COMMUNITY LEGAL SERVICES
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VIA EFILE

August 24, 2018

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

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

Dear Secretary Chiavetta,

Enclosed for filing, please find the *Joint Reply Comments of the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA) and The Tenant Union Representative Network and Action Alliance of Senior Citizens of Greater Philadelphia (TURN et al.)* (collectively, the Low Income Advocates).

Please to not hesitate to contact me with any questions.

Respectfully,

Joline Price
Counsel for TURN *et al.*

Enclosures

CC:
Dan Mumford, Director of the Office of Competitive Market Oversight, dmumford@pa.gov
Parties to the NRG Petition at Docket P-2016-2579249, via email

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

En Banc Hearing on Implementation of Supplier Consolidated Billing	:	Docket No. M-2018-2645254

JOINT REPLY COMMENTS OF
THE COALITION FOR AFFORDABLE UTILITY SERVICES AND ENERGY EFFICIENCY IN PENNSYLVANIA (CAUSE-PA)
AND
THE TENANT UNION REPRESENTATIVE NETWORK AND ACTION ALLIANCE OF SENIOR CITIZENS OF GREATER PHILADELPHIA (TURN *ET AL.*)

On March 27, 2018, the Pennsylvania Public Utility Commission ("Commission") issued a Secretarial Letter listing a series of questions concerning Supplier Consolidated Billing (SCB), and invited interested parties to file comments by May 4, 2018, and set a June 14, 2018 *en banc* hearing. In response, the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA), together with the Tenant Union Representative Network and Action Alliance of Senior Citizens of Greater Philadelphia (TURN *et al.*) (collectively referred to herein as the Low Income Advocates) filed comprehensive comments detailing the full scope of our concerns regarding supplier consolidated billing.[1]

On May 14, 2018, the Commission issued its second Secretarial Letter through which it established a second *en banc* hearing for July 12, 2018, and invited interested parties to file reply comments by August 24, 2018. By invitation from the Commission, the Low Income Advocates

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[1] See Joint Comments of the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania, the Tenant Union Representative Network, and Action Alliance of Senior Citizens of Greater Philadelphia, Docket No. M-2018-2645254 (May 4, 2018) (hereinafter "Low Income Advocates' Comments").

testified at the first *en banc* hearing held on June 14, 2018. We now submit these brief reply comments for the Commission's consideration.

None of the parties supporting SCB has offered any arguments or evidence to rebut the positions advanced by the Low Income Advocates in our initial comments. We incorporate those comments by reference here, and summarize them below:

SCB is not permitted by the Public Utility Code

SCB is inconsistent with the Electric Generation Customer Choice and Competition Act.

- The Choice Act expressly delegates customer service functions to Electric Distribution Companies (EDCs). 66 Pa. C.S. § 2807(d). This necessarily includes the billing, collections, and termination standards contained in Chapter 14 of the Public Utility Code and Chapter 56 of the PUC's regulations.
- The Choice Act requires the PUC to ensure universal service programming is adequately funded, cost-effective, and available to those in need. 66 Pa. C.S. § 2802(9), (10), (17). If approved, SCB would create significant barriers to and curtail the effectiveness of universal service programming.
- The legislative history of the Choice Act evidences a clear intent for EDCs to continue to perform residential billing and customer service functions. Pa. House Journal at 2566 (Nov. 25, 1996) ("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.").

SCB is inconsistent with the Responsible Utility Customer Protection Act (Chapter 14) and the Standards and Billing Practices for Residential Utility Service (Chapter 56).

- Chapters 14 and 56 do not apply to suppliers. Absent clear statutory authority imposing legal responsibility on suppliers and enforcement authority on the PUC, consumers could be deprived of essential utility services without notice or an opportunity to prevent the termination. Supporters of SCB suggested at the *en banc* hearings that they could voluntarily take on the requirements of Chapter 14 and Chapter 56. However, voluntary adoption of responsibility does not and cannot offer the same level of protection to consumers, for the reasons explained more fully in our initial comments and in our oral testimony.
- Insufficient enforcement of Chapters 14 and 56 and the rights included therein would most severely impact low income families, who are disproportionately likely to need assistance, as well as medically vulnerable consumers and victims of domestic violence who are entitled to enhanced Chapter 14 and 56 protections.
    - Confirmed low income customers make up just 12.6% of the residential electric customer class, yet they account for 57.2% of payment troubled customers, 48.9% of payment arrangements, and 46.5% of involuntary terminations. (2016 Universal Service Report at 7-11).

- The PUC is not permitted to delegate the statutory duties of a public utility to a supplier. Dauphin County Industrial Authority v. Pa. PUC, 123 A.3d 1124, 1134-35 (Pa. Commw. Ct. 2015).

