



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

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July 10, 2012

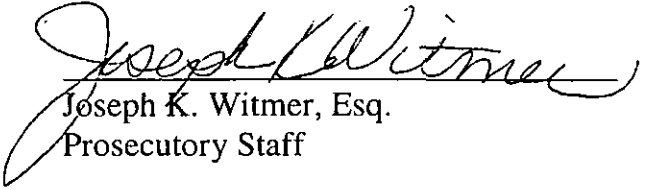
Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

**Re: Law Bureau Prosecutory Staff v. Columbia Gas of Pennsylvania, Inc.
Docket No. C-2010-2071433**

Dear Secretary Chiavetta:

Enclosed for filing are an original and three (3) copies of a Settlement Agreement between the parties in the above-referenced matters. Law Bureau Prosecutory Staff is requesting that this settlement be forwarded to the Office of Special Assistants. Thank you for your cooperation in this matter. The title in this filing reflects a matter underway prior to the Commission's creation of the Bureau of Investigations and Enforcement.

Very truly yours,


Joseph K. Witmer, Esq.
Prosecutory Staff

Enclosure

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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Pennsylvania Public Utility Commission
Law Bureau Prosecutory Staff,

MAY 16 2012

Complainant

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

v.

Docket No.

C-2010-2071433

Columbia Gas of Pennsylvania, Inc.,

Respondent

JOINT PETITION FOR SETTLEMENT AGREEMENT

I. INTRODUCTION

1. The Parties to this Joint Petition for Settlement Agreement ("Settlement Agreement") are the Pennsylvania Public Utility Commission ("Commission") Prosecutory Staff (Prosecutory Staff), P.O. Box 3265, Harrisburg, PA 17105-3265 and Columbia Gas of Pennsylvania, Inc. ("Columbia" or "the Company") in the above-captioned proceeding. Columbia is a certificated company that provides public utility gas service to residential and business customers in Pennsylvania.

II. BACKGROUND

2. The Prosecutory Staff initiated an Informal Investigation relating to possible violations of the Public Utility Code (the "Code") and Commission regulations related to twenty-two releases of standard billing information between August 25 and September 3, 2008, despite five of those the consumers opting out of the process for limited release of confidential information, that was subsequently communicated to the Commission's Bureau of Consumer Services (BCS) on September 30, 2008.

3. The following is a sequence of events that occurred with regard to the release of customer billing information subject to section 501 and Section 62.78 obtained and maintained by Columbia in Pennsylvania:

a. On September 3, 2008, Columbia discovered a technical glitch within its website that allows the customer to view their bill. Columbia's call center first reported the incident after they had received a few calls from customers alleging that they were able to view bills of other Columbia customers in other states in which Columbia affiliates provide service. Columbia immediately disabled the system to prevent further viewing and began an investigation to determine the root cause of the problem and to mitigate the further release of customer bills.

b. On September 4, Columbia discovered that a corrupt database in the bill viewer program had caused the releases of customer bills at issue. Columbia determined that standard billing information, which includes the customer's name, service address, account number, gas consumption, past payments, payment due dates, the current balance and current charges had been released. No release of other confidential information such as social security numbers, bank account information, credit card information, or telephone numbers occurred.

c. During the course of its investigation, Columbia determined that there were twenty-two of its customers whose bills were mistakenly viewed by other customers who were attempting to view their own bills through Columbia's website.

d. Columbia sent letters to each of the affected customers to advise them of the situation, to describe the steps that Columbia had taken to address the matter, and to provide them with information about how to prevent identity theft.

e. On September 30, 2008, after completion of its investigation, Columbia communicated information to the Bureau of Consumer Services (BCS) about the release of customer billing and account information, information subject to the Commission's regulations under Section 62.78 of the Public Utility Code, 52 Pa.C.S. § 62.78 through the bill viewer function on Respondent's website.

f. Of the twenty-two Columbia Gas of Pennsylvania customers whose bills were viewed by other customers, five had previously exercised their option under 52 Pa. Code § 62.78 to restrict the release of customer information.

