BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Petition of PECO Energy Company for Approval of a Default Service Program for the Period of June 1, 2021 through May 31, 2025	Docket No. P-2020-3019290

REBUTTAL TESTIMONY OF HARRY GELLER

ON BEHALF OF

THE COALITION FOR AFFORDABLE UTILITY SERVICES AND

ENERGY EFFICIENCY IN PENNSYLVANIA ("CAUSE-PA")

July 9, 2020

PREPARED REBUTTAL TESTIMONY OF HARRY GELLER

Q. Please state your name, occupation, and business address.

A. Harry Geller. I am an attorney. Though I am currently retired, I have maintained an office at the Pennsylvania Utility Law Project (PULP), 118 Locust St., Harrisburg, PA 17101 and serve as a consultant to organizations representing the low income and their clients. Since the Governor's Emergency Order regarding the Covid-19 pandemic, I have been working from 4213 Orchard Hill Rd, Harrisburg, PA, 17110.

Q: Did you submit direct testimony in this proceeding?

A: Yes. My direct testimony was premarked as CAUSE-PA Statement 1.

Q. Please state the purpose of your rebuttal testimony.

A: The purpose of my rebuttal testimony is to respond to certain aspects of the Direct Testimony of Travis Kavulla on behalf of the Electric Supplier Coalition (ESC). Specifically, my rebuttal testimony will address why Mr. Kavulla's proposal to pursue dramatic changes to the default service paradigm in Pennsylvania is unsupported by the evidence and should be rejected. In addition, I will address why Mr. Kavulla's proposal to institute Supplier Consolidated Billing (SCB), as well as his proposed amendments to PECO's Time of Use TOU rate proposal, Standard Offer Program (SOP) proposal, and Customer Assistance Program (CAP) shopping proposal, should also be rejected.

As I indicated in my direct testimony, the unfortunate reality is that residential ratepayers, in significant numbers, have entered and participated in the competitive market and have not received the bill savings they were promised and were expecting. This problem has not been caused by the continued existence of default service in its present form, or by the regulated billing practices of default service providers, but by the suppliers themselves. The solution to this clear

and prolonged pattern of excessive charges is not to make default service more expensive for those who choose not to shop – or to circumvent critical statutory and regulatory billing, collections, and termination protections for residential consumers through adoption of SCB. Indeed, the Commission has repeatedly rejected attempts to do so in the past – both in individual utility proceedings and in the context of comprehensive statewide investigations. Rather, the Commission must take steps to reform existing ratepayer-supported "retail market enhancement" programs designed to protect residential consumers from excessive competitive market prices.

I note that a number of issues raised in Mr. Kavulla's testimony involve legal questions that are properly reserved for briefing. I will not comment on any issues which are strictly legal in nature, or which otherwise do not require additional factual context or information. Moreover, my silence in response to any witnesses' direct testimony in this proceeding should not be construed as an agreement therewith. Unless required for context or clarification in providing a further response to other parties' direct testimony, I will not reiterate the extensive arguments, evidence, and recommendations that I provided in my direct testimony. Rather, to the extent an argument raised by any party was already sufficiently addressed in my direct testimony, I do not intend to respond, and stand firmly on the evaluation, analysis, and recommendations contained in my direct testimony. Nothing proposed by any other witness has changed my initial conclusions or recommendations.

Finally, I reserve the right to supplement my rebuttal testimony in response to pending discovery requests, which the Electric Suppliers Coalition (ESC) have not yet answered despite a July 2, 2020 Order requiring them to do so by noon on July 7, 2020.[1] Information in response to

[1] On July 6, 2020, ESC filed a Petition for Certification requesting interlocutory review of the July 2 Order.

these pending discovery requests is likely to reveal information related to the reasonableness of Mr. Kavulla's analysis and soundness of his recommendations. Thus, I reserve the right to supplement my rebuttal testimony upon review of ESC's pending discovery responses.

DEFAULT SERVICE PROVIDER

Q: Please summarize Mr. Kavulla's Direct Testimony regarding PECO's role as default service provider, generally, and his recommendations related thereto.

A: In his testimony, Mr. Kavulla argues that default service is broken, as evidenced by what he claims to be a "stagnation" in residential shopping rates, and that dramatic structural changes are necessary to remove PECO from the role as default service provider. (ESC St. 1 at 6). To fix the market, Mr. Kavulla argues that PECO should no longer serve as the default service provider. Rather, he asserts that a supplier should be assigned to act as the "provider of last resort." (ESC St. 1 at 10-14).

Mr. Kavulla argues for two additional policy changes to default service. First, he asserts that there is "persistent cross-subsidization" of default service by distribution customers, and argues that more of PECO's costs should be collected through the default service price rather than base rates. (ESC St. 1 at 8). Second, he argues for adoption of supplier consolidated billing (SCB), claiming that "without the ability to bill its customers directly, EGSs are put at a disadvantage in establishing meaningful, long-term relationships with their customers." (ESC St. 1 at 9)[2].

Ultimately, in recognition of the fact that it is "not realistic to expect PECO to submit a compliance filing in this proceeding that begins the process of moving it out of the DSP role," Mr. Kavulla recommends that PECO and interested stakeholders engage in an intensive 4-month

[2] To be clear, as I will discuss below, suppliers already have the ability to direct bill their customers, they just cannot send a consolidated bill with both the supplier's charges and PECO's charges – commonly referred to as supplier consolidated billing, or SCB.

stakeholder workshop process, with a requirement to submit a report to the Commission at the end of the 4-month period "summarizing the alternative default service models identified by the stakeholders" during the workshops. (ESC St. 1 at 14).

Q: Do you agree with Mr. Kavulla's conclusions and recommendations regarding PECO's role as default service provider?

A: No. I believe the slow-down in residential shopping rates – which Mr. Kavulla characterizes as "stagnation" – is the result of excessive pricing in the competitive market, leading consumers to make an *affirmative choice* to return to or remain on default service. As I explained in direct testimony, PECO's residential shopping consumers have paid a *net* average of $773 million dollars more than the price to compare over the last five years. (CAUSE-PA St. 1 at 10). Even as our economy faced devastating losses in the first two months of the pandemic in March and April, residential shopping customers were charged roughly $22,108,500 more (in just those two months) than they otherwise would have been charged for default service. (CAUSE-PA Exhibit 1).[3] While we do not yet have the data for May and June, I am confident that the same five-year trend in supplier pricing continued – despite the ongoing and profound economic harm associated with the pandemic on residential ratepayers.

The primary purpose of establishing a competitive electric shopping market for residential consumers is price.[4] This goal is manifested by the Commission's longstanding competitive

[3] I note that hundreds of thousands of Pennsylvanians now face imminent loss of utility service for non-payment of utility bills in those months. See COVID-19 Customer Service, Billing, and Public Outreach Provisions Request for Utility Information, Docket No. M-2020-3020055. More research and analysis should be done to determine the level of arrears accrued throughout the pandemic that are attributable to supplier charges in excesses of the price to compare.

[4] See 66 Pa. C.S. § 2802(4)-(7).

market tagline: "Shop. Switch. Save."[5] However, as several members of the public attested to at the public input hearings in this case, many are choosing not to shop out of concern they may be burned by a high cost contract. In light of this data and evidence, I am not at all surprised that shopping numbers have declined in recent years. This is a rational economic response of consumers to repeated and prolonged overcharging in the competitive market.

Contrary to Mr. Kavulla's suggestions, the "solution" to this decline in residential shopping customers is not to remove PECO from the role of default service provider. (ESC St. 1 at 8-9). Removing PECO from its role as default service provider would disrupt the critical safety net that default service was intended to provide – allowing all those who choose not to shop in the competitive market to continue to obtain stable, regulated electric service at the least cost over time. PECO has no stake in the provision of competitive supply, as it no longer makes a profit from the sale of generation. Shifting the role of default service provider to a supplier, who is motivated by profit and is actively competing for market share, would infuse competition into the default service model - undermining the strength and stability of the default service safety net.

In turn, Mr. Kavulla's recommendations to inflate the cost of default service by shifting system costs onto default service customers and to implement supplier consolidated billing (SCB) should likewise be rejected. (ESC St. 1 at 8-9). Even accepting the possibility that making default service more costly for residential consumers by shifting system-wide costs onto default service customers would drive more people into the market, such a result would nevertheless conflict with and not advance the clear statutory objectives of the Choice Act to reduce electricity costs.[6]

[5] See Pa PUC, Take Charge of Your Electric Bill, http://www.puc.pa.gov/General/consumer_ed/pdf/PAPowerSwitch-Take_Charge_FS.pdf.

[6] See 66 Pa. C.S. § 2802(4)-(7).

Moreover, adoption of SCB would only make it more difficult for consumers to compare supplier prices against the price to compare or to access critical statutory and regulatory consumer protections through Chapters 14 and 15 of the Public Utility Code and Chapter 56 of the Commission's regulations. I will discuss the issues associated with SCB further below.

Finally, Mr. Kavulla's recommendation to establish a time and resource intensive 4-month stakeholder work group to examine alternative default service structures in PECO's service territory would be a waste of ratepayer resources and should not be approved. This request plainly seeks to relitigate a multi-year Commission investigation into the competitive market, initially launched in 2011, which specifically looked at the "end state" of default service and decided against removing EDCs from the default service provider (DSP) role.[7] Instead, the Commission affirmed its existing regulations governing the selection of an alternative DSP.[8] Those regulations remain effective today, and provide clear parameters for establishing a new DSP in a given utility service territory.[9] In light of this established regulatory process for identifying a new DSP, the investment of additional time and resources into a 4-month workgroup process to examine alternative default service structures in PECO's service territory would be an exercise in futility, and would not constitute a just and reasonable expenditure of time and resources for PECO or for the many stakeholders that would be called upon to engage in such an effort.

[7] Investigation of Pennsylvania's Retail Electricity Market: End State of Default Service, Final Order, Docket No. I-2011-2237952, at 20 (Feb. 14, 2013).

[8] Id. at 16, 20.

[9] 52 Pa. Code § 54.183(b)(1)-(3). Notably, the Commission's regulations permit the Commission to reassign the default service obligation only if "necessary for the accommodation, safety, and convenience of the public." 52 Pa. Code § 54.183(c). The rule sets forth clear evidentiary standards that a supplier vying to become a DSP must meet as a condition to becoming a DSP. 52 Pa. Code § 54.183(d).

Q: You note above that Mr. Kavulla believes there is "persistent cross-subsidization" between default service and distribution rates, and recommends shifting distribution costs onto default service customers. Please explain.

A: Mr. Kavulla believes that PECO is not properly accounting for its overhead to provide default service, and that more of its operational costs should be allocated to default service – rather than being recovered through base rates.

Q: Do you agree?

A: No. And neither does the Commonwealth Court of Pennsylvania, which recently rejected this very same argument in an appeal brought by Mr. Kavulla's Company, NRG Energy, against the Commission for its decision in PECO's most recent base rate proceeding.[10] I note that counsel for CAUSE-PA has advised me that this issue will be addressed further in briefing.

Q: You mentioned Mr. Kavulla's recommendation to approve Supplier Consolidated Billing (SCB). Please explain.

A: As I noted above, Mr. Kavulla believes suppliers are at a competitive disadvantage because, as he asserts, suppliers cannot bill consumers "directly" for service. (ESC St. 1 at 9). He argues that this inability to bill residential customers directly has stifled innovation – especially with regard to time of use (TOU) product offerings. (ESC St. 1 at 17-18, 25). To facilitate improved TOU product offerings, Mr. Kavulla asserts that PECO should "adopt a retail enhancement allowing supplier consolidated billing at the same time that PECO TOU rates are implemented." (ESC St. 1 at 18-19). Mr. Kavulla concludes that failure to adopt SCB will result in "several harms" to the competitive market.

