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August 16, 2018

***VIA ELECTRONIC FILING***

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2nd Floor North  
P.O. Box 3265  
Harrisburg, PA 17105-3265

**Re: Pennsylvania Public Utility Commission, et al. v. Columbia Gas of Pennsylvania, Inc.  
Docket No. R-2018-2647577, etc.**

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Dear Secretary Chiavetta:

Enclosed please find the Main Brief of Columbia Gas of Pennsylvania, Inc. in the above-referenced proceeding. Copies will be provided as indicated on the Certificate of Service.

Respectfully submitted,

Lindsay A. Berkstresser

LAB/skr  
Enclosure

cc: Certificate of Service  
Honorable Jeffrey Watson

**CERTIFICATE OF SERVICE  
(Docket No. R-2018-2647577)**

I hereby certify that a true and correct copy of the foregoing has been served upon the following persons, in the manner indicated, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

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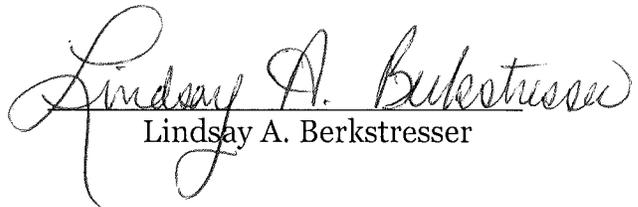
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Date: August 16, 2018

  
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**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	Docket No. R-2018-2647577
Office of Consumer Advocate	:	C-2018-3000582
Office of Small Business Advocate	:	C-2018-3000773
Patricia Southorn	:	C-2018-3000779
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
Robin A. Harrison	:	C-2018-3002595
	:	
v.	:	
	:	
Columbia Gas of Pennsylvania, Inc.	:	

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**MAIN BRIEF OF  
COLUMBIA GAS OF PENNSYLVANIA, INC.**

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**TO ADMINISTRATIVE LAW JUDGE JEFFREY A. WATSON:**

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## **I. INTRODUCTION**

Columbia Gas of Pennsylvania, Inc. (“Columbia” or the “Company”) is a “public utility” and “natural gas distribution company” (“NGDC”) as those terms are defined in Sections 102 and 2202 of the Public Utility Code, 66 Pa.C.S. §§ 102 and 2202. Columbia provides natural gas sales, transportation, and/or supplier of last resort services to approximately 426,000 retail customers in portions of 26 counties of Pennsylvania. (Columbia St. No. 1, p. 3)

In this proceeding, Columbia requests Pennsylvania Public Utility Commission (“Commission”) approval of a base rate increase, with an anticipated effective date of December 15, 2018, which is the effective date of rates under the Commission’s April 5, 2018 Suspension Order. As will be set forth in a Joint Petition for Partial Settlement to be filed simultaneously with the Reply Brief in this proceeding, the parties have achieved settlement on all issues in this case, with one exception. The issue reserved for resolution by Administrative Law Judge Jeffrey A. Watson (the “ALJ”) and the Commission is whether Columbia will be permitted to continue to include on its bills a separate line item charge for non-commodity services elected by customers and offered by unaffiliated entities who are not Natural Gas Suppliers (“NGSs”), without being required to allow NGSs access to Columbia’s bills to charge customers for other non-commodity products and services that may be offered by NGSs.

Joint Petitioners have agreed to a base rate increase, an allocation of that increase to the rate classes and the rate design for all rate classes to recover the allocated portions of the rate increase to such classes. Other issues raised by the Company’s filing and by intervening parties also have been resolved. Columbia will address in this Brief the issue reserved for litigation. Columbia’s explanation of why the Partial Settlement is

in the public interest and should be approved will be contained in Columbia's Statement in Support of the Joint Petition for Partial Settlement to be filed by August 31, 2018.

**A. Statement Of The Case**

On March 16, 2018, Columbia filed the above-captioned 2018 Base Rate Filing, together with Supplement No. 267 to its Tariff Gas – Pa. P.U.C. No. 9, responses to Commission filing requirements and standard data requests, and supporting direct testimony and exhibits. In the 2018 Base Rate Filing, Columbia proposed new tariff rules and regulations and proposed increased rates designed to produce an overall revenue increase of approximately \$46.9 million annually based upon a pro forma fully projected future test year (“FPFTY”) ending December 31, 2019.

Formal Complaints were filed by the Office of Consumer Advocate (“OCA”), Office of Small Business Advocate (“OSBA”), Columbia Industrial Intervenors (“CII”), The Pennsylvania State University (“PSU”), Patricia Southorn, G. Blair Bauer, Philip L. Bloch, and Robin A. Harrison. Petitions to Intervene were filed by Shipley Choice, LLC, Dominion Energy Solutions, Inc. and Interstate Gas Supply, Inc. (collectively, the “NGS Parties”), Direct Energy Business, LLC, Direct Energy Services, LLC & Direct Energy Business Marketing, LLC (collectively, “Direct Energy”), Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (“CAUSE-PA”), and Community Action Association of Pennsylvania (“CAAP”). The Commission's Bureau of Investigation & Enforcement (“I&E”) filed a Notice of Appearance.

In an Order entered April 5, 2018, the Commission initiated an investigation of Columbia's proposed general rate increase. Supplement No. 267 was suspended by operation of law pursuant to Section 1308(d) of the Public Utility Code, 66 Pa.C.S. § 1308(d), until December 15, 2018, unless permitted by Commission Order to become

effective at an earlier date. On April 19, 2018, Columbia filed with the Commission Supplement No. 274 to Tariff Gas Pa. PUC No. 9, suspending Columbia's Supplement No. 267 until December 15, 2018.

An initial Prehearing Conference was held on April 18, 2018. At the prehearing conference, the ALJ established the litigation schedule. The ALJ also set forth discovery rules, which included shorter response times than those provided in the Commission's regulations. See 52 Pa. Code §§ 5.341 *et seq.* On May 1, 2018, the ALJ issued a Prehearing Order that confirmed the litigation schedule established at the Prehearing Conference.

