IN THE COMMONWEALTH COURT OF PENNSYLVANIA

INTERSTATE GAS SUPPLY, INC. ET AL.	:	
Petitioner	:	
v.	:	Case No. 472 CD 2022
	:	
PENNSYLVANIA PUBLIC UTILITY COMMISSION,	:	
Respondent	:	

BRIEF FOR INTERVENOR RETAIL ENERGY SUPPLY ASSOCIATION

Appeal from the Opinion and Orders of the Pennsylvania Public Utility Commission entered August 26, 2021 and April 14, 2022, at Docket Nos. C-2019-3013805, C-2019-3013806, C-2019-3013807, C-2019-3013808

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I. INTRODUCTION

The Retail Energy Supply Association ("RESA")[1] submits this Brief as an Intervenor in support of the Petition for Review filed by Interstate Gas Supply, Inc. d/b/a IGS Energy, NRG Energy, Inc., and Shipley Choice, LLC d/b/a Shipley Energy ("Petitioners").[2] Along with the Petitioners, RESA respectfully requests reversal of the Orders entered by the Pennsylvania Public Utility Commission ("Commission" or "PUC") on August 26, 2021 and August 14, 2022.

Section 2804(6) of the Electricity Generation Customer Choice and Competition Act ("Electric Competition Act") contains an explicit legislative mandate for electric distribution companies ("EDCs") to provide services to electric generation suppliers ("EGSs") that are comparable, as to access and conditions, to the EDC's own use of its system. 66 Pa. C.S. § 2804(6). This means that in providing public utility service, EDCs may not engage in practices

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[1] The comments expressed in this filing represent the position of the Retail Energy Supply Association (RESA) as an organization but may not represent the views of any particular member of the Association. Founded in 1990, RESA is a broad and diverse group of twenty retail energy suppliers dedicated to promoting efficient, sustainable and customer-oriented competitive retail energy markets. RESA members operate throughout the United States delivering value-added electricity and natural gas service at retail to residential, commercial and industrial energy customers. More information on RESA can be found at www.resausa.org.

[2] Pursuant to Pa. Rule of Appellate Procedure No. 2102, RESA adopts by reference the following parts of the Petitioners' Main Brief: Statement of Jurisdiction; Orders on Appeal; Statement of Scope of Review and Standard of Review; Statement of the Questions Involved; and Statement of the Case.

that favor their own businesses without affording comparable services to EGSs. Further, Section 1502 of the Public Utility Code prohibits public utilities from granting any unreasonable preference or advantage to any person or subjecting any person to unreasonable prejudice or disadvantage. 66 Pa. C.S. § 1502.

Based upon these unequivocal directives of the General Assembly, the Petitioners filed Complaints with the Commission against the FirstEnergy ("FE") operating companies of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company (collectively, "the FE EDCs" or "Companies"). The gist of the Petitioners' Complaints is that the FE EDCs are providing on-bill billing services to themselves while refusing to do the same for EGSs. The specific charges the FE EDCs are placing on their electric bills are for non-commodity goods and services, which are goods and services other than electricity, such as home warranty, surge protection and line repair programs. Besides citing the applicable statutory provisions, the Complaints referred to a recent Commission decision which found that a natural gas distribution company ("NGDC") was in violation of statutory mandates when it offered on-bill billing service to former affiliates but refused to offer the same service to competitive natural gas suppliers ("NGSs").

The Administrative Law Judge ("ALJ") who presided over the proceeding below issued an Initial Decision dated November 18, 2020 properly sustaining the

Complaints. In so doing, the ALJ faithfully adhered to the clear legislative directives regarding comparable access and conditions, as well as the Commission's prior decision based on a nearly identical set of facts. The ALJ cited to substantial record evidence in finding that the discriminatory practices engaged in by the FE EDCs were unreasonable and therefore in violation of the Public Utility Code. RR. 609a-617a (Initial Decision at 11-19).

In rejecting the Initial Decision, the Commission dismissed the Complaints, in direct contravention of the legislative mandates in the Public Utility Code, and without adequate explanation, departed from its own recent precedent. Through the Orders on appeal, the Commission has sanctioned the FE EDCs' unlawful practice of giving themselves unreasonable preferences by placing charges for the FE EDCs' non-commodity goods and services on their consolidated electric bills while refusing to permit EGSs to do the same for their non-commodity goods and services. By failing to adhere to Section 2804(6) and Section 1502 of the Public Utility Code, the Orders contain errors of law and should be reversed.

