

**ORDER NO. 90696**

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	* * * * *	BEFORE THE PUBLIC SERVICE COMMISSION OF MARYLAND  _____ CASE NO. 9461  _____
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**Issued: June 27, 2023**

**ORDER ON COST RECOVERY METHODOLOGY  
OF SUPPLIER CONSOLIDATED BILLING<sup>1</sup>**

1. On March 20, 2023, the Commission’s Technical Staff (“Staff”), on behalf of the Supplier Consolidated Billing Work Group (“SCB WG”), filed its Request for Advice Regarding Cost Recovery of the Implementation of Supplier Consolidated Billing (“the SCB WG Request”), which asked that the Commission determine the appropriate method, or otherwise limit the issues, related to the cost recovery methodology of Supplier Consolidated Billing (“SCB”) costs.<sup>2</sup> For the reasons discussed below, the Commission directs that cost recovery be shared between ratepayers and retail suppliers participating in SCB pursuant to Option 5 discussed in the SCB WG Request.

**I. BACKGROUND**

2. The Commission’s proceeding on SCB began on September 7, 2017, when NRG Energy, Inc, Interstate Gas Supply Inc., Just Energy Group, Inc., Direct Energy Services, LLC and Engie Resources, LLC (“the Petitioners”) filed a petition with the Commission requesting

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<sup>1</sup> The highlighted text in Revised Paragraph 54, which corresponds to the per bill fee amount adopted in the Ordering paragraph, was inadvertently omitted from the original order.

<sup>2</sup> Maillog No. 301889.

implementation of SCB. The Commission docketed Case No. 9461 for the purpose of receiving public comments and considering the Petitioners' request.<sup>3</sup>

3. After holding a hearing on February 20, 2018, and considering comments and briefs, the Commission issued Order No. 89116, which authorized supplier consolidated billing for retail gas and electricity supply customers. Order No. 89116 also directed the SCB WG to address SCB implementation issues, including an implementation timeline and cost recovery. Order No. 89116 provided no Commission findings regarding the appropriate cost recovery mechanism, noting that the Commission lacked sufficient information at the time to determine either the costs or the appropriate cost recovery mechanism for SCB implementation.<sup>4</sup> Instead, the Commission directed the SCB WG to address cost recovery issues and present options for Commission consideration.

4. The SCB WG has continued to meet since issuance of Order No. 89116. The workgroup procured a consultant to assist with electronic data interchange ("EDI") development, including exchange of billing, enrollment, metering, and payment information. The SCB WG also submitted a proposed timeline for SCB implementation, including a deadline for filing draft regulations and business practices associated with SCB. The SCB WG requested extensions of this timeline on several occasions, which the Commission granted.<sup>5</sup>

5. The Commission addressed certain cost recovery issues in its January 19, 2022, order, where it authorized the utilities to seek recovery of consultant costs as part of a review of all other costs associated with implementing SCB.<sup>6</sup> The Commission also determined that the utilities may establish regulatory asset accounts for any costs associated with EDI development as needed to

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<sup>3</sup> See, Commission's Sept. 15, 2017, Notice of Request for Comments, Maillog No. 216892.

<sup>4</sup> Order No. 89116 at 52.

<sup>5</sup> See the following Commission orders extending the SCB implementation schedule: July 18, 2019 (Maillog No. 226119); May 29, 2020 (Maillog No. 230505); Aug. 12, 2020 (Maillog No. 231434); and Jan. 19, 2022 (Order No. 90046, Maillog No. 238638).

<sup>6</sup> Order No. 90046 at 5.

recover consultant costs. However, the Commission held that it would “determine at a later date how recovery of consultant costs will occur, after a more complete picture of SCB costs and POR [Purchase of Receivables] balances becomes available.”<sup>7</sup> Since issuance of Order No. 90046, the utilities have begun the process of programming system changes to accommodate SCB, with testing of the system by a retail supplier set as the next implementation milestone.

6. On March 20, 2023, Staff filed the SCB WG Request, which indicated that the parties had failed on numerous occasions to reach agreement regarding recovery of SCB program costs. In particular, Staff noted that the parties had become deadlocked on the issue of cost recovery, including the appropriate entities from which to recover utility development costs and the methods by which recovery of such costs should be accomplished.<sup>8</sup>

7. The SCB WG Request highlighted four areas of concern that impact cost recovery.<sup>9</sup> First, parties disagreed over allocation of program costs, including the degree to which costs should be allocated among SCB suppliers, all retail suppliers, and ratepayers. Second, the workgroup could not agree on recovery methods, with potential approaches including billing fees, rate-based recovery, fixed user fees, and forms of discount rates. Third, the parties did not agree on the impact of SCB fees or charges on suppliers, with the suppliers expressing concern that fees or charges that impose a high barrier to entry or make supply contracts uncompetitive could result from approaches that seek full recovery from retail suppliers. Fourth, the parties did not reach consensus on the level of program costs for utilities to develop and test SCB. The SCB WG Request notes

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<sup>7</sup> Order No. 90046 at 5.