[10] NRG Energy, Inc. v. Pa. PUC, 58 CD 2019 (Pa. Commw. Ct., filed June 2, 2020) (denying NRG's proposal to reallocate $100 million from PECO's distribution rates to its default service rate).

Q: Do you agree?

A: No. First, it is not true that suppliers cannot bill customers directly for supply service. Suppliers are free to send bills for electric supply directly to their customers.[11] Suppliers just cannot send a *consolidated* bill which also collects PECO's distribution rates.

NRG and other members of the Electric Supplier Coalition (ESC) have pushed for approval of SCB for many years - most recently through a statewide Commission investigation that culminated with multiple days of *en banc* testimony before the Commission.[12] The Commission has not, to date, issued a decision in its *en banc* investigation. However, it would be inappropriate for the Commission to do so here, in this proceeding, when a statewide investigation into the merits of SCB is still pending before the Commission.

I note that, notwithstanding the pending nature of the Commission's statewide SCB investigation, there are a number of legal and policy reasons why SCB cannot be approved in Pennsylvania - all of which have been previously addressed at length in other record proceedings.[13] In short, SCB is inconsistent with the Choice Act; circumvents the requirements of Chapter 14 and 15 of the Public Utility Code and Chapter 56 of the Commission's regulations regarding residential

[11] See 66 Pa. C.S. § 2807(c); see also Petition of NRG Energy, Inc. for Implementation of Electric Generation Supplier Consolidated Billing, Comments and Answer of PECO Energy Co., Docket No. P-2016-2579249 (filed Jan. 23, 2017), http://www.puc.pa.gov/pcdocs/1506739.pdf.

[12] *En Banc* Hearing on Implementation of Supplier Consolidated Billing, Docket No. M-2018-2645254; see also Petition of NRG Energy, Inc. for Implementation of Electric Supplier Consolidated Billing, Joint Motion of Chairman Gladys M. Brown and Commissioner Norman J. Kennard, Docket No. P-2016-2579249 (Jan, 18, 2018); Investigation of Pennsylvania's Retail Electricity Market: Joint Electric Distribution Company-Electric Generation Supplier Bill, Final Order, Docket M-2014-2401345 (order entered May 23, 2014); Investigation of Pennsylvania's Retail Electricity Market: End State of Default Service, Final Order, Docket Mo. I-2011-2237952, at 68 (Feb. 14, 2013).

[13] *En Banc* Hearing on Implementation of Supplier Consolidated Billing, Joint Comments and 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, Docket No. M-2018-2645254 (filed May 4, 2018 and Aug. 24, 2018, respectively).

customer billing, credit, and collections standards; harms competition; is incompatible with critical universal service programs; would harm vulnerable residential ratepayers; and is cost prohibitive.[14] For the sake of brevity, I will not reiterate those prior legal and policy arguments in detail, though I have attached a copy of CAUSE-PA's comments and reply comments in the Commission's *en banc* SCB investigation as Appendix A and B, and incorporate those comments and reply comments by reference herein.[15]

TIME OF USE (TOU) PROGRAM

Q: Please summarize Mr. Kavulla's testimony regarding PECO's time of use proposal to which you wish to respond.

A: As I noted above, Mr. Kavulla argues that PECO should be required to permit supplier consolidated billing (SCB) generally to help improve the competitive market, but also specifically argues for SCB in the context of PECO's TOU proposal. He further argues that all customers – including those enrolled in PECO's Customer Assistance Program – should be eligible to select a TOU rate. (ESC St.1 at 23-24).

Q: How do you respond?

A: First, with regard to SCB, I note that the same critical legal and policy concerns I addressed briefly above are present with regard to SCB for TOU rates. I also question why suppliers need to bill for PECO's distribution rates in order to effectively design and implement a TOU product for electric supply. As I explained above, suppliers already have the ability, today, to bill customers

[14] Id.

[15] See 52 Pa. Code § 1.33 (Incorporation by reference); 52 Pa. Code § 5.407. Pursuant to section 5.407(a), I have attached a copy of these comments and reply comments hereto as Appendix A and B.

directly for supply services. Adding distribution charges to the bill will do nothing to enhance the suppliers' product – it will simply add another charge to the bill.

Further, I disagree with Mr. Kavulla's contention that all residential customers should be eligible for TOU rates – including those enrolled in CAP. As I explained in direct testimony, TOU rates are not compatible with CAP. The purpose of CAP is to provide low income households with an affordable bill based on the participant's household income. (CAUSE-PA St. 1 at 23). When the cost of service for a CAP customer increases above the PTC, as is distinctly possible for customers who subscribe to a TOU rate (explained below), there are three possible outcomes: (1) the CAP customer will be charged higher overall rates, causing CAP participants to reach the maximum CAP credit limit without achieving the program's target level of affordability; (2) residential consumers who finance CAP through rates will pay more for the program, as the amount of credits applied to the CAP bill will increase to reach the target level of affordability; or (3) the increased cost will be shared by both CAP participants and residential consumers. (Id.). Each of these potential outcomes is untenable, and undercuts the explicit statutory goals and purpose of CAP to provide an affordable bill to economically vulnerable households.

Economically vulnerable households often have very little discretionary energy usage, such as washing machines, dish washers, and other large appliances, and are more likely to live in smaller homes with less efficient heating and cooling spaces – all factors which make it difficult to shift load during peak periods. (CAUSE-PA St. 1 at 24-25). Consumers who are home during the day or are reliant on electric-powered medical devices are at even greater risk, as usage curtailment during peak hours can have an immediate and substantial impact on health outcomes. (Id.) This includes seniors, individuals with disabilities, and families with young children – all of whom are generally more likely to be low income or income constrained. For these households,

usage patterns are often fixed or otherwise inflexible. Indeed, as I noted in direct testimony, a household cannot shift their laundry routine to the late evening hours if they do not have a washer or dryer in their home…nor can they turn off their air conditioner during the hottest hours of the day if they are home during those hours. Imposing time-varying pricing on consumers with fixed or inflexible usage patterns could disproportionately increase the cost of energy for Pennsylvania's most vulnerable consumers, and is therefore an inappropriate rate structure for CAP customers. (Id.)

Finally, I note that with respect to the eligibility of CAP customers to participate in TOU rates, Mr. Kavulla draws a number of unsound legal conclusions that counsel for CAUSE-PA will address through briefing. (ESC St. 1 at 22-23).

STANDARD OFFER PROGRAM (SOP)

Q: Please describe Mr. Kavulla's testimony regarding PECO's Standard Offer Program (SOP) to which you wish to respond.

A: Mr. Kavulla believes that "measures should be taken to 'mature' the SOP" and argues that all new PECO customers should be automatically enrolled in the SOP unless they have affirmatively selected another supplier. (ESC St. 1 at 54). Mr. Kavulla also asserts that PECO should allow customers to enroll in the SOP through its website, and that the SOP fee for online SOP enrollments should be waived or reduced. (ESC St. 1 at 55). Finally, Mr. Kavulla argues that PECO should make changes to its SOP script and should "revisit the situations in which SOP is mentioned" and otherwise engage in additional, periodic SOP outreach and promotion.

Q: Do you agree?

A: No. First, automatically enrolling all new customers in the SOP would be tantamount to slamming, and would deprive consumers of their right to choose not to shop for competitive

electric service. When SOP is offered, and a customer elects not to accept it, they are making an affirmative choice to remain with their default service provider, and that choice must be honored. Mr. Kavulla minimizes the importance of this choice, concluding that "no reason exists to initially place a customer on PECO's default service." (ESC St. 1 at 55). But that reason is clear to me in light of overwhelming data that suggests consumers do not fare well in the competitive market – and more often than not end up paying significantly higher rates than they would pay if they remained with default service. (CAUSE-PA St. 1 at 27-31). While SOP participants receive a 7% discount off the price to compare, there is no guarantee that will result in longer-term savings, as there is no assurance that the SOP participant will not face a steep hike in rates at the conclusion of the 12-month program. Indeed, even the potential for continued savings requires active market participation throughout the SOP and at the conclusion of the initial program period. Many consumers do not want to invest in the time commitment of checking applicable rates and selecting a supplier every few months when the default service price changes – and elect to stay with their default service provider so they can 'set it and forget it'. This is a valid choice that consumers must be allowed to make.

While I agree with Mr. Kavulla's assertion that PECO should not "brand" the program, I strongly disagree with Mr. Kavulla's recommendation to substantially revise the SOP script. The proposed revisions suggest guaranteed savings and provide vague and imprecise information critical to a consumers' understanding of the offer. For example, the proposed revisions do not mention when the PTC changes – alluding only to quarterly changes, thereby obscuring the ability of a consumer to actively assess when the applicable price will change. It also fails to explain what the customer is purchasing, and removes language that explains the difference between distribution and generation service. Even the name Mr. Kavulla gives to the SOP – the "Supplier

Savings Program" (a branding in itself) – suggests that savings are a sure bet. Mr. Kavulla boldly asserts: "it is absolutely true that savings will be realized in the first PTC period, because the whole premise of the program is a 7% discount off of it." (ESC St. 1 at 56-57). But what Mr. Kavulla fails to recognize is that the PTC may change within days of the customers' enrollment in the SOP. If the PTC decreases by 7%, the customer may not realize any appreciable bill savings through the program. For these reasons, and with the exception of removing language regarding PECO's "sponsorship" of the program, Mr. Kavulla's proposed script revisions should be rejected.

Finally, I disagree with Mr. Kavulla's suggestion that PECO should begin offering the SOP in additional situations, such as when a customer calls in with a billing dispute. When a customer contacts PECO regarding a billing dispute, it is often because the customer has received notice of termination – or is otherwise in distress regarding an issue with their bill. Consumers with billing disputes are often in high-stress situations, making it (at best) an inopportune time for marketing activities. PECO's call center staff must remain focused on resolving that customers' dispute to the customers' satisfaction, and should not subject consumers to a colloquy about available offers that may or may not save them money – and may in fact exacerbate the customers' payment trouble over the long term. (See CAUSE-PA St. 1 at 29).

CUSTOMER ASSISTANCE PROGRAM (CAP) SHOPPING PROPOSAL

Q: Please describe Mr. Kavulla's testimony regarding PECO's Customer Assistance Program (CAP) Shopping Proposal to which you wish to respond.

A: Mr. Kavulla explains that the Electric Supplier Coalition has three primary concerns with PECO's CAP Shopping proposal. First, the suppliers object to the requirement that all suppliers offer CAP customers a price that is at or below PECO's PTC for "the entire time." (ESC St. 1 at 60). He argues that "EGSs should be permitted on their own to adjust their prices during the

program year to reflect the market conditions they are facing" – in short, leaving CAP customers open to a significant price increase shortly after being hooked into shopping as a result of an initial teaser rate. He argues that, since CAP customers "may leave the EGS CAP Shopping program without penalty at any time, they will not be harmed." (ESC St. 1 at 60).

Next, Mr. Kavulla argues that suppliers wishing to serve CAP customers should not be required to post their CAP rate on the Commission's PAPowerSwitch.com website. He asserts that consumers who are ineligible for the rate would be confused by the offer, and may file more complaints with the Commission. Instead, Mr. Kavulla argues that the Commission should create a separate portal that is only accessible to CAP customers.