II. SUMMARY OF ARGUMENT

The General Assembly has established clear legislative mandates prohibiting public utilities from granting unreasonable preferences in the provision of public utility service. Section 2804(6) of the Electric Competition Act requires EDCs to provide services to EGSs that are comparable, as to access and conditions, to the

EDC's own use of its system. 66 Pa. C.S. § 2804(6). Further, Section 1502 of the Public Utility Code prohibits public utilities from granting any unreasonable preference or advantage to any person or subjecting any person to unreasonable prejudice or disadvantage. 66 Pa. C.S. § 1502.

The Commission's Orders permitted the FE EDCs to block EGSs from accessing the same on-billing services to EGSs that they offer themselves based on the view that Section 2804(6) does not apply to billing services. Notably, the plain language of Section 2804(6) exempts no aspect of utility service from the requirement for nondiscriminatory treatment. Instead, the Commission stepped into the role of the legislature and unlawfully and inexplicably carved billing services out from the transmission and distribution services that EDCs are obligated to provide to EGSs on comparable terms that they afford themselves. (August 26, 2021 Order at 26-29).

As to the language in Section 1502 prohibiting public utilities from granting unreasonable preferences to any entity, the Commission claimed that this ban applies only when a utility is offering services to third parties but refuses to offer the services to other third parties. Because the FE EDCs are offering a preference to themselves (as opposed to third parties), the Commission did not view Section 1502 as protecting EGSs from being subjected to an unreasonable disadvantage. (August 26, 2021 Order at 24-26). Importantly, nothing in Section 1502 specifies

that the preference or advantage needs to be offered to a third party in order for the protections to apply. Moreover, public utilities favoring themselves is more offensive than granting a preference to some third parties over other third parties, particularly in view of the mandate in Section 2804(6).

The FE EDCs' refusal to provide the same on-bill billing services to EGSs that they provide to themselves for the billing of non-commodity goods and services is especially problematic given the fact that only EDCs may offer consolidated billing to consumers. Under utility consolidated billing ("UCB"), the EDCs send a single bill to consumers that contains both their distribution charges and the EGS's supply charges. The Commission has refused to authorize supplier consolidated billing ("SCB"), which would permit EGSs to send a single bill to consumers that contains both the EDC's distribution charges and the EGS's supply charges. Since the Commission has determined that only the EDCs may issue consolidated bills to consumers, the Commission's observation that EGSs can place charges for non-commodity goods and services on their own dual bills is disingenuous. More specifically, the Commission's refusal to establish a level playing field whereby both EDCs and EGSs may issue a consolidated bill to consumers and then, in this case, deny EGSs the statutory protections set forth in Section 2804(6) regarding their right to nondiscriminatory access to the EDCs' consolidated bills evidences a pattern of disregard for the legislative directive to

the Commission to foster the development of a workable competitive market. The undisputed factual scenario underlying the Orders on appeal – of denying EGSs access to the EDCs' on-bill billing services that equals the services the EDCs provide to themselves – is exactly what Section 2804(6) and Section 1502 of the Public Utility Code are designed to prevent.

III. ARGUMENT

A. The Orders Contain Reversible Errors of Law By Failing to Adhere to Legislative Mandates.

1. The legislative mandates are clear.

The cardinal rule of statutory interpretation is to ascertain and effectuate the intent of the Legislature. *O'Rourke v. Commonwealth of Pennsylvania, Department of Corrections*, 778 A.2d 1194, 1201 (Pa. 2001). When the statutory language is clear, the Commission's interpretive discretion ends and it must abide by the statute. *Dauphin Cnty. Indus. Dev. Auth. v. PUC*, A.3d 1124, 1133 (Pa. Cmwlth. 2015), appeal denied, 140 A.3d 14 (Pa. 2016) ("*DCIDA*"). In short, the Commission may not ignore or alter clear statutory directives. *See Popowsky v. PUC*, 910 A.2d 38, 53 (Pa. 2006). Under the Statutory Construction Act, the plain language controls, unless there is a material ambiguity as to its meaning, in which event it is necessary to consult the tools of statutory construction. *See* 1 Pa. C.S. §§ 1921, *et seq*.

