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File #: 171942

August 31, 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 Reply 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,

Michael W. Hassell

MWH/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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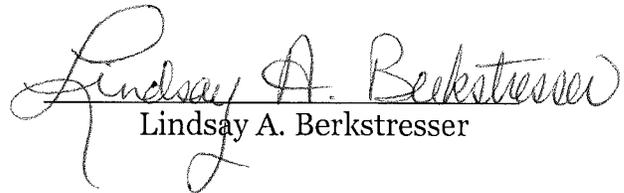
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Date: August 31, 2018

  
Lindsay A. Berkstresser

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

---

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

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Date: August 31, 2018

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*Affiliated Interest Agreement Between Columbia Gas of Pennsylvania, Inc., Columbia Gas of Maryland, Inc., Columbia Gas of Ohio, Inc. and Columbia Services Partners, Inc.*, Docket No. G-00960483 (Order entered July 18, 1996).....7  
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## **I. INTRODUCTION**

Pursuant to the procedural schedule adopted in this proceeding, Columbia Gas of Pennsylvania, Inc. (“Columbia” or the “Company”), Interstate Gas Supply, Inc., d/b/a/ IGS Energy and Shipley Choice, LLC d/b/a Shipley Energy (the “NGS Parties”), Direct Energy Business, LLC, Direct Energy Services, LLC and Direct Energy Business Marketing, LLC (collectively, the “Direct Energy Companies”), and the Office of Consumer Advocate (“OCA”) filed Main Briefs on August 16, 2018. The Main Briefs addressed the sole issue reserved for litigation: 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.

In their Main Briefs, the NGS Parties and Direct Energy Companies do not recommend that Columbia’s current practice of billing for the non-commodity services offered by two unaffiliated, non-NGS entities be discontinued. Rather, the NGS Parties and Direct Energy Companies recommend that Columbia be required to extend this billing option to include the non-commodity products and services offered by the NGS Parties. The OCA and Columbia do not support the NGS Parties’ proposal. Columbia fully explained in its Main Brief why the NGS Parties’ proposal should not be adopted.

Although the OCA expressed concern with Columbia’s current practice, the OCA does not recommend that any changes be made at this time. Columbia explained in its Main Brief why the OCA’s concerns are not warranted.

Columbia hereby files its Reply Brief in response to the Main Briefs filed by the OCA, NGS Parties, and Direct Energy Companies. Columbia anticipated many of the arguments raised by the OCA, NGS Parties, and Direct Energy Companies in their Main Briefs and has already addressed these arguments in the Company's Main Brief. Columbia's Reply Brief does not seek to repeat these arguments and responds only to new arguments raised in the other parties' Main Briefs. Simultaneously with Columbia's Reply Brief, the Company is also submitting a Joint Petition for Partial Settlement in accordance with the procedural schedule.

For the reasons explained herein and in Columbia's Main Brief, the NGS Parties' proposal should be rejected, and Columbia should be permitted to continue billing for the non-commodity products and services offered by two unaffiliated, non-NGS entities without being required to bill for the non-commodity products and services offered by the NGS Parties.

## **II. ARGUMENT**

### **A. BILLING FOR THE NON-COMMODITY PRODUCTS AND SERVICES OFFERED BY TWO UNAFFILIATED, NON-NGS ENTITIES DOES NOT CONSTITUTE "SERVICE" SUBJECT TO THE COMMISSION'S PROHIBITION ON DISCRIMINATION.**

The NGS Parties contend that billing for the non-commodity products provided by two unaffiliated, non-NGS entities constitutes "service" as defined by 66 Pa. C.S. § 102 and is subject to the Commission's prohibition on discrimination in 66 Pa. C.S. §§ 1502 and 2203.<sup>1</sup> (NGS Parties' M.B., p. 5) Simply billing for the unregulated non-commodity products and services provided by two nonjurisdictional entities does not amount to "service." Therefore, the Commission's prohibition on discrimination does

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<sup>1</sup> Columbia's Main Brief addresses why its conduct is not discriminatory pursuant to 66 Pa. C.S. § 2203(4).

not apply to the billing of non-commodity products offered by two unaffiliated, non-NGS entities.