SCB is not in the Public Interest

SCB is Dangerous for Vulnerable Low Income Families

- SCB is incompatible with critical universal service programming, including Customer Assistance Programs (CAP), Hardship Funds, and the Low Income Usage Reduction Program (LIURP).
    - *SCB Undermines the Accessibility of Universal Service Programming*
      Public utilities have an express duty under Chapter 14 to refer payment troubled customers to available universal service programming. 66 Pa. C.S. § 1410.1 (1)-(2). But even with this express obligation, and despite overwhelming demonstrated need for the program, CAP reaches less than half (47%) of *confirmed* low income customers – and just 22% of the *estimated* low income customers. (2016 Universal Service Report at 7, 50). Suppliers are under no such obligation and, thus, SCB would likely further erode already-insufficient CAP penetration rates.
    - *SCB Distorts CAP Program Costs and the Affordability Generated by the Program*
      CAPs calculate discounts and/or credits based on the price of default service, and provide arrearage forgiveness on debts accrued prior to entry in the program. Supplier pricing is, on net, more expensive than default service. If SCB were to proceed as proposed, debts deferrable through CAP are likely to include higher costs for the same basic electric service, as well as potential products and services that may be lumped into the commodity cost for electricity under SCB. This would either (1) disqualify economically vulnerable customers from participating in CAP, or (2) create artificially higher programmatic costs. Both results are untenable and contrary to the requirements of the Choice Act that universal services must be adequately funded, cost effective, and available to those in need.
    - *SCB Diminishes the Availability of Hardship Fund Grants*
      Hardship Fund programs are funded primarily through voluntary ratepayer donations and other independent fundraising efforts, which are matched by utility shareholder dollars. SCB would diminish the pool of ratepayer donors, which would in turn erode Hardship Fund donations.
    - *SCB Undermines the Effectiveness of LIURP*
      SCB not only would interfere with LIURP referrals, as mentioned above, it would also impede the ability of EDCs to target high users and/or payment troubled consumers for usage reduction services.

- Supplier Consolidated Billing would undermine the ability of households to receive cash or crisis grant assistance through the Low Income Home Energy Assistance Program (LIHEAP), as the Pennsylvania Department of Human Services explicitly forbids suppliers from serving as a LIHEAP vendor. While this DHS policy could conceivably be revised in the future, the implementation issues created by such a broad expansion of LIHEAP vendors would cause

significant added administrative costs. This is just one of the many potential unintended costs associated with the implementation of SCB.

- Exclusion of universal service program participants from participating in SCB is insufficient to resolve these conflicts. As mentioned above, over half of *confirmed* low income customers are not currently enrolled in CAP, and the enrollment rate is even lower when you look at the *estimated* eligible population. Moreover, there are many consumers who experience an acute financial hardship, and find themselves newly eligible for assistance. Death of a primary wage earner, serious medical conditions, domestic violence, lay-offs or job losses can cause a household to face financial instability. Excluding only those who are currently participating in an assistance program would not address the thousands who may currently be eligible or who may be eligible for assistance in the future.

SCB is Unnecessarily Costly for Consumers

- Proponents of SCB have argued that any cost to the implementation of SCB would be minimal. But this is simply not true. Potential costs include, but are not limited to:
    - The sunk costs for each utility's billing system, including those costs which have already been recovered and those which will still be recovered regardless of whether some consumers choose to be billed through their supplier;
    - The cost to the supplier to create fully compliant billing systems, which will ultimately be passed to consumers;
    - The additional costs to the operational budgets of the Commission's various bureaus and offices associated with oversight of supplier billing practices, including training, case-handling, adjudication, and compliance reviews;
    - Additional costs for the Office of Attorney General that, under SCB, could experience an uptick in complaints related to supplier pricing, which would continue to fall outside of the Commission's jurisdiction;
    - Additional case-handling, training, and education costs for social and legal service agencies, which must learn the intricacies of a multitude of billing and complaint processes;
    - Additional costs to families who experience the loss or are threatened with the loss of critical electric service, without access to the same level of consumer protections available under the current billing paradigm.

It is instructive that many of the concerns noted above – and more fully explained in our initial comments – substantially mirror the concerns of each of the utilities who submitted comments at this docket,[2] as well as the Energy Association of Pennsylvania,[3] and the Office of Consumer

[2] See Comments of PECO Energy Company at 2-5; PPL Electric Utilities, Inc. at 3-4; Duquesne Light Company at 4-12; Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company at 2-5; UGI Electric Division at 4.

[3] See Comments of the Energy Association of Pennsylvania at 8-12.

Advocate.[4] All of these parties have asserted that SCB is not permitted under the Public Utility Code, and further, it is both unnecessary and bad public policy.