Section 2804(6) of the Electric Competition Act provides that the following standard shall govern the Commission's assessment and approval in regulation of the restructured electric utility industry:

> (6) Consistent with the provision of section 2806, the commission shall require that a public utility that owns or operates jurisdictional transmission and distribution facilities *shall provide transmission and distribution service to all* retail electric customers in their service territory and to electric cooperative corporations and *electric generation suppliers, affiliated or nonaffiliated, on rates, terms of access and conditions that are comparable to the utility's own use of its system*.

66 Pa. C.S. § 2804(6) (emphasis added). In addition, Section 2807 of the Electric Competition Act establishes the express duties of EDCs to provide billing services on behalf of EGSs, subject to the right of an end-use customer to choose to receive separate bills from its EGS for supply charges. 66 Pa. C.S. § 2807(c).

Under the explicit language of Section 2804(6), the EDCs are obligated to provide transmission and distribution service to EGSs, on rates, terms of access and conditions that are comparable to the utility's own use of its system. Section 102 of the Public Utility Code defines "Service," in pertinent part, as "[u]sed in its broadest and most inclusive sense, includes any and all acts done, rendered, or performed, and any and all things furnished or supplied, and any and all facilities used, furnished, or supplied by public utilities…in the performance of their duties under this part to their patrons, employees, other public utilities and the public." 66 Pa. C.S. § 102 (relating to definitions). Indeed, the Commission has previously

recognized that a utility's billing practices related to charges for non-commodity products and services constitute a public utility service as that term is defined in Section 102. *Pa. Public Utility Commission v. Columbia Gas of Pennsylvania, Inc.*, Docket No. R-2018-2647577 (Order entered December 6, 2018, at 45)("*Columbia*"). Of note, in *Columbia*, the Commission cited this Court's ruling in *Aronson v. Pa. PUC*, 740 A.2d 1208, 1212 (Pa. Cmwlth. 1999) ("*Aronson*") for the proposition that billing falls under the Section 102 definition of service.

In addition, Section 1502 of the Public Utility Code prohibits public utilities from granting "*any* unreasonable preference to *any* person, corporation, or municipal corporation" or subjecting "*any* person, corporation, or municipal corporation to any unreasonable prejudice or disadvantage." 66 Pa. C.S. § 1502 (emphasis supplied). Again, this legislative mandate leaves no doubt as to its meaning.

Quite simply, the General Assembly has made crystal clear on two separate occasions that public utilities are barred from unreasonably favoring any entity in the provision of public utility service.

2. **The Commission failed to adhere to clear legislative mandates.**

In the Orders on appeal, the Commission failed to adhere to explicit legislative mandates despite: (i) the unequivocal language in two provisions of the Public Utility Code prohibiting public utilities from granting unreasonable

preferences; (ii) the Court's holding in *Aronson* that billing falls under the statutory definition of service; and (iii) the Commission's prior determination in *Columbia* that a utility's billing practices related to non-commodity products and services constitute a public utility service. The Commission's failure to follow these statutory directives and its own recent precedent constitutes errors of law and warrants reversal of the Orders on appeal.

a. Section 2804(6) Prohibits Billing Practices That Provide the Utility an Unreasonable Preference.

In determining that Section 2804(6) of the Electric Competition Act is inapplicable to the billing practices of the FE EDCs, the Commission improperly found that the statutory requirement for comparable treatment is restricted to access to the EDCs' transmission and distribution facilities, "which does not include billing facilities/services." (August 26, 2021 Order at 27). The PUC referred to "a narrower class of transmission and distribution facilities necessary for the transport of electricity" as triggering the "heightened duty" created by Section 2804(6) on the part of EDCs to provide nondiscriminatory service. (August 26, 2021 Order at 26-27). In reaching this conclusion, the Commission referred to the definition of "Direct Access" that appears in Section 2803 of the Electric Competition Act, as follows:

> The right of electric generation suppliers and end-use customers to utilize and interconnect with the electric transmission and distribution system on a nondiscriminatory basis a rates, terms and conditions of

> service comparable to the transmission and distribution companies' own use of the system to transport electricity from any generator of electricity to any end-use customer.

66 Pa. C.S. § 2803 (relating to definitions). On the basis of the definition for direct access in Section 2803, the Commission did not view the protection afforded to EGSs by Section 2804(6) as extending to the EDCs' billing and service facilities.

The plain language of Section 2804(6) does not require interpretation or consideration of the definition for direct access in Section 2803. Indeed, Section 2804(6) neither contains the term "direct access" nor establishes the requirement for a utility to provide EGSs direct access to its transmission and distribution system. The General Assembly declared its purpose in passing the Electric Competition Act, as follows: "it is now in the public interest to permit retail customers to obtain direct access to a competitive generation market." 66 Pa. C.S. § 2802(3).

