

August 16, 2018

**Via Electronic Filing**

Rosemary Chiavetta, Secretary  
PA Public Utility Commission  
PO Box 3265  
Harrisburg, PA 17105-3265

Re: Pennsylvania Public Utility Commission, Office of Small Business Advocate, Office  
of Consumer Advocate, The Pennsylvania State University, Columbia Industrial  
Intervenors, G. Blair Bauer and Philip L. Bloch v. Columbia Gas of Pennsylvania, Inc.;  
Docket Nos. R-2018-2647577, et. al.

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Dear Secretary Chiavetta:

Enclosed for electronic filing please find Direct Energy Business, LLC, Direct Energy Services,  
LLC and Direct Energy Business Marketing, LLC's Main Brief in the above-referenced matter.  
Copies to be served in accordance with the attached Certificate of Service.

Sincerely,

*Kristine E Marsilio*

Kristine E. Marsilio, Esq.

Enclosure

cc: Hon. Jeffrey A. Watson  
Certificate of Service w/enc.

## CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of Direct Energy's Main Brief upon the participants listed below in accordance with the requirements of § 1.54 (relating to service by a participant).

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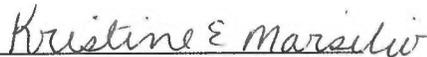
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Date: August 16, 2018, 2018

  
Kristine E. Marsilio, Esq.

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	R-2018-2647577
Office of Consumer Advocate	:	C-2018-3000582
Office of Small Business Advocate	:	C-2018-3000073
The Pennsylvania State University	:	C-2018-3001034
Columbia Industrial Intervenors	:	C-2018-3001047
G. Blair Bauer	:	C-2018-3001319
Philip L. Bloch	:	C-2018-3001634
	:	
v.	:	
	:	
Columbia Gas of Pennsylvania, Inc.	:	
	:	
and	:	
	:	
Petition of	:	P-2018-2641257
Columbia Gas of Pennsylvania, Inc. for	:	
Authorization to Defer, for Accounting Purposes,	:	
Certain Costs Associated With a Prepayment to the	:	
NiSource, Inc. Pension Trust	:	

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**MAIN BRIEF  
OF DIRECT ENERGY BUSINESS, LLC,  
DIRECT ENERGY SERVICES, LLC, AND  
DIRECT ENERGY BUSINESS MARKETING, LLC**

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Date: August 16, 2018

Attorneys for  
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Services, LLC, and Direct Energy Business  
Marketing, LLC

## **I. INTRODUCTION**

Direct Energy Business, LLC, Direct Energy Services, LLC, and Direct Energy Business Marketing, LLC (collectively, “Direct Energy”) respectfully request that the Pennsylvania Public Utility Commission (“Commission”): (1) order Columbia Gas of Pennsylvania, Inc. (“Columbia” or the “Company”) to end its discriminatory practice of allowing only two former affiliates to bill for non-commodity service on its utility bill; and (2) order the Company to allow all Natural Gas Suppliers (“NGSs”) to have the option of billing for non-commodity services on Columbia’s utility bill.

Columbia’s current practices are discriminatory, in violation of Pennsylvania law and the Commission’s regulations. On the other hand, allowing all NGSs to bill for a diverse range of products and services on Columbia’s bill is in the public interest, as it will serve to enhance the competitive market and provide benefits to consumers. Additionally, it will further the Commission’s goals of promoting competition, enhancing innovation, and improving customer service.

## **II. PROCEDURAL HISTORY**

On March 16, 2018, Columbia filed Supplement No. 267 to its Tariff Gas PA PUC No. 9 (“Supplement No. 267”) to become effective May 15, 2018, containing proposed changes in rates, rules, and regulations. In Supplement No. 267, Columbia seeks an overall revenue increase of \$46.9 million per year, or 8.16%. Columbia served its Direct Testimonies along with Supplement No. 267.

On March 20, 2018, the Office of Consumer Advocate (“OCA”) filed a Formal Complaint in the above-captioned proceeding. The Commission’s Bureau of Investigation and Enforcement (“I&E”) filed a Notice of Appearance in the matter on March 22, 2018. The Office

of Small Business Advocate (“OSBA”) filed a Formal Complaint on March 28, 2018. The following parties filed Petitions to Intervene: Direct Energy, Shipley Choice, LLC d/b/a Shipley Energy, Dominion Energy Solutions, Inc., and Interstate Gas Supply, Inc. d/b/a IGS Energy (collectively, “NGS Parties”), Community Action Association of Pennsylvania (“CAAP”), the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (“CAUSE-PA”), Pennsylvania State University (“PSU”), and Columbia Industrial Intervenors (“CII”). The following consumers also filed Formal Complaints: G. Blair Bauer, Philip L. Bloch, and Robin A. Harrison.