Section 1502 prohibits discrimination as to service. “Service” is defined 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. The NGS Parties contend that Columbia’s billing for the non-commodity products offered by two unaffiliated, non-NGS entities is “service” because billing is a regulated function. As explained in Columbia’ Main Brief, the Commonwealth Court has previously rejected such an overly broad definition of service. *See PPL Electric Utilities Corp. v. Pa. PUC*, 912 A.2d 386 (Cmwlth. Ct. 2006). 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 that case, the utility’s actions also involved a function regulated by the Commission—the disclosure of customer information to third parties. Even so, the utility’s conduct did not constitute “service” for purposes of the Commission’s prohibition on discrimination because it was not related to the “public service the utility provides to its customers and the public.” *Id.* at 408.

Simply because a regulated function, i.e. billing, is involved, does not mean that utility service is being provided. The non-commodity products and services at issue here are not regulated and are not being provided by Columbia to the public. Therefore,

they do not constitute service pursuant to 66 Pa. C.S. § 102 and do not fall under the Commission's prohibition on discrimination.

The NGS Parties also cite 66 Pa.C.S. § 2205(c)(3) in support of their argument that billing for the non-commodity products and services offered by the two unaffiliated, non-NGS entities constitutes public utility service. (NGS Parties M.B., p. 5) However, Section 2205(c)(3) relates to billing for natural gas distribution service and supply services provided by NGSS. Section 2205(c) states as follows:

**(c) Customer billing.--**

(1) Subject to the right of a retail gas customer to choose to receive separate bills from its natural gas supplier for natural gas supply service, the natural gas distribution company shall be responsible for billing each of its retail gas customers for natural gas distribution service, consistent with the orders or regulations of the commission, regardless of the identity of the provider of natural gas supply services.

(2) (i) Bills to retail gas customers shall contain sufficient unbundled charge information to enable the customer to determine the basis for those charges and shall comply with section 1509 (relating to billing procedures). At a minimum, such charges shall include those services which are unbundled as a result of a restructuring filing or rulemaking.

(ii) Bills to retail residential customers rendered by a natural gas distribution company for natural gas distribution services shall include information required by commission regulations governing standards and billing practices for residential utility service.

(iii) Bills rendered by a natural gas distribution company on behalf of a natural gas supplier shall include, in a form and manner determined by the natural gas distribution company in consultation with the natural gas supplier, the following information with respect to natural gas supplier services: the name of the natural gas supplier; the rates, charges or prices of natural gas supply services billed, including adjustments to prior period billings, if applicable, and taxes, if applicable; and the natural gas supplier's toll-free telephone number and hours of operation for customer inquiries.

(3) Incremental costs relating to billing services designed, implemented and rendered by the natural gas distribution company, at its election, on behalf of a natural gas supplier or other entity may be

recovered through fees charged by the natural gas distribution company to the natural gas supplier or other entity. Either party may request that the commission consider the appropriate level of the fee. In doing so, the commission shall consider fees charged by other natural gas distribution companies for similar services. The commission shall either permit the fee to continue as set or shall establish an alternative mechanism to permit full recovery of unrecovered just and reasonable costs from the supplier or the supplier's customers. Nothing in this section shall permit the recovery of such costs from natural gas supply service customers of the natural gas distribution company.

\*

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\*

Section 2205(c)(3) does not involve billing for non-commodity services offered by unaffiliated third parties. Section 2205(c)(3) provides no support for the NGS Parties' argument that billing for non-commodity products of unaffiliated entities is somehow a regulated utility service.

Finally, the NGS Parties cite *Aronson v. Pa. PUC*, 740 A.2d 1208 (Cmwlth. Ct. 1999), in support of their argument that billing for the non-commodity services offered by unaffiliated, nonregulated entities is a regulated service. (NGS Parties M.B., p. 5) The services that were being billed in *Aronson* are distinguishable from the services being billed here. *Aronson* involved the reasonableness of a utility's billing practices for natural gas service, including the information to be included on billing statements and late payment charges to be imposed. *Aronson*, 740 A.2d 1208. The billing practices at issue in *Aronson* did not relate to billing for non-commodity products and services. Therefore, *Aronson* does not support the NGS Parties' argument that billing for non-commodity service offered by unaffiliated, nonregulated entities is a regulated service.