Finally, Mr. Kavulla objects to PECO's requirement that at least five suppliers indicate an intent to serve CAP customers before PECO develops the infrastructure to support CAP shopping. In support of his position, Mr. Kavulla asserts that "the number of EGSs who are willing to participate should have no bearing on PECO's commitment to implement the program." (ESC St. 1 at 61).

Q: Has your opinion regarding PECO's CAP Shopping Proposal changed since you submitted your direct testimony?

A: No. Competitive shopping is inappropriate for CAP customers, and should not be approved in any form. Nevertheless, and notwithstanding my overarching and continued objection to CAP shopping in its entirety, I will respond briefly to Mr. Kavulla's CAP shopping proposals – each of which should be rejected.

Q: How do you respond to Mr. Kavulla's first argument that suppliers should be "permitted on their own to adjust prices." (ESC St. 1 at 60).

A: Quite plainly, Mr. Kavulla's suggestion would offer no protection for CAP customers or other residential ratepayers from the clear and persistent cost increases associated with unrestricted CAP shopping. In fact, it would provide even less protection than is available to PECO's residential SOP customers, who are at least locked in at 7% off the PTC at the time they enter the program. Mr. Kavulla's recommendation would instead introduce an initial teaser rate for CAP customers, followed by any rate that the supplier chooses to charge – at any time. This suggestion should be rejected out of hand, as it provides no meaningful protection from excessive supplier pricing that will undeniably increase the cost of service for both economically vulnerable CAP customers and other residential ratepayers who pay for CAP.

Q: What is your response to Mr. Kavulla's objection to including CAP offers on the Commission's PAPowerSwitch.com website, and his recommendation that the Commission develop a separate portal that only CAP customers can access?

A: I find it very hard to believe that customers will be confused by an offer that is available only to a specific group of customers. PAPowerSwitch.com already has a number of different filters to identify offers with different attributes that may be available to specific targeted groups. For example, the site maintains filters to differentiate offers by suppliers of clean energy and by EDC service territories – yet there are no concerns that a PECO customer will be confused if they cannot accept an offer in PPL Electric service territory. I fail to see why the same would not apply for CAP customer offers.

Moreover, I object to creating a separate portal that only CAP customers may access. This would be an unnecessary and costly endeavor, and should not be adopted merely to avoid having to explain to an occasional customer why they cannot accept an offer designed for CAP customers.

Q: Please respond to Mr. Kavulla's argument that there should be no threshold supplier participation to implement CAP shopping in PECO's service territory.

A: Implementation of CAP shopping is an expensive endeavor, and is projected to cost ratepayers approximately $1.2 million. (PECO Exhibit JAB-6). In my opinion, the cost of implementing CAP shopping is not prudent to begin with, as it adds costs to universal service programming that does nothing to reduce the cost of energy to vulnerable households through the program – and in fact places vulnerable households at greater risk of exposure to high supplier pricing. Nevertheless, if PECO's proposal for CAP shopping were to go forward, it is reasonable for PECO to assess interest in the program before implementing this costly endeavor. While Mr. Kavulla is correct that one supplier could conceivably serve as many CAP customers as five suppliers, the purpose of requiring five suppliers to sign up is not to ensure that there will be enough providers to cover CAP shopping requests. Rather, the purpose is to ensure that the initial investment would not be wasted simply because a few suppliers withdrew from the program. By requiring at least five participants, PECO is attempting to ensure that if one or multiple suppliers drop out of the program, the substantial ratepayer investments will nevertheless be prudent and justifiable.

Q: Does this conclude your Rebuttal Testimony?

A: Yes.

CAUSE-PA Statement 1-R
APPENDIX A

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

JOINT 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.*)

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I. INTRODUCTION

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), file these Comments in response to the Public Utility Commission's (Commission) March 27, 2018 Secretarial Letter. The Low Income Advocates have substantial concerns about the impact of Supplier Consolidated Billing (SCB) on the ability of households to access critical energy services on reasonable terms and conditions and consistent with the laws and regulations of the Commonwealth of Pennsylvania. We appreciate the opportunity to share these concerns with the Commission. The Low Income Advocates submit that the current paradigm of utility-consolidated billing (UCB) with a purchase of receivables program is effective, and levels the playing field for access to the competitive market. We urge the Commission to resist the call to radically depart from the statutorily prescribed billing, collection, and termination standards for essential utility services in Pennsylvania.

CAUSE-PA is a statewide unincorporated association of low-income individuals which advocates on behalf of its members to enable consumers of limited economic means to connect to and maintain affordable water, electric, heating and telecommunication services. CAUSE-PA membership is open to moderate- and low-income individuals residing in the Commonwealth of Pennsylvania who are committed to the goal of helping low-income families maintain affordable access to utility services and achieve economic independence and family well-being.

The Tenant Union Representative Network (TURN) is a not-for-profit corporation with many low and lower income members. TURN's mission is to advance and defend the rights and interests of tenants and homeless people. TURN's goal is to guarantee that all Philadelphians have

equal access to safe, decent, accessible, and affordable housing. Action Alliance of Senior Citizens of Greater Philadelphia (Action Alliance) is a not-for-profit corporation and membership organization whose mission is to advocate on behalf of senior citizens on a wide range of consumer matters vital to seniors, including utility service. As part of advancing the respective interests of tenants and seniors, TURN and Action Alliance advocate on behalf of low and moderate income residential customers of public utilities in Philadelphia in proceedings before the PUC.

On behalf of our clients, we are requesting the opportunity to testify before the Commission *En Banc* at the June 14, 2018 hearing. CAUSE-PA and TURN *et al.* are well-known and respected advocates for Pennsylvania's low income utility consumers, and have first-hand knowledge, experience, and expertise with the intricacies of Chapters 14 and 56; the mandates of the Electricity Generation Customer Choice and Competition Act (Choice Act); and the Universal Service program design in each utility service territory across the state. SCB crosses each of these critical topics, as discussed in further detail below. The Low Income Advocates not only have expertise on this area of law, we also have substantial experience with the impact of these laws, policies, and procedures on low income populations, as well as the ability of the competitive market to serve their unique needs.

II. BACKGROUND

On March 27, 2018, the Commission issued a Secretarial Letter, notifying interested parties that the Commission would hold an *en banc* hearing on Thursday, June 14, 2018 at 1:00 pm, and inviting interested parties to submit comments by May 4, 2018. The stated purpose of the hearing was to address three issues: "(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."[1]

The Secretarial Letter was issued following the Joint Motion of Chairman Gladys M. Brown and Commissioner Norman J. Kennard to Deny the Petition of NRG Energy, Inc. for Implementation of Electric Generation Supplier Consolidated Billing (SCB). NRG's petition failed because it "lack[ed] sufficient detail to substantiate a definitive determination on both the policy prudence and legality of numerous pivotal issues," but the Commission nonetheless expressed a desire to better understand the prudence and legality of SCB. [2]

The Joint Motion recognized that the Commission "has a long history of deliberating SCB," but noted that the Commission had not squarely addressed the legality [3] Indeed, prior to the NRG proceeding, the Commission assessed and rejected SCB as part of its comprehensive Retail Market Investigation, and instead opted to implement revisions to the Utility Consolidated Bill (UCB) to more prominently feature the supplier's information.[4] In doing so, the Commission explained:

> We believe that [the joint bill] approach offers several advantages over creating an SCB environment at this time. As we have noted, we fully expect that this approach will require fewer resources than would be required to implement an SCB environment. In addition, this approach does not raise the consumer protections concerns expressed by OCA, PULP, PCADV and others, since we are not changing the entity that is billing and collecting from the consumers.[5]

[1] En Banc Hearing on Implementation of Supplier Consolidated Billing, Secretarial Letter, Docket M-2018-2645254 (March 27, 2018).
[2] Petition of NRG Energy, Inc. for Implementation of Electric Generation Supplier Consolidated Billing, Joint Motion of Chairman Gladys M. Brown and Commissioner Norman J. Kennard, Docket No. P-2016-2579249 (Jan. 18, 2018).
[3] Id.
[4] Investigation of Pennsylvania's Retail Electricity Market: End State of Default Service, Final Order, Docket No. I-2011-2237952, at 68 (Feb. 14, 2013).
[5] Id.

Ultimately, changes to the UCB were ordered in May 2014, just four years ago.[6] To the Low Income Advocates' knowledge, the impact of the changes to UCB have not been evaluated to assess whether the efforts were successful or whether additional, incremental changes may be warranted.

The Low Income Advocates were active in the NRG proceeding, as well as the Commission's Retail Market Investigation and the subsequent Joint Bill proceeding.[7] We were then, and remain now, strongly opposed the introduction of SCB in Pennsylvania. As we explain at length below, SCB is legally unsound, dangerous for consumers, and unjustifiably costly.

III. COMMENTS

A. Supplier Consolidated Billing is not permitted under the Public Utility Code.

SCB is not authorized by law and directly conflicts with a number of statutory provisions. Significant legislative changes to multiple chapters within the Pennsylvania Public Utility Code would be necessary to allow SCB to proceed in Pennsylvania. These legal barriers pose an insurmountable hurdle for the Commission to act without legislative change. Nevertheless, as discussed in later sections, the Commission should reject SCB notwithstanding the lack of statutory authority, as it is not in the public interest.

[6] Investigation of Pennsylvania's Retail Electricity Market: Joint Electric Distribution Company – Electric Generation Supplier Bill, Final Order, Docket No. M-2014-2401345 (May 23, 2014).

[7] See Petition of NRG Energy, Inc. for Implementation of Electric Generation Supplier Consolidated Billing, Petition to Intervene and Answer of CAUSE-PA, Comments of CAUSE-PA, and Reply Comments of CAUSE-PA, Docket No. P-2016-2579249 (filed Jan. 27, 2017, Jan. 23, 2017, and Feb. 22, 2017, respectfully); Petition of NRG Energy, Inc. for Implementation of Electric Generation Supplier Consolidated Billing, Comments of TURN *et al.* and Reply Comments of TURN et al., Docket No. P-2016-2579249 (Jan. 23, 2017 and Feb. 22, 2017, respectfully).

i. Supplier Consolidated Billing is inconsistent with the mandates of the Electric Generation Customer Choice Act contained in Chapter 28 of the Public Utility Code. [8]

SCB directly conflicts with explicit provisions of the Electric Generation Customer Choice Act (Choice Act), which requires electric distribution companies (EDCs) to continue performing essential consumer service functions, including billing services. Moreover, SCB would undercut the Commission's obligation under the Choice Act to ensure that universal service programming is cost-effective, available, and adequately funded to ensure that all consumers, regardless of income, are able to access affordable utility services.[9] Approval of SCB would, thus, violate multiple provisions of the Choice Act.

First, section 2807(c) speaks directly to the respective billing obligations of EDCs, compared to those of suppliers. While the provision allows for separate (dual) billing, wherein a consumer could choose to receive a bill from both their supplier and their EDC, it otherwise allows EDCs to provide UCB when a consumer does not otherwise elect to receive a dual bill:

> 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. [10]

Importantly, use of the term "may" in this section *does not* grant implicit authority for suppliers to also perform consolidated billing functions. Indeed, the section only contemplates two forms of billing: dual billing or UCB. If the legislature intended to allow suppliers to bill for EDC services,

[8] 66 Pa. C.S. §§ 2801 et seq.
[9] See 66 Pa. C.S. §§ 2802, 2804, 2807(c)-(d)
[10] 66 Pa. C.S. § 2807(c). In addition, the subsections that follow this mandate set forth other required attributions of customer billing, including mandatory unbundling of all charges: "Customer bills shall contain unbundled charges sufficient to enable the customer to determine the basis for those charges." 66 Pa. C.S. § 2807(c)(1). As discussed below in subsections A.ii and A.iii, Chapter 14 only applies to "public utilities" – which includes EDCs, but excludes suppliers. Thus, if SCB were to proceed, the Commission would be without authority or oversight to regulate consumer billing to ensure that rates and charges are not bundled.

it could have done so. It did not. Instead, the legislature set forth additional requirements for UCB, including a requirement that if services are provided by an entity other than the EDC, that entity "shall furnish to the electric distribution company billing data sufficient to enable the electric distribution company to bill customers."[11] Again, if the legislature intended to facilitate or otherwise authorize SCB, it could have done so by imposing the same requirement on the EDC to provide billing data to suppliers. The absence of such authority indicates the legislature neither contemplated nor authorized SCB.