In accordance with the litigation schedule, various parties filed direct, rebuttal, and surrebuttal testimony. Specifically, Columbia, the NGS Parties, OCA and CAUSE-PA submitted testimony regarding the issue reserved for litigation.

The Joint Petitioners held numerous settlement discussions over the course of this proceeding. As a result of those discussions and the efforts of the Joint Petitioners to examine the issues in the proceeding, a settlement in principle of all but the previously identified issue reserved for litigation was achieved by the Joint Petitioners, thereby negating the need for the scheduled evidentiary hearings on most issues. The Parties agreed to waive cross-examination on the issue reserved for litigation. A hearing was held before the ALJ on July 26, 2018 to allow for the introduction and admission into evidence of Columbia's filing, along with testimony and exhibits filed by Columbia and other parties during the course of the proceeding.

The Main Brief on the issue reserved for litigation is being filed in accordance with the procedural schedule adopted by the ALJ.

## B. Legal Standards And Burden Of Proof

Under the Public Utility Code, rates charged by public utilities must be just and reasonable and cannot result in unreasonable rate discrimination. 66 Pa.C.S. §§ 1301 and 1304.

A public utility seeking a general rate increase has the burden of proof to establish the justness and reasonableness of every element of the rate increase request. 66 Pa.C.S. § 315(a); *Pa. P.U.C. v. Aqua Pennsylvania, Inc.*, Docket No. R-00038805, 236 PUR 4th 218, 2004 Pa. PUC LEXIS 39 (August 5, 2004). However, a public utility, in proving that its proposed rates are just and reasonable, does not have the burden to defend affirmatively claims made in its filing that no other party has questioned. As the Commonwealth Court has explained:

While it is axiomatic that a utility has the burden of proving the justness and reasonableness of its proposed rates, it cannot be called upon to account for every action absent prior notice that such action is to be challenged.

*Allegheny Center Assocs. v. Pa. P.U.C.*, 570 A.2d 149, 153 (Pa. Cmwlth. 1990).

Although the ultimate burden of proof does not shift from the utility seeking a rate increase, a party proposing an adjustment to a ratemaking claim of a utility bears the burden of presenting some evidence or analysis tending to demonstrate the reasonableness of the adjustment. *See, e.g., Pa. P.U.C. v. PECO*, Docket No. R-891364, *et al.*, 1990 Pa. PUC LEXIS 155 (May 16, 1990); *Pa. P.U.C. v. Breezewood Telephone Company*, Docket No. R-901666, 1991 Pa. PUC LEXIS 45 (January 31, 1991). In addition, tariff provisions previously approved by the Commission are deemed just and reasonable and, therefore, a party challenging a previously-approved tariff provision bears the burden to demonstrate that the Commission's prior approval is no longer

justified. *See, e.g., Pa. P.U.C. v. Philadelphia Gas Works*, Docket Nos. R-00061931, *et al.*, 2007 Pa. PUC LEXIS 45 at \*165-68 (September 28, 2007) (adopting the ALJ's discussion on burden of proof).

Further, a party that raises an issue that is not included in a public utility's general rate case filing bears the burden of proof. For example, in *Pa. P.U.C. v. Metropolitan Edison Company, et al.*, Docket Nos. R-00061366, *et al.*, 2007 Pa. PUC LEXIS 5 (January 11, 2007), a party offered proposals to have the companies incur expenses not included in their filings. The ALJ held that, as the proponent of a Commission order with respect to its proposals, the party bears the burden of proof as to proposals that are not included in the companies' filings. The Commission agreed and adopted the ALJ's conclusion that Section 315(a) of the Public Utility Code cannot reasonably be read to place the burden of proof on the utility with respect to an issue the utility did not include in its general rate case filing and which, frequently, the utility would oppose. *Id.* at \*111-12. The issue reserved for litigation was not presented in Columbia's filing and, therefore, the burden of proof on this issue should be borne by parties proposing changes to billing for non-commodity products and services.

## **II. SUMMARY OF ARGUMENT**

The sole issue reserved for litigation in this case is whether Columbia should be permitted to continue its current practice of including on its bills charges for non-commodity services offered by two former non-NGS affiliates, without being required to bill for non-commodity products and services offered by NGSs. Columbia's position is that it should have the right to determine what entities, if any, may contract with Columbia to include non-commodity charges on Columbia's bills. Columbia should not be required to bill for other non-commodity products and services offered by NGSs

simply because it has contracted with two unaffiliated, non-NGS entities to bill for certain defined non-commodity services.

The Public Utility Code and the Commission's regulations do not prohibit Columbia from deciding whether to allow non-affiliate charges for non-commodity services on its bills, nor do they require Columbia to open its bill to charges for any non-commodity products and services offered by NGSs once it enters into a contract that allows charges for non-commodity services by an unaffiliated non-NGS entity. The NGS Parties claim that Columbia's decision to limit the number of entities who may include charges for optional services on Columbia's bill is discriminatory because the Company does not also bill for non-commodity products and services offered by NGSs. Columbia's practice is not discriminatory. The non-commodity services are not utility services, and thus Columbia's selection of only two entities to be authorized to include charges on Columbia's bill is not discriminatory to utility customers. The two entities that are authorized to include charges for non-commodity services on Columbia's bill also are not NGSs, and thus Columbia is not favoring one NGS over another. Moreover, unlike the optional non-commodity services that are currently authorized to be included on Columbia's bill, the non-commodity products and services proposed to be offered by the NGS Parties encompass items that are in no way related to natural gas service. Columbia should have the right to refuse NGSs access to the Company's bills to charge for these products and services.

In addition to forcing Columbia to associate with products and services against its will, the NGS Parties' proposal will be detrimental to customers. Including the NGS non-commodity charges on Columbia's bills would require significant system and process upgrade costs and would likely lead to customer confusion regarding the

charges appearing on their bill. In addition, the NGS Parties seek a regulated charge for the billing service, rather than a charge developed through arm's length negotiation.

