commission decides to explore these topics further, what are the preferred procedural methods for doing so?

As discussed *supra*, SCB is not a legal alternative billing mechanism in Pennsylvania regardless of the design of any purchase of receivables (POR) program. Further, as explained above, there has been no discussion of how a POR, where EGSs purchase a EDCs' receivables and also has responsibility for collections is consistent with the plain language of 2807(d) that specifically mandates collections by EDCs. As a result, this type of POR proposal is illegal, as the

Commission lacks authority to delegate a statutorily mandated function (collections) from EDCs and unilaterally give it to EGSs.

Because the answer of the legality of the EGS POR proposal has been answered, there is no reason to address any of the further complexities or the viability of SCB if an EGS does not include a POR program as part of its plan. As indicated above, and will be repeated throughout these Comments, there is no statutory authority for SCB in the Public Utility Code. As such, any question that contemplates the ability for EGSs to use SCB without first acknowledging the fact that it is not authorized by law must be answered in the negative (or not at all).

B. IMPACT ON THE MARKET

How would implementation of SCB affect Pennsylvania's retail electric market? What are the benefits to consumers associated with implementation of SCB? Is implementation of SCB necessary to facilitate the introduction of products and services to retail electric customers in Pennsylvania and to boost competition in the electric generation market? Is SCB needed to facilitate the provision of smart-meter related products like Time-of-Use (TOU)? What effect would implementation of SCB have on standard offer programs (SOP) and how would they interact, if at all?

At the outset, there is no statutory authority for SCB in the Public Utility Code. As such, any question that contemplates the ability for EGSs to use SCB without first acknowledging the fact that it is not authorized by law must be answered in the negative (or not at all).

With that said, it is difficult to evaluate what the impact would be on Pennsylvania's retail electric market if SCB were to be legalized. What's even less clear is the need for any changes in the current UCB or dual bill options and how the current Commission itself defines retail market success. Pennsylvania's retail market is still evolving since passage of the Electricity Generation Customer Choice and Competition Act in 1996, and since default service took effect for the majority of the Commonwealth in the 2010-2011 time period. Many unrelated elements, well

beyond who is providing the electric bill, can (and do) impact consumers' decisions on whether and how they would like to shop for electric generation supply.

Suggestions to date on the use of SCB attempt to attack the notion that, upon opening the electric generation market for retail competition, having EDCs (which are fully regulated and under the supervision of the Commission) maintain continuity over consumer services such as billing for distribution service, collections and complaint resolution hold back EGSs and the retail market, in general, from being as vibrant as it otherwise would exist as contemplated under the Act. Using Texas as an example, some suppliers are likely to opine at the *en banc* hearing that SCB works well in Texas, therefore it should work in Pennsylvania. This type of argument should be rejected outright.

Texas has SCB because Texas took the billing function from its distribution utilities and gave it to retail electric providers except when billing "is incidental to providing retail billing services at the request of a retail electric provider …"[17] -- something that Pennsylvania's Legislature specifically chose not to do when drafting the Commonwealth's Competition Act. Rather, the General Assembly recognized that there are certain functions that should remain with the transmission and distribution utility for that service, such as billing, even upon the ability for a customer to choose and be billed for generation service by EGSs. This conclusion is clear upon review of the Public Utility Code.

Further, the claimed lack of innovative product offerings from suppliers has likely more to do with EGS business decisions than it does on any limitations on billing. In an October 28, 2016 report by the Kleinman Center entitled "A Case Study of Electric Competition Results in

[17] *See, e.g.* PURA §25.246(d)(4). "The transmission and distribution utility may not directly bill an end-use retail customer for services that the transmission and distribution utility provides except when the billing is incidental to providing retail billing services at the request of a retail electric provider pursuant to PURA §39.107(e)."