The very next provision of the Choice Act – section 2807(d) – further eliminates any doubt about whether SCB may be implicitly authorized under section 2807(c). Indeed, all consumer service functions – which necessarily includes billing, collections, and termination functions – are expressly delegated to EDCs in Section 2807(d):

> 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.**
>
> (1) The commission shall establish regulations to ensure that an electric company does not change a customer's electricity supplier without direct oral confirmation from the customer of record or written evidence of the customer's consent to a change of supplier.
>
> (2) The commission shall establish regulations to require each electric distribution company, electricity supplier, marketer, aggregator and broker to provide adequate and informed choices regarding the purchase of al electricity services offered by that provider. Information shall be provided to consumers in an understandable format that enables consumers to compare prices and services on a uniform basis.
>
> (3) Prior to the implementation of any restructuring plan under section 2806 (relating to implementation, pilot programs and performance-based rates), each electric distribution company, in conjunction with the commission, shall implement a consumer education program informing

[11] 66 Pa. C.S. § 2807(c)(2).

> customers of the changes in the electric utility industry. The program shall provide consumers with information necessary to help them make appropriate choices as to their electric service. The education program shall be subject to the approval by the commission.[12]

These detailed legislative provisions impose a host of very specific obligations on EDCs for billing, education, and other responsibilities to ensure that customers are well informed about the competitive market, but they are silent about similar obligations of suppliers. This silence is telling: EDCs must continue to perform the consumer functions inherent to the billing entity, and the legislature did not contemplate a paradigm which would authorize suppliers to conduct the sensitive functions of billing, collections, and terminations.

Furthermore, section 2807(f) imposes a host of "consumer service functions" of the EDC that are not readily severable from billing functions from the "consumer service functions" otherwise contemplated to remain with the EDC. Consumers naturally contact the billing agent with a broad range of problems, including service quality, charges, collections efforts, privacy concerns, meter issues, termination, and other critical questions or issues a consumer may experience with regard to their utility service. If an EDC were to continue performing all "consumer service functions" – without also fulfilling the billing function – consumers would experience a great deal of confusion, having to overcome significant and frustrating obstacles to reach a resolution of their issues. For example, if a consumer received a termination notice from their EDC, and first contacted their supplier because it is the company who bills them for service, the consumer would be told they must contact the EDC to address the termination issue – adding significant time and frustration to the consumer seeking resolution of a potentially life-threatening termination of utility service.[13] Such a result would appear to directly violate section

[12] 66 Pa. C.S. § 2807(d) (emphasis added).
[13] Of course, suppliers are not required to report on or comply with call and response times or dispute handling functions, so their initial call to the supplier could be quite long and protracted.

2807(f), which requires that all consumer service functions "be maintained at the same level of quality under retail competition."[14]

As a matter of statutory construction, the language of the Choice Act is clear and unambiguous, and must be implemented in accordance with this plain meaning.[15] That said, were an ambiguity to arise, the legislative history affirms the General Assembly's intention that traditional utility customer service functions – including billing - continue to be exercised exclusively by the EDC. When the Choice Act was initially passed, the discussion on the House floor clearly evidenced an intent to require that EDCs – not suppliers – perform all consumer service functions, including billing:

> 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 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.[16]

[14] 66 Pa. C.S. § 2807(d).
[15] 1 Pa. C.S §1921(b).
[16] Pa. House Journal, at 2566 (November 25, 1996).

This legislative history demonstrates the intention of the General Assembly to maintain the paradigm wherein the consumer deals "directly" with the EDC, and the EDC continues to uphold its obligations to perform all consumer services functions, including billing.

Finally, as explored more thoroughly below in section B.ii., SCB is inconsistent with the universal service requirements of the Choice Act, and would erode the stability, effectiveness, availability, and cost-effectiveness of universal service programs. The Choice Act, in relevant part, explicitly provides:

> Electric service is essential to the health and well-being of residents, to public safety and to orderly economic development, and electric service should be available to all customers on reasonable terms and conditions.[17]
>
> **The Commonwealth must, at a minimum, continue the protections, policies and services that now assist customers who are low-income to afford electric service.**[18]
>
> There are certain public purpose costs, including programs for low-income assistance … which have been implemented and supported by public utilities' bundled rates. **The public purpose is to be promoted by continuing universal service and energy conservation policies, protections and services**, and full recovery of such costs is to be permitted through a nonbypassable rate mechanism.[19]
>
> Programs under this paragraph shall be subject to the administrative oversight of the commission which will ensure that the programs are operated in a cost-effective manner.[20]

SCB is incompatible with federal and utility universal service programs, and the Commission's regulations and policies which implement these programs to assist low income households. As addressed in full below, since SCB would erode the accessibility, cost-effectiveness, and funding

[17] 66 Pa. C.S. § 2802(9).
[18] 66 Pa. C.S. § 2802(10) (emphasis added).
[19] 66 Pa. C.S. § 2802(17) (emphasis added).
[20] 66 Pa. C.S. § 2804(9).

for universal services and other low-income energy assistance programs, it directly contradicts the provisions of the Choice Act outlined above.

As discussed in further detail in subsection A.iii, the Commission may not delegate the EDC's explicit duties under the Choice Act to a supplier. Doing so would be outside of the Commission's express authority to implement the requirements of the Choice Act, and such an interpretation would not be subject to deference by the Commonwealth Court.

ii. Suppliers are not subject to the critical billing, collections, and termination standards contained in Chapter 14 of the Public Utility Code and Chapter 56 of the Commission's regulations.

Not only does SCB directly conflict with the Choice Act, it also conflicts with critical billing, collections, and termination standards contained in Chapter 14 of the Public Utility Code and Chapter 56 of the Commission's regulations. Under current law, suppliers are not subject to the requirements contained in Chapters 14 and 56. Importantly, as discussed in subsection A.iii below, the Commission cannot cure these legal defects by waiving or otherwise delegating those requirements to suppliers to allow for SCB.

Chapter 14 of the Public Utility Code and Chapter 56 of the Commission's regulations apply only and explicitly to public utilities, not suppliers.[21] Chapter 14 defines a public utility as:

> "Public utility." Any electric distribution utility, natural gas distribution utility, small natural gas distribution utility, steam heat utility, wastewater utility or water distribution utility in the Commonwealth that is within the jurisdiction of the Pennsylvania Public Utility Commission.[22]

Chapter 56 defines a public utility as: "An electric distribution utility, natural gas distribution utility or water distribution utility in this Commonwealth that is within the jurisdiction of the

[21] 66 Pa. C.S. § 1401 ("This chapter relates to protecting responsible customers of **public utilities**." (emphasis added)).
[22] 66 Pa. C.S. § 1403.

Commission."[23] The definition contemplates two criteria: (1) that the public utility is a distribution utility, and (2) that a public utility fall within the jurisdiction of the PUC. Suppliers meet neither of those provisions.

Every crucial provision of Chapter 14, and consequently of Chapter 56, is expressly applied to **public utilities**, including:

- Cash Deposits[24]
- Payment Arrangements[25]
- Termination of Service[26]
- Winter Protections[27]
- Medical Protections[28]
- Reconnection of Service[29]
- Surcharge Prohibitions[30]
- Late Payment Fee Rules[31]
- Consumer Complaint Procedures[32]
- Universal Service Referrals[33]
- Automatic Meter Reading[34]
- Reporting Requirements[35]
- Protections for Victims of Domestic Violence[36]

These provisions each describe, in detail, the duties, prohibitions, responsibilities, and requirements which apply explicitly – by name – to "public utilities," not suppliers.

Important to this analysis is the fact that Chapter 14 makes reference to suppliers.[37] Thus, the legislature clearly contemplated the competitive market – and suppliers' role in that market –

[23] 52 Pa. Code § 56.2.
[24] 66 Pa. C.S. §§ 1404, 1404(a.1).
[25] 66 Pa. C.S. § 1405.
[26] 66 Pa. C.S. § 1406.
[27] 66 Pa. C.S. § 1406(e).
[28] 66 Pa. C.S. § 1406(f).
[29] 66 Pa. C.S. 1407(a)-(b).
[30] 66 Pa. C.S. § 1408.
[31] 66 Pa. C.S. § 1409.
[32] 66 Pa. C.S. § 1410.
[33] 66 Pa. C.S. § 1410.1.
[34] 66 Pa. C.S. § 1411.
[35] 66 Pa. C.S. § 1415.
[36] 66 Pa. C.S. § 1417; see also 56 Pa. Code Ch. 56, Subchapters L-V.
[37] See, e.g., 66 Pa. C.S. § 1403.

in passing Chapter 14, and understood that it could assign the duties therein to suppliers, but nevertheless declined to extend the Chapter to either allow or require suppliers to conduct the sensitive and high-stakes operations of billing, collections, and termination of residential utility consumers.[38] As explained in subsection A.iii, this fact is instructive, and prevents the Commission from delegating to suppliers the express duties of the public utilities mandated by Chapter 14.

It would not be appropriate for suppliers to simply refer consumers to call their public utility to address matters covered in Chapter 14. Billing is not a stand-alone consumer function, and cannot be excised from the billing, collections, and termination standards in Chapter 14.

Take, for example, a consumer who is experiencing difficulty making full payment on a SCB. That consumer would naturally call the supplier first in an attempt to work out a resolution because the supplier is the entity listed on their bill. Suppliers' call centers are unregulated, and are not subject to the Commission's quality of service benchmarks and standards or other quality control provisions.[39] In fact, there is nothing to prohibit suppliers from taking actions directly contrary to the Commission's standards, failing to appropriately track and survey customer contacts or utilizing the call center to market ancillary goods or services, or otherwise impede in resolution of customer concerns. Under current law, public utilities are required to offer reasonable payment terms to a customer and to refer economically vulnerable customers to universal service programs.[40] Suppliers have no such obligation. Thus, after facing inadequate and/or inconsistent

[38] 66 Pa. C.S. § 1403.
[39] See 52 Pa. Code §§ 54-151-.156; see also Pa. PUC, BCS, 2016 Customer Service Performance Report (Aug. 2017), http://www.puc.state.pa.us/General/publications_reports/pdf/Customer_Service_Perform_Rpt2016.pdf. Section 54.151 specifically provides that the purpose of the regulations is to "develop uniform measurement and reporting **to assure that the customer services of the EDCs are maintained, at a minimum, at the same level of quality under retail competition.**" 52 Pa. Code § 54.151 (emphasis added).
[40] 66 Pa C.S. § 1401.1

customer service, as well as potentially lengthy call wait times, the financially vulnerable consumer may or may not be told to contact the public utility or appropriately advised regarding the availability of dispute procedures under the Commission's regulations. Ultimately, such customer may or may not find an appropriate resolution of their issue with a supplier, and may never be effectively directed under Commission regulations.

