

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

Testimony of Terrance J. Fitzpatrick, President & CEO
Energy Association of Pennsylvania
July 12, 2018

1. **SCB is inconsistent with Chapters 28 and 14 of the Public Utility Code**

- The Competition Act contains separate sections setting out the obligations and requirements for EDCs and EGSs. 66 Pa.C.S. §§ 2807, 2809. Section 2807 is entitled “Duties of electric distribution companies,” and subsection (c) of that section is entitled “Customer billing.” This subsection provides that, subject to the right of a customer to choose to receive a separate bill from its EGS, the EDC may be responsible for billing for all electric services regardless of who provides them. There is no similar language in section 2809 authorizing EGSs to provide consolidated bills.
- The general language in the Competition Act providing that the Commission “may require the unbundling of other services” (66 Pa.C.S. § 2804 (3)) cannot reasonably be construed to empower the Commission to undo specific directives in the very same Act establishing that “customer billing” is a “duty” of EDCs. See, the Statutory Construction Act, 1 Pa.C.S. § 1933 (“Particular controls general”). Furthermore, Commonwealth Court has held that EDC obligations under the Competition Act may not be delegated to EGSs. *Dauphin County Industrial Development Authority v. Pa. PUC*, 123 A.3d 1124 (Pa. Cmwlth. 2015), *appeal denied*, 140 A.3d 14 (Pa. 2016).
- The above conclusion is reinforced by other provisions in Chapters 28 and 14 making EDCs responsible for customer service functions that accompany billing. For example, section 2807 (d) provides that “[t]he electric distribution company shall continue to provide customer service functions consistent with the regulations of the commission, including meter reading, complaint resolution, and collections.” Chapter 14 contains a myriad of provisions imposing duties regarding customer service on “public utilities,” a term that includes EDCs but not EGSs. 66 Pa.C.S. § 1403.

2. **As a matter of policy, SCB should not be required because the costs of implementing it— for EDCs and for the Commission—are not justified by speculative benefits to consumers.**

- Implementing SCB would entail significant costs for EDCs and for the Commission. Two EDCs have estimated costs of \$4.6 million and \$4 million, respectively, to change their systems to provide SCB. See, PECO comments at p. 11, PPL comments at p. 10. SCB would also result in a wasteful duplication of costs as EDCs would have to maintain their customer service systems and processes for customers on default service and for customers purchasing supplies from EGSs since these customers may choose to return to default service and EDCs have a duty to serve them.
- The Commission would also incur significant costs in time and resources to implement and oversee SCB. The EGS Coalition for SCB itself proposes a fourteen step process even before issuance of an implementation order and review of EDC compliance plans. Comments at pp. 32-33. And after implementation, the Commission would be required to

oversee an uncertain, but potentially large, number of EGSs providing important customer service functions, as opposed to regulating a handful of EDCs today.

- The benefits of SCB to customers are speculative. As with previous market enhancements, some EGSs cite the potential that innovative new products will now be offered by EGSs, but there is no certainty of that and it is unclear whether, on balance, customers would be better off considering the costs.
- In light of the history of market enhancements, the Commission should not require SCB or any new enhancements without evaluating “lessons learned” from previous enhancements. The costs of these enhancements to customers and EDC shareholders (but not to EGSs) have run at least in the tens, if not hundreds, of millions of dollars¹ and the benefits to the market are unclear. This evaluation is particularly appropriate in light of a growing body of information from other states—most recently Illinois²—indicating that customers served by competitive suppliers pay much more on average than customers on default service.

3. Proposals to require SCB, and any other major modifications to the retail electricity market, should be addressed to the General Assembly.

- In light of 1) the likelihood that a Commission decision to require SCB would be reversed in court for reasons explained above, and 2) the substantial costs in time and resources that would be required to implement SCB, EGSs should pursue authorization to provide SCB from the Pennsylvania General Assembly rather than the Commission.

¹ As EAP reported in its May 4, 2018 comments at this docket (pp. 7-8), PECO and Duquesne provided information in response to NRG’s SCB petition that they spent, respectively, \$31.5 million and \$24 million to implement previous market enhancements.

² See, Annual Report of the Office of Retail Market Development, Illinois Commerce Commission, June 2018, available at www.icc.illinois.gov/reports. According to the Report (p. 7), customers in two utility service territories paid over \$190 million more per year by purchasing from competitive suppliers instead of purchasing default service from their utility. See *also*, EAP’s Comments at p. 8 referencing evaluations by other states.