4. In response to these events, the Prosecutory Staff filed a Formal Complaint against Columbia in Docket No. C-2010-2071433. Subsequent to the filing of that Formal Complaint, the Prosecutory Staff and Columbia proceeded to discuss a possible settlement of the matter and a Settlement Agreement was reached on this matter.

5. This Settlement Agreement among the parties addresses and resolves the matters and concerns investigated by Prosecutory Staff concerning the release of customer billing information.

III. PROSECUTORY STAFF POSITION

6. The Prosecutory Staff reviewed the release and absent a settlement of these matters the Prosecutory Staff would have proceeded to allege in subsequent litigation that *Columbia committed the following acts or omissions in violation of the Public Utility Code and the Commission's regulations:*

7. Columbia failed to maintain and follow the Commission regulations governing the release of confidential customer billing and account information with regard to at least 22 customers in a manner required by Section 1501 of the Public Utility Code and Sections 62.78,

52 Pa.C.S. § 62.78, of the Commission's regulations in that the company released customer billing information.

8. Each release constitutes a separate violation of Section 1501 and Section 62.78 of the Commission's regulations on a per day basis.

9. Columbia failed to adequately address the release of customer billing information in that the company released customer billing information.

10. Each release constitutes a separate violation of Section 1501 and Section 62.78 of the Commission's regulations on a per day basis.

11. Columbia's failure to adequately maintain confidential customer billing information constitutes a violation of Pennsylvania law for the protection of privacy for each action, a standard greater than the federal standard. *Commonwealth v. Schaeffer*, 536 A.2d 354, 360 (1987) (Pennsylvania Constitution at Article I, §8 offers more protection to the right of privacy than exists in the federal regime); *In re: B*, 394 A.2d 418, 425 (1978) (Pennsylvania Supreme Court recognizes that some Pennsylvania rights of privacy are more stringent than the federal equivalent); *Commonwealth v. Stenger*, 609 A.2d 796, 800 (Supreme Court rejects the flexible approach and holds that only a compelling state interest may warrant disclosure of personal matters) in that the company released confidential customer information.

12. Each release constitutes a separate violation of Section 1501 and Section 62.78, including privacy standards, on a per day basis.

IV COLUMBIA'S POSITION

13. Columbia does not admit herein any of the findings of the Prosecutory Staff. Columbia was prepared to dispute and respond or answer each allegation in litigation. Columbia

was prepared to present a case to refute the claim that these events constitute an act or omission in violation of the Public Utility Code or the Commission's regulations.

14. Columbia notes that the above allegations overlooked the fact that Columbia promptly remedied the glitch in the software and subsequently replaced the Information Technology (IT) company providing software support for Columbia's information retention and retrieval functions regarding Pennsylvania consumers. Moreover, Columbia notes that only five of the twenty-two affected customers had exercised their option to restrict the release of customer information, that no critical information such as social security numbers, bank account numbers, credit card numbers, or telephone numbers was compromised. Further, Columbia notes that it proactively contacted each of the affected customers, and that no affected customer ever filed a complaint against Columbia in any forum.

15. Columbia further notes that these allegations were made without the benefit of hearings and that either Parties' contentions may or may not be accepted by the Commission if the matter had been fully litigated. The response of Columbia to the Prosecutory Staff's allegations in each of these incidents would have been contained in an extensive response to the Formal Complaint.

16. In lieu of that costly and long-term litigation, Columbia subsequently agreed to the mutually agreed-upon terms of Settlement set forth below.

V. SETTLEMENT AGREEMENT

17. The parties to this Settlement Agreement have engaged in extensive and detailed discussions with respect to the allegations and defenses relating to each of the above matters. The purpose of this Settlement Agreement is to terminate the Commission Prosecutory Staff's

Formal Complaint and to resolve these matters without litigation in a manner that minimizes concerns regarding future events of a similar nature.

18. Columbia and Prosecutory Staff acknowledge that issues raised in these matters are subject to factual and legal dispute and, before Prosecutory Staff had filed its Formal Complaint, Columbia had already taken remedial action to address the concerns raised by the Prosecutory Staff in connection with these matters.