<sup>8</sup> SCB WG Request at 1. The SCB WG Request also asked that the Commission approve an extension of SCB implementation from the December 1, 2023, deadline set in Order No. 90046 until December 31, 2024; and approve for use in SCB the utilization of the low-income customer definition approved in Rule Making 78 (“RM78”). The Commission approved both requests in its April 12, 2023, letter order. (Maillog No. 302360).

<sup>9</sup> SCB WG Request at 3-4.

that estimated program costs have escalated from \$25 million in 2021 to \$32.5 million currently.<sup>10</sup> Some parties argued that the utility costs may be overstated or include costs that are typically recovered through base distribution rates.

8. Given the significant disagreement over cost recovery, the SCB WG presented to the Commission seven options with varying degrees of support among workgroup participants. Those options include the following:

9. In Option 1, utility customers exclusively pay the utility implementation costs of SCB.<sup>11</sup> The costs that each utility incurs would be put into customer base distribution rates and set according to customer class. Because costs would be placed in base rates, they would be eligible for a return grossed up for taxes. The benefits of this approach, according to the SCB WG Request, are that rates would be low for the average ratepayer, since they would be spread out among a large number of ratepayers, and it would meet the principle of timely cost recovery for utilities. Additionally, Option 1 would encourage suppliers to participate in the SCB program as there would be no additional cost to join.

10. In Option 2, total SCB costs would be paid by all retail suppliers participating in the Maryland choice market, including utility consolidated billing (“UCB”) and SCB suppliers.<sup>12</sup> This option would charge suppliers based on their overall retail choice participation through either a customer surcharge or based on revenues, effectively as an addition to the POR rates. Purported benefits of this option, according to the SCB WG Request, are that it would assure timely cost recovery, and it would not create an additional cost barrier to suppliers to participate in the SCB market. However, the option could increase a supplier’s cost of utilizing UCB in Maryland, which

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<sup>10</sup> SCB WG Request at 3-5.

<sup>11</sup> *Id.* at 10-11.

<sup>12</sup> *Id.* at 11-12.

could make the cost of participating in retail competition more expensive, and therefore less appealing, for both customers and suppliers.

11. In Option 3, all costs are paid exclusively by SCB suppliers through a surcharge or through a mechanism similar to a UCB POR discount rate.<sup>13</sup> If a monthly SCB fee per account were used, the cost recovery period of each utility's costs would depend upon the number of accounts using SCB and the level of SCB fees supported by the retail gas and electric markets. SCB suppliers could also pay for the costs of the program through fees applied as a fraction of billed revenue, which would be similar to a UCB type discount rate. The SCB WG Request states that a benefit of this option is that it follows cost causation principles, as only those retail suppliers that use SCB would be charged to pay for the utility system upgrades. However, the Request notes that per-customer fees or discount rates could be costly for SCB suppliers, given the likely small number of customers and SCB suppliers participating in the market. Additionally, timely cost recovery would not be guaranteed under this proposal.

12. Option 4 is a Staff compromise proposal that requires a commitment from the suppliers who intend to participate in the SCB market to pay from 50% to 55% of total SCB implementation costs.<sup>14</sup> Under this option, the upfront costs of SCB implementation would be backed by a guarantee, such as contractual guarantees, bonds, or letters of credit. The costs would be scaled on a dollar per customer basis to ensure that small suppliers are not disadvantaged relative to larger suppliers.<sup>15</sup> The costs could be paid upfront or over five years subject to carrying charges. According to the SCB WG Request, Option 4 is intended to follow principles of cost causation, by recognizing that SCB suppliers are the ultimate beneficiary of SCB. The option also avoids

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<sup>13</sup> *Id.* at 12-14.

<sup>14</sup> *Id.* at 14-16.

<sup>15</sup> *Id.* at 14.

creating market incentives that offer preference to the UCB market over the SCB market. Nevertheless, Staff noted that if the Commission wishes to pursue this option, it may need to direct a halt in SCB system development until such time as an agreement is reached regarding supplier commitments.

13. In Option 5, both SCB choice customers and ratepayers pay utility SCB program costs.<sup>16</sup> The option would require that costs are recovered first from ratepayers, through either base rates or a surcharge to ensure timely cost recovery. During this time, SCB suppliers would pay a dollar per bill fee or a POR discount rate, which would accrue back to the ratepayers. Carrying costs would also accrue back to ratepayers. The SCB WG Request notes that there is no guarantee of full supplier repayment under this option.<sup>17</sup> If the market matures sufficiently over time, all SCB implementation costs will be repaid. However, if the market does not mature, timely repayment may be delayed or never occur. A long repayment period could create intergenerational concerns, since ratepayers who pay the SCB implementation costs during the first five years of the program may not be the individuals who are repaid by the suppliers in subsequent years. Benefits of this option include timely cost recovery for utilities of SCB costs.