Supporters of SCB have argued that SCB is necessary for suppliers to continue to compete in Pennsylvania. They argue that implementation of SCB would allow innovation of product offerings and services. However, when pressed at the *en banc* hearing, the EGSs were unable to come up with innovations or services specifically requiring a supplier consolidated bill, particularly given the potentials for harm. Instead, for the most part they cited goods and services that are already generally available, including:

- "frequent flyer miles"[5]
- "bundling electricity with cable and internet service"[6]
- "digital games and contests to encourage energy efficiency"[7]
- "smart thermostats"[8]
- "smart home automation"[9]
- "energy efficiency products"[10]
- "various applications to automate home energy and appliances."[11]
- "home security"[12]
- "HVAC Maintenance"[13]

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[4] See Comments of the Office of Consumer Advocate at 1-2.
[5] Comments of the Retail Energy Supply Association at 12.
[6] Id.
[7] Id.
[8] Id.
[9] Id.
[10] Id.
[11] Id.
[12] Comments of Drift Marketplace, Inc.
[13] Id.

- "products from energy partners (e.g. NEST)"[14]
- "demand response products"[15]
- "time varying rates"[16]
- "prepaid energy plans"[17]
- "flat bill plans"[18]

In addition to many of these products already being available in the market place from non-utility providers and generation suppliers themselves, some are required to be provided by the EDCs themselves pursuant to the requirements of Act 129 of 2008.[19] The EGS parties have provided no compelling arguments as to why these products should be provided by electricity suppliers, or are not already fully accessible to consumers on the marketplace. There has also been no showing by any of the parties supporting supplier consolidated billing that consumers are demanding these products be billed *by EGSs* on utility bills and, even if so, why dual billing is an insufficient solution. As pointed out by the Energy Association, "[t]here is nothing unduly or inherently prohibitive or complicated about dual billing that hinders EGSs' ability to market and bill for other products services."[20]

As we emphasized in our initial comments, the purpose of the Choice Act is "to create direct access by retail customers to the competitive market for the *generation of electricity.*"[21] Indeed, the primary legislative purpose was to permit competitive forces to effectively control "*the*

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[14] Id.
[15] Comments of National Energy Marketers Association at 7.
[16] Id.
[17] Comments of EGS Coalition at 47.
[18] Id.
[19] See 66 Pa. C.S. § 2806.1(b), (d) (EDCs to offer energy conservation and energy efficiency plans and peak load reduction) and § 2807(f) (requiring EDCs as default service provider to provide time of use rates). The Low Income Advocates would also note that in the case of prepaid energy plans, the EGS parties have made no showing that such an offering would even be permissible under the Public Utility Code.
[20] EAP Comments at 7.
[21] 66 Pa. C.S. § 2802(12).

cost of generating electricity," for the benefit of all customer classes, while ensuring that such service (essential to the health and well-being of residents) remains available to all customers on reasonable terms and conditions.[22] The Choice Act, and opening the electric market to competition generally, was never intended to be a vehicle to allow EGSs to peddle their non-commodity wares. In fact, there is no mention of "value added" services anywhere in the Choice Act. What the Choice Act did do – in addition to opening up wholesale and retail competition for electric commodity service – is enshrine into statute that "[e]lectric service is essential to the health and well-being of residents, to public safety and to orderly economic development," and that "electric service should be available to all customers on reasonable terms and conditions." 66 Pa. C.S. § 2802 (9).[23] The Choice Act further set out that "[r]eliable electric service is of the utmost importance to the health, safety and welfare of the citizens of the Commonwealth." 66 Pa. C.S. § 2802 (12). Both EDCs and the PUC are responsible under the Public Utility Code for ensuring that these mandates are fulfilled. These obligations should not be lightly disregarded simply because EGSs desire to upend the billing paradigm. Supporters of SCB have made no showing of a nexus between the non-commodity products and services referenced by those who support SCB and the generation of electricity or the billing for electricity that would require SCB. As the Low Income Advocates noted in *en banc* testimony, SCB is inconsistent with the Public Utility Code, and no possible benefit of SCB outweighs the potentials for harm to consumers or the real danger SCB poses to keeping essential electric service available to all customers on reasonable terms and conditions.

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[22] 66 Pa. C.S. § 2802(5), (9), (10), (12).

[23] See also Memphis Light, Gas & Water Division v. Craft, 436 U.S. 1, 18 (1978) ("Utility Service is a necessity of modern life; indeed, the discontinuance of water or heating for even short periods of time may threaten health and safety.").

For all of the reasons outlined by the Low Income Advocates, the utilities, the Energy Association, and the Office of Consumer Advocate, the Commission should reject SCB as inconsistent with the Public Utility Code and the public interest.

Respectfully Submitted,

Pennsylvania Utility Law Project
On Behalf of CAUSE-PA

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