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April 5, 2023

By Electronic Filing

Mr. Andrew S. Johnston
Executive Secretary
Maryland Public Service Commission
William Donald Schaefer Tower
6 Saint Paul Street, 16th Floor
Baltimore, Maryland 21202-6806

Re: Case No. 9461

Dear Mr. Johnston:

Enclosed for filing in this matter are the Comments of The Retail Energy Supply Association pursuant to the Maryland Public Service Commission's Notice of Hearing issued on March 22, 2023.

Please do not hesitate to contact me if you have any questions.

Sincerely,

/s/ Eric J. Wallace

Eric J. Wallace

cc: Service List (by e-mail only)

BEFORE THE
PUBLIC SERVICE COMMISSION
OF MARYLAND

In the Matter of the Petition of NRG Energy, Inc., Interstate Gas Supply, Inc., Just Energy Group, Inc., Direct Energy Services, LLC and ENGIE Resources LLC for Implementation of Supplier Consolidated Billing for Electricity and Natural Gas in Maryland	* * * * * * *	Case No. 9461

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COMMENTS OF THE
RETAIL ENERGY SUPPLY ASSOCIATION

The Retail Energy Supply Association ("RESA"),[1] by counsel, submits these comments pursuant to the Maryland Public Service Commission's ("Commission's") Notice of Hearing issued in this proceeding on March 22, 2023 (the "Notice"). The Notice called for comments on the Supplier Consolidated Billing ("SCB") Work Group Request for Advice Regarding Cost Recovery of the Implementation of Supplier Consolidated Billing (the "Request"). The Request comes after years of work and developments regarding the implementation of SCB, initially initiated by the Petition for Implementation of Supplier Consolidated Billing for Electricity and Natural Gas in Maryland ("Petition"), which NRG Energy, Inc., Interstate Gas Supply, Inc., Just Energy Group, Inc., Direct Energy Services, LLC and ENGIE Resources LLC (collectively the "Petitioners") filed on September 7, 2017.

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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 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.

I. INTRODUCTION

RESA – a diverse organization of competitive energy suppliers of varying sizes and business plans serving all types of consumers in Maryland and elsewhere – fully supports implementation of SCB in Maryland as an additional billing option for retail electricity and natural gas customers. Allowing the entities providing electricity and natural gas supply service to directly bill their customers through the implementation of supplier consolidated billing is an important and necessary evolution of the retail energy marketplace, enabling retail energy suppliers to deliver on the original promises of technological and services-related innovation that were an integral part of the Electric Customer Choice and Competition Act of 1999 (the "Electric Choice Act").[2] More specifically, in enacting the Electric Choice Act, the General Assembly charged the Commission with:

(1) establishing "customer choice of electricity supply and electricity supply services;"

(2) creating "competitive retail electricity supply and electricity supply services markets;"

(3) deregulating "the generation, supply, and pricing of electricity;"

(4) providing "economic benefits for all customer classes;" and

(5) ensuring "compliance with federal and State environmental standards."[3]

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[2] Md. Code § 7-501 *et seq*. (Public Utilities Article).
[3] Md. Pub. Util. Art. § 7-504.

SCB is a critical next step towards achieving the Electric Choice Act's policy goals. Likewise, SCB is consistent with the policy goals of the Natural Gas Supplier Licensing and Consumer Protection Act of 2000 ("Natural Gas Act").[4]

Implementation of SCB will spur development of innovative products and services that add value to consumers beyond the electric and natural gas commodities. Suppliers are starting to develop these products today (including electricity bundled with energy efficiency, demand response, direct load control, smart thermostats, distributed solar generation and other forms of on-site generation, battery storage technology, products bundled with loyalty rewards and products bundled with home protection). However, the lack of a direct billing relationship with customers prevents customers from accessing the full value of these products and services.

RESA continues to support implementation of SCB in Maryland, but the issue of utility SCB implementation cost recovery is a critical element that can enable or prevent a successful SCB program in Maryland. As discussed below, RESA recommends that the Commission approve Staff Option 1 for cost recovery as the best option to ensure timely utility cost recovery while enabling supplier participation SCB and the expanded competition and customer choice that SCB can provide.