Pennsylvania: Real Benefits and Important Choices Ahead,"[18] the authors studied whether any non-monetary benefits were available to the residential sector as a result of shopping. The finding was that renewable energy was the most innovative product offering made. As of the date of the report, there were none of the anticipated innovations such as time of use or demand response offerings.[19] The report further noted that additional risks have been associated with new products.[20]

Approximately 30% of Duquesne Light's residential customers currently shop for electricity, which represents 31% of that customer class's load.[21] When adding in the shopping statistics for commercial and industrial customers, more than 65% of Company's load is being served by EGSs.[22] On a statewide basis, approximately 2 million customers have switched, which represents a total of approximately 64% of the load. These are customer choices.[23] This is success. The fact that large EGSs want more share of the retail market and are not satisfied with where they are at today, as an essentially unregulated business model, should not be the main focus of the Commission. It is astounding that after more than twenty years and numerous mandated Commission retail market enhancements that have cost the Commonwealth's distribution customers tens of millions of dollars[24] suppliers are now requesting Commission-endorsed use of a mechanism that isn't shown to be needed, legal or in the Commonwealth's public interest, but could, possibly, "increase competition" and improve certain EGSs' bottom lines.

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[18] Available at https://kleinmanenergy.upenn.edu/sites/default/files/A%20Case%20Study%20of%20Electric%20Competition%20Results%20in%20Pennsylvania_0.pdf

[19] *Id.* at 4.

[20] *Id.* at 41.

[21] *See* www.PAPowerSwitch.com, "Customers Switching to an Electric Generation Supplier", March 2018.

[22] *Id.*

[23] *Id.*

[24] Some of these enhancements include: bill ready capability, standard offer program, Joint EDC/EGS bill, TOU rates, seamless move/instant connect, accelerated 3-day switching, enhanced consumer education, regular ECL refresh and enhanced EDI protocols and web portal capability.

While EGSs do not have the legal ability to offer a SCB in Pennsylvania, there are no restrictions on the number and type of contacts EGSs can have with their customers, once customer consent is given. EGSs are free to do direct mailings, send e-mail communications, and/or make telephone calls. Further, if choosing UCB, EGSs have the option to include their logo on the bills as well as some messaging. Any argument that EGSs can only create a foundation for long-term relationships with their customers through a bill that includes distribution bills is specious and countered by the success of the retail electric market to date.

Not surprisingly, the few EGSs that took the time to submit comments in the NRG proceeding and will likely participate here generally support the concept of SCB. However, Calpine's Answer and Comments in the NRG proceeding, among other things, carefully question the disparate treatment among EGSs should SCB be put in place, explain (similar to numerous other respondents in this proceeding) that NRG's proposal may not "preserve all protections currently enjoyed by retail customers," and specifically notes that EGSs are not utilities, and therefore should not be extended the same powers.[25] Duquesne Light agrees.

What should be equally notable is the lack of participation in this process of the tens to hundreds of other currently licensed EGSs. As explained in Duquesne Light's Answer and Comments in the NRG Proceeding, this previously demonstrated lack of interest in SCB is one of the specific articulated reasons why the PUC chose to forego further analysis of SCB as part of the RMI End State. In fact, the RMI Final Order posits:

> We have substantial concerns that use of an SCB process may be even more unlikely now since POR [Purchase of Receivable] programs are available. It is unclear how many suppliers would be willing to forgo the ease and convenience of utility consolidated billing under POR, where they have no debt risk, to opt for an SCB model where they assume the full burden of billing, collections and bad debt. We also point out that suppliers do currently have the option of issuing a separate

[25] *See generally,* Answer and Comments of Calpine.

> bill to the customer (the dual billing option) if they find utility consolidated billing not conducive to their offerings or business model.[26]

There has been no demonstrated change in circumstances since the RMI End State Order to show these concerns are not equally valid today.

Retail electric suppliers serving Duquesne Light customers currently have three methods to bill customers: rate ready, bill ready and dual bill. In the rate ready situation, the Company receives rates from the supplier, calculates the supply bill amount based on consumption and places the supplier charges on the Duquesne Light bill. In bill ready, Duquesne Light provides usage to the EGS, the EGS calculates the charges and sends the amount of supplier charges to the Company to be shown on the Duquesne Light bill. In a dual bill situation, the customer receives a separate bill from the EGS for generation supply and transmission charges as well as any additional products or services contracted from the EGS. Currently, thirty-two (32) EGSs use dual billing for approximately 8,800 Duquesne Light customers. The Company is unaware of any problems, issues or lack of long term relationships because of these three billing methods.