By Order dated April 5, 2018, The Commission suspended Supplement No. 267 by operation of law until December 15, 2018, unless otherwise directed by Order of the Commission. The case was assigned to the Office of Administrative Law Judge and was further assigned to Administrative Law Judge Jeffrey A. Watson (“ALJ Watson”). On April 10, 2018, ALJ Watson issued a Prehearing Conference Order, scheduling a Prehearing Conference in this case for Wednesday, April 18, 2018. ALJ Watson convened a Prehearing Conference on April 18, 2018, at which time a procedural schedule was established.

CAUSE-PA served Direct Testimony on June 6, 2018. On June 7, 2018, the following parties served Direct Testimony: Direct Energy, the NGS Parties, I&E, OCA, OSBA, PSU, and CAAP. Rebuttal Testimony was served by the following parties on July 3, 2018: Columbia, Direct Energy, the OCA, CAUSE-PA, CII, the OSBA, and PSU. The following parties served Surrebuttal Testimony on July 17, 2018: Columbia, Direct Energy, the OCA, the NGS Parties, I&E, CAUSE-PA, the OSBA, CII, and PSU.

Prior to the hearing, the parties reached a settlement resolving all issues, except for the issue related to non-commodity charges on Columbia’s bill. The evidentiary hearing was held on July 26, 2018, at which time the parties admitted their pre-served testimony into the record.

In accordance with the litigation schedule established in this proceeding, Direct Energy submits this Brief to address the non-commodity billing issue.

### **III. APPLICABLE LEGAL STANDARDS**

The Natural Gas Choice and Competition Act (“Choice Act”) authorizes consumers to choose among NGSs in a competitive generation market. 66 Pa. C.S. § 2203(2). Under the Choice Act, Natural Gas Distribution Companies (“NGDCs”) must “provide distribution service to [...] all natural gas suppliers, affiliated or nonaffiliated, on nondiscriminatory rates, terms of access and other conditions.” 66 Pa. C.S. § 2203(4); *see also* 66 Pa. C.S. § 1502 (containing a general prohibition against discrimination in service). The Commission regulations also contain provisions governing the standards of conduct between an NGDC and its affiliate, and prohibiting the NGDC from granting preference to its affiliate over a nonaffiliated NGS. *See* 52 Pa. Code § 62.142.

### **IV. ARGUMENT**

The evidence of record in this proceeding supports a finding that Columbia’s current practice of allowing only two of its former affiliates to bill for non-commodity services on its utility bill is discriminatory and violates Pennsylvania law and the Commission’s regulations. As such, Columbia should be required to allow all NGSs to bill for non-commodity products or services on the Company’s utility bill. Allowing NGSs to bill for a diverse range of products and services on Columbia’s bill is in the public interest, as it will serve to enhance the competitive market and provide benefits to consumers. Additionally, it will further the Commission’s goals of promoting competition, enhancing innovation, and improving customer service.

As an NGDC, Columbia is prohibited from engaging in discriminatory practices and from providing preferential treatment to affiliated entities over non-affiliated NGSs. *See* 66 Pa. C.S. § 2203(4); *see also* 66 Pa. C.S. § 1502; *see also* 52 Pa. Code § 62.142. In his Direct Testimony, NGS Parties' witness Mr. Anthony Cusati, III testified that Columbia's current practice of allowing non-commodity products on Columbia's utility bill is discriminatory. NGS Parties St. No. 2 at 2-3. Mr. Cusati explained that Columbia only allows access to this service to two non-NGSs that were previously its affiliates, Columbia Service Partners ("CSP") and Nicor Energy Services Company ("Nicor").<sup>1</sup> NGS Parties St. No. 2 at 2. Specifically, Mr. Cusati explained that as a regulated monopoly, Columbia has unique access to customers in its service territory. *Id.* Mr. Cusati further explained that Columbia's utility bill is a distribution asset, paid for by the distribution rate-payers. By allowing CSP and Nicor to benefit from a distribution monopoly asset, it discriminates against other players in the market who offer similar services. *Id.* Mr. Cusati also testified that this practice is harmful to customers, because CSP and Nicor will have a lessened incentive to keep prices low and to provide better service. *Id.*