Both the OCA and CAUSE-PA agree with Columbia that the NGS Parties should not have access to Columbia's bills for purposes of billing non-commodity charges. However, the OCA and CAUSE-PA have expressed several concerns with Columbia's existing billing for non-commodity charges. The OCA and CAUSE-PA raised issues regarding the presentation of non-commodity charges on Columbia's bills, termination of service for nonpayment and marketing of the non-commodity services. These concerns are without merit. When billing for non-commodity services, Columbia strictly adheres to the Commission's regulations regarding standards and billing practices for residential utility service, which includes separate identification of the charges for non-commodity services and prohibition of termination for non-payment of non-commodity charges. Further, Columbia does not market any of the services provided by the existing third-party entities.

Columbia's current practice of billing for non-commodity services is lawful and should continue. The NGS Parties' request to require Columbia to bill for other non-commodity products and services provided by the NGS Parties should be denied.

### **III. ARGUMENT**

#### **A. History of Columbia's on bill billing for non-commodity services.**

In order to understand why Columbia's existing practice of billing for non-commodity services should continue, it is first necessary to briefly explain the history of Columbia's billing for non-commodity services. Pursuant to the terms of separate agreements between Columbia and Columbia Service Partners ("CSP"), and Columbia

and Nicor Energy Services Company (“Nicor”), Columbia includes a separate line item charge on its bills for certain covered non-commodity products and services, such as repair and maintenance plans for customer-owned facilities, offered by these entities. (Columbia St. No. 18-R, p. 3) This practice is referred to as “on bill” billing. Revenues received by Columbia under the contracts with CSP and Nicor are credited as miscellaneous revenues and reflected in computing revenue requirements. (Columbia St. No. 18-R, p. 3)

Both CSP and Nicor are former Columbia affiliates. (Columbia St. No. 18-R, p. 3) Prior to its sale to a non-affiliated entity in 2003, CSP provided various service plans for the repair and maintenance of customer-owned facilities, e.g., piping, to Columbia customers for seven years. NiSource Retail Services, a Columbia affiliate, sold its retail services business assets to Nicor in 2013. Prior to the sale, NiSource Retail Services provided various service plans for the repair and maintenance of customer-owned heating and cooling systems, water heaters, appliances, pipes and wires to Columbia customers for nine years. Prior to the sale of CSP and the NiSource Retail Services assets, Columbia provided on bill billing services to these affiliates. (*Id.*)

Columbia permits CSP and Nicor to have their charges for non-commodity services appear on Columbia’s monthly billing statements because they each purchased various retail service businesses that a Columbia affiliate previously provided to Columbia customers. For the convenience of Columbia’s customers who wish to continue purchasing non-commodity products and services from CSP and Nicor, the current billing arrangements were entered into with CSP and Nicor to maintain the ability to have these charges included on the monthly gas bill. Columbia does not

provide on bill billing for any entity other than CSP and Nicor. (Columbia St. No. 18-R, pp. 4-5)

**B. The Commission's regulations do not mandate that Columbia's bill be opened to any entity.**

The NGS Parties request that Columbia be required to offer an on bill billing option for NGSs' non-commodity products and services, as the Company does for the two non-NGS entities. (NGS Parties' St. No. 2, p. 7) Nothing in the Public Utility Code or the Commission's regulations require Columbia to bill for non-utility products and services, as requested by the NGS Parties.

Although the Commission's regulations envision that a distribution company's bill *may* include charges for non-commodity products and services offered by third parties, as evidenced by the Commission's regulation on "charges for other than basic service," including these charges on the utility bill is not *required*. See 52 Pa. Code § 56.13. Columbia has the right to negotiate with third parties of its choosing regarding non-utility products, subject to the Commission's regulations for billing and prohibition on termination for nonpayment of non-basic charges, as set forth in 52 Pa. Code §§ 56.13 and 56.83.

Columbia is required to bill for natural gas supply service provided by NGSs in accordance with 66 Pa. C.S. § 2205(c). However, Columbia is not required to bill for any other non-regulated, non-commodity products and services that NGSs offer.

**C. Columbia's decision to limit the entities permitted to include charges on Columbia's bill is not discriminatory.**

The NGS Parties allege that providing an on bill billing option for two unaffiliated, non-NGS entities, while not allowing the same billing option for NGSs, is discriminatory. (NGS Parties' St. No. 2, p. 3) Those allegations are legally

unsupportable. Columbia's decision to limit the entities that can include non-commodity charges on its bill is not discriminatory. Section 1502 of the Public Utility Code prohibits discrimination in service. The *Natural Gas Choice and Competition Act* specifically requires that natural gas distribution companies operating jurisdictional distribution facilities provide service to all retail gas customers and natural gas suppliers in its service territory on a nondiscriminatory basis. 66 Pa. C.S. § 2203(4). Neither of these provisions apply to the billing of non-regulated, non-commodity services provided by unaffiliated third parties.

Specifically, Section 1502 provides:

§ 1502. Discrimination in service.

No public utility shall, as to service, make or grant any unreasonable preference or advantage to any person, corporation, or municipal corporation, or subject any person, corporation, or municipal corporation to any unreasonable prejudice or disadvantage. No public utility shall establish or maintain any unreasonable difference as to service, either as between localities or as between classes of service, but this section does not prohibit the establishment of reasonable classifications of service.

"Service" is defined in the Public Utility Code as follows:

Used in its broadest and most inclusive sense, includes any and all acts done, rendered, or performed, and any and all things furnished or supplied, and any and all facilities used, furnished, or supplied by public utilities, or contract carriers by motor vehicle, in the performance of their duties under this part to their patrons, employees, other public utilities, and the public, as well as the interchange of facilities between two or more of them. . .