In addition, with dual billing, an EGS has complete control over the products and services it wishes to offer its customers, has a direct, long term relationship with those customers, and complete control over bill presentment. Accordingly, there has been no legitimate showing that SCB is necessary to facilitate the introduction of products and services to retail electric customers or to boost competition in the electric generation market. Moreover, through the options of rate ready, bill ready and dual bill, there is no known limitation or a demonstrated need for SCB in order to facilitate the provision of smart-meter related products like TOU. The Company has direct experience with at least two suppliers offering TOU rates one under rate ready and one under bill ready.

[26] *See* Duquesne Light Answer at 19, citing RMI Final Order at 67.

The Company is unable to speculate how SCB, if it were made legal, would boost competition in the electric generation market in support of EGSs' unsubstantiated claims. Moreover, the fact that more than 64% of available load is already shopping suggests that any gains to be made are minimal, at best. The only realistic means to determine what types of products or services that would further enhance competition (as well as their connection or limitations under the current billing methods available) is to engage in consumer surveys and studies designed to tease out why consumers do or do not shop and what additional products or services consumers would seek from an EGS. These inquires, if done at all, should be done by EGSs, not the PUC or ratepayers, as EGSs are the ones that would directly benefit from such research.

In sum, without more information, it is impossible to establish whether consumers would obtain any benefits from SCB that are not already available with rate ready, bill ready or dual bill. While the EGS SCB proponents allege there are benefits to consumers, without statistical significant data or other consumer studies, only speculative answers can be provided to this query. Further, suppliers have done little to show or explain the true limitations of a dual billing option since it hasn't been used widely to date.

Finally, the Company is unable to speculate on what, if any, impact SCB, were it a legal option, would have on the standard offer program. Once the customer has been transferred to the EGS, and the EGS submits the enrollment, the Company is not privy to any interactions that occur regarding how the customer is billed or if the customer is even provided with a separate option for billing. If the question is really concerning how, if at all, transfers would be effected under a scenario where an EGS that provides a SCB has a call center, there are two concerns. First, it is unclear whether the Commission can compel EGSs to participate and carry out EDC required programs. Second, it is unclear whether the PUC is legally able to delegate customer service

functions, such as fielding calls to EGSs, when Section 2807(d) mandates that customer service functions shall continue to be provided by EDCs.

C. MECHANICS – HOW WOULD IT WORK

Should an EGS be required to meet more stringent financial/bonding requirements, demonstrate that it possesses the technical expertise to perform billing and customer service functions, or make any other showing before being permitted to offer SCB? If so, what should those requirements be and what process should the Commission use to review an EGS's eligibility? Would a pilot program involving an EDC working with an EGS or group of EGSs to design and implement a SCB platform be appropriate? What steps would the Commission need to take to ensure that EDCs receive payment according to the terms of the POR program in a timely fashion? What type of costs may be incurred by EDCs and EGSs when implementing SCB in Pennsylvania's retail electric market? Would the costs of implementation outweigh the potential benefits? Who should be responsible for paying those costs? Is it feasible/appropriate to designate an EGS offering SCB as default service provider? *See* 66 Pa. C.S. §§ 2803 (definition of default service provider), 2807(e) (relating to obligation to serve) and 52 Pa. Code § 54.183 (relating to default service provider).

At the outset, there is no statutory authority for SCB in the Public Utility Code. As such, any question that contemplates the ability for EGSs to use SCB without first acknowledging the fact that it is not authorized by law must be answered in the negative (or not at all). To that end, none of these questions are relevant or should be answered at this time.

However, if the General Assembly were to provide the legal means for EGSs to offer SCB, it would be for the legislators to determine the requirements that EGSs must meet in order to protect consumers either through statute or delegate these requirements to be developed by the Commission through regulations. To that end, the Company offers the following brief thoughts.

