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ELECTRONICALLY FILED

July 12, 2012

Hon. Susan D. Colwell
PO Box 3265
Harrisburg, PA 17105-3265

Re: Donald Rinald v. Columbia Gas of Pennsylvania, Inc.
Complaint Docket No. C-2012-2292780

Dear Judge Colwell:

Enclosed is a Motion to Join Indispensable Party in the above-captioned Formal Complaint. A copy of the Motion has been served on the parties.

Sincerely,


Larry R. Crayne

cc: Ron Cerniglia
Direct Energy, LLC
Director of National Advocacy,
Government & Regulatory Affairs
40 Columbine Drive
Glenmont, NY 12077

Donald Rinald
281 Old Farm Road
Pittsburgh, PA 15228

Commonwealth of Pennsylvania

Before the Pennsylvania Public Utility Commission

In the Matter of:

Donald Rinald,
Complainant,

Complaint Docket
No. C-2012-2292780

VS.

Columbia Gas of Pennsylvania, Inc.,
Respondent.

Motion to Join Indispensable Party

And Now comes Respondent, Columbia Gas of Pennsylvania, Inc. (Columbia Gas), and states and avers as follows:

1. On or about March 5, 2012, Complainant filed a formal complaint against Columbia Gas alleging, *inter alia.*, that his February 14, 2012 bill contained "...an increase of 11% for my gas from Direct Energy." Formal Complaint, paragraph 5. Complainant also alleged that Columbia Gas "...plans to retain 11% of the funds to be given to the supplier." Formal Complaint, paragraph 4. B.
2. Direct Energy Services, LLC (Direct Energy), 12 Greenway Plaza, Suite 600 Houston, TX 77046, is the Natural Gas Supplier for Complainant. As the Natural Gas Distribution Company for Complainant, Columbia Gas bills Complainant for the gas supply charges by Direct Energy and transmits payments from Complainant to Direct Energy.
3. In accordance with the most recent rate case order at Docket No. R-2010-2215623, *et al.*, Columbia Gas is transitioning from billing customers on a volumetric basis to a therm basis.
4. In the transition to billing on a term basis, Columbia Gas adjusted its rates to reflect the new billing methodology.
5. Complainant is apparently disputing charges billed by Direct Energy. Direct Energy has apparently not adjusted its rates to reflect the new therm billing methodology. Therefore any possible refund of rates or findings of improper rates relates to Direct Energy.
6. Further, Columbia Gas is not privy to the contractual relationship between Complainant and Direct Energy. Therefore, Columbia Gas is unable to determine if Direct Energy has charged Complainant correctly for gas supply.

7. In Pennsylvania, "...an indispensable party is one whose rights are so directly connected with and affected by litigation that they must be a party of record to protect such rights, and their absence renders any order or decree of court null and void for want of jurisdiction." *Columbia Gas Transmission Corp. v. Diamond Fuel Co.*, 464 Pa. 377, 379 (Pa. 1975). Failure to join an indispensable part goes absolutely to the court's jurisdiction and, if not raised by the parties, should be raised *sua sponte*. *Posel v. Redevelopment Authority of Philadelphia*, 72 Pa. Commw. 115, 121 (Pa. Commw. Ct. 1983).

8. The Pennsylvania Supreme Court has established that the "the basic inquiry in determining whether a party is indispensable concerns whether justice can be done in the absence of a third party In order to make the analysis, however, one must refer to the nature of the claim and the relief sought." *Cry, Inc. v. Mill Service, Inc.*, 536 Pa. 462, 486-489 (Pa. 1994). In *Mechanicsburg Area School District, v. Kline*, 494 Pa. 476, 481 (Pa. 1981), the court's test for determining indispensability involved "at least" the following considerations:

1. Do absent parties have a right or interest related to the claim?
2. If so, what is the nature of that right or interest?
3. Is that right or interest essential to the merits of the issue?
4. Can justice be afforded without violating the due process rights of absent parties?

9. In regard to the first factor, Direct Energy has a right or interest in the claim. Complainant's allegations of improper charges relate to Direct Energy charges.

10. In regard to the second factor, Direct Energy has an interest in the possible obligation to refund payments received and/or to compromise charges in dispute.

11. In regard to the third factor, Direct Energy's interest is essential to the merits of this Complaint because the alleged "increase of 11% for my gas from Direct Energy" relates to gas supply charges by Direct Energy, not distribution charges by Columbia Gas. Columbia Gas cannot respond to charges by Direct Energy. The relief sought by Complainant necessarily involves Direct Energy, not Columbia Gas which is a mere billing agent for Direct Energy with no authority to adjust Direct Energy's charges.

12. In regard to the fourth factor, not joining Direct Energy would violate due process rights. Direct Energy is the supplier of energy to Complainant. Complainant's allegations relate to Direct Energy's rates and supply practices and any adjudication concerning business practices of Direct Energy without its presence would violate its due process rights.

Wherefore, Columbia Gas of Pennsylvania moves that Direct Energy be joined as an indispensable party to this Complaint.

Notice to Plead

To: Direct Energy

You are hereby notified to file a written response to the above Motion to Join Indispensable Party within ten (20) days from service hereof or a judgment may be entered against you. The response must be mailed to the Secretary of the Public Utility Commission:

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

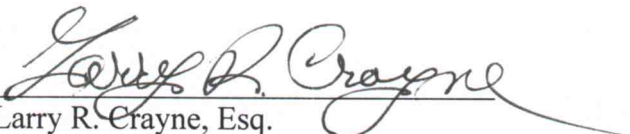
A copy of your response must also be mailed to:

Larry R. Crayne, PC
Attorney at Law
238 Johnston Road
Pittsburgh, PA 15241

Donald Rinald
281 Old Farm Road
Pittsburgh, PA 15228

Respectfully submitted,

Columbia Gas of Pennsylvania, Inc.

By: 
Larry R. Crayne, Esq.

VERIFICATION

I, M. Carol Fox, hereby state that the facts above set forth are true and correct (or are true and correct to the best of my knowledge, information, and belief) and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).

Date:

7-12-2012

M. Carol Fox

M. Carol Fox
President

Columbia Gas of Pennsylvania, Inc.

Certificate of Service

I hereby certify that I have this day served a true and correct copy of the foregoing document upon the individuals, listed below, in accordance with the requirements of Sec. 1.54 (relating to service by a participant).

Ron Cerniglia
Direct Energy, LLC
Director of National Advocacy,
Government & Regulatory Affairs
40 Columbine Drive
Glenmont, NY 12077\

Donald Rinald
281 Old Farm Road
Pittsburgh, PA 15228

Dated this 12th day of July, 2012



Larry R. Crayne
238 Johnston Road
Pittsburgh, PA 15241

Counsel for
Columbia Gas of Pennsylvania, Inc.