66 Pa. C.S. § 102. Section 1502 prevents discrimination in any act performed by a utility involving the provision of utility service. It does not apply to acts by the utility that are not related to utility service. *See PPL Electric Utilities Corp. v. Pa. PUC*, 912 A.2d 386 (Cmwlth. Ct. 2006). Thus, Section 1502 does not prohibit Columbia from limiting the entities that the Company permits to include non-commodity charges on its bills.

In *PPL Electric Utilities Corp. v. Pa. PUC*, the Commonwealth Court determined that Section 1502 did not apply to a utility's conduct in referring its customers to a non-regulated affiliate for tax auditing services because tax auditing was not a public utility service. "In order to come within Section 1502, the conduct must relate to the public service the utility provides to its customers and the public." *PPL Electric Utilities Corp.*, 912 A.2d at 408. The Court further explained:

Complainants complain that PPL has discriminated against them because their conduct allegedly impacted Complainants' ability to compete. Complainants, however, were not customers or ratepayers. They provided consulting services to industrial customers. Therefore, this Court does not agree with the Commission that this is the type of discrimination or preferential treatment addressed by Section 1502.

*PPL Electric Utilities Corp.*, 912 A.2d at 409. Therefore, the utility's actions were not subject to the prohibition on discrimination in Section 1502.

The Commonwealth Court's decision in *PPL Electric Utilities Corp.* is controlling over the NGS Parties' claim that "non-commodity billing for some entities and not NGS is discriminatory and puts NGSs at a distinct competitive disadvantage in the market for those services." (NGS Parties St. No. 2-SR, p. 8) Like the tax auditing services in *PPL Electric Utilities Corp. v. Pa. PUC*, the non-commodity services at issue here do not constitute regulated public utility service. The non-commodity products and services that the NGS Parties seek to include on Columbia's bills do not, in any way, constitute the provisions of natural gas service to customers. (NGS Parties St. No. 2, p. 4) The NGS Parties are not customers or ratepayers. Therefore, the prohibition on discrimination in Section 1502 does not apply to Columbia's decision not to include charges on its bill for the non-commodity products and services offered by the NGS Parties because these non-commodity products do not constitute utility service.

The NGS Parties' contention that Columbia actions violate Section 2203(4) of the Public Utility Code is similarly without merit. (NGS Parties St. No. 2, p. 5) Columbia's decision to limit on bill billing for non-commodity products to the two non-affiliated entities also does not violate the *Natural Gas Choice and Competition Act's* non-discrimination provisions. Section 2203(4) provides:

(4) Consistent with the provisions of section 2204, the commission shall require that a natural gas distribution company that owns or operates jurisdictional distribution facilities shall provide distribution service to all retail gas customers in its service territory and to all natural gas suppliers, affiliated or nonaffiliated, on nondiscriminatory rates, terms of access and other conditions.

Section 2203(4) prohibits a natural gas distribution company from discriminating among NGSs with respect to natural gas distribution service.<sup>1</sup> It does not prohibit different treatment as between an NGS and another non-affiliated entity with respect to non-utility products and services. The two entities that are authorized to include charges for non-commodity services on Columbia's bill are not "NGSs" and do not offer "natural gas supply service" as those terms are defined in the Public Utility Code, 66 Pa. C.S. § 2202.<sup>2</sup> Thus, Columbia's decision to limit on bill billing for the non-commodity services offered by the two non-affiliated entities does not favor one NGS over another, does not favor an affiliate over an NGS, and is not discriminatory pursuant to the *Natural Gas Choice and Competition Act*.

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<sup>1</sup> Natural gas distribution service is defined as, "the delivery of natural gas to retail gas customers utilizing the jurisdictional facilities of the natural gas distribution company." 66 Pa. C.S. § 2202.

<sup>2</sup> "Natural gas supplier" is defined as "an entity other than a natural gas distribution company, but including natural gas distribution company marketing affiliates, which provides natural gas supply services to retail gas customers utilizing the jurisdictional facilities of a natural gas distribution company. . ." "Natural gas supply services" is defined as, "the sale or arrangement of the sale of natural gas to retail gas customers; and services that may be unbundled by the commission under section 2203(3) (relating to standards for restructuring of natural gas utility industry)." "The term does not include distribution service."

Finally, even if a discrimination standard were applied, discrimination must be unreasonable to constitute a violation of Section 1502. The Commission has repeatedly held that some level of discrimination is allowable so long as it is not undue. “There may be discrimination between classes of customers, provided that it is not unreasonable and that it rests on sound basis of fact.” *Pa. PUC v. Nat’l Fuel Gas Distribution Corp.*, 2000 Pa. PUC LEXIS 883, \*13 (June 29, 2000) citing *United Natural Gas Co. v. Pa. PUC*, 22 A.2d 752, 757 (Pa. Super. 1943).

Here, there are differences between the entities involved and the non-commodity products and services being offered that justify different treatment. The two non-NGS entities offer clearly defined non-commodity services, i.e. service plans for customer-owned natural gas facilities, pursuant to legacy contracts. (Columbia St. No. 18-R, p. 3) Conversely, the NGS Parties seek to market products and services, such as products bundled with loyalty rewards and products bundled with home protection that are unrelated to natural gas service and could be detrimental to customers. (NGS Parties St. No. 2, p. 4) Limiting the entities that receive an on bill billing option to the two unaffiliated, non-NGS entities does not rise to the level of unreasonable discrimination.

Columbia’s decision not to offer NGSs an on bill billing option for their non-commodity products and services as it does for the two non-affiliated, non-NGS entities does not violate the Public Utility Code’s nondiscrimination provisions.

**D. Columbia should not be required to provide on bill billing for non-commodity products and services offered by NGSs.**

**1. Columbia's decision to continue two legacy contracts to bill for non-commodity services should not result in Columbia being required to open its bill to other third parties.**

The existing agreements between Columbia and the two unaffiliated entities do not provide support for creating a new requirement that Columbia bill for non-commodity products and services provided by the NGS Parties.