In general, Duquesne Light is concerned that SCB could create higher costs for the Company and its customers. Fundamentally, as an EDC that is fully regulated, directed to serve all customers and delivers an essential public service, Duquesne Light does not believe, as a matter of law and public policy, that EDCs should be required to rely on another entity to bill for its services and transmit necessary funds to the Company. While Duquesne acknowledges previous

EGS's proposals to have "more stringent financial requirements," a heightened demonstration of "technical expertise to perform billing and related functions" and a registration process similar to that of conservation service providers (*See* NRG Petition at 17), these purported safeguards are not enough. No matter what financial standards would be applied to such parties, no standard can avoid all fraud, misconduct or simple failures of systems or third party employees to issue bills.

If the General Assembly were to enact legislation to enable SCB within the Commonwealth, it would be essential for the Commission to have greater regulatory oversight of the EGSs who would seek to offer SCB. Depending on legislation, regulations would need to address securing payments to EDCs from EGSs for distribution services, as well as the timing appropriate for these transactions.

The costs incurred by EDCs to implement SCB would be substantial. EDCs are already investing a great deal of capital (borne by ratepayers) to update technologies such as customer billing, outage management and other technologies that are becoming necessary in an increasingly complex energy sector. Suppliers that support SCB do not address the fact that EDCs would have to continue to retain their billing systems for not only themselves as distribution companies and current default service suppliers but also for the tens to hundreds of other EDCs that may not want, or be able, to perform SCB, as well as for those customers that do not want SCB. More importantly, EDCs would need to remain ready to bill customers should an EGS decide to leave the market or decide that it no longer wants to offer SCB. This responsibility extends the Company's mandate as an EDC, not as a default service provider (*See* 2806(c), 2807(d)).

With potentially multiple entities maintaining billing systems to serve customers, there is necessarily duplication of costs, which need to be recovered. Any proposal for mandatory SCB could lead to claims that EGS customers subject to SCB should not be required to pay EDC billing

costs. Further, EGSs could also contend that EDCs should pay EGSs for billing when EGSs choose to bill, despite the fact that EDCs have built and must retain facilities to bill all customers. Allowing EGSs to choose whether to provide SCB or rely on EDC consolidated billing will create variability of EDC cost recovery if unbundling of billing costs is required. Mandating SCB and allowing EGSs to bypass EDC billing costs through unbundling could significantly increase costs to remaining customers and also could force smaller EGSs without billing systems out of the market. This result is inimical to creating an open competitive retail electric market, such as the one that exists today.

Further, and in addition to the fact that Duquesne Light has already explained that it would need to maintain its same billing system regardless of whether SCB is allowed, to suggest that having SCB would somehow lead to cost savings for EDCs because other functions would be handled by EGSs is disingenuous. The costs of implementing SCB would far outweigh any as yet undefined benefits to ratepayers and retail electric market.

It is completely inappropriate for an EDC to be removed as a Default Service Supplier if done so to accommodate anticipated issues (such as the ability to terminate) with SCB. 52 Pa. Code. §52.183(c) states as follows:

> The Commission may reassign the default service obligation for the entire service territory, or for specific customer classes, to one or more alternative DSPs when it finds it to be necessary for the accommodation, safety and convenience of the public. A finding would include an evaluation of the incumbent EDC's operational and financial fitness to serve retail customers, and its ability to provide default service under reasonable rates and conditions. In these circumstances, the Commission will announce, through an order, a competitive process to determine the alternative DSP.

Not only is there no showing that EDCs have been inadequate in any way in fulfilling this role, but also there is no showing that changing DSPs in the context of SCB is "necessary for the accommodation, safety and convenience of the public." If the purported convenience is receiving

one bill and interacting with the billing entity for complaint resolution, that option is already available, and customer service functions, including complaint resolution are again, specifically enumerated functions that are to remain with EDCs after restructuring.