14. Under Option 6, SCB costs would be shared between ratepayers and UCB suppliers, with the relative percentages to be determined by the Commission.<sup>18</sup> A benefit of this approach is that it would guarantee timely cost recovery to utilities of SCB costs. However, it does not align with cost causation principles. The SCB WG Request acknowledges that this option was formulated by Staff and not explored with the workgroup.

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<sup>16</sup> *Id.* at 16-18.

<sup>17</sup> *Id.* at 16. Staff modeled pay-back scenarios involving different levels of customer participation in SCB and using \$2 and a \$5 per customer fee scenarios over a 30-year period. Using this analysis, the shortest payback period would be six years in the BGE electric service territory. However, under numerous scenarios, full pay back would not ever be achieved. SCB WG Request at 18, Tables 11 and 12.

<sup>18</sup> *Id.* at 18.

15. Option 7 is a variant of Option 3, where 100 percent of the costs of SCB would be recovered from SCB suppliers.<sup>19</sup> However, under Option 7, all SCB suppliers would make quarterly payments into an escrow account based on forecasted bills that would pay the entirety of the SCB balances within five years. The escrow account would be distributed to the utilities proportionally to the size of their program costs, such that utilities with larger numbers of SCB customers, such as Baltimore Gas and electric (“BGE”), would distribute a portion of their fees to utilities with smaller number of SCB customers, such as The Potomac Edison Company (“Potomac Edison.”) This redistribution of fees would help lower the higher cost per customer to implement SCB in the smaller service territories, while meeting the goal of timely cost recovery.

16. Given that the parties could not achieve consensus on these options, the SCB WG requested that the Commission make a determination on the appropriate method of SCB cost recovery. In response, the Commission issued a Notice of Hearing providing that it would review the Request at a hearing immediately after the Commission’s April 12, 2023, Administrative Meeting. Additionally, the Commission provided a comment date of April 5, 2023.<sup>20</sup> Party comments are discussed below.

## **II. PARTY POSITIONS**

### **A. Petitioners**

17. Petitioners<sup>21</sup> comment that “they can compete under the new SCB Rules” adopted in RM70 and that a successful SCB should be possible with multiple suppliers participating in the program

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<sup>19</sup> *Id.* at 18-19. This option was proposed by the Energy Supplier Reform Coalition.

<sup>20</sup> March 22, 2023, Notice of Hearing, Maillog No. 301922.

<sup>21</sup> Constellation NewEnergy, Inc., Vistra Corp., and their respective retail affiliates joined the Petitioners after the filing of the September 7, 2017, Petition, and are signatories to Petitioners’ April 5, 2023, Comments.

during its first year, and positive customer experiences.<sup>22</sup> Nevertheless, Petitioners caution that the initial rollout of SCB will be “slow and deliberate,” analogizing it to a pilot program.<sup>23</sup>

18. Petitioners assert that for the SCB program to succeed, the utilities’ cost recovery mechanism must not create a barrier to entry for suppliers.<sup>24</sup> Petitioners assert that imposing a cost recovery methodology for utilities that imposes significant costs upon suppliers will deter suppliers from participating in the SCB program. Petitioners state that they already face significant costs to enter the SCB program, including IT development to build new billing systems, EDI/XML work to facilitate market transactions, various associated support systems, and call center staff training on Maryland rules to deploy SCB. Petitioners assert that participating suppliers will also incur the risk of non-payment of supply charges, without the benefit utilities possess of terminating a customer’s service for non-payment.

19. The Petitioners oppose cost recovery options that would require suppliers to pay for utility SCB implementation costs, given that the estimated costs are not certain, have risen over time, and have not undergone a prudence review.<sup>25</sup> Petitioners claim “it is unreasonable to expect a supplier to simply agree to pay an ever-changing and unchecked dollar amount .... [and] to participate in the SCB program regardless of the level of costs imposed upon them.”<sup>26</sup>

20. Petitioners disagree with OPC and Staff that suppliers are the cost-causers of utilities’ SCB costs, arguing that the Maryland General Assembly created the obligation to create competitive billing as part of restructuring mandated by the Electric Customer Choice and Competition Act of

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<sup>22</sup> Petitioners April 5, 2023, Comments, Maillog No. 302275 at 1.

<sup>23</sup> *Id.* at 2.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.* at 3.

<sup>26</sup> *Id.*

1999.<sup>27</sup> Petitioners argue that the requirement to implement competitive billing created by PUA § 7-511 is part of the competitive restructuring of markets, which benefits customers by establishing choice for supply and supply services, creating competitive retail markets for electricity supply and services, and providing economic benefits to all customer classes.

21. Regarding particular cost recovery options, the Petitioners support Option 1, arguing that it will most effectively enable suppliers to participate in SCB and bring beneficial products and services to Maryland ratepayers.<sup>28</sup> The Petitioners state that Option 1 will also ensure timely cost recovery for utilities for their prudently incurred costs.