Ultimately, if the consumer is not appropriately referred, the public utility would be unable to fulfill its Chapter 14 duties, which include the duty to refer payment troubled consumers to universal service programs and to attempt to collect on debt.[41] Similarly, a customer with grounds for a dispute or complaint may never receive notification of their rights from a supplier.[42] Under SCB, who would bear the responsibility if a consumer's service is unjustly terminated? If a consumer is never referred to the public utility, would the public utility nonetheless be responsible for failure to fulfill Chapter 14 requirements, such as the winter moratorium and the protections for victims of domestic violence and medically vulnerable households? Absent a statutory scheme imposing clear legal responsibility on suppliers, and vesting the Commission with adequate enforcement authority, SCB creates a clear risk that consumers would suffer irreparable losses, without notice and opportunity to avoid the risks. Even if the consumer were properly referred to the public utility, their added time, energy, and potential expenditures to address their payment issue represent unavoidable harms resulting from SCB. Time away from work during business hours can be especially challenging for low wage and hourly employees, who are often prohibited or constrained from making calls during work hours. Low income consumers, who are far more

[41] See id.
[42] Cf. 52 Pa. Code §56.97(b)(1) (requiring notice of dispute rights and complaint procedures to be provided by public utilities).

likely to experience payment issues,[43] frequently lack access to stable telecommunications services, making multiple calls and potentially long wait times of particular concern. Indeed, under an SCB paradigm, by the time a consumer reaches the public utility to address their payment issue, the consumer's service may be subject to termination.

Policy considerations, such as the broader impact of SCB on low income and vulnerable Pennsylvanians, are discussed in greater detail in Section B. Suffice to say, the implementation of SCB in Pennsylvania would weaken the ability of public utilities to comply with Chapter 14 and would undermine the effectiveness of consumer protections contained therein, causing significant and substantial harm to consumers.

Chapter 14 – which governs the billing, collections, and termination standards, does not extend to suppliers. As such, absent clear legislative authorization and specific Commission enforcement authority, SCB must fail. As discussed in further detail in subsection iii, the Commission may not delegate the explicit duties of public utilities to a supplier. Doing so would contravene the Commission's express obligations to implement the requirements of Chapter 14.

iii. The Commission is obligated to ensure that the requirements contained in the Public Utility Code are fulfilled by public utilities, which it cannot do by delegating those requirements to suppliers.

As discussed at length above, Chapters 28 and 14 of the Public Utility Code impose unambiguous duties, obligations, and requirements directly on public utilities. Implementation of SCB would interrupt and/or usurp those obligations for reasons unsupported by sound utility

[43] **Approximately 57% of payment-troubled residential electric consumers and 75% of payment-troubled natural gas customers are classified as "confirmed low income" (verified income which does not exceed 150% of the Federal Poverty Level).** See Pa. PUC, BCS, 2016 Report on Universal Service Programs & Collections Performance, at 8-9 (Oct. 2017). These percentages are likely much higher, given the significant disparity between the estimated low income population and the confirmed low income population. Id. at 6-8. Utilities generally require a household to have recently submitted verified income documentation to be classified as "confirmed low income."

policy. Indeed, the obligations imposed in Chapters 28 and 14 are not waivable – nor are they discretionary.

Proponents of SCB may nonetheless argue that the Commission may authorize a supplier to act in some expanded capacity as the party responsible for directly billing EDC service, so long as it ensures that **someone** satisfies the requirements imposed on EDCs through these enactments. The hypothetical argument that suppliers could be substituted for an EDC for purpose of meeting the statutory obligations imposed by the Public Utility Code is without merit and is inconsistent with closely analogous recent precedent from the Commonwealth Court.

In Section 4 of Act 201 of 2014 (the legislative Act which promulgated Chapter 14), the legislature explicitly declared that Chapter 14 supersedes inconsistent laws: "The addition of 66 Pa.C.S. Ch. 14 **supersedes any inconsistent requirements imposed by law** on public utilities."[44] Section 6 then sets forth the parameters of Commission authority to implement the rigorous requirements of Chapter 14:

> Section 6. The Pennsylvania Public Utility Commission shall amend the provisions of 52 Pa. Code Ch. 56 to comply with the provisions of 66 Pa. C.S. Ch. 14 and may promulgate other regulations to administer and enforce 66 Pa. C.S. Ch. 14, **but the promulgation of any such regulation shall not act to delay the implementation or effectiveness of this chapter.**[45]

As established above, SCB is inconsistent with the requirements of Chapter 14 of the Public Utility Code and Chapter 56 of the Commission's regulations, and would diminish the effectiveness of the provisions contained therein – in direct violation of the authorizing and implementation language in Sections 4 and 6 of Act 201 of 2004.

[44] Act 201 of 2004, PL 1578, Section 4(1), http://www.legis.state.pa.us/cfdocs/legis/li/uconsCheck.cfm?yr=2004&sessInd=0&act=201.
[45] Act 201 of 2004, PL 1578, Section 6, http://www.legis.state.pa.us/cfdocs/legis/li/uconsCheck.cfm?yr=2004&sessInd=0&act=201.

First, to the extent an EGS contract for SCB would require a customer to agree to allow a supplier to fulfill the requirements of Chapter 14, and effectively waive the imposition of those requirements on the public utility, such waiver would be void. It is well established that "a statutory right conferred on a private party, but affecting the public interest, may not be waived or released if such waiver or release contravenes the statutory policy."[46] As discussed in greater detail throughout these Comments, waiver of a consumer's statutory rights would directly contravene the express goals of Chapter 14 (i.e., to impose equitable rules for consumer billing, collection, and termination procedures) by allowing suppliers to impose inconsistent and/or impermissible rules and standards without any accountability.[47] Without continued and full effectiveness of the consumer protections contained in Chapter 14, individual consumers, their families, and the surrounding community would experience substantial harm. Such a result would contradict the Commission's regulatory authority set forth in Chapter 14, which constrains the Commission to implement and effectuate the requirements of Chapter 14.[48]

Similarly, there is no authority on which the Commission could rely to permit the delegation of the requirements of Chapter 14 from public utilities (here, EDCs) to suppliers. The Commonwealth Court recently examined an analogous proposal, which proposed to delegate the statutory obligation of a public utility to offer Time of Use rates, pursuant to the Choice Act, to a supplier.[49] Weighing this proposal against the clear statutory language of the Choice Act, the Commonwealth Court struck down a proposal that would effectively substitute an EGS for an EDC for purposes of fulfilling the provisions Time of Use provisions of the Choice Act. In *Dauphin*

[46] See Brooklyn Sav. Bank v. O'Neil, 324 U.S. 697, 704 (1945).
[47] 66 Pa. C.S. § 1402 (Declaration of Policy.)
[48] Id.
[49] Dauphin County Indust. Dev. Auth. v. Pa. PUC, 123 A.3d 1124, 1134-35 (Pa. Commw. Ct. 2015), *appeal denied* 140 A.3d 13 (Pa. 2016).

County Industrial Development Authority v. Pa. PUC, the Commonwealth Court held that the Commission is not entitled to "substitute" an unregulated entity for a regulated entity. The statutory requirement imposed on the regulated entity is non-transferrable:

> The Commission's interpretation of Section 2807(f) is not entitled to deference. Unlike the statute at issue in *Popowsky*, there is no ambiguity in the Competition Act's mandate. … Our rules of statutory construction require that words and phrases be read according to their common and approved usages. 1 Pa. C.S. §1903(a). The legislature's unqualified use of the words "shall offer" in Section 2807(f)(5) places the burden on the default service provider, in this case PPL, to offer Time-of-Use rates to customer-generators. **The legislature knows the difference between a default service provider and an Electric Generation Supplier. Its decision to place the onus on default service providers was neither accidental nor arbitrary.**[50]

Here, there is likewise no ambiguity with regard to which entity bears the responsibilities of compliance with Chapter 14: Each provision explicitly and unambiguously applies to "public utilities," not suppliers. The same is true for Chapter 28, which imposes on EDCs the duty to "provide customer service functions consistent with the regulations of the commission."[51] As in *Dauphin County Industrial Development Authority*, the legislature's "decision to place the onus" on public utilities "was neither accidental nor arbitrary,"[52] and any action by the Commission to delegate those duties to suppliers – voluntarily or otherwise – is not entitled to deference.

It would also be unworkable to approve SCB based on a suppliers' assertion of voluntary compliance with the requirements of Chapters 14. While certain suppliers may willingly offer to voluntarily comply with these rules in exchange for the Commission's blessing to implement SCB, voluntary compliance would present a thorny issue if a supplier's compliance was called into question in a complaint by a consumer or the Commission's Bureau of Investigation and Enforcement. It is a dubious conclusion that the Commission would have authority to fully enforce

[50] Id.
[51] 66 Pa. C.S. § 2807(d).
[52] Id.

these provisions against a group of suppliers who volunteer to follow the rules, but are not governed by the applicable statute.

Chapter 14 was most recently updated, amended, and reauthorized less than four years ago, in December 2014. If the legislature had intended to allow suppliers to conduct billing, collections, and/or termination functions, it certainly could have amended Chapter 14 to do so. It did not. The Commission may not now – just over three years after the legislature reauthorized Chapter 14 – implement regulatory approval measures which would substitute suppliers for public utilities where such substitution is without any legal basis under Chapters 14 and 28. Under the current legislative paradigm contained in Chapters 14 and 28 of the Public Utility Code, SCB simply does not conform. The Commission may not use its power to otherwise delegate the responsibilities of EDCs to unregulated suppliers, nor may it in any way authorize the substitution of an unregulated party for a regulated party for purposes of satisfying statutory mandates. As such, the Commission must reject SCB.

B. Supplier Consolidated Billing is not in the public interest.

As argued above, SCB is not permissible under Pennsylvania law. That said, even if it were permissible, SCB is not in the public interest because it would be harmful to low and moderate income families in Pennsylvania who already struggle to keep service connected under the current paradigm of public utility billing, collection, and termination standards, and would further impede efforts to implement effective universal service programming capable of ensuring energy affordability. Moreover, if authorized, SCB would blur the demarcation of responsibility between public utilities and suppliers, leading to significant confusion and potentially wide-spread

abuses. Ultimately, SCB would harm the competitive market and consumers alike – at a great cost to all ratepayers[53] – and should not be authorized in Pennsylvania.

i. Supplier Consolidated Billing harms competition.