In Duquesne Light's view, its obligation to bill as well as pursue termination when appropriate, is due to its role as an EDC, which entails mandated customer service functions, including collections, as well as Chapter 14 and Chapter 56 obligations. If the only reason the PUC is considering changing default service providers is so that EGSs that offer SCB can have a more colorable argument for terminating customers,[27] the inquiry should stop immediately as inappropriate and not in the public interest.

D. **COLLECTIONS - TERMINATIONS**

Does an EGS offering SCB need the power to order termination of a customer's service? Would allowing an EGS to order an EDC to terminate a customer's service comply with Chapter 14 of the Public Utility Code, 66 Pa. C.S. §§ 1401-1419, and Chapter 56 of the Commission's regulations, 52 Pa. Code §§ 56.81-56.83, 56.91-56.101, 56.111-56.118? If an EGS purchases an EDC's receivables and the EDC is no longer owed any money, does the EDC (or EGS) have the authority under the Public Utility Code and Commission regulations to terminate service for nonpayment of distribution charges? What safeguards should an EGS employ to ensure proper termination and reconnection of service by the EDC (e.g., steps to ensure timely sharing of data with EDCs; use of termination checklists; steps to promote customer understanding regarding the functions handled by the EGS versus those handled by the EDC)? What role, responsibility, and discretion does the EDC have in executing the termination process? Would a blocking mechanism to prevent switching by customers who have made payment arrangements with the EGS be permitted under the Public Utility Code and Commission regulations, and prudent from a public policy perspective? What consumer protections, if any, should be implemented by an EGS if a blocking mechanism is permitted? What steps should EGSs take to ensure proper accounting for value-added service (VAS) charges pursuant to Chapter 56 of the Commission's regulations, 52 Pa. Code §§ 56.23, 56.24, including allocation of customer payments to accounts with past due balances? Does the Commission have authority under the Public Utility Code to require an EGS to follow these regulations with respect to accounting for VAS charges? Should procedures be put in place

[27] See NRG Petition Order at 32-35

to ensure that nonpayment of VAS not lead to termination of service? If so, what procedures should be implemented?

At the outset, there is no statutory authority for SCB in the Public Utility Code. As such, any question that contemplates the ability for EGSs to use SCB without first acknowledging the fact that it is not authorized by law must be answered in the negative (or not at all).

As indicated by the numerous questions above, the additional complications that would be created by allowing an EGS to terminate electric service are many. Even in a dual billing situation, the EGS does not have the ability to terminate service for good reason. The General Assembly recognized the necessity of electricity for the health and well-being of Commonwealth citizens and numerous protections exist to ensure citizens are terminated from service only when no other options exist. This is for good reason – it is because the provision of electric service is an essential public service. There was a clear decision made (as enumerated more fully in Section III. A., *supra*), customers would still interact with EDCs (and later NGDCs), for billing. It not only makes sense from the regulated nature of public utilities, but also for the continuity of service and quality of service. Further, under today's construct (which notably no one other than suppliers argue is "broken"), all of the questions above need not to be answered. Similarly, it is unnecessary to once again reject the proposal (as was done in the NRG Petition) that EGSs that are owed money would be able to block customers from changing suppliers until they are paid.[28]

In its Petition, NRG proposed paying the EDC for its charges similar to the POR program for EGSs. However, if the EGS pays the EDC for distribution charges, then the EDC no longer has a claim against the customer and thus the EDC could not terminate because it has been made whole. The legality of an EDC terminating a customer for nonpayment when the EDC has in fact

[28] *See* Petition to Intervene, Answer in Opposition and Comments of Duquesne Light Company, Docket No. P-2016-2579249.

been paid and the nonpayment is to a third party is well outside this proceeding, as EGS POR programs are not legally allowable and the Commission is without statutory authority to delegate the collection function to EGSs. Collections and terminating service is a tool, given to public utilities specifically in Chapters 28 and 14, respectively, to enable utilities to better manage debt.