22. Petitioners oppose Options 2 and 6 because they impose costs on all suppliers, including those that may have no interest in providing SCB, and these options would force suppliers to finance the system to be used by their competitors.<sup>29</sup> Additionally, Petitioners argue that a per-bill surcharge would increase the cost of providing UCB services, making suppliers' offers less competitive.

23. Petitioners assert that they cannot participate in an SCB program that includes the level of supplier payments included in Options 3, 4, and 7, which, in Petitioners' view, would "doom" the SCB program.<sup>30</sup> Although Option 4 is a hybrid compromise whereby suppliers would pay only 50-55% of SCB implementation costs, Petitioners claim that requiring this amount within five years would also be prohibitively expensive, given the small number of SCB suppliers and customers expected in the first few years.

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<sup>27</sup> *Id.* at 3-4.

<sup>28</sup> *Id.* at 1-2.

<sup>29</sup> *Id.* at 6.

<sup>30</sup> *Id.* at 7-8.

24. Regarding Option 5, the Petitioners state that “they are not opposed to paying a reasonable per-bill fee that does not jeopardize their ability to participate in the SCB program.”<sup>31</sup> Petitioners comment that a per-bill SCB fee that is commensurate with the fee currently paid for UCB would be “doable.”<sup>32</sup> Petitioners assert that any SCB per-bill charge that the Commission orders should not create an economic barrier to entering and remaining in the SCB program, and it should not impede the ability of an SCB supplier to make beneficial offers to customers as opposed to what a UCB supplier could make to the same customer.

## **B. RESA**

25. The Retail Energy Supply Association (“RESA”) filed comments largely consistent with those filed by the Petitioners. RESA asserts that SCB will spur development of innovative products and services that add value to consumers beyond the electric and natural gas commodities, including electricity bundled with energy efficiency, demand response, and direct load control.<sup>33</sup>

26. RESA recommends that the Commission approve Option 1 for cost recovery to ensure timely utility cost recovery and to enable full supplier participation in SCB by avoiding the imposition of a barrier to entry.<sup>34</sup> RESA opposes options that impose significant costs on suppliers, stating such costs “could prevent many, if not all, suppliers from being able to participate in SCB” and that “imposing excessive costs on the broader retail market could ... drive suppliers out of Maryland and reduce competition.”<sup>35</sup> Regarding Option 2, RESA asserts that a small customer base, exacerbated by shopping restrictions due to RM78, will drive up costs for the remaining shopping customers, who will face rising incentives to abandon SCB, driving customers

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<sup>31</sup> *Id.* at 10.

<sup>32</sup> *Id.* UCB suppliers currently pay 50 cents for BGE and 62 cents to Pepco for residential customers.

<sup>33</sup> RESA April 5, 2023, Comments, Maillog No. 302271 at 3.

<sup>34</sup> *Id.* at 8-9.

<sup>35</sup> *Id.* at 6-7.

and SCB supplier investment out of Maryland.<sup>36</sup> RESA's concerns are augmented for Option 3, which would impose all the utility SCB implementation costs on the subset of suppliers that provide SCB. RESA expresses further concern over the uncertainties in this option, including the amount of SCB implementation costs to be recovered, how many customers will participate, and the level of supplier participation. RESA similarly describes Option 4 as a "prohibitive barrier to entry," noting the high costs to suppliers and significant uncertainties involved. RESA also contends that the supplier guarantees needed for this option will likely lead to program delays and duplicative costs once implementation work resumes.

27. Regarding Option 5, RESA argues that any surcharge used should 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.<sup>37</sup> RESA argues that if set too high, the surcharge could serve as a barrier to entry preventing SCB participation.

28. RESA argues that Option 6 is an improvement on Option 2 because it would reduce the costs imposed on SCB and UCB suppliers. RESA opposes Option 7 because the costs imposed on SCB suppliers would act as a barrier to entry, and because the redistribution mechanism would take payments associated with one utility service territory and allocate those payments to a different utility service territory.<sup>38</sup>

### **C. Deca Energy Inc.**

29. Deca Energy Inc. ("Deca") comments that SCB implementation costs as estimated by the utilities have become cost prohibitive and are threatening the viability of SCB implementation in

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<sup>36</sup> *Id.* at 10.

<sup>37</sup> *Id.* at 14.

<sup>38</sup> *Id.* at 15.

Maryland.<sup>39</sup> Accordingly, Deca proposes that the Commission re-examine proposed SCB implementation by directing the SCB WG to make program design changes and examine the costs of alternative options. Specifically, Deca asserts that the requirement that a utility must purchase from an SCB supplier arrearages attributable to the utility is causing a large number of program design requirements, and large costs, which could be eliminated.