As explained in detail above, Columbia's decision to provide on bill billing for the two unaffiliated entities is the result of a unique transaction involving two prior Columbia affiliates. CSP and Nicor each purchased retail service businesses that a Columbia affiliate provided to Columbia customers. Following the sale of these businesses, Columbia decided to continue billing for the non-commodity services provided by these entities. The agreements with CSP and Nicor are negotiated in arm's length transactions. (Columbia St. No. 18-R, pp. 3-4) Conversely, the NGS Parties seek to *mandate* that Columbia open its bill for the non-commodity products and services that the NGSs market.

Columbia's decision to continue two legacy contracts should not result in Columbia being *required* to open its bill to other third parties. Although Columbia is free to choose which entities, if any, it offers to provide on bill billing, Columbia has not provided this option to any other entity other than the two entities involved in purchasing the prior Columbia affiliates, nor should it be required to do so. (Columbia St. No. 18-R, pp. 4-5)

The Commission has previously denied similar requests by suppliers to access distribution companies' bills in the competitive electric market context. *See*

*Investigation of Pennsylvania's Retail Electricity Market: Joint Electric Distribution Company – Electric Generation Supplier Bill*, Docket No. M-2014-2401345 (Order entered May 23, 2014) at pp. 28 (rejecting request to allow electric generation suppliers to include marketing materials as bill inserts and encouraging suppliers to do their own outreach). The NGS Parties are free to market their non-commodity products and services to customers, but Columbia should not be required to open its bill to include charges for the NGSs' products and services simply because it has done so for two non-NGSs that purchased former Columbia affiliates.

**2. The NGS Parties' proposal would force Columbia to associate itself with products and services unrelated to natural gas service and potentially contrary to Columbia's interests.**

The NGS Parties' proposal would result in Columbia being required to associate itself with products and services that are contrary to its interests in violation of Columbia's First Amendment rights.

If Columbia were to include charges for the NGS Parties' non-commodity products and services on its bills, Columbia could be viewed as endorsing these items. Several of the products and services offered by the NGS Parties are in no way related to natural gas service, e.g. products bundled with loyalty rewards and products bundled with home protection. Certain of these services, such as distributed solar energy, are in direct competition with services provided by Columbia. (Columbia St. No. 18-R, p. 6) There are no criteria offered with respect to the non-commodity products or services that NGSs could demand to be included on Columbia's bill, which increases concerns about implicit endorsement of products.

Columbia cannot be ordered to include on its bill charges for the products and services offered by NGSs. Such a mandate would violate Columbia's First Amendment rights. *See Mid-Atlantic Power Supply Association v. PECO Energy Company*, Docket No. P-00981615, 1999 Pa. PUC LEXIS 23 \*97 (Recommended Decision, January 11, 1999; Order entered May 19, 1999) (utility could not be ordered to include in its billing envelopes a letter supporting EGSs because it would require the utility to "endorse EGSs and vouch for their reliability, competence, truthfulness and good reputation," which would violate the utility's First Amendment rights). Therefore, the NGS Parties' proposal should be denied.

**3. The NGS Parties' proposal presents a concern of improper linkage of commodity and non-commodity products.**

The OCA expressed concern regarding the NGS Parties' proposal because it could lead to non-commodity products and services being bundled with natural gas supply service. (OCA St. No. 5-R, pp. 8-9) The NGS Parties responded by stating that the charge for non-commodity services would appear as a separate charge on the bill. (NGS Parties St. No. 2-SR, p. 6) The NGS Parties miss the OCA's point. The consumer protection issues raised by the OCA stem from the marketing of non-commodity products and services together with natural gas supply service. This practice could lead to potential confusion and adverse consequences for customers. (OCA St. No. 5-R, pp. 8-9)

Even if the charges for non-commodity products appear separately from the commodity charge on the bill, NGSs could still market these products in connection with the commodity service. As a result, the gas supply product and non-commodity service could be viewed as a package deal from the customer's perspective, leading customers to

elect this option even when it is not in their best interest. The Commission has previously expressed its concern with linking non-commodity products with the sale of gas supply. *See, e.g., Petition of PPL Electric Utilities Corporation for Approval of a Default Service Program and Procurement Plan for the Period June 1, 2017 Through May 31, 2021*, Docket No. P-2016-2526627 (limitations on low-income customer shopping were warranted for several reasons, including NGSs marketing “other benefits,” such as gift cards and energy audits, along with supply service to customers as an incentive to elect their natural gas supply service) (Order entered October 27, 2016) at pp. 35, 53.

This concern does not apply to Columbia’s existing billing contracts with the two non-NGS entities because, unlike the NGSs, Columbia does not sell or market the non-commodity services being offered. Rather, the non-commodity products are marketed directly by the third party entities that offer the products, without any involvement from Columbia. (Columbia St. No. 18-SR, p. 7) Therefore, there is no potential of the non-commodity product being linked with gas supply or distribution service.

The NGS Parties’ proposal is simply a claim to market Columbia’s customers for products that are sold by the NGS Parties and should be denied. Further, a rate case is not the proper proceeding to consider the NGS Parties’ proposal because it could affect stakeholders that are not involved in this rate proceeding. The NGS Parties’ proposal has the potential to impact Pennsylvania utilities and customers generally, not just Columbia and its customers.

#### **4. The NGS Parties’ proposal is detrimental to customers.**

The NGS Parties’ request should be denied because including NGSs’ non-commodity products and services on Columbia’s bill is not necessarily beneficial to

customers. Including these charges on Columbia's bill would require costly system updates and training and would only result in additional questions from customers.

The NGS Parties' proposal would lead to customer confusion regarding the charges that appear on their utility bill. It is Columbia's experience that when changes are made to customer bills, calls to the customer contact center about billing questions increase. (Columbia St. No. 18-R, p. 7) The charges for non-commodity services provided by CSP and Nicor are contractually defined and not subject to change. The types of charges the NGS Parties are proposing to add to the bills, such as home protection services and loyalty rewards programs, are not charges that customers would reasonably expect to appear on their gas bills. (Columbia St. No. 18-R, p. 7) The NGS Parties have the ability to market and bill their products and services directly to customers without unnecessarily complicating customers' natural gas utility bills.