In addition, if EGSs engage in SCB and are paying substantial sums to EDCs for distribution charges in an untimely manner, the impact on the Company's cash flow could be significant. Such delay could result in credit issues and rating downgrades, which could jeopardize an EDC's ability to secure long-term debt for needed infrastructure improvements that maintain the service which EGSs utilize. Under this untenable scenario, an EGS with unexpected cash flow issues could negatively impact Commonwealth citizens well beyond its customer base should it suddenly be unable to conduct business due to financial constraints. In the current regulatory framework, utilities are provided with a means to collect on uncollectible bad debt through the ratemaking process. EGSs currently do not have any such option and could suffer financial distress that could eventually negatively impact customers.

Allowing an EGS to terminate service is counter to the obligation placed on utilities for safe and reliable service to all customers. 66 C.S. §2807(a). In light of recent cyber events regarding transactions between EGSs and EDCs where a third party vendor that manages EDI transactions was hacked and had to shut down transactions for over two weeks it is even more imperative that some form of billing and termination processes rest with public utilities. The only thing that saved customers from more billing impacts and utilities from more widespread cash flow problems is the fact that EGSs only bill for generation service. The EDI issue, while problematic,

only affected generation charge bill presentment, not all charges that likely could have been affected had certain EGSs been providing SCB as they so desire.

The General Assembly specifically provided public utilities with the authority to enter into payment arrangements with customers in Chapter 14. As noted *supra*, Chapter 14 was enacted in 2004 and provided an opportunity for considering the role of EGSs in billing functions. The General Assembly did not address EGSs' agreeing to payment arrangements on behalf of EDCs as contemplated by SCB. Managing payment arrangements for customers in a central location, such as the EDC or NGDC, is challenging enough without adding another party. Enacting SCB with a component that would block a customer from returning to default service or from ending a relationship with an EGS would completely change the nature of utility service and without a clear understanding of the impacts, it would be poor public policy.

NRG's proposal would have prevented a customer from terminating a relationship with an EGS and such a mechanism is fraught with implications well beyond who is generating a bill for a service. In fact, by creating a mechanism where customers cannot choose their provider, the Commission would in fact be removing choice, the very option that it promotes. Such a situation would not be tolerated in a free market for any other good or service.

If the General Assembly were to provide the legal means for EGSs to offer SCB, it would be for the legislators to determine how charges would be allocated between an essential public service and an optional service on the same bill. However, it is unlikely that any proposal to terminate an essential service for an overdue bill for non-basic charges would ever be allowed. It is right and proper that public utilities are explicitly authorized to continue to provide certain customer service functions such as collections and termination and, as public utilities, are subject

to stringent regulatory requirements to safeguard customers who face termination of an essential service.

E. LOW-INCOME CUSTOMERS / ASSISTANCE PROGRAMS

Should EGSs offering SCB be permitted to include LIHEAP and CAP customers? If so, how would SCB and these programs interact, especially with regard to customer notification and education? If EGSs offering SCB are permitted to include LIHEAP and CAP customers, how would these programs interact and what changes (statutory, regulatory and programmatic) would be necessary? How would EGSs ensure that programs to assist low-income customers remain in place in accordance with the policy established in 66 Pa. C.S. § 2802(17) (relating to declaration of policy)? How would EGS-implementation of SCB affect existing universal service billing procedures? Would an EGS with SCB have an obligation to answer or refer to the EDC questions regarding low-income programs and to educate customers on the options and programs available?

At the outset, there is no statutory authority for SCB in the Public Utility Code. As such, any question that contemplates the ability for EGSs to use SCB without first acknowledging the fact that it is not authorized by law must be answered in the negative (or not at all).

Further, as any proposal for SCB is not a Duquesne Light proposal, the moving party would have the burden of proof to show how all of these issues raised (legal, mechanics, necessity, collections/termination as well as interplay with low-income/assistance programs) should be addressed prior to receiving Commission approval for its proposal. As such, it is not the Company's intention to solve all of these issues for suppliers, but would be more than happy to provide feedback on any specific proposals once one is made to the Commission, similar to what Duquesne Light submitted in response to the NRG Petition.