**D. Octopus**

30. Octopus Energy US (“Octopus”) supports Option 1, stating that it would promote a competitive energy market that benefits customers and suppliers, would impose minimal bill impacts upon customers, and would satisfy the principle of timely cost recovery. Other options that allocate all or a portion of the utilities’ SCB implementation costs to suppliers would disincentivize suppliers from participating in SCB and undermine the program, according to Octopus.<sup>40</sup>

31. Octopus argues that it would be unfair to allocate costs to suppliers for which the utilities had decisional control. To the extent the Commission imposes costs on suppliers, Octopus argues that suppliers must be afforded greater transparency and control over the decision-making process.<sup>41</sup> Octopus asserts that at a minimum, the vendors and system integrations necessary for SCB implementation should be solicited competitively, to minimize costs and ensure effective solutions are selected from a supplier perspective. Finally, Octopus asserts that allocating SCB costs to suppliers would create an unfair burden on smaller suppliers, who may struggle to absorb the costs, which could limit customer choice by discouraging new suppliers from entering the market.

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<sup>39</sup> Deca March 29, 2023, Comments, Maillog No. 302025 at 2.

<sup>40</sup> Octopus April 5, 2023, Comments, Maillog No. 302273 at 2-3.

<sup>41</sup> *Id.* at 4.

**E. SFE Energy**

32. SFE Energy Maryland, Inc. and StateWise Energy Maryland LLC (collectively “SFE Energy”) asserts that SCB is a market enhancement that is required under Maryland state law, will benefit all consumers, and whose costs should therefore be recovered from all consumers, consistent with Option 1.<sup>42</sup>

**F. The Joint Exelon Utilities**

33. BGE, Potomac Electric Power Company (“Pepco”), and Delmarva Power & Light Company (collectively, the “Joint Exelon Utilities”) comment that SCB costs should be borne by all suppliers exclusively, given that the suppliers will receive all of the benefits of SCB.<sup>43</sup> The Joint Exelon Utilities argue that suppliers are not deprived of the ability to provide any product or service they wish, even without SCB, given that suppliers possess the option of providing bills directly to their customers through dual billing, through which they can offer an array of ancillary products and services.<sup>44</sup> To the extent there is a benefit to customers, the Joint Exelon Utilities state that low-income ratepayers should be exempted from the requirement to fund SCB, given that low-income customers and customers with arrearages are ineligible to participate in SCB. In the event that the Commission elects not to impose all SCB implementation costs on suppliers, the Joint Exelon Utilities state that they would support Staff’s proposal whereby suppliers that plan to participate in the SCB markets are allocated at least 50% of costs.<sup>45</sup>

34. Regardless of how SCB costs are allocated, the Joint Exelon Utilities contend that utilities must receive full and timely recovery of all prudently incurred SCB implementation costs. Regarding timing, the Joint Exelon Utilities argue that the IT-related assets they have invested in

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<sup>42</sup> SFE Energy April 5, 2023, Comments, Maillog No. 302270 at 1.

<sup>43</sup> Joint Exelon Utilities April 4, 2023, Comments, Maillog No. 302247 at 1-2.

<sup>44</sup> *Id.* at 2.

<sup>45</sup> *Id.* at 3.

to date for SCB implementation generally have a lifespan of five years, which is the appropriate timeline for cost recovery, in their view.<sup>46</sup> They point out that if suppliers are allocated the costs but subsequently elect to withdraw from the market, the utilities could be left with unrecovered SCB implementation costs. For utilities with multi-year rate plans (“MYPs”), the Joint Exelon Utilities assert that the solution is for the Commission to authorize utilities to seek recovery from their customers of SCB implementation costs in their next MYP rate cases.<sup>47</sup> The Joint Exelon Utilities further state that all of the costs they have presented are incremental, and do not include embedded costs currently in rates; however, they argue that this issue is also better suited to exploration in a rate case.<sup>48</sup>

35. Finally, the Joint Exelon Utilities ask that the Commission make a determination as to whether the implementation of SCB is to be delayed or halted in order to prevent customers from having to bear unnecessary costs.<sup>49</sup> They state that they have spent \$8.3 million to date implementing SCB, with a monthly run rate of approximately \$1.5 million as of February 2023. However, the Joint Exelon Utilities state that they would act to slow the current monthly spend rate if the Commission extends the SCB implementation date.

#### **G. Potomac Edison**

36. Potomac Edison argues that principles of cost causation require that the parties causing a cost should bear that cost, and that accordingly, SCB suppliers should bear the full cost of SCB implementation.<sup>50</sup> Potomac Edison contends that nothing in the Public Utility Article (“PUA”) or Commission orders mandate that suppliers using SCB be subsidized by the utilities’ non-shopping

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<sup>46</sup> *Id.* at 4.

<sup>47</sup> *Id.* at 3.

<sup>48</sup> *Id.* at 5.

<sup>49</sup> *Id.* at 4-5.