As the Commission noted in its End State Final Order, "[i]t is unclear how many suppliers would be willing to forgo the ease and convenience of utility consolidated billing under POR, where they have no bad debt risk, to opt to an SCB model where they assume the full burden of billing, collections and bad debt."[54] Indeed, smaller suppliers likely do not have the internal capacity to offer SCB, and have raised concerns that SCB would harm competition.[55]

Proponents of SCB may seek to fundamentally change how charges to customers are presented in bills and other notices, obscuring important information about the price of service customers are charged. For example, NRG made this concern clear in its 2016 Petition, seeking permission for a number of anti-competitive conventions.[56] In its Petition, NRG requested to consolidate EDC charges in its bill presentment, thereby obscuring the price to compare by charging a single, undesignated cost for distribution and generation costs.[57] This would complicate the ability for a consumer to freely choose a new supplier, and obfuscates the ability of the consumer to compare supplier's terms against the price to compare or other offers in the competitive market. Similarly, in an attempt to ease specific concerns about the continued ability for consumers to access reasonable payment arrangements, as required by Chapter 14, NRG proposed that suppliers offering SCB be allowed to implement a blocking mechanism, which

[53] The many and varied costs associated with SCB is discussed in Section C.
[54] Investigation of Pennsylvania's Retail Electricity Market: End State of Default Service, Final Order, Docket No. I-2011-2237952, at 67-68 (Feb. 14, 2013) (hereinafter End State Final Order).
[55] See Petition of NRG Energy, Inc. for Implementation of Electric Generation Supplier Consolidated Billing, Answer and Comments of Calpine Energy Solutions, LLC, Docket No. P-2016-2579249 (filed Jan. 23, 2017).
[56] See Petition of NRG Energy, Inc. for Implementation of Electric Generation Supplier Consolidated Billing, at paras. 31, 37, 48-50, Docket No. P-2016-2579249 (filed Dec. 8, 2016).
[57] See id. at para. 48

would prevent those with a supplier-provided payment arrangement from switching to a new supplier until the terms of the payment arrangement are fulfilled.[58] Such a move would hold the consumer captive at a potentially unaffordable rate. Calpine Energy Solutions, LLC – a prominent Pennsylvania supplier – noted in response to NRG's proposal to implement a blocking mechanism that "[h]olding a retail customer hostage until the customer has paid his or her past due bill in full circumvents and ignores existing market structures, shifts the risk to Pennsylvania consumers, and is the antithesis of competition."[59]

The Commission is currently engaged in a rulemaking to tighten supplier marketing regulations, and allow consumers to conduct a true rate comparison – including all applicable fees and service costs.[60] These efforts have become increasingly necessary to allow consumers to reasonably assess competitive offers in light of widespread and well-documented pricing abuses, which have led to undeniable confusion and dissatisfaction with the marketplace.[61] Authorizing SCB would enlarge those abusive practices, allowing suppliers to obfuscate their prices, hide the price-to-compare, and otherwise make it difficult for consumers to assess offers.

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[58] See id. at para. 37(e).

[59] Petition of NRG Energy, Inc. for Implementation of Electric Generation Supplier Consolidated Billing, Answer and Comments of Calpine Energy Solutions, LLC, Docket No. P-2016-2579249, at 7 (filed Jan. 23, 2017).

[60] See Rulemaking Regarding Electricity Generation Customer Choice, 52 Pa. Code Chapter 54, Notice of Proposed Rulemaking Order, Docket No. L-2017-2628991 (order entered Dec. 7, 2017).

[61] A recent Public Input Hearing, held as part of the First Energy Companies' current Default Service Proceeding, is instructive of the widespread negative shopping experiences. In that proceeding, about 350 consumers attended the hearing, 66 of whom testified under oath. All of the testifiers expressed outrage at a proposal to add a fee to default service to coerce customers to shop, and most shared personal stories about their negative experiences in the market. See Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company for Approval of their Default Service Programs, Docket Nos. P-2017-2637855 et al, Public Input Hearing Tr. pp. 63-306. Of course, several recent lawsuits against a number of competitive suppliers over marketing abuses are also instructive. See Alex Wolf, Law 360, Respond Power Pays $5.2M to Settle Pa. Price Spike Suits (Aug. 11, 2016), https://www.law360.com/articles/827574/respond-power-pays-5-2m-to-settle-pa-price-spike-suits; Emily Field, Law 360, HIKO Energy Paying $1.6M to End Pa. Price Spike Suit (May 4, 2015), https://www.law360.com/articles/651172/hiko-energy-paying-1-6m-to-end-pa-price-spike-suit; Emily Field, Law 360, Pa. Utility to Pay $2.3M to End Price Spike Suit (March 25, 2015), https://www.law360.com/articles/635486/pa-utility-to-pay-2-3m-to-end-price-spike-suit.

In the past, suppliers have argued that they would like SCB in order to bill and market so called "value added" services to the bills of utility customers. While there may be a segment of the population who wish to be billed for unrelated products on their utility bill,[62] this in and of itself is **not** a reason for the Commission to authorize SCB.

The stated purpose of the Choice Act is "to create direct access by retail customers to the competitive market for the *generation of electricity.*"[63] Indeed, the primary legislative purpose was to permit competitive forces to effectively control "*the 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.[64] On the other hand, there is no mention of "value added" services anywhere in the Choice Act.

The non-commodity products and services often referenced by those who support SCB are not related to the generation of electricity, and are therefore not a part of the competitive market for retail electric supply authorized by the Choice Act. These charges drive up the cost of utility service, and – as discussed in section B.ii – work to diminish the effectiveness of critical universal service programming. Any concern about the ability to bill for these services on a consumer's consolidated bill is without legislative foundation in the Choice Act and has no bearing on electric generation choice and competition. The goal of the Choice Act is to drive financial savings for electric service – not to facilitate the sale of unrelated products and services, such as thermostats, security systems, and HVAC systems.

[62] It should be noted that, prior to proceeding with consideration of SCB, the Commission should determine whether there is sufficient interest from consumers to justify the substantial costs. See below, section C, regarding the costs associated with SCB, and section D, which discusses the need to fully investigate and assess those costs.
[63] 66 Pa. C.S. § 2802(12).
[64] 66 Pa. C.S. § 2802(5), (9), (10), (12).

ii. Supplier Consolidated Billing is incompatible with critical utility assistance programming for low income households.

The structure of SCB is incompatible with critical universal service programming, and directly contradicts the obligations of public utilities and the Commission to ensure that such programming is cost-effective, available, and adequately funded to ensure that all Pennsylvanians can afford basic utility services. Adding yet another intermediary between the needy household and available assistance programs would delay or otherwise deter enrollment, leading to deeper affordability issues across the state. Importantly, it would be insufficient to merely carve out low income populations, using proxies such as confirmed low income status or existing enrollment in a utility assistance program. Indeed, SCB must be rejected to avoid significant and compounded harm to low income populations.

1) The Low Income Home Energy Assistance Program

SCB is incompatible with the federal Low Income Home Energy Assistance Program (LIHEAP), which provides millions of dollars each year in emergency grant assistance to help vulnerable low income households to afford heat in the winter. The Pennsylvania Department of Human Services (DHS), which administers LIHEAP, explicitly prohibits suppliers from receiving LIHEAP grants.[65] The decision of DHS to exclude suppliers from receiving a grant is not merely

[65] LIHEAP is a federally funded block grant program administered on the Federal level by the United States Department of Health and Human Services Administration for Children and Families. In Pennsylvania, the block grant allocation is administered by the Pennsylvania Department of Human Services (DHS) pursuant to a State Plan that is submitted each year to HHS. The 2017-2018 LIHEAP State Plan submitted by DHS provides that LIHEAP grants will be paid directly to either the LIHEAP recipient's primary or secondary heating provider, so long as the provider is a licensed LIHEAP vendor. See Commonwealth of Pennsylvania, Low-Income Home Energy Assistance Program, Fiscal Year 2018 Final State Plan, (hereinafter 2018 LIHEAP State Plan), *available at* http://www.dhs.pa.gov/cs/groups/webcontent/documents/document/c_266106.pdf.

The 2018 LIHEAP State Plan defines "vendor" as:

> An agent or company that directly distributes home-heating energy or service in exchange for payment. **The term does not include landlords, housing authorities, hotel mangers or proprietors, rental agents, energy suppliers or generators,** or other parties who are not direct distributors of home-heating energy or service.

an oversight – it is an explicit expression of policy, which recognizes that *in light of restructuring*, and because EDCs "remain regulated" and subject to the winter moratorium, "[t]he interests of the Commonwealth's low-income customers are best served and protected by sending the LIHEAP payment to the distribution companies."[66] Given that suppliers are not regulated, and are not subject to the requirements of Chapter 14, it is not in the interest of the Commonwealth's low income consumers to change these LIHEAP rules. As such, the implementation of SCB would complicate the ability of vulnerable low income households to receive assistance from LIHEAP to help afford essential utility service.

2) Customer Assistance Programs

SCB would diminish the cost-effectiveness, accessibility, and affordability of Customer Assistance Programs (CAPs). CAPs provide vulnerable low income consumers with a bill discount or credit and arrearage forgiveness, are paid for by residential consumers through a non-bypassable rate, and are structured and administered by EDCs subject to Commission oversight.[67] Each CAP is unique, with different calculations of benefits and different terms and conditions for enrollment. However, the same general statutory and regulatory mandates apply across the board. In short, Chapter 28 requires the Commission to ensure that universal services are accessible, cost-effective, and adequately funded to deliver affordable utility services to all

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> Under the restructuring statutes (66 Pa. C.S. § 2807, 66 Pa. C.S. § 2207), the distribution companies are the suppliers of last resort; they remain regulated, and must comply with the state's winter termination rules in accordance with 66 Pa. C.S. § 1406(e). **The interests of the Commonwealth's low-income customers are best served and protected by sending the LIHEAP payment to the distribution companies**.

Id. at Attachment B-3, § 601.3 (Definitions).

[66] Id.

[67] 66 Pa. C.S. §§ 2802(17), 2804(9); see also Retail Energy Supply Ass'n v. Pa. PUC, No. 230 C.D. 2017, at 24-25 (Pa. Commw. Ct. May 2, 2018).

those in need of assistance.[68] The Commission has an affirmative, statutory obligation to ensure that the level of assistance available to those in need is not diminished from levels available at the time of restructuring.[69]

SCB would undermine the level of affordability produced by CAP because CAP calculations tend to use the Price to Compare to calculate CAP discounts or credits in an attempt to achieve an appropriate energy burden for the program participant, consistent with the Commission's CAP Policy Statement. This is logical as, unlike unregulated EGS-supply, default service is statutorily mandated to be provided at the least cost over time.[70] Substantial, long-term data in recent proceedings,[71] as well recent research by the University of Pennsylvania,[72] has shown that charges for competitive residential electric service most often exceed the Price to Compare – especially for low income consumers.[73] Those most in need of CAP to receive affordable bills are the same customers most likely to be harmed by higher prices for electricity in the competitive market. As the data bears out over a 52-month period, confirmed low income Pennsylvanians in the First Energy service territory alone were charged tens of millions of

[68] See id.
[69] 66 Pa. C.S. § 2802(10).
[70] 66 Pa. C.S. § 2807(e).
[71] Retail Energy Supply Ass'n v. Pa. PUC, No. 230 C.D. 2017, at 36 (Pa. Commw. Ct. May 2, 2018) ("On the issue of harm, the evidence presented showed that between January 2012 and October 31, 2015, on average, nearly 10,000 CAP customers each month were paying above the PTC. These customers, together, were paying each month, on average, $298,406 more than had they simply paid the PTC. Even when these overpaying CAP customers were considered together with those CAP customers who were paying below the PTC, the CAP was still more costly than the PUT, in an amount of $228,656 each month, or more than $2.7 million a year. This evidence was 'unrefuted'. This data did not focus 'on a simple point in time'[;] rather this data spanned 46 months. There is substantial evidence to support PUC's finding this data demonstrated a pattern of a significant number of CAP customers overpaying for electricity." (internal citations omitted)).
[72] Christine Simeone & John Hanger, Kleinman Ctr. for Energy Policy, U. Penn, A Case Study of Electricity Competition Results in Pennsylvania (Oct. 28, 2016) ("During full implementation of restructuring (from 2011 to 2014), statewide average annual retail electricity rates to residential shopping customers were higher than utility default service rates.").
[73] In the four First Energy service territories, over the course of 58 months, the net cost of CAP shopping was $18,336,440 – paid by PCAP customers and other residential ratepayers who pay for the program. See Joint Petition of Metropolitan Edison Co., Pennsylvania Electric Co., Pennsylvania Power Co., and West Penn Power Co. for Approval of their Default Service Programs, Main Brief of CAUSE-PA, Docket Nos. P-2017-2637855, P-201702637857, P-2017-2637858, P-2017-2637866, at 29 (filed May 1, 2018).

dollars more than the price to compare.[74] SCB creates a pathway to enlarge this problem, not rectify it. As discussed above, SCB proponents may seek to mask the higher charges from EGSs by failing to provide contemporaneous and clear disclosure of the price-to-compare, and may attempt to re-bundle charges – making it difficult for consumers to compare. This essentially undermines the core universal service requirements of Chapter 28: That universal service programs, including CAP, be appropriately funded, cost-effective, and available in each electric distribution service territory.[75]

Moreover, SCB would frustrate access to CAP because it would add yet another intermediary who is: unfamiliar with CAP; not required to be make referrals to CAP; and not knowledgeable about the nuances of CAP programs. Adding an intermediary would also interfere with the core universal service requirements of Chapter 28, which demand that universal service programming not be diminished. As noted above, in section A.i, Chapter 14 contains explicit obligations on public utilities to refer payment troubled consumers to available universal service programs. Even if suppliers were to voluntarily agree to provide appropriate referrals, the Commission lacks the enforcement/oversight authority to ensure that supplier

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[74] In First Energy's service territory, shopping data showed that over a 52-month period, confirmed low income customers paid $35.8 million more than they would have paid if they remained on default service. See Joint Petition of Metropolitan Edison Co., Pennsylvania Electric Co., Pennsylvania Power Co., and West Penn Power Co. for Approval of their Default Service Programs, CAUSE-PA St. 1, Docket Nos. P-2017-2637855, P-201702637857, P-2017-2637858, P-2017-2637866, at 26 n.41 (filed Feb. 22, 2018).