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[4] Md. Code § 7-601 *et seq*. (Public Utilities Article); *see also* Petition at 5 n.12 (citing Case No. 8683, Order No. 71703 (Jan. 10, 1995); Case No. 8386, Order No. 76473 (Sept. 27, 2000); Order No. 80265 (Aug. 29, 2005)); *In the Matter of the Commission's Inquiry Into Gas Supplier Licensing and Consumer Protection (Competitive Billing)*, Case No. 8846, Order No. 77245 (Sept. 20, 2001).

II. COMMENTS

A. The utilities presented high levels of SCB implementation costs with low levels of transparency into those cost estimates.

RESA is concerned about the high level of utility costs for SCB implementation, which is controlled by the utilities and their procurement processes. Retail suppliers do not have visibility into the methods by which utilities developed their cost estimates or the degree to which the utilities considered various options at differing levels of cost. The cost utility cost estimates for SCB implementation have varied widely - from $25 million to $40 million.[5] As discussed in the SCB Work Group Request, the current cost estimates (as of February 2023) are:[6]

Utility	**Cost Estimate**
BGE	$11,360,170
PHI 73.3% Pepco 26.7% Delmarva	$9,699,882
Potomac Edison	$7,313,393
WGL	$4,000,000
Total	**$32,373,445**

Through 2022, the utilities reported spending $6.65 million so far on SCB implementation ($3 million – BGE; $2.82 million - PHI; $0.83 million – PE; $0 – WGL).[7]

As explained in the Request, the Exelon Utilities' cost estimates have grown significantly, driving the overall cost estimate for all utilities to implement SCB from about $25 million in 2021 up to a range of $32 - $41 million.[8] The Request also explains that WGL was the

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[5] Request at 2.
[6] Request at 4.
[7] Request at 4-5.
[8] Request at 5.

only utility to use a competitive procurement process, resulting in an estimated SCB implementation of $4 million for WGL. That figure puts WGL's costs at a little over half of Potomac Edison's costs and about 40% of PHI's costs (among the single-fuel utilities). WGL's SCB implementation costs are about one third of BGE's dual-fuel implementation costs. Looking at it another way, BGE's cost estimate is about 280% of WGL's cost estimate. This data shows not just a high level of implementation costs, but also considerable variation among the utilities. Moreover, this data does not include the extensive costs that suppliers incur to implement SCB.

Additionally, Staff discussed a concern that the utilities are incurring costs before the EDI working group has completed its work.[9] RESA's shares Staff's concern that premature development work could lead to duplicative efforts if the utilities need to correct changes based on the final outcomes in the EDI working group, unnecessarily increasing costs.[10] While it is important for the utilities to complete their implementation timely, that timing efficiency must be met with cost efficiency as well, avoiding duplicative and unnecessary costs. Certain utilities would blame SCB implementation delays on suppliers that have not yet committed to EDI testing with the utilities.[11] However, suppliers need to know what will be required from a utility cost-recovery perspective before fully allocating resources necessary to develop and implement the systems and processes necessary for SCB-related EDI testing. Clarity from the Commission through ratepayer cost-recovery and confirmation of the implementation timeline will enable

[9] Request at 6.
[10] Request at 6.
[11] Comments of BGE, Pepco, and Delmarva Power ("Joint Exelon Utilities") at 6 (filed Apr. 4, 2023)(ML 302247).

suppliers to continue to invest in developing their systems for SCB and progress to testing their systems with the utility systems.

Staff also raised concerns about the types of costs that are included in the utility cost estimates. Specifically, Staff determined that the utility cost estimates may include utility costs for time spent participating SCB work groups developing regulations and business processes for SCB.[12] As an example, Staff referenced $500,000 of costs in Potomac Edison's cost estimate that predate system upgrade-related costs.[13] As Staff noted in the Request, the issue of incremental versus embedded costs will need to be determined by the Commission when the utilities seek cost recovery, but this is an area where RESA shares stakeholder concerns about cost transparency and the types of costs that utilities are seeking to recover through incremental charges.

B. Ratepayer cost recovery is the optimal solution for utility SCB implementation costs.

Cost recovery must be reasonable in the context of a competitive program and enable suppliers to participate in SCB, while ensuring that the utilities recover their prudently incurred costs. RESA shares the concern raised in the SCB Work Group Request: "A poorly constructed cost recovery program could discourage suppliers from participating in the SCB program."[14] Indeed, each supplier will need to assess the business case to determine whether to invest their time and capital in Maryland to expand services to customers by participating in SCB. That analysis will be different for each supplier, but RESA is concerned that excessive SCB costs

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[12] Request at 5-6.
[13] Request at 6.
[14] Request at 3.

incurred by SCB suppliers could prevent many, if not all, suppliers from being able to participate in SCB.[15] At the same time, imposing excessive costs on the broader retail market could damage the retail market, drive suppliers out of Maryland and reduce competition. This would lead to fewer options available to consumers at increasing costs, creating the potential for a vicious cycle with a downward spiral where more and more costs are imposed on a shrinking retail market.