<sup>50</sup> Potomac Edison April 5, 2023, Comments, Maillog No. 302266 at 2-3.

customers. Moreover, neither the PUA nor Commission orders require that SCB be launched at this time regardless of its cost-effectiveness.<sup>51</sup> Nevertheless, Potomac Edison states that it would agree to Staff's compromise proposal that SCB suppliers bear, over time, at least half of incremental SCB utility costs, with the remainder to be recovered in rates from all utility customers.<sup>52</sup>

## **H. Washington Gas**

37. Washington Gas Light Company ("Washington Gas") comments that the cost of implementing SCB on Washington Gas's system will likely be significantly higher than the \$4 million estimate provided in 2021.<sup>53</sup> The company states that it will not know the exact cost until the work has been fully scoped and a request for proposals (RFP) for the project has been issued and a proposal accepted.

38. Washington Gas argues that suppliers should be solely responsible for SCB implementation costs, given that they and their customers will benefit from its implementation, and that the request for SCB came from the suppliers.<sup>54</sup> If, however, the Commission determines that the implementation costs of SCB should fall on utility customers, Washington Gas asserts that costs should be collected through a surcharge. Washington Gas argues that collection through a surcharge is preferable to recovery through base rates via a regulatory asset, because recovery through future rates would require deferral of carrying costs and would ultimately be more expensive to utility customers.

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<sup>51</sup> *Id.* at 2.

<sup>52</sup> *Id.* at 3.

<sup>53</sup> Washington Gas Comments at 2.

<sup>54</sup> *Id.* at 3.

## **I. Office of People’s Counsel**

39. The Maryland Office of People’s Counsel (“OPC”) opposes Option 1, arguing that SCB will inure exclusively to the commercial benefit of retail suppliers.<sup>55</sup> OPC asserts that consistent with principles of cost causation, utility ratepayers should not be required to bear SCB costs. OPC argues this is especially true for low-income customers who will not be able to be served by a retail supplier.

40. Given the diminishing number of residential customers choosing competitive supply, OPC further argues that it would be unfair to “forc[e] 80-85 percent of non-participating ratepayers into funding another retail choice market enhancement.”<sup>56</sup> Instead, OPC supports options that allocate cost recovery of SCB implementation costs to retail suppliers, including Option 2, Option 3, or Option 7.

41. OPC opposes Option 4 and Option 6, since neither option includes a mechanism by which ratepayers would be fully repaid for SCB implementation costs.<sup>57</sup> OPC does not object as strongly to Option 5, noting it provides a pathway for ratepayers to obtain reimbursement for SCB implementation costs, though with no guarantee. During the hearing, OPC opined that “Option 5 could work,” though OPC would like to see a firmer timeline for repayment of ratepayers.

## **J. Maryland Energy Advocates Coalition**

42. The Maryland Energy Advocates Coalition (“MEAC”)<sup>58</sup> contends that Maryland residential customers and small businesses should not pay any portion of SCB costs.<sup>59</sup> MEAC argues that SCB provides little incremental benefit over the current billing system, as evidenced

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<sup>55</sup> OPC April 5, 2023, Comments, Maillog No. 302267 at 7.

<sup>56</sup> *Id.* at 8.

<sup>57</sup> *Id.* at 10.

<sup>58</sup> MEAC is a coalition of energy advocates, founded and led by Ms. Laurel Peltier.

<sup>59</sup> MEAC April 5, 2023, Comments, Maillog No. 302264 at 1.

by the suppliers' collective reluctance to pay for any portion of it. MEAC further contends that many retail suppliers charge significantly more for the same electricity and gas offered by regulated utilities, and confuse customers through teaser rates that are subsequently raised to well above the default utility rate.<sup>60</sup> Additionally, MEAC argues that many suppliers target low-income customers and charge them a premium above what they would charge medium and high-income accounts.<sup>61</sup> Accordingly, MEAC opposes any requirement that ratepayers fund SCB.

#### **K. Staff**

43. Staff comments that its goal throughout the SCB implementation process has been to develop a cost recovery option for SCB that follows cost causation principles, while avoiding the creation of a barrier to entry for suppliers into the SCB market.<sup>62</sup> Another important principle to Staff is to minimize impacts to suppliers who choose not to utilize SCB. Staff also states that it is important to achieve full and timely cost recovery for utilities and to minimize intergenerational concerns, such that cost recovery aligns with the useful life of an asset.<sup>63</sup> Staff asserts that its compromise proposal (Option 4) best meets these principles. Staff contends that Option 4 supports cost causation because suppliers who intend to participate in SCB must commit to paying at least 50% of program costs through an enforceable guarantee, but the amount of the commitment will not be so high as to create a barrier to entry.<sup>64</sup>

44. Staff observes that Option 5 is an alternative Staff option that also strikes a compromise between cost causation and supplier affordability by relaxing the guarantee required in Option 4.<sup>65</sup> Staff asserts that the success of complete repayment by SCB suppliers will be determined by (i)

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<sup>60</sup> *Id.* at 8.