The NGS Parties' request for access to Columbia's bill to charge for non-commodity products and services offered by NGSs is impractical. Columbia would incur significant costs to update documentation and training for employees that would need to be provided if billing for these products and services were included on Columbia's bills. Columbia's current billing system is limited to a very specific subset of services relative to the services being proposed by the NGS Parties. Several additional processes would need to be developed for Columbia to address issues that it would expect to face by allowing NGSs to include billing for non-commodity products and services on Columbia's bills, including training to educate employees on the products, development of a hierarchy to determine the impact of non-payment of services, and development of a customer complaint process. (Columbia St. No. 18-R, p. 7)

The NGS Parties' proposal to require Columbia to include on its bills a separate charge for non-commodity products and services offered by NGSs should be denied because it is not in the best interest of Columbia's customers.

**E. Columbia's current practice of on bill billing for non-commodity services offered by CSP and Nicor is lawful and should be permitted to continue.**

OCA and CAUSE-PA also oppose the NGS Parties' proposal that the Commission require Columbia to include on its bills charges for non-commodity products and services offered by NGSs. (OCA St. No. 5-R, pp. 5-7; CAUSE-PA St. No. 1-R, pp. 7-9) However, OCA and CAUSE-PA go further, and question the propriety of including charges for non-commodity services from CSP and Nicor. OCA's and CAUSE-PA's concerns are without merit and should be dismissed.

As a preliminary matter, the OCA questioned whether Columbia has authority to bill for these charges since the practice is not reflected in Columbia's tariff or approved by a Commission order. (OCA St. No. 5-R, p. 4) Nothing in the Public Utility Code or the Commission's regulations prohibit Columbia from offering on bill billing for the non-commodity services provided by two unaffiliated, non-NGS entities, nor is Columbia required to seek approval of a tariff provision before offering on bill billing to these entities. Commission approval of this arrangement is not required because neither CSP and Nicor nor the non-commodity services they offer are regulated by the Commission. In fact, the Commission's regulations anticipate that these types of charges will appear on utility bills. *See* 52 Pa. Code § 56.13, which provides:

Charges for other than basic service—that is, merchandise, appliances and special services, including merchandise and appliance installation, sales, rental and repair costs; meter testing fees; line extension costs; special construction charges and other nonrecurring charges, except as provided in this chapter—must appear after charges for

basic services and appear distinctly separate. This includes charges for optional recurring services which are distinctly separate and clearly not required for the physical delivery of service. Examples include line repair programs and appliance warranty programs. See § 56.83(3) (relating to unauthorized termination of service).

Pursuant to this regulation, charges for the non-commodity services provided by CSP and Nicor do appear as a distinct line item on the customer's bill. (Columbia St. No. 18-SR, p. 4)

Columbia bills and collects the charges for non-commodity services provided by CSP and Nicor in accordance with the Public Utility Code, 66 Pa. C.S. § 1501 et seq., and the Commission's regulations at 52 Pa. Code § 1.1 et seq. The OCA expressed concern regarding the presentation of non-commodity charges on Columbia's bill. (OCA St. No. 5-R, pp. 5-6) Both the OCA and CAUSE-PA expressed concern regarding how billing for the non-commodity charges could affect termination of service for non-payment. (OCA St. No. 5-R, pp. 7-8; CAUSE-PA St. No. 1-R, pp. 7-8) The Commission has set forth certain billing standards to address these issues, and Columbia's on bill billing practices for the non-commodity charges comply with those standards.

Chapter 56 of the Commission's regulations sets forth the standards and billing practices for residential utility service. Chapter 56 provides, in pertinent part:

Payments received by a public utility without written instructions that they be applied to merchandise, appliances, special services, meter testing fees or other nonbasic charges and which are insufficient to pay the balance due for the items plus amounts billed for basic utility service shall first be applied to the basic charges for residential public utility service.

52 Pa. Code § 56.23. In accordance with Section 56.23, any partial payments are applied to the customer's utility service balance, including distribution and commodity charges. Non-commodity products and services are paid after the utility service balance is fully satisfied. (Columbia St. No. 18-SR, p. 4; Columbia Ex. No. NP-2-SR)

The Commission's regulations further state:

Unless expressly and specifically authorized by the Commission, service may not be terminated nor will a termination notice be sent for any of the following reasons:

- \* (3) Nonpayment, in whole or in part, of nonbasic charges for leased or purchased merchandise, appliances or special services including, but not limited to, merchandise and appliance installation fees, rental and repair costs; meter testing fees; special construction charges; and other nonrecurring or recurring charges that are not essential to delivery or metering of service, except as provided in this chapter. \*

52 Pa. Code § 56.83(3). Columbia will not disconnect a customer for non-payment of non-commodity charges. When customers inquire with Columbia regarding the non-commodity charges on their bill, Columbia clearly discloses to the customer that CSP and Nicor are vendors that sell warranty service plans and are not affiliated with Columbia in any way. This disclosure is also provided on customers' bill statements each month. (Columbia St. No. 18-SR, p. 4; Confidential Columbia Ex. No. NP-4-SR) Columbia further informs the customer that non-payment of the charges for these optional services will not result in any delinquent fees or late charges by Columbia and will never result in termination of natural gas service to the customer's home. (*Id.*)

The OCA also questioned how the non-commodity services are marketed to Columbia's customers. (OCA St. No. 5-R, p. 7) The OCA's concern is without merit. Columbia offers on bill billing pursuant to its agreement with CSP and Nicor, but the Company does not market to customers the non-commodity services offered by these vendors. All marketing is performed directly by CSP and Nicor. (Columbia St. No. 18-SR, p. 7) In addition, all outreach materials provided by CSP and Nicor include disclosures stating that these entities are independent from Columbia and that the

services being provided by them are not regulated by the Commission. (Columbia St. No. 18-SR, p. 3)