19. Columbia has been cooperative and pro-active in addressing the Commission's concerns, particularly those involving software glitches that resulted in the inadvertent release of billing information in managing release of information for similarly-situated customers in the future.

20. Based upon the foregoing, the parties have agreed to the entry of an Order directing Columbia do the following:

- A. Pay a civil penalty in the amount of five thousand dollars (\$5,000.00), pursuant to 66 Pa. C.S. § 3301. Payment shall be made by certified check to the Commonwealth of Pennsylvania and presented to the Commission within twenty (20) days of the date of the Commission's Order. Columbia shall not claim or include any portion of this civil settlement payment in any future rate proceeding.
- B. To continue oversight, management, and implementation of software programs and reliance on Information Technology expertise sufficient to prevent incidents of the nature covered within this Settlement Agreement from occurring in the future. Such ongoing commitment shall include any necessary staff training and internal management procedures.

21. In consideration of Columbia's payment of a civil penalty in the amount of \$5,000, as specified herein, and implementation and completion of the remediation of the earlier software programming issue and replacement of the prior Information Technology (IT) expert, the Commission Prosecutory Staff expressly agrees to forbear the institution of any formal

complaint or other informal investigation that relates to the conduct and responsiveness of Columbia regarding the release of standard billing information as described in this Settlement Agreement.

22. Nothing contained in this specific Settlement Agreement shall affect the Commission's authority to receive and resolve any informal or formal complaints filed by any affected party with respect to the incidents covered by this Settlement Agreement, except that no further enforcement action, including but not limited to civil penalties, shall be imposed by the Commission on Columbia for any actions that are within the scope of this Settlement Agreement.

23. Prosecutory Staff and Columbia believe that this Agreement is in the public interest, and therefore request that the Commission approve this Settlement agreement as in the public interest. This Agreement is expressly conditioned upon the Commission's approval under applicable public interest standards without modification, addition, or deletion of any term or condition herein. If the Commission fails to approve this Agreement by tentative or final order, or any of the terms or conditions set forth herein, without modification, addition or deletion, then either Party may elect to withdraw from this Agreement by filing a response to the tentative or final order within fifteen (15) days of the date that the tentative or final order is entered. None of the provisions of this Agreement shall be considered binding upon the Parties if such a response is filed.

24. Nothing contained in this Agreement may be used or construed by any person as an admission of any fact by Columbia . This Agreement is proposed by the Parties without any admission against, or prejudice to, any position which any Party may adopt during any subsequent administrative or court proceeding of whatever nature.

**VI. COMPLIANCE WITH THE COMMISSION'S POLICY STATEMENT ON \
LITIGATED AND SETTLED PROCEEDINGS INVOLVING VIOLATION OF
THE PUBLIC UTILITY CODE AND COMMISSION REGULATIONS**

25. The parties assert that approval of this Settlement is consistent with the Commission's *Policy Statement for Litigated and Settled Proceedings Involving Violations of the Public Utility Code and Commission Regulations*, 52 Pa. Code § 69.1201.

26. Under this Policy Statement, the Commission will consider specific factors when evaluating settlements of alleged violations of the Public Utility Code and Commission's Regulations. These factors are: (1) Whether the conduct at issue was of a serious nature; (2) Whether the resulting consequences of the conduct at issue were of a serious nature; (3) Whether the conduct at issue was deemed intentional or negligent (may only be considered when evaluating litigated cases); (4) Whether the regulated entity made efforts to modify internal policies and procedures to address the conduct at issue and prevent similar conduct in the future; (5) The number of customers affected and the duration of the violation; (6) The compliance history of the regulated entity that committed the violation; (7) Whether the regulated entity cooperated with the Commission's investigation; (8) The amount of the civil penalty or fine necessary to deter future violations; (9) Past Commission decisions in similar situations; and (10) Other relevant factors. 52 Pa. Code § 69.1201(c).

27. When applied to settled cases, the Commission will not apply the standards as strictly as it will in litigated cases. 52 Pa. Code § 69.1201(b).

28. With regard to the first standard and starting point in the Policy Statement, whether the conduct at issue was of a serious nature, such as willful fraud or misrepresentation,

the alleged conduct in this case involved the inadvertent release of standard billing information.