<sup>61</sup> *Id.* at 2, 5.

<sup>62</sup> Staff April 5, 2023, Comments, Maillog No. 302276 at 2.

<sup>63</sup> *Id.* at 3-4.

<sup>64</sup> *Id.* at 6.

<sup>65</sup> *Id.* at 9.

the size of the SCB surcharge; and (ii) the adoption rate of SCB by customers. Staff notes that there is a risk that the costs will not be fully covered by suppliers. A benefit of Option 5 in Staff's view is that the barrier to entry to suppliers is low and the option does not incentivize or disincentivize the UCB market compared to the SCB market, so long as the surcharge is not overly large.<sup>66</sup> Staff further states that the surcharge amount may need to be revisited over the course of the SCB program and adjusted over time based on repayment success.

### **III. COMMISSION DECISION<sup>67</sup>**

45. The issue of cost recovery of incremental SCB costs requires a careful balancing of competing principles including cost causation, avoiding barriers to entry, and full and timely recovery of utility costs. The SCB WG labored diligently attempting to resolve this issue and provided comprehensive information to the Commission through the SCB WG Report, party comments, and live testimony at the April 12, 2023, hearing.

46. Ultimately, the Commission finds unpersuasive the suppliers' argument that all costs should be imposed on ratepayers, since that position lies in contravention of the principle of cost causation. As OPC and the utilities assert, SCB suppliers will be the primary beneficiaries of the SCB rollout. They are also the parties who asked for the authority to offer SCB, and it is the implementation of SCB that is causing Maryland utilities to incur significant costs to make the service possible.

47. Nevertheless, the Commission does not agree with parties who suggest that suppliers will be the only beneficiaries of SCB. Petitioners correctly point out that the Maryland General Assembly created the obligation to implement competitive billing as part of restructuring

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<sup>66</sup> *Id.* at 9-10.

<sup>67</sup> Commissioner Kumar P. Barve did not participate in this decision.

mandated by the Electric Customer Choice and Competition Act of 1999.<sup>68</sup> That Act envisioned that competition, including through competitive billing, would benefit customers by creating competitive retail markets for electricity supply and services, expanding consumer options, and potentially lowering prices.<sup>69</sup> Still, the fact that the General Assembly mandated competitive billing does not lead inevitably to the conclusion that the legislature intended ratepayers to fund it, or that ratepayers are the cost causers. To the contrary, the Customer Choice and Competition Act is silent on the issue of cost recovery options for competitive billing.

48. Regarding the principle of avoiding barriers to entry, the Commission finds unworkable cost recovery options that require suppliers to pay all SCB implementation costs within the five-year period needed for utility reimbursement. The tables provided in the SCB WG Report demonstrate that these options would impose economic burdens on suppliers that would dissuade them from entering the SCB market and would make their retail products unattractive to customers. Moreover, SCB implementation costs have fluctuated significantly over the years, have generally risen over time, and will not have undergone a prudence review at the time suppliers would be required to pay them under the applicable options. An additional problem is that there is unlikely to be a large number of customers or suppliers participating in SCB in the first few years of the program. As the suppliers stated in their filed comments and during the hearing, their participation in the SCB program will likely start slowly, like a utility pilot program. To the extent excessive costs are imposed on SCB suppliers (and potentially passed on to their customers), they will face

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<sup>68</sup> Codified in PUA §§ 7-501 *et seq.*

<sup>69</sup> It is true that not all customers will choose to utilize SCB, and many may eschew retail competition entirely. However, the choice will still be available to most customers. Several parties observed that low-income customers will not have the choice of selecting SCB or competitive supply after July 1, 2023, as a result of newly enacted legislation codified in PUA § 4-308. The Commission observes, however, that no party presented any method for shielding low-income customers from SCB costs, other than choosing a cost recovery option that imposes all of the costs on suppliers. The Commission will remain receptive to hearing SCB WG recommendations on this issue.

a rising incentive to abandon SCB, leaving remaining suppliers and customers with an even larger share of the costs. For these reasons, the imposition of significant, but uncertain costs on a small number of suppliers would likely create an insurmountable barrier to entry to SCB.

49. Regarding the principle of recovery of utility costs, there is no material dispute that the utilities are entitled to full and timely recovery of the reasonable costs they have incurred in implementing SCB, subject to a prudency review. The utilities should not be placed in a position where their cost recovery becomes contingent on the willingness of retail suppliers to enter the SCB market. Regarding the time period for recovery, there appears to be general consensus that five years is the appropriate period to recover the investments made by the utilities. The Commission agrees that time period is appropriate. Additionally, the Commission finds that options that do not guarantee utility cost recovery during this five-year period and instead rely on a certain number of participating suppliers or customers are not reasonable.