Finally, CAUSE-PA raised a concern regarding privacy of customer information with respect to third-party access to customer data. (CAUSE-PA St. No. 1-R, p. 8) Columbia adheres to the Commission's regulations concerning privacy of customer information. Section 62.78 of the Commission's regulations provides:

(a) An NGDC or NGS may not release private customer information to a third party unless the customer has been notified of this intent and has been given a convenient method, consistent with subsection (b), of notifying the entity of the customer's desire to restrict the release of the private information. If the customer does not choose to restrict the release of one of the two restriction options in paragraphs (1) and (2), all of the customer's private information may be released to a third party except for the telephone number. If the customer chooses to restrict the release of private customer information, the customer may restrict information released according to one of the following two restriction options:

(1) Restrict the release of only the customer's historical billing data in the NGDC's standard pricing unit, that is, as denominated by the NGDC.

(2) Restrict the release of all private customer information including name, billing address, service address, rate class, rate subclass, account number and historical billing data in the NGDC's standard pricing unit, that is, as denominated by the NGDC.

(b) Customers shall be permitted to restrict information as specified in subsection (a) by returning a signed form, or by oral or electronic communication.

(c) Nothing in this section prohibits the NGS and NGDC from performing their mandatory obligations to provide natural gas service as specified in the disclosure statement and in 66 Pa.C.S. (relating to the Public Utility Code).

(d) Telephone numbers may not be released to third parties.

In accordance with Section 62.78, Columbia provides customers with the opportunity to opt out of having their information shared with third parties. Twice a

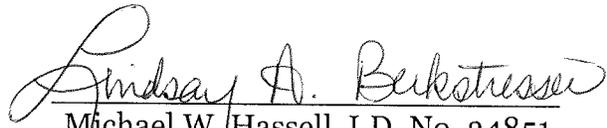
year, Columbia sends a bill insert to customers notifying them of their ability to opt out of having their information shared with third parties. The notice clearly explains how customers can notify Columbia of their desire to limit or restrict the information that is provided to third parties. (Columbia St. No. 18-SR, p. 8) As further protection, Columbia does not provide account number information to the third party entities. Only customers can give their account numbers to CSP and Nicor. (Columbia St. No. 18-SR, p. 7) Without proper account number identification, the customer will not be charged for non-commodity services from CSP or Nicor on the Columbia bill.

Columbia should be permitted to continue its lawful practice of providing on bill billing for the non-commodity services offered by the two unaffiliated, non-NGS entities.

#### IV. CONCLUSION

WHEREFORE, for all the foregoing reasons, Columbia Gas of Pennsylvania, Inc. respectfully requests that the ALJ and Commission reject the NGS Parties' request to require Columbia to bill for non-commodity products and services offered by the NGS Parties and permit Columbia to continue billing for the non-commodity services provided by two unaffiliated, non-NGS entities.

Respectfully submitted,



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Date: August 16, 2018

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**I. FINDINGS OF FACT<sup>1</sup>**

1. Columbia provides natural gas sales, transportation, and/or supplier of last resort services to approximately 426,000 retail customers in portions of 26 counties of Pennsylvania. (Columbia St. No. 1, p. 3)

2. Pursuant to the terms of separate agreements between Columbia and CSP and Columbia and Nicor, Columbia includes a separate line item charge on its bills for certain covered non-commodity products and services, such as repair and maintenance plans for customer-owned facilities, offered by these entities. (Columbia St. No. 18-R, p. 3)

3. Revenues received by Columbia under the contracts with CSP and Nicor are credited as miscellaneous revenues and reflected in computing revenue requirements. (Columbia St. No. 18-R, p. 3)

4. Both CSP and Nicor are former Columbia affiliates. (Columbia St. No. 18-R, p. 3)

5. Prior to the sale of CSP and the NiSource Retail Services assets, Columbia provided on bill billing services to these affiliates. Prior to the sale, NiSource Retail Services provided various service plans for the repair and maintenance of customer-owned heating and cooling systems, water heaters, appliances, pipes and wires to Columbia customers for nine years. (Columbia St. No. 18-R, p. 3)

6. Columbia does not provide on bill billing for any entity other than CSP and Nicor. (Columbia St. No. 18-R, pp. 4-5)

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<sup>1</sup> These Findings of Fact and Conclusions of Law are specific to the issues reserved for litigation in this proceeding.

7. The agreements with CSP and Nicor are negotiated in arm's length transactions. (Columbia St. No. 18-R, pp. 3-4)

8. Columbia does not sell or market the non-commodity services being offered. The non-commodity products are marketed directly by the third party entities that offer the products, without any involvement from Columbia. (Columbia St. No. 18-SR, p. 7)

9. It is Columbia's experience that when changes are made to customer bills, calls to the customer contact center about billing questions increase. (Columbia St. No. 18-R, p. 7)

10. The types of charges the NGS Parties are proposing to add to the bills, such as home protection services and loyalty rewards programs, are not charges that customers would reasonably expect to appear on their gas bills. (Columbia St. No. 18-R, p. 7)

11. Columbia would incur significant costs to update documentation and training for employees that would need to be provided if billing for these products and services were included on Columbia's bills. (Columbia St. No. 18-R, p. 7)

12. Columbia's current billing system is limited to a very specific subset of services relative to the services being proposed by the NGS Parties. Several additional processes would need to be developed for Columbia to address issues that it would expect to face by allowing NGSs to include billing for non-commodity products and services on Columbia's bills, including training to educate employees on the products, development of a hierarchy to determine the impact of non-payment of services, and development of a customer complaint process. (Columbia St. No. 18-R, p. 7)

13. Columbia applies any partial payments to the customer's utility service balance, including distribution and commodity charges. Non-commodity products and services are paid after the utility service balance is fully satisfied. (Columbia St. No. 18-SR, p. 4; Columbia Ex. No. NP-2-SR)