Even if a nondiscrimination standard were applied, Columbia's decision to limit the entities permitted to include charges on Columbia's bill is not discriminatory. The NGS Parties state that they are seeking "equal access" to Columbia's bills. (NGS Parties M.B., p. 4) This statement is misleading. The NGS Parties seek to market products and

services, such as products bundled with loyalty rewards and products bundled with home protection, that go far beyond what is currently offered by the two unaffiliated, non-NGSs. (NGS Parties St. No. 2, p. 4) As explained in Columbia's and the OCA's Main Briefs, the NGS Parties' proposal to include charges for these items on Columbia's bill is not in the customers' best interest. (Columbia M.B., pp. 17-19; OCA M.B., pp. 7-10) The Commission has previously expressed its concern with ensuring that NGSs maintain fair billing practices. *See Re: Requirements for Natural Gas Suppliers – Guidelines pursuant to Chapter 22 Natural Gas Choice and Competition Act Section 2208*, Docket No. M-00991249, 1999 Pa. PUC LEXIS 42 (Order entered July 16, 1999) (imposing requirements on NGSs to comply with billing practices set forth in 52 Pa. Code Chapter 56 and establishing interim standards of conduct related to NGSs' activities, including marketing and billing).

Columbia's decision to limit on bill billing for the non-commodity services offered by the two non-affiliated entities is not discriminatory and should be permitted to continue without requiring Columbia to bill for the non-commodity products and services offered by the NGS Parties.

**B. THE NGS PARTIES INCORRECTLY ALLEGE THAT COLUMBIA DID NOT SEEK APPROVAL FOR ITS AFFILIATED INTEREST AGREEMENTS WITH CSP AND NICOR.**

The NGS Parties state for the first time in their Main Brief that there is no evidence in the record that approval was obtained for the agreements with CSP and Nicor when they were affiliates of Columbia.<sup>2</sup> This allegation is without merit.

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<sup>2</sup> The NGS Parties' argument is also procedurally improper. The NGS Parties have raised this argument for the first time at the briefing stage of this proceeding. Had the NGS Parties raised this argument in their direct case, Columbia would have responded by presenting evidence that it did, in fact, obtain the proper affiliated interest agreement approval for its agreements with CSP and Nicor. By presenting this argument for the first time after the submission of testimony and the evidentiary hearing,

The NGS Parties' allegation that Columbia did not obtain the proper approval for its affiliated interest agreements is simply incorrect. Columbia ceased affiliation with CSP and Nicor nearly a decade ago. (NGS Parties' M.B., p. 7) Prior to entering the agreements with CSP and Nicor in the 1990s, Columbia did, in fact, seek and receive Commission approval of these agreements. *See Affiliated Interest Agreement Between Columbia Gas of Pennsylvania, Inc., Columbia Gas of Maryland, Inc., Columbia Gas of Ohio, Inc. and Columbia Services Partners, Inc.*, Docket No. G-00960483 (Order entered July 18, 1996); *Affiliated Interest Agreement Between Columbia Gas of Pennsylvania, Inc., Columbia Gas of Maryland, Inc., Columbia Energy Services Corporation, Columbia Gas of Ohio, Inc., and NiSource Retail Services, Inc.*, Docket No. G-00960483 (February 19, 2004), attached hereto as "Appendix A." The fact that these agreements were reviewed and approved by the Commission evidences that they are not discriminatory.

**C. OCA'S CONCERNS REGARDING COLUMBIA'S EXISTING PRACTICE ARE WITHOUT MERIT.**

Although the OCA does not ultimately recommend any change to the manner in which Columbia currently bills for the non-commodity products and services offered by two unaffiliated, non-NGS entities, the OCA does express concern with Columbia's existing practice. In particular, the OCA questions whether the inclusion of these charges on Columbia's bill could result in an assumption by customers that such products and services are regulated by the Commission. (OCA M.B., pp. 8-9). As explained in Columbia's Main Brief, the OCA's concerns are not warranted.

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Columbia has no meaningful opportunity to respond or present evidence countering the NGS Parties' allegation. For this reason, the NGS Parties' argument should not be considered. *See Application of PPL Electric Utilities Corp.*, 2009 Pa. PUC LEXIS 2323, 227 (2009) (a conjecture introduced for the first time in a brief with no basis in the record will be ignored).