50. For the reasons discussed above, the Commission finds Option 1 untenable. It does not adhere to the principle of cost causation. Option 2 would increase the suppliers' costs of utilizing UCB in Maryland, thereby making the cost of participating in retail competition more expensive in this State, for customers and suppliers. Additionally, new low-income regulations beginning July 1, 2023, will exacerbate the problem by further reducing the number of shopping customers. The Commission similarly finds that Option 3 would impose excessive costs to SCB suppliers and create a barrier to entry.

51. Though Option 4 is a compromise position advocated by Staff, the Commission finds that it would require significant cost recovery from SCB suppliers through some form of guarantee, which could delay development of SCB until the guarantee is secured from willing suppliers. Although the utilities may have the ability to slow down programing during this indeterminate

waiting period, the Exelon Utilities have already expended approximately \$8.3 million in sunk costs and Potomac Edison has spent an additional \$1 million, with some additional spending still required during the delay. Moreover, the act of stopping and restarting SCB coding would likely result in duplicative costs, as utility IT systems are developed in test environments that would no longer be maintained and would need to be redeveloped. Finally, the expected delays in this option could lead to a catch-22 scenario where SCB is never fully completed as the Commission waits for suppliers to guarantee undefined and rising costs based on dwindling revenues from a relatively small participating customer base.

52. As Staff acknowledges, Option 6 was not discussed with the SCB WG.<sup>70</sup> The Commission is reluctant to consider an option that was not fully vetted with the workgroup participants. Additionally, this option does not provide a pathway for full repayment to ratepayers, so does not align with the principle of cost causation. Finally, the Commission finds Option 7 problematic because it introduces potential legal and equitable concerns with cost recovery crossing utility territories.

53. The Commission finds that Option 5 best balances the principles of cost causation, avoidance of barriers to entry, and full and timely recovery of utility costs. Customers will pay SCB implementation costs upfront, which will ensure that utilities are made whole for their investments and will also prevent the imposition of overwhelming costs to a nascent SCB industry. Suppliers, however, will be required to repay customers over time, which will meet the principle of cost causation. It is true that this option presents only a pathway to full recovery and not a guarantee, and that the timing of repayment may raise some intergenerational concerns. Overall, however, the Commission finds this alternative is the best option.

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<sup>70</sup> See, SCB WG Request at 18.

54. The specifics of this proposal should be analyzed and refined by the SCB WG. However, the Commission finds that a dollar per bill fee should be charged and that the amount should be sufficient to ensure repayment to ratepayers over a reasonable period of time, and not so much as to risk imposing a barrier to entry.<sup>71</sup> **The Commission finds that a \$2.00 per bill fee is reasonable. Nevertheless, the surcharge amount may need to be revisited over the course of the SCB program and adjusted from time to time, depending on variables including the rare of supplier and customer SCB participation. In the long term, the Commission will also examine UCB charges with the intent of keeping incentives in the UCB and SCB markets on relatively equal footing. The Commission will also examine POR amounts.**

55. With regard to the Joint Exelon Utilities' request that the Commission make a determination as to whether the implementation of SCB is to be delayed or halted, the Commission directs the parties to proceed with implementation of SCB. Similarly, the Commission finds that Deca's proposal to make significant program design changes and pursue alternative options would create excessive delays in SCB implementation. Nevertheless, the Commission encourages parties to continue searching for ways to lower costs.

56. This Order does not address prudence, which is an issue that is appropriately addressed in the context of a rate case. Related issues such as whether portions of the utilities' claimed SCB implementation costs may include embedded costs currently in rates or are instead incremental costs directly related to the changes necessary to implement SCB, are also better left for inquiry in a future rate case.

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<sup>71</sup> The Commission observes that a higher dollar per bill fee does not necessarily equate to a faster payback, given that a higher fee could dissuade suppliers and customers from participating. Here, Commissioner Linton concurs with the majority that the work group should propose a range for the SCB fee, but for those discussions would not offer a floor or ceiling at this time.

57. Finally, the Commission is sympathetic to Octopus' argument that suppliers have lacked decisional control over SCB implementation costs incurred by the utilities. However, it is ultimately the utilities who will be subjected to a prudency review, and they should be the entities making decisions about selecting the vendors and in-house resources necessary to develop, implement, and administer utility billing systems, EDI interface, and informational data needed for SCB. Octopus is correct, however, that the process should be made as transparent and competitive as possible to reduce costs. Greater transparency will also help resolve the issue raised by multiple suppliers that they have no effective control over or insight into utility implementation costs.

**IT IS THEREFORE**, this 27<sup>th</sup> day of June, in the year Two Thousand Twenty-Three, by the Public Service Commission of Maryland, **ORDERED** that cost recovery be shared between ratepayers and retail suppliers participating in supplier consolidated billing pursuant to Option 5 discussed in the Supplier Consolidated Billing Workgroup Request, with inclusion of a \$2.00 per bill fee, as provided in the body of this Order.

/s/ Jason M. Stanek

/s/ Michael T. Richard

/s/ Anthony J. O'Donnell

/s/ Odogwu Obi Linton

Commissioners