14. When customers inquire with Columbia regarding the non-commodity charges on their bill, Columbia clearly discloses to the customer that CSP and Nicor are vendors that sell warranty service plans and are not affiliated with Columbia in any way. (Columbia St. No. 18-SR, p. 4; Confidential Columbia Ex. No. NP-4-SR)

15. Columbia informs customers that non-payment of the charges for these optional services will not result in any delinquent fees or late charges by Columbia and will never result in termination of natural gas service to the customer's home. (Columbia St. No. 18-SR, p. 4; Confidential Columbia Ex. No. NP-4-SR)

16. Twice a year, Columbia sends a bill insert to customers notifying them of their ability to opt out of having their information shared with third parties. The notice clearly explains how customers can notify Columbia of their desire to limit or restrict the information that is provided to third parties. (Columbia St. No. 18-SR, p. 8)

17. Charges for the non-commodity services provided by CSP and Nicor appear as a distinct line item on the customer's bill. (Columbia St. No. 18-SR, p. 4)

18. Columbia does not provide account number information to the third party entities. Only customers can give their account numbers to CSP and Nicor. (Columbia St. No. 18-SR, p. 7)

## II. CONCLUSIONS OF LAW

1. Under the Public Utility Code, rates charged by public utilities must be just and reasonable and cannot result in unreasonable rate discrimination. 66 Pa.C.S. §§ 1301 and 1304.

2. A public utility seeking a general rate increase has the burden of proof to establish the justness and reasonableness of every element of the rate increase request. 66 Pa.C.S. § 315(a); *Pa. P.U.C. v. Aqua Pennsylvania, Inc.*, Docket No. R-00038805, 236 PUR 4th 218, 2004 Pa. PUC LEXIS 39 (August 5, 2004).

3. A public utility, in proving that its proposed rates are just and reasonable, does not have the burden to affirmatively defend claims made in its filing that no other party has questioned. *Allegheny Center Assocs. v. Pa. P.U.C.*, 570 A.2d 149, 153 (Pa. Cmwlth. 1990).

4. A party proposing an adjustment to a ratemaking claim of a utility bears the burden of presenting some evidence or analysis tending to demonstrate the reasonableness of the adjustment. *Pa. P.U.C. v. PECO*, Docket No. R-891364, *et al.*, 1990 Pa. PUC LEXIS 155 (May 16, 1990); *Pa. P.U.C. v. Breezewood Telephone Company*, Docket No. R-901666, 1991 Pa. PUC LEXIS 45 (January 31, 1991).

5. A party challenging a tariff provision previously approved by the Commission bears the burden to demonstrate that the Commission's prior approval is no longer justified. *Pa. P.U.C. v. Philadelphia Gas Works*, Docket Nos. R-00061931, *et al.*, 2007 Pa. PUC LEXIS 45 at \*165-68 (September 28, 2007).

6. A party that raises an issue that is not included in a public utility's general rate case filing bears the burden of proof. *Pa. P.U.C. v. Metropolitan Edison Company, et al.*, Docket Nos. R-00061366, *et al.*, 2007 Pa. PUC LEXIS 5 (January 11, 2007).

7. The issue reserved for litigation was not presented in Columbia's filing and, therefore, the parties proposing changes to billing for non-commodity products and services bear the burden of proof on this issue.

8. Columbia is required to bill for natural gas supply service provided by NGSs in accordance with 66 Pa. C.S. § 2205(c).

9. Columbia is not required by the Public Utility Code, 66 Pa. C.S. § 1501 et seq., or the Commission's regulations, 52 Pa. Code § 1.1 et seq., to bill for non-utility products and services.

10. Section 1502 of the Public Utility Code does not apply to acts by the utility that are not related to utility service. *See PPL Electric Utilities Corp. v. Pa. PUC*, 912 A.2d 386 (Cmwlth. Ct. 2006).

11. Columbia's decision to provide an on bill billing option for two unaffiliated, non-NGS entities, while not allowing the same billing option for NGSs, is not discriminatory under 66 Pa. C.S. § 1502.

12. Section 2203(4) of the Public Utility Code prohibits a natural gas distribution company from discriminating among NGSs with respect to natural gas distribution service.

13. Columbia's decision to provide an on bill billing option for two unaffiliated, non-NGS entities, while not allowing the same billing option for NGSs, is not discriminatory under 66 Pa. C.S. § 2203(4).

14. Discrimination must be unreasonable to constitute a violation of Section 1502. *Pa. PUC v. Nat'l Fuel Gas Distribution Corp.*, 2000 Pa. PUC LEXIS 883, \*13 (June 29, 2000) citing *United Natural Gas Co. v. Pa. PUC*, 22 A.2d 752, 757 (Pa. Super. 1943).

15. The NGS Parties' proposal would result in Columbia being required to associate itself with products and services that are contrary to its interests in violation of Columbia's First Amendment rights. *See Mid-Atlantic Power Supply Association v. PECO Energy Company*, Docket No. P-00981615, 1999 Pa. PUC LEXIS 23 \*97 (Recommended Decision, January 11, 1999; Order entered May 19, 1999).

16. The Public Utility Code and the Commission's regulations do not prohibit Columbia from offering on bill billing for the non-commodity services provided by two unaffiliated, non-NGS entities.

17. The Public Utility Code and the Commission's regulations do not require Columbia to seek approval of a tariff provision before offering on bill billing to unaffiliated, non-NGS entities.

18. Neither CSP and Nicor nor the non-commodity services they offer are regulated by the Commission.

19. Columbia bills and collects the charges for non-commodity services provided by CSP and Nicor in accordance with the Public Utility Code, 66 Pa. C.S. § 1501 et seq., and the Commission's regulations at 52 Pa. Code § 1.1 et seq.

### **III. ORDERING PARAGRAPHS**

1. The NGS Parties' request to require Columbia to bill for non-commodity products and services offered by the NGS is denied.

2. Columbia is permitted to continue billing for the non-commodity services provided by two unaffiliated, non-NGS entities.