These actions do not rise to the level of a willful fraud or substantial misrepresentation.

29. With regard to the second standard set out in the Policy Statement, whether the resulting consequences attributable to the conduct at issue were of a serious nature, the parties have not been apprised of any adverse consequences to any of the twenty-two customers attributable to the release of the information from bills being viewed by other customers. Moreover, none of those customers have sought redress against Columbia in any forum related to the release of billing information.

30. The third standard set out in the Policy Statement whether the alleged conduct at issue was intentional or negligent, is not relevant given the indications that it was a software glitch that gave rise to the inadvertent release.

31. Under the terms of the settlement, Columbia has corrected the software malfunction, replaced the Information Technology provider, and agrees to modify its internal procedures so as to prevent similar situations in the future, thereby satisfying the fourth factor in the Policy Statement.

32. In the process of negotiating this Settlement Agreement, the factors discussed in Paragraph 22 through 29 were considered to be the most relevant factors. All of the other factors set forth in Section 69.1201 were considered, however, but are not believed to be particularly applicable to this matter. Specifically, the parties reviewed the number of customers affected, the compliance history of the Company, the Company's cooperation with the Commission, and the amount necessary not only to deter future violations but to recognize possible violations in the past. This Settlement Agreement recognizes Columbia's good faith efforts to comply with the regulations.

33. The parties believe that both parties' efforts have resulted in fair and equitable settlement that is in the public interest. The Commission has consistently encouraged settlements to avoid the time and expense associated with litigation. The parties submit that the Settlement Agreement is in the public interest because it recognizes the incident while effectively addressing and resolving the issues raised by the investigation and avoids the time and expense of litigation, which entails hearings, filings of briefs, exceptions, reply exceptions, and appeals. The Company has also agreed to pay a civil penalty and to comply with the Commission's Regulations. In addition, the Company has remedied the software malfunction and replaced the Information Technology vendor. The Settlement Agreement clearly meets the standards set forth in Section 69.1201.

34. This Settlement Agreement is conditioned upon the Commission's approval without modification. The parties agree that the Law Bureau Prosecutory Staff may prepare and submit a tentative order for the Commission's consideration pursuant to 52 Pa. Code Section 3.113.

35. The parties agree to waive the exception period, thereby allowing the Settlement Agreement to be presented directly to the Commission for review pursuant to 52 Pa. Code Section 5.232(e). The parties reserve the right to withdraw from this Settlement Agreement if it is modified in any manner, or if any adverse response is filed.

WHEREFORE, because the Agreement addresses and remedies all allegations raised in this matter, Prosecutory Staff and Columbia request that the Commission adopt an order approving the terms of this Agreement as being in the public interest.

Dated: _____

**PENNSYLVANIA PUBLIC UTILITY
COMMISSION PROSECUTORY STAFF**

BY: Joseph K. Witmer
Joseph Witmer, Esquire
Assistant Counsel, Law Bureau

BY: Daniel Mumford
Daniel Mumford
Bureau of Consumer Services

**COLUMBIA GAS OF PENNSYLVANIA,
INC.**

BY: Theodore J. Gallagher
Theodore J. Gallagher, Esquire
Counsel for
Columbia Gas of Pennsylvania, Inc.

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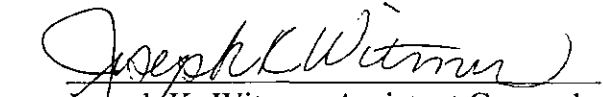
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CERTIFICATE OF SERVICE

I hereby certify that I am this day serving the foregoing document in accordance with the requirements of 52 Pa. Code § 1.54 *et seq.* (relating to service by a participant).

Notification by first class mail addressed as follows:

Mr. Ted Gallagher, Esquire
Columbia Gas of Pennsylvania, Inc.
650 Washington Road
Pittsburgh, PA 15228


Joseph K. Witmer, Assistant Counsel
Attorney ID #74939
Law Bureau

P.O. Box 3265
Harrisburg, PA 17105-3265

DATE: July 10, 2012

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