> It bears noting that these confirmed low income customers are, themselves, not making out much better in the competitive market than the Companies' PCAP customers. In response to discovery requests, the Companies provided a chart showing the net impact of shopping for all confirmed low income customers for the same period … . In sum, the information shows that over a substantially similar period of time (52 months from August 2013 through December 2017 as compared to the 55 months from June 2013 through December 2014 information for PCAP customers), **the Companies' confirmed low income customers who shopped – on net – paid $35,824,007 more than they would have paid had they remained on default service.** This amounts to $8.2 million annually. While this also accounts for PCAP shopping over this period, it nonetheless shows the stark reality that the Companies' low income customers are not making out very well in the competitive electric market.

Id. (emphasis in original).

[75] 66 Pa. C.S. § 2804(9) (Standards for restructuring of electric industry).

screening and referrals meet the needs of this vulnerable population. There are ten separate CAP structures run by the EDCs and NGDCs in Pennsylvania, each with vastly different rules for eligibility, enrollment, and benefit structures. An untold number of suppliers would have to learn the nuances of each program, and make appropriate referrals. Indeed, SCB would undoubtedly erode the effectiveness of the referral requirements in Chapter 14 that connect eligible consumers with available assistance. Such a result is contrary to the requirements in Chapter 28, which mandates that universal service programs remain accessible, cost-effective, and adequately funded to serve all those in need.

Proponents of SCB often argue that SCB is necessary to allow suppliers to offer non-energy products and services. As discussed above in section B.i, the ability to bill for non-energy products is not a goal or requirement of the Choice Act, and is in fact contrary to the purpose of the Choice Act to reduce the cost of electric generation services in Pennsylvania. But in addition to this concern, the costs associated with non-energy services are particularly harmful to low income households, and should not be allowed to appear on a consolidated bill from either a supplier or the utility. Indeed, this "value added" argument is inconsistent with the Commission's universal service requirements, particularly the Commission's stated policy regarding Customer Assistance Programs. Allowing suppliers to offer other products and services, for which they directly bill customers through SCB, would harm vulnerable low income consumers, and may disrupt their eligibility for CAP. CAP bills are paid, in part, by other ratepayers and Commission policy prohibits those ratepayers who pay for CAP to subsidize nonessential products and services which have been shown to increase the commodity price for basic service. The Commission's CAP Policy Statement explicitly prohibits CAP participants from subscribing to "nonbasic services that would cause an increase in monthly billing and

would not contribute to bill reduction."[76] While the policy statement provides that nonbasic services may be allowed if the service *reduces* the customer's bills, the statement unequivocally concludes by explaining that, even still, "CAP credits should not be used to pay for nonbasic services."[77]

In addition to contradicting codified Commission policy, the "value added" argument also runs afoul of the universal service provisions of the Choice Act, which require the Commission to administer universal service programs like CAP in a manner that is "cost-effective for CAP participants and non-CAP participants who share the financial consequences of the CAP participants' EGS choice."[78] In fact, in a decision issued just this week, on May 2, 2018, the Commonwealth Court explained that charging CAP customers for value added services "appear[s] to be inconsistent with the Choice Act."[79]

In short, the structure and implications of SCB are wholly incompatible with the statutory and regulatory requirements of CAP, and – thus – SCB should be rejected.

3) Hardship Fund Programs

In addition to undermining the effectiveness and availability of LIHEAP and CAP, SCB would also erode the Hardship Fund program, which provides emergency grant assistance to those

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[76] 52 Pa. Code § 69.265(3)(ii).
[77] Id.
[78] Coalition for Affordable Util. Servs. & Energy Efficiency in Pa, et al. v. Pa. Pub. Util. Comm'n, 120 A.3d 1087, 1103 (Pa. Commw. Ct. 2015), appeal denied, 2016 WL 1383864 (Pa. Apr. 5, 2016) (hereinafter CAUSE-PA et al.).
[79] Retail Energy Supply Ass'n v. Pa. PUC, No. 230 C.D. 2017, at 26 fn. 29 (Pa. Commw. Ct. May 2, 2018).

> RESA's advocacy in favor of unregulated competition so that CAP customers can choose an EGS for reasons "[b]eyond lower pricing" arguably undercuts the Choice Act's concern for accessible, affordable, and cost-effective electrical service for all Pennsylvanians. RESA would have CAP customers "leverage the power of the competitive market" so that they might obtain "loyalty discounts, reward points and gift cards offered through some EGS programs." However, that leverage of power comes at a cost to non-CAP customers who would be paying even more in subsidies, were there no shopping restrictions, so that CAP customers might earn more reward points to use at a retailer or restaurant. The use of the CAP in this manner would appear to be inconsistent with the Choice Act.

Id.

facing financial hardships, such as job loss, domestic violence, divorce, death or serious illness, and other acute personal hardships. Hardship Fund grants are generally available to households with income up to 200% of the Federal Poverty Level, which helps to fill the gaps for families who are just over the line for eligibility in LIHEAP and CAP. Hardship Fund programs are financed through voluntary donations on customer bills, which are generally matched by the public utility's shareholder dollars.[80] In the 2015-2016 program year, EDCs collected over $1.1 million in voluntary contributions, which was matched by $1.6 million in shareholder contributions. These donations are then administered and distributed to those in need. Under SCB, donations to the Hardship Fund programs would necessarily diminish because it would remove SCB customers from the pool of voluntary contributors and eliminate the possibility of public utility shareholder matching contributions with respect to such customers.

4) The Low Income Usage Reduction Program

Enrollment in the Low Income Usage Reduction Program (LIURP) is also likely to be constrained. The EDC's ability to track and determine high users across its service territory would be difficult under an SCB paradigm, thereby impeding the ability for utilities to target appropriate households for usage remediation. Moreover, participation in LIURP is frequently linked to CAP participation, which - as discussed above - is impeded by SCB. Additionally, low income consumers are often hesitant to participate in LIURP because they do not fully understand the programming. The EDCs serve a vital role in educating customers about the benefits of LIURP, which is essential to the ability to deliver the necessary service provided by these EDC-administered programs. If there is a disconnect between the billing entity and the administrator of

[80] See Pa. PUC, BCS, 2016 Customer Service Performance Report, at 63 (Aug. 2017), http://www.puc.state.pa.us/General/publications_reports/pdf/Customer_Service_Perform_Rpt2016.pdf.

LIURP, this information gap is likely to grow, deterring vulnerable, high-use and low income consumers from receiving the critical benefits provided through the program.

5) The Customer Assistance Referral and Evaluation Program (CARES)

The primary purpose of the Customer Assistance Referral and Evaluation Program (CARES) "is to provide a cost-effective service that helps payment troubled customers maximize their ability to pay utility bills and maintain safe and adequate utility service."[81] CARES is administered by staff within the public utility to connect consumers with resources within their community that can help address financial instability:

A utility CARES representative performs the task of strengthening and maintaining a network of community organizations and government agencies that can provide services to the program clients. CARES staff conduct outreach and make referrals to programs that provide energy assistance grants, such as LIHEAP, hardship finds, and to other agencies that provide cash assistance. LIHEAP outreach and networking are vital pieces of CARES, especially when addressing important health and safety concerns relating to utility service.[82]

Unlike public utilities, which have longstanding relationships with the community built over decades of service, suppliers often operate from out of state, and do not have the knowledge or relationships with the community to perform this critical function, which matches vulnerable consumers with available assistance in their community. If SCB were allowed to be implemented in Pennsylvania, it would further impede the ability of consumers facing unique and difficult hardships to address financial instability.

[81] Id. at 61.
[82] Id.

6) An exemption for universal service participants would be insufficient to ameliorate the potential harm to low income households which will likely be caused by Supplier Consolidated Billing.

It would be insufficient to merely exempt universal service participants from participating in SCB. Households often move in and out of eligibility for universal service programming, based on any number of personal circumstances. Consumers may experience periods of unemployment, unexpected medical expenses, death or illness of a wage earner, domestic violence, and other hardships which can disrupt the household's financial stability. If a consumer faces such a hardship, it is critically important that they be promptly referred to available assistance programs to stabilize the household's finances and avoid further accrual of uncollectible expenses. But as discussed above, SCB would diminish the effectiveness of low-income assistance programs, jeopardize affordability, and undermine referral obligations. Under the current paradigm, subject to rigorous oversight, CAP and LIHEAP reach only a fraction of the eligible population.[83] SCB would further obscure access to these programs, further diminishing universal service program enrollment. Such a result is contrary to the explicit requirements of the Chapter 28 and the goals of universal service programming to provide affordable utility service to all Pennsylvanians.

iii. Supplier Consolidated Billing would harm vulnerable residential ratepayers.

In addition to lacking necessary legal authorization for implementation pursuant to Public Utility Code Chapters 14 and 28, discussed in Section A above, SCB is also incompatible with the intent and purpose of the consumer protection provisions contained therein. SCB would not only cause customer confusion, particularly for low income households who more likely to experience payment trouble and threatened loss of service, it would also create an enforcement nightmare.

[83] Id. at 50. In 2016, CAP participation rate for electric customers as a percentage of confirmed low income customers, was approximately 47%. That number is much lower when looking at the estimated eligible population, which is based on census data – rather than on whether a customer recently verified their income with the utility by submitting income information. See id. at 7.

Expansion of Commission oversight to include oversight of supplier billing functions would either significantly increase rates[84] or vastly undermine enforcement of consumer protections. These results are unacceptable, and contrary to the public interest.

In a recent review of SCB, the Connecticut Public Utilities Regulatory Authority (PURA) concluded that shifting the billing responsibilities from EDCs to suppliers would "very likely increase customer confusion and decrease customer satisfaction."[85] That same concern applies here, and is an especially salient concern for low income consumers. As explained above, low income consumers are more likely to experience payment troubles, and are thus more likely to contact their utility for assistance. This is the same population that is less able to contact their utility during business hours to address issues as they arise, either because they lack flexibility to make personal calls during work or they lack access to stable telecommunications service.