SCB is a key innovation to help advance the retail markets in Maryland, attract investment to Maryland, and empower customers through greater choice and competition. However, cost recovery is a critical element of SCB implementation that could tragically backfire and destroy competition in Maryland if not handled correctly.

Regarding the issue of who should pay for SCB implementation costs, RESA agrees with the supplier position explained in the Request – it is appropriate to recover the utilities' costs to implement SCB from ratepayers.[16] SCB is a billing option established by the General Assembly in the Customer Choice Act. SCB is not a concept that was created by the group of suppliers that filed the Petition initiating this proceeding, nor will SCB be limited to a subset of suppliers or ratepayers. SCB is a market enhancement that will benefit all ratepayers.

To participate in SCB, suppliers will need to incur significant costs to configure their business processes and systems to align with the utility systems and procedures developed in the SCB Working Group and the EDI/XML Working Group. SCB suppliers will need to recover those costs through the prices that they charge to their customers. Some suppliers may be able to

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[15] Request at 15.
[16] Request at 7.

offer SCB as soon as it becomes available, while other suppliers may decide to offer SCB later, in the next few years or a decade from now. SCB cost recovery should recognize that SCB is a market enhancement that applies broadly as a potential option for all customers and all suppliers that may be interested in the near term or longer into the future.

Staff summarized key uncertainties facing suppliers considering SCB:[17]

1. High, unverified, and fluctuating costs;
2. An uncertain go-live date;
3. Uncertain cost recovery options that could result in significant costs required of SCB suppliers (such as price of admission requirement discussed in Option 4).

These uncertainties represent risks to suppliers that are interested in providing SCB to Maryland customers. As Staff explained, if the costs to participate in SCB are too high, coupled with the potential increase in risk for uncollectible costs, suppliers may choose not to participate in meaningful numbers in SCB.[18] Indeed, RESA expects that suppliers will not be able to participate if they are required to pay for the utilities' SCB implementation costs. RESA recommends that the Commission resolve these uncertainties and mitigate the associated risks by directing utility SCB implementation cost recovery from ratepayers.

i. <u>Option 1 – Cost Recovery From Ratepayers</u>

Ratepayer cost recovery for utility SCB implementation costs is the clear choice to provide the greatest opportunity for successful implementation of SCB and full utility cost recovery. As Staff explains, this is the most affordable payback option, and it will provide cost

[17] Request at 8.
[18] Request at 9-10.

recovery in the 5-year cost recovery window that the utilities require.[19] This option will not adversely affect the competitive market or those suppliers that choose to bill under UCB instead of SCB. This option will also enable supplier participation in SCB by avoiding a "barrier to entry" fee. Suppliers offering SCB will incur extensive costs to build out their systems and develop SCB products, including all the marketing, training, and customer support resource that support those systems. SCB suppliers will also incur collections risk when taking on the billing function. Accordingly, utility cost recovery from ratepayers is the best option to enable a successful and robust market for SCB products and services in Maryland, while ensuring that utilities can fully recover their prudently incurred implementation costs.

ii. Option 2 – Cost Recovery from UCB and SCB Suppliers

SCB is a statutory requirement under the Choice Act that will be implemented in the short term but will remain an option for ratepayers and their suppliers in Maryland indefinitely. Under Staff's Option 2, the utilities' SCB implementation costs would be recovered from all suppliers (those serving customers on UCB, as well as SCB) through an additional monthly surcharge estimated at between about 50 cents (BGE) and $5.25 (Potomac Edison).[20]

While Option 2 is better than some of the other options presented in the Work Group Request, RESA is concerned about the level of this potential cost and the underlying assumption that retail choice shopping levels will remain the same during the 5-year recovery period. Indeed, this is very likely a false assumption. Starting July 1st, an unknown amount of low-income shopping customers will no longer be eligible to shop as the energy assistance customer

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[19] Request at 11.
[20] Request at 11-12.

shopping restrictions developed in RM78 to implement Public Utilities Article § 4-308 take effect. As those customers transition off their retail supply contracts and future energy assistance customers are restricted in their shopping eligibility, the likely result is a reduction in shopping levels. As a result, there will be a smaller customer base available for the POR recovery mechanism contemplated in Staff's Option 2, increasing the cost burden on the remaining shopping customer base.