As set forth in 52 Pa. Code §69.265(3)(ii):

> *Nonbasic services.* A CAP participant may not subscribe to nonbasic services that would cause an increase in monthly billing and would not contribute to bill reduction. Nonbasic services that help to reduce bills may be allowable. CAP credits should not be used to pay for nonbasic services.

This prohibition would seem to eliminate CAP customers from any "innovative services and products" that would be offered by EGSs and considered non-basic service as part of SCB. Due to the fact that the Company will be implementing a new CAP program design, combined with the ongoing Universal Service wholesale review and examination, and the lack of any specific proposal here, the complexities of intermingling CAP, in particular, and LIHEAP, generally, with SCB are beyond the scope of these comments.

Currently, the responsibility for universal service program design, implementation and cost recovery rests strictly with EDCs. As such, and in light of the above changes, it is impossible to address the myriad of factors that could impact how costs associated with universal services programs would be reflected on the SCB, how monies would be collected from ratepayers who receive SCB, and how these funds would be provided to EDCs. Again, as stated numerous times throughout these Comments, the Company questions the Commission's legislative authority to delegate consumer service functions, including collections, to EGSs.

Identifying the issues surrounding universal service billing procedures under a SCB scheme would require substantial resources and considerable discussions. At this time, without a more specific proposal at which to respond, the Company is reluctant to engage in this discussion, as it is premature. The Company does note, however, that it continues to believe, as it did in response to the NRG Petition, that all issues to ensure that consumer protections are maintained would need to be addressed at the outset of any serious proposal and resolved before SCB is ever approved by the PUC.

F. **POSSIBLE ALTERNATIVES**

In an effort to look at other alternatives in addition to SCB, the Commission is seeking comment on: changes to utility consolidated billing (UCB) to allow for additional flexibility

needed to bill for smart-meter related services like TOU and the addition of charges for EGS value-added services; unbundling of billing services; unbundling of other related and specified services; and allowance of third-party billing agents, such as EGSs, or an independent billing agent in place of UCB or SCB.

Respectfully, none of these options need to be reviewed at this time. As already explained, the Company has worked with EGSs to offer TOU rates, both under a bill ready and a rate ready scheme. Secondly, unbundling of services has already taken place to the extent possible; however, with that said, if the Commission has some sort of specific unbundling proposal to which the Company can respond, Duquesne Light would be happy to do so.

Finally, the numerous legal, duplication, regulatory, and public interest issues that would arise from unilaterally removing billing from EDCs and creating third party billing agents are, in many cases, inconsistent with the Public Utility Code, unlikely to add efficiencies that would benefit customers, and should be rejected. Instead, in order to truly understand the supposed shortcomings of an EGS dual bill option prior to making any recommendation on the use of SCB going forward, the Commission should encourage or require EGSs to vastly increase the use of dual bills and provide information to the PUC in the form of a report as to their limitations.[29] Without widespread use of dual bills, this information does not exist today.

IV. CONCLUSION

Duquesne Light appreciates the opportunity to provide these comments on the issues first raised by NRG's denied Petition for supplier consolidated billing and echoed in the March 27, 2018, Secretarial Letter.

[29] Interestingly, despite having a number of accounts in Duquesne Light's territories through a number of affiliates, NRG only uses dual billing in a few cases.

The voluminous number of questions raised in the Secretarial Letter as well as the answers contained in these Comments illustrate that SCB is illegal, unnecessary, not good public policy, and would create innumerable issues for little demonstrated benefit except for a select few. Suppliers currently have a statutorily authorized mechanism, dual billing, that addresses their ability to "offer innovative products and services" while establishing a long-term, direct relationship with their customers. This mechanism can be used without raising the myriad of regulatory issues associated with SCB, which are neither legal in Pennsylvania nor shown to be in the public interest.

Further, recognition must be given to the fact that the retail electricity market in Pennsylvania is transient. This is demonstrated month after month when the Commission releases the Electric Shopping numbers. Conversely, statutory obligations like the ones at issue in this proceeding, however, are permanent unless changed by the Legislature. Duquesne Light looks forward to reviewing other parties' responses to these questions and to hearing the testimony on June 14, 2018.

Respectfully submitted,

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