As it stands, the Commission expends a significant amount of resources (financed by the Commonwealth's ratepayers) to ensure that the regulated public utilities in Pennsylvania are fully compliant with the standards in Chapters 14 and 56.[86] But there are hundreds of suppliers operating in Pennsylvania. The resources necessary to effectively oversee each supplier's separate billing operations would require significantly more resources with no material benefit. This means means that enforcement would either be inadequate or significant increased costs would be generated, which would inevitably increase customer rates. Neither result would be just or reasonable.

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[84] The costs associated with SCB are discussed in further detail in Section C. A significant factor in assessing the total costs of SCB is the cost of expanded oversight of suppliers, including assessments for both the Commission and the statutory advocates.

[85] Decision in the Matter of PURA Review of Billing of All Components of Electric Service by Electric Suppliers, PURA Docket No. 13-08-15, at 6 (Aug. 6, 2014).

[86] In 2017, the Bureau of Consumer Services fielded 12,509 complaints, received 46,124 requests for payment arrangements, and 25,095 inquiries from residential consumers. Pa. PUC, BCS, Quarterly Update to UCARE Report, January – December 2017, at 4 (2018), http://www.puc.state.pa.us/General/publications_reports/pdf/UCARE_2017-4Q.pdf.

Full and proper implementation and enforcement of the consumer protections contained in Chapters 14 and 56 is an ongoing and labor-intensive process, which requires training and retraining of utility staff, and constant course correction through the investigation of complaints fielded by the Commission's Bureau of Consumer Services and adjudication before the Commission's Administrative Law Judges.

In the Commission's End State of Default Service Investigation in 2012, and again in response to the NRG's Petition for Implementation of Electric Generation Supplier Consolidated Billing, the Pennsylvania Coalition Against Domestic Violence highlighted the severity of significant additional oversight obligations, and the likely impact on vulnerable populations and the service providers who assist those most in need:

> As a practical matter, as noted in our prior comments, full implementation of the domestic violence protections in Chapter 14 and 56 has been difficult across the seven regulated electric utilities in Pennsylvania.
>
> > PCADV and its member programs have had difficulty in getting the incumbent EDCs to become familiar with the fact that Chapter 56 has a different set of rules for victims of domestic victims of domestic violence with a protection order. This educational gap has caused for many local domestic violence programs to expend a tremendous amount of staff time and resources to advocate on behalf of victims of domestic violence to obtain the protections to which they are statutorily entitled.
>
> As we explained before: 'If it is hard to get seven EDCs who are closely regulated by the Commission to recognize these realities, getting the hundred plus licensed suppliers to comply with the provisions in Chapter 56, including those provisions that are applicable to survivors of domestic violence, will be nearly impossible.'[87]

Impediments to enforcement of the critical consumer protections against the loss of utility services is not only harmful to the individuals, it is also harmful to the community as a whole. Households that cannot easily access assistance to pay their bill often suffer health consequences,

[87] Petition of NRG Energy, Inc. for Implementation of Electric Generation Supplier Consolidated Billing, Comments of the Pennsylvania Coalition Against Domestic Violence, Docket No. P-2016-2579249 (Jan. 23, 2017).

forgoing food, medicine, and other basic necessities to come up with the money to pay full tariff rates for service. This comes at great cost to the individual and their household, and can reverberate through the entire community – raising the cost of healthcare, draining scarce resources, and undermining the vibrancy and health of the local community.[88] Without utility services, households often turn to unsafe and/or costly alternatives for basic life essentials, including heating, cooking, refrigeration, and bathing. Extension cords are run from sympathetic neighbors, ovens or kerosene heaters are used to provide warmth, candles burn into the night, and gas-powered generators are fired up dangerously close to the home. Child development is often impacted, affecting a child's performance in school. Of course, evictions and eventual homelessness are also a direct result from the loss of service, which in turn creates strain on community safety net programs and emergency shelters. Indeed, eroding consumer service by involving suppliers in the core billing, dispute, and assistance functions performed by EDCs would exacerbate these social ills, impacting the community at large.

SCB is not in the public interest, as it would cause significant confusion for consumers, particularly those who are payment troubled or are facing the loss of critical utility services. At the same time, SCB undermines enforcement efforts to ensure that critical consumer protections are upheld. This is not only detrimental to individual households, but has a ripple effect through our surrounding communities. The Low Income Advocates submit that there is no policy justification for SCB, and urge the Commission to reject SCB.

[88] For a deeper look at the impact of the loss of utility services on low income Pennsylvanians, and the communities in which they live and work, see Review of Universal Service and Energy Conservation Programs, Joint Comments of CAUSE-PA and TURN et al., Docket No. M-2017-2596907, at 9-19 (filed Aug. 8, 2017).

C. Supplier Consolidated Billing is cost prohibitive.

As the Commission concluded just five years ago, "the extensive work and expense [to implement SCB] could result in a feature that will not be utilized sufficiently to justify the costs at this time."[89] The Low Income Advocates agree: The costs associated with SCB are prohibitive, and substantially outweigh any potential benefit.

The likely costs associated with SCB 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 costs which will still be recovered regardless of whether some consumers choose to be billed through their supplier;
- The cost to the EGS to develop a fully compliant billing system, including a full assessment of the likely impact to the cost for competitive service;
- The cost of Commission oversight, including increased work flow for the Bureau of Consumer Services, the Office of Administrative Law Judge, the Office of Special Assistants, the Law Bureau, the Bureau of Investigation and Enforcement, and the Bureau of Technical Utility Services;
- The increased cost for the statutory advocates, including the Office of Consumer Advocate and the Office of Small Business Advocate;
- The increased cost of staff training and systems development for EDCs to enable a transition of billing services for a segment of its customers;
- The increased cost of consumer education and outreach for the Commission, EDCs, EGSs, statutory advocates, and other consumer advocates;
- The cost to families who experience the loss or are threatened with the loss of critical electric service without access to critical consumer protections;
- The cost to social service providers that assist consumers facing the loss of electric service or who cannot afford to pay for service.

Unfortunately, any way you slice it, consumers are the ones who will pay for all of these costs – even if, on paper, the costs are allocated to the utility or the EGS. If passed on to an EGS, consumers pay through increased supplier pricing, which can be passed on to the consumer through fees or complicated pricing models designed to mask the higher costs. If passed on to the EDC, consumers will pay through increased base rates. But ratepayers have already paid and continue

[89] Investigation of Pennsylvania's Retail Electricity Market: End State of Default Service, Final Order, Docket No. I-2011-2237952, at 67-68 (Feb. 14, 2013) (hereinafter End State Final Order).

to pay hundreds of millions of dollars through the base rate to develop sophisticated information technology infrastructure capable of producing bills which are fully compliant with the laws of the Commonwealth. Indeed, if the Commission allows SCB, consumers will pay a second time, with the inevitable result that customers will assume new risks associated with a billing structure that provides no discernible benefit in price or quality of service.

The claimed benefits of SCB do not outweigh these significant and substantial costs. Suppliers often argue that SCB is necessary to forge relationships with consumers, and reject alternatives as incomparable to the bond created through a direct and consolidated billing relationship. There are a plethora of other ways – apart from SCB – that companies can forge and nurture direct relationships with their customers: community events, giveaways, direct mailing, social media campaigns, team sponsorship, charitable donations, and most importantly by providing a reasonable rate for electric service. None of these common business strategies to forge long-term customer relationships would negatively impact the consumer rights and protections.

Connecticut's Public Utilities Regulatory Authority (PURA) recently reached the same conclusion. PURA explained:

> The Authority disagrees with SCB supporters who imply that the only way to address Supplier concerns with UCB is by offering SCB for the following reasons…. Suppliers always have the opportunity to interface with their customers and market their products and services through numerous means. Suppliers could improve customer education and communication from the time the customer begins purchasing Service.[90]

[90] Decision in the Matter of PURA of the Billing of All Components of Electric Service by Electric Suppliers, CT PURA Docket No. 13-08-15 (Aug. 6, 2014).

Arguments that SCB would allow suppliers to offer products and services not available in the market today fail to justify the risks of SCB. If suppliers wish to offer additional products and services, they may do so under the currently approved dual billing option. As PURA explained:

> If the products, pricing and services are limited by the current UCB, the Supplier has the option to bill its customers directly under a dual billing option. This dual billing option is a tool for Suppliers to perform customized billing and rate structures. Potential customers could weigh the service under a single UCB bill versus those billed under the dual billing option.[91]

For those pricing structures which are not as conducive to dual billing, such time varying rates, additional changes to UCB are likely far less costly than a radical disruption of the current billing paradigm.

It is manifestly unjust and unreasonable to charge consumers duplicative costs for basic, necessary services, such as billing – especially where viable and less costly alternatives exist. Just five years ago, in February 2013, the Commission rejected SCB, and instead approved a number of changes to UCB.[92] Those changes were enacted pursuant to the Commission's May 23, 2015 Final Order (Joint Bill Order), and have not been afforded an opportunity to take shape or evolve, much less an opportunity to be evaluated for success.[93] However, the strength of the market today is a good indication that these changes were successful in driving market adoption rates. The shopping rates across the state continue to steadily grow, in spite of the fact that supplier rates are proving to impose significantly higher net costs than default service.[94]

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[91] Id. at 6.
[92] Investigation of Pennsylvania's Retail Electricity Market: End State of Default Service, Final Order, Docket No. I-2011-2237952, at 67-68 (Feb. 14, 2013).
[93] Investigation of Pennsylvania's Retail Electricity Market: Joint Electric Distribution Company – Electric Generation Supplier Bill, Final Order, Docket No. M-2014-2401345 (May 23, 2014) (Joint Bill Order).
[94] See Retail Energy Supply Ass'n v. Pa. PUC, No. 230 C.D. 2017, at 36 (Pa. Commw. Ct. May 2, 2018); See Joint Petition of Metropolitan Edison Co., Pennsylvania Electric Co., Pennsylvania Power Co., and West Penn Power Co. for Approval of their Default Service Programs, CAUSE-PA St. 1, Docket Nos. P-2017-2637855, P-201702637857, P-2017-2637858, P-2017-2637866, at 26 n.41 (filed Feb. 22, 2018).

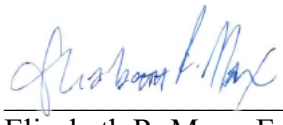
Rather than expend significant amounts of ratepayer dollars to implement SCB, the Commission should instead investigate the cost and effectiveness of the recent billing changes, and identify whether there are additional bill presentment changes to the UCB which could be reasonably made. Upending the current billing model to make sweeping and radical changes to implement SCB is not necessary, cost effective, or beneficial to consumers. Thus, SCB must fail.

IV. CONCLUSION

For all of the reasons stated above, the Low Income Advocates respectfully request that the Commission reject calls to implement SCB in Pennsylvania. We further request that the Commission grant our request to testify at the *En Banc* hearing on June 14, 2018, so that we may fully share with the Commission our substantial concerns about implementation of the billing convention in Pennsylvania, and answer any questions the Commission may have.

Respectfully Submitted,

Pennsylvania Utility Law Project
On Behalf of CAUSE-PA



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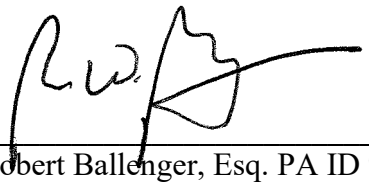

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CAUSE-PA Statement 1-R
APPENDIX B

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

[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.

[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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