Section 2804(6) addresses the service that is provided by the utility to EGSs and requires such service to be on rates, terms of access and conditions that are comparable to the utility's own use of its system. The heightened duty of EDCs under Section 2804(6) is not limited to the transport of electricity. Indeed, this provision contains no language to support the notion that billing services provided to EGSs are exempt from the duty of EDCs to engage in nondiscriminatory or comparable treatment requirement. The terms "transmission and distribution"

preceding "service" are merely descriptive of the two components of service that the EDCs provide, following implementation of the Electric Competition Act when the EDCs no longer provide generation service. 66 Pa. C.S. § 2802(16). Their insertion into Section 2804(6) in no way narrows the term "service" as defined by Section 102 of the Public Utility Code. Just as in *Columbia,* the utilities' on-bill billing services are a component of service and warrant protection from discriminatory treatment under Section 2804(6).

Nothing in the unambiguous language of Section 2804(6) authorizes the Commission to carve out certain services that are components of a utility's transmission and distribution service from the requirement for EGSs to receive comparable access, terms and conditions. As defined by Section 102 of the Public Utility Code, a utility's "service" is all-encompassing; no precedent exists for viewing a "narrower class" of a utility's system, such that it does not include billing services.

Indeed, to reach the conclusion that Section 2804(6) does not apply to billing services, the PUC had to inject a new phrase into the statute – "except for billing services." As interpreted by the Commission, Section 2804(6) would need to state that EDCs are required to "provide transmission and distribution service, *except for billing service*…to electric generation suppliers…on rates, terms of access and conditions that are comparable to the utility's own use of its system." However,

that qualifier is not in Section 2804(6) and the Commission's efforts to read it into the provision requires a strained and illogical reading of the legislative mandate. Moreover, the EDCs' obligations to provide billing services on behalf of EGSs under the Competition Act underscore the importance of adherence to the "comparable basis" requirement. Yet, the Commission summarily concluded that Section 2804(6) did not contemplate the provision of billing services by EDCs to be offered by EGSs on terms of access and conditions that are comparable to the utilities' own use of their system.

b. Section 1502 Prohibits Billing Practices That Provide the Utility an Unreasonable Preference.

Similarly, in granting themselves an unreasonable preference in the inclusion of charges for non-commodity goods and services on customers' monthly electric bills in contravention of Section 2804(6), the FE EDCs are violating the non-discriminatory requirement in Section 1502. The Commission erroneously found that the Section 1502 ban applies only when a utility is offering services to third parties but refuses to offer the services to other third parties. Because the FE EDCs are offering a preference to themselves (as opposed to third parties), the Commission did not view Section 1502 as protecting EGSs from being subjected to an unreasonable disadvantage. (August 26, 2021 Order at 24-26).

Notably, Section 1502 does not specify that the preference or advantage needs to be offered to a third party in order for the protections to apply. Moreover,

public utilities favoring themselves is a more offensive practice than granting a preference to some third parties over other third parties because it prevents all potential competitors from having a fair opportunity to win customers from the historically entrenched monopoly provider.

Section 1502 prohibits public utilities from granting "*any* unreasonable preference to *any* person, corporation, or municipal corporation" or subjecting "*any* person, corporation, or municipal corporation to any unreasonable prejudice or disadvantage." 66 Pa. C.S. §1502 (emphasis supplied). To interpret Section 1502 in the manner that the Commission has, again a phrase would need to be added to the plain language of the statutory provision. Specifically, each place where Section 1502 refers to "any person," would need to have an exception excluding the public utility itself as the recipient of the unreasonable preference.

B. The Commission Departed From Its Prior Ruling Without An Adequate Explanation.

When the Commission determined in the Orders on appeal that "billing practices" do not fall within service provided by a utility that must be on comparable terms as it provides itself, the Commission departed from its prior ruling in *Columbia*. As this Court has held, an administrative agency may revise and correct its prior pronouncements; however, it cannot expect that its later interpretation is entitled to very much deference. *DCIDA*, 123 A.3d at 1135. Further, an agency changing its course must apply a reasoned analysis indicating

that its prior policies and standards are being deliberately changed, not casually ignored. *See, e.g., Mazza v. Secretary of Department of Health and Human Services*, 903 F.2d 953, 958-959 (3rd Cir. 1990). *See also Bell Atlantic-Pennsylvania, Inc. v. PUC*, 672 A.2d 352, 354 (Pa. Cmwlth. 1995) (while the Commission is not bound by *stare decisis*, it must render consistent opinions and should either follow, distinguish, or overrule its precedent).