The risk of Option 2, exacerbated by the upcoming shopping restrictions due to RM78, is the potential for a vicious cycle with a smaller customer base driving up the costs for remaining shopping customers. As the costs in Maryland rise, suppliers will be pushed to take resources out of Maryland and invest in other markets, further decreasing the remaining customer pool. As the market becomes less competitive, there will be less offers available for customers and the remaining offers will be saddled with the higher costs to recover the utilities' SCB implementation costs from a shrinking customer base. In this way, the implementation of SCB with costs borne by UCB and SCB suppliers has the potential to hurt competition, reduce customer choice, and discourage supplier participation in SCB. Accordingly, RESA recommends that the Commission choose ratepayer cost recovery through Option 1 to provide the greatest opportunity for a successful SCB program, contributing to enhanced retail choice and competition in Maryland.

iii. Option 3 – Cost Recovery from SCB Suppliers

RESA does not support the entrance fee concept in Option 3, which would impose all the utility SCB implementation costs on the subset of suppliers that initially sign up to provide SCB. Due to the high level of the utility SCB implementation costs, requiring SCB suppliers to pay the utilities costs, as well as all the supplier's own costs, will prevent suppliers from participating in SCB.

As a practical matter, it will be difficult to determine what entrance fee would be required to recover SCB implementation costs because we do not know how many suppliers will participate or how many customers will participate. This uncertainty makes it impossible to establish a per-bill fee to recover utility SCB implementation costs. Indeed, as Staff notes, Option 3 could use a per-bill fee, or a charge based on a portion of billed revenue (similar to the UCB discount rate concept). However, both options depend on customer participation levels in SCB, and we do not know what the participation level will be. Moreover, imposing additional costs as contemplated in Option 3 will discourage customers from participation in SCB, reducing the potential to recover utility SCB implementation costs.

In Table 7 of the SCB Work Group Request, Staff includes a table with potential levels of customer migration to SCB and the associated costs. This data shows that the monthly charges for a low level customer migration (5%) range from about $10 (BGE) up to $105 (Potomac Edison). Even at the highest level of customer migration in Table 7, 50%, the monthly charges range from $1 (BGE) up to $10.50 (Potomac Edison). However, as discussed above regarding Option 2, these figures are based on assumed levels of customer shopping that will change this summer with the implementation of the PUA § 4-308 energy assistance customer shopping restrictions.

As with Option 2, Option 3 can create a vicious cycle imposing more and more SCB implementation costs on a shrinking customer base, stifling competition and driving customers and SCB supplier investment out of Maryland retail choice markets. Indeed, because Option 3 imposes the utility SCB implementation costs on an unknown number of suppliers based on an unknown level of customer participation in SCB, there is significant risk that the barrier to entry will be too high for any suppliers to participate. As Staff notes in the Work Group Request, "[s]uppliers have advised that they believe the fees or percentages at levels such as those in [Staff's] tables would prevent them from participating in the SCB program."[21] Absent supplier and customer participation in SCB, the utilities will not receive timely cost recovery under Option 3.[22] Accordingly, RESA recommends that the Commission reject Option 3 as a non-starter for utility SCB implementation cost recovery.

iv. <u>Option 4 – Upfront Guarantee of 50% SCB Cost Recovery</u>

Staff presents Option 4 as a compromise intended to balance policy considerations of cost causation, affordability, and market incentives.[23] Under this option, SCB suppliers would be required to pay 50-55% of the utility SCB implementation costs. Staff characterizes these as the "total SCB implementation costs," but it is important to remember that suppliers will also incur extensive costs to develop and implement systems, processes, and products for SCB. Staff proposes to impose this charge on suppliers that participated in the SCB Working Group, including the original SCB Petitioners, Constellation, WGL Energy, SFE Energy, and DECA Energy.[24] Staff proposes to structure the supplier charge as an initial upfront payment, coupled with an ongoing per-bill fee. The remaining 50% of the utility SCB implementation costs would be paid by ratepayers initially, then recovered from future SCB suppliers that enter the market.