In his Rebuttal Testimony, Mr. Cusati explained that this practice is discriminatory, regardless of the unique business transactions that may have led to this arrangement. NGS Parties' St. No. 2-SR at 9-10. Furthermore, Mr. Cusati explained that it is also irrelevant that neither CSP nor Nicor are NGSs, as the NGSs are prohibited from billing for these same services on the Columbia bill. *Id.*

Other parties also presented testimony raising concerns about Columbia's current practice of allowing its non-NGS affiliates to bill for non-commodity services. For example, in the Direct Testimony of Direct Energy witness Orlando Magnani, Mr. Magnani testified, "Direct

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<sup>1</sup> While Mr. Cusati's Direct Testimony only references CSP, Columbia witness Nicole M. Paloney clarified in her Rebuttal Testimony that Columbia also allows its former affiliate, Nicor, to bill for non-commodity services on its utility bill. Columbia St. No. 18-R at 3.

Energy also offers similar products and services, but does not have the ability to bill its customers for those products and services on the utility bill. I agree that Columbia's practice is discriminatory and not in the public interest." Direct Energy St. No. 1 at 6. OCA witness Barbara Alexander also agreed that she is concerned with Columbia's practice, noting "The condition under which Columbia has agreed to include these non-commodity charges on customer bills clearly reflects prior affiliated relationships and this practice is not reflected in Columbia's tariff or an explicit Commission order." OCA St. No. 5-R at 4.

As such, Direct Energy submits that the record contains substantial evidence to support a finding that Columbia's current practice of allowing its former affiliates to bill for non-commodity services is discriminatory, in violation of the Public Utility Code and the Commission's regulations.

As a resolution to this problem, Mr. Cusati recommended that the Commission require Columbia to end the discriminatory practice by allowing all NGSs to bill for non-commodity products on Columbia's utility bill. NGS Parties St. No. 2 at 7. Mr. Cusati testified that allowing NGSs to bill for a diverse range of products and services will enhance the competitive market by allowing customers to see natural gas as a package of products and services. NGS Parties St. No. 2 at 4-5. Mr. Cusati further explained:

One of the major benefits of competition is that it encourages the development of innovative products and services that add value to customers beyond the natural gas commodity. Suppliers such as the NGS Parties have developed new products and services that provide additional value to customers. The market is evolving to offer even more sophisticated products and services including commodity bundled with energy efficiency products, smart thermostats, distributed solar generation, products bundled with loyalty rewards and products bundled with home protection, to name a few. These value-added products and services not only add value to customers, but also many of these products enable customers to use natural gas more efficiently, reduce energy costs and enhance reliability.

NGS Parties St. No. 2 at 4. Additionally, Mr. Cusati noted that consumers would benefit by receiving additional services, and only one invoice. NGS Parties St. No. 2 at 7.

In terms of how the billing for non-commodity services would work, Mr. Cusati explained that “[it] would be very similar to how Columbia already bills natural gas commodity service for NGSs.” NGSs would supply electronically the non-commodity charges to Columbia on a monthly basis, and Columbia would add these charges to its invoice. NGS Parties St. No. 2 at 5-6. In his Rebuttal Testimony, Mr. Cusati addressed concerns that his proposal may be confusing to consumers, noting “if there is a clear delineation between charges owed for natural gas service, and charges owed for other services, presenting both these charges on the utility bill is not misleading.” NGS Parties St. No. 2-SR at 5.

Direct Energy witness Mr. Magnani also supported Mr. Cusati’s proposal, noting:

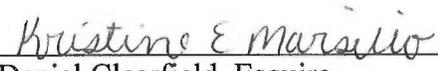
[A]llowing suppliers to add non-commodity charges on the utility bill will enhance the competitive market, as it will encourage customers to view natural gas as a package of value-added and innovative products and services. Many of these non-commodity products and services help to promote natural gas efficiency and reduce energy costs. Customers receive an additional benefit by only receiving one invoice for this package.

Direct Energy submits that requiring Columbia to permit all NGSs to bill for non-commodity products and services on the Company’s utility bill is in the public interest. This proposal will promote the competitive market and provide benefits to consumers in the form of innovative and value-added products.

V. CONCLUSION

WHEREFORE, Direct Energy Business, LLC, Direct Energy Services, LLC, and Direct Energy Business Marketing, LLC respectfully request that the Commission order Columbia to end its discriminatory practice of allowing only its affiliates to bill for non-commodity service on its utility bill. Direct Energy further requests that the Commission order Columbia to allow all Natural Gas Suppliers (“NGSs”) to bill for non-commodity services on Columbia’s bill.

Respectfully submitted,

  
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