In the Orders on appeal, the Commission attempted to explain the stark departure from its prior decision by claiming that "the facts in the present case and *Columbia* are distinguishable in several material respects." (August 26, 2021 Order at 24). However, a review of the Orders makes clear that variations between the two scenarios are minor and are, at most, distinctions without a difference.

According to the Commission, the "material fact in *Columbia* was that the utility treated other third parties differently than third-party former affiliates of Columbia." *Id.* In the proceeding below, the Commission noted that "the EDCs are not providing 'on-bill billing' of non-commodity goods and service to any third party. In this case, the EDCs provide their own customers 'on-bill billing' of non-commodity goods and services offered by the EDCs themselves." *Id.* The difference highlighted by the Commission was that while the utility in *Columbia* was favoring third parties over competitive suppliers, the FE EDCs in this situation

are favoring themselves over competitive suppliers. This distinction lends no support for different outcomes.

This so-called "material" difference relied on by the Commission to justify a departure from its prior *Columbia* holding should be given no deference. The Commission's rationale rests merely on the identity of the entity *receiving* the unreasonable preference. Nothing in the Public Utility Code makes such a distinction in the context of preferential treatment. The fact that the utilities themselves are the beneficiaries of the unreasonable advantages makes the practices no less prejudicial to EGSs than if the entities receiving favorable treatment are third parties. Indeed, it is arguably more offensive for utilities to extend a preference to themselves while blocking EGSs from similar access, particularly in view of the mandate in Section 2804(6) and the EDCs' obligations under the Commission's competitive safeguards to establish and maintain an effective and vibrant competitive market in the purchase and sale of retail electric energy. 52 Pa. Code §§ 54.121-122.

The other self-styled distinguishing factor pointed to by the Commission in the Orders on appeal is that in *Columbia*, the decision was based on a statutory provision that appears in the Natural Gas Choice and Competition Act ("Natural Gas Competition Act"), rather than Section 2804(6) that is contained in the Electric Competition Act. Finding that the language in the two statutory provisions is not

identical, the Commission concluded that FE EDCs' billing practices do not violate the Public Utility Code. (August 26, 2021 Order at 24).

A review of the respective statutory provisions in the Natural Gas Competition Act and Electric Competition Act addressing the need for utilities to provide nondiscriminatory terms of access and conditions demonstrates that the minor differences fail to justify the Commission's departure from prior precedent. Section 2203(4) of the Natural Gas Competition Act requires "that a natural gas distribution company that owns or operates jurisdictional facilities shall provide distribution service to all retail gas customers in its service territory and to all natural gas suppliers, affiliated or nonaffiliated, on nondiscriminatory rates, terms of access and other conditions." 66 Pa. C.S. § 2203(4). The table below is a side-by-side comparison of the key phrases in the statutory provisions:

Section 2804(6) – Electric	**Section 2203(4) – Natural Gas**
"[T]he commission shall require that a public utility that owns or operates jurisdictional transmission and distribution facilities…"	"[A] natural gas distribution company that owns or operates jurisdictional facilities…"
"[S]hall provide transmission and distribution service to all…"	"Shall provide distribution service to all…"
"[E]lectric generation suppliers, affiliated or nonaffiliated,..."	"[N]atural gas suppliers, affiliated or nonaffiliated,…"
"[O]n rates, terms of access and conditions that are comparable to the utility's own use of its system."	"[O]n nondiscriminatory rates, terms of access and other conditions."

While the language in these statutory provisions is not *identical*, the spirit is identical in that the General Assembly included language in both provisions designed to ensure that public utilities treat competitive suppliers fairly. Implicit in both provisions is a recognition of the fact that the historical monopoly provider has certain advantages and access to systems that need to be accessible to competitive suppliers so that they have a fair opportunity to design competitive supply products for retail end users. To that end, requiring the historical monopoly provider to grant nondiscriminatory, comparable access to its ratepayer funded systems to the competitor is a critical component of developing a competitive market. Minor variations in the actual wording do not warrant different outcomes in proceedings involving an electric utility and a natural gas utility – where the utilities are both failing to provide nondiscriminatory terms of access and conditions to competitive suppliers.