Staff's proposed costs to SCB suppliers are a prohibitive barrier to entry. Option 4 would impose a massive price of admission by requiring a small group of suppliers to shoulder the

[21] Request at 14.
[22] Request at 14.
[23] Request at 14.
[24] Request at 14.

utilities' SCB implementation costs up front, in addition to all the suppliers' own costs. Unlike the utilities, SCB suppliers will need to invest private at-risk capital to provide SCB, without guaranteed cost recovery, and then recover their costs through the prices that they charge to customers. RESA does not support Staff Option 4 because it will prevent, rather than enable, supplier participation in SCB. Suppliers should not be required to pay for utility implementation costs that are: (1) controlled by the utilities, not suppliers; (2) unknown and frequently fluctuate; and (3) incremental over and above all the suppliers' own implementation costs. In addition, suppliers do not know when the program will be available or what the level of customer interest in the program will be at the outset or over time. Taking all these factors into consideration, as well as the statutory requirement for SCB in the Choice Act, RESA recommends that the Commission reject Staff's Option 4 as a non-starter for SCB cost recovery.

Staff notes in the Request that if the Commission wishes to pursue a supplier guarantee requirement as proposed in Option 4, the Commission may need to halt ongoing SCB system development until guarantee agreements are put in place. RESA does not anticipate that suppliers will be able to enter into long-term agreements to pay for utility implementation costs, akin to an entrance fee to the program. These delays would lead to significant sunk costs (Staff estimates $8.3 million) that will increase until SCB implementation work resumes, and then potential duplicative efforts once work resumes.[25] The most efficient path to timely and lower-cost SCB implementation is to proceed with implementation now and recover costs from ratepayers pursuant to Option 1.

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[25] Request at 16.

v. Option 5 – Ratepayers pay up front, SCB suppliers payback over time

Staff's Option 5 would initially recover utility SCB implementation costs from ratepayers, and then impose a surcharge on SCB supplier bills that would recover those implementation costs over time and credit ratepayers. It is unclear from the Work Group Request what level of surcharge would be imposed. However, if there is a surcharge, it must be structured as a per-bill fee rather than a revenue-based charge to provide suppliers with the ability to manage the cost and make informed business decisions about investment in SCB. As with Options 2, 3, and 4 above, the level of the costs imposed on SCB supplier may serve as a barrier to entry preventing SCB participation.

vi. Option 6 – Cost recovery from ratepayers and UCB

The Work Group Request does not detail Option 6 but discusses it at a high level as a hybrid option with partial cost recovery from ratepayers and the remainder recovered through UCB. This option appears to be a hybrid of Options 1 and 2. While RESA maintains that Option 1 is the optimal cost recovery option for the reasons explained above, Option 6 appears to be an improvement on Option 2 to the extent that Option 6 would reduce the costs imposed on SCB and UCB suppliers, thereby mitigating the potential for adverse market outcomes due to utility SCB implementation costs.

vii. Option 7 – Energy Supplier Reform Coalition Proposal

Staff describes Option 7 as requiring SCB suppliers to pay for 100% of the utilities' SCB implementation costs through quarterly payments into an escrow account based on forecasted bills, recovering the entirety of the utilities' SCB implementation costs in five years. This proposal would apparently require funds to be allocated from this escrow fund across various utility service territories, apparently redistributing fees from the BGE territory to Delmarva

Power and Potomac Edison. RESA does not support this approach because: (1) the costs imposed on SCB suppliers would be a barrier to entry preventing suppliers from entering the SCB market, as described above regarding Option 3; and (2) the redistribution mechanism would take payments associated with one utility service territory and allocate those payments to a different utility service territory. For these reasons, RESA recommends that the Commission reject Option 7 and instead choose Option 1 as the optional solution for utility SCB implementation cost recovery.

III. CONCLUSION

For the reasons explained above, RESA recommends that the Commission provide for timely and effective utility cost recovery while enabling successful SCB implementation and participation by directing ratepayer cost recovery consistent with Staff's cost recovery Option 1 proposal.

Respectfully submitted,

RETAIL ENERGY SUPPLY ASSOCIATION

By Counsel

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Counsel for The Retail Energy Supply Association

Date: April 5, 2023

CERTIFICATE OF SERVICE

I certify that a true copy of the foregoing was e-mailed to the service list of record on this 5th day of April, 2023.

/s/ Eric J. Wallace
Eric J. Wallace