The phrase "the utility's own use of its system" in Section 2804(6) in the Electric Competition Act cannot be reasonably read as providing a narrower level of protection to EGSs than Section 2203(4) in the Natural Gas Competition Act affords NGSs. The only way to reach that determination is to view the utility's "system" as not including its billing practices. Yet, the Commission has repeatedly referred to utility billing systems without differentiating them from the utility's overall distribution system. *See, e.g., Investigation of Pennsylvania Retail*

Electricity Market: End State of Default Service, Docket No. I-2011-2237952 (Order entered February 14, 2013, at 32). The use of the word "system" in Section 2804(6) in the Electric Competition Act certainly does not expressly or impliedly mean that billing systems are not part of a utility's transmission and distribution service. Stated differently, inclusion of the language in Section 2804(6) regarding the utility's use of its own system does not alter the FE EDCs' obligation to place an EGS's charges for non-commodity goods and services on their bills when they are placing their own such charges, and those of their affiliates, on their bills.

Even if the Court agrees with the Commission that Sections 2203(4) and 2804(6) offer differing protections to NGSs and EGSs when receiving services from NGDCs and EDCs, respectively, Section 1502 of the Public Utility Code applies to all public utilities, irrespective of the industry. And, Section 1502 forbids all public utilities from granting unreasonable preferences to any entity, which includes themselves, in the provision of public utility service. Simply stated, the General Assembly has determined that public utilities may not afford any entity an unreasonable advantage over any other entity. 66 Pa. C.S. § 1502. The only way to be faithful to that legislative mandate is to reverse the Orders on appeal with a directive that the Commission require the FE EDCs to cease their discriminatory practices.

C. The Ability of EGSs to Include Charges for Non-Commodity Goods and Services on Their Own Bills is Irrelevant.

In describing on-bill billing, whereby EDCs include charges for non-commodity goods and services on the monthly utility bills to customers, the Commission suggested that "EGSs are free to do the same via their own direct billing of customers." (August 26, 2021 Order at 2-3). This is a disingenuous suggestion given the fact that only EDCs are permitted offer consolidated billing to consumers in Pennsylvania. Under UCB, the EDCs send a single bill to consumers that contains both their distribution charges and the EGS's supply charges. Therefore, if EGSs are unable to use UCB for the inclusion of charges for non-commodity goods and services, the only option available to EGSs is to send a dual bill to customers. Under this approach, customers would receive two bills for electricity – one from the EDC for distribution charges and another from the EGS for supply charges. As customers prefer to receive a single consolidated bill for all of their electricity charges, this is not an acceptable alternative. RR. 99a.

The Commission has refused to authorize SCB, which would permit EGSs to send a single bill to consumers that contains both the EDC's distribution charges and the EGS's supply charges. *See Supplier Consolidated Billing*, Docket No. M-2018-2645254 (Secretarial Letter issued June 21, 2021). The Orders on appeal compound the Commission's prior refusal to promote the development of a

competitive market by establishing a level playing field for purposes of consolidated billing. The result is that EGSs have no ability to meaningfully avail themselves of any consolidated bill for the placement of charges for non-commodity goods and services, notwithstanding the protections set forth in Section 2804(6) and Section 1502.

In any event, the key to the outcome of this appeal is not whether EGSs have the opportunity to issue dual (or separate) bills to customers and include charges for non-commodity goods and services on those bills. The issue that is under review is whether the FE EDCs may engage in the discriminatory practice of including charges for their non-commodity goods and services on their consolidated bills while refusing to do the same for EGSs. The undisputed factual scenario underlying the Orders on appeal – of the FE EDCs denying EGSs access to their on-bill billing services that equals the services the FE EDCs provide to themselves – is exactly what Section 2804(6) and Section 1502 of the Public Utility Code seek to prevent.

IV. CONCLUSION

For the foregoing reasons, the Retail Energy Supply Association respectfully requests that this Court reverse the Commission's Orders of August 26, 2021 and April 14, 2022.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to Pa. R.A.P. 2135, I hereby certify that this Brief does not exceed 14,000 words based on the word count feature on the Microsoft Word processing system used to prepare the brief.

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Date: August 22, 2022

CERTIFICATE OF COMPLIANCE

I hereby certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

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Respondent.	:	

PROOF OF SERVICE

I hereby certify that I have this day served a true copy of the Retail Energy Supply Association's Brief upon the persons and in the manner indicated below, which service satisfies the requirements of Pa. R.A.P. 121:

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