Columbia does not market to customers the non-commodity services offered by the two unaffiliated vendors. Instead, all marketing is performed directly by CSP and Nicor. (Columbia St. No. 18-SR, p. 7) 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) Accordingly, there is no risk that customers would view these products and services as being regulated by the Commission simply because they appear on Columbia's bill.

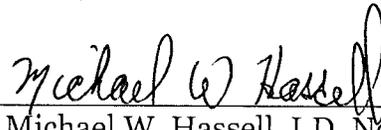
Further, when customers inquire with Columbia regarding the non-commodity charges on their bill, Columbia clearly discloses to the customer that CSP and Nicor are vendors that sell warranty service plans and are not affiliated with Columbia in any way. This disclosure is also provided on customers' bill statements each month. (Columbia St. No. 18-SR, p. 4; Confidential Columbia Ex. No. NP-4-SR)

There is no basis for the OCA's concern regarding the manner in which the non-commodity products and services provided by CSP and Nicor are marketed. Therefore, Columbia should be permitted to continue its existing, lawful practice without modification.

**III. CONCLUSION**

For the foregoing reasons, and as further explained in Columbia's Main Brief, Columbia 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 31, 2018

*Attorneys for Columbia Gas of  
Pennsylvania, Inc.*

# Appendix A



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

RECEIVED

RECEIVED

JUL 23 1996

STANLEY J. SAFUN

G-00960483

July 18, 1996

STANLEY J SAFUN ESQUIRE  
200 CIVIC CENTER DRIVE  
PO BOX 117  
COLUMBUS OHIO 43216-0117

Affiliated Interest Agreement between Columbia Gas of Pennsylvania, Inc., Columbia Gas of Maryland, Inc., Columbia Gas of Ohio, Inc., and Columbia Services Partners, Inc.

To Whom It May Concern,

This is to advise you that an Opinion and Order has been issued by the Commission in public meeting held July 18, 1996 on the above entitled proceeding.

A copy of this Opinion and Order is enclosed for your records.

Very truly yours,

John G. Alford, Secretary

Certified Mail

**PENNSYLVANIA  
PUBLIC UTILITY COMMISSION  
Harrisburg, PA. 17105-3265**

Public Meeting held July 18, 1996

Commissioners Present:

John M. Quain, Chairman  
Lisa Crutchfield, Vice Chairman  
John Hanger  
David W. Rolka  
Robert K. Bloom

Affiliated Interest Agreement Between  
Columbia Gas of Pennsylvania, Inc.,  
Columbia Gas of Maryland, Inc., Columbia  
Gas of Ohio, Inc. and Columbia Services  
Partners, Inc.

G-00960483

**OPINION AND ORDER**

**BY THE COMMISSION:**

On May 2, 1996, Columbia Gas of Pennsylvania, Inc. ("Columbia") filed an Affiliated Interest Agreement with Columbia Gas of Maryland, Inc., Columbia Gas of Ohio, Inc. and Columbia Service Partners, Inc. ("Partners"). On May 23, 1996, the Commission extended the period of consideration for this agreement to August 9, 1996. The agreement sets forth the terms and conditions whereby accounting, operating, administrative, billing and other related services will be provided in efforts to offer new energy-related services to customers.

This Agreement is filed in accordance with the requirements of Section 2102(b) of the Public Utility Code, 66 Pa. C.S. §2102(b).

Columbia, and the other parties to this Agreement, are all wholly-owned subsidiaries of The Columbia Gas System, Inc., and therefore affiliates.

At this time, Columbia expects it will provide limited service to Partners, primarily in the form of advisory labor

(estimated not to exceed 500 hours annually), and incremental expenditures for items such as postage, monthly invoicing and cash processing of customer bills. The estimated total dollar amount that Columbia will charge Partners for services provided is estimated to be less than \$10,000 for 1996.

Columbia states that all services provided to Partners will be billed at cost, in compliance with Section 13(b) of the Public Utility Holding Act of 1935, and, as with all affiliate billings between Columbia Gas System companies, revenues received from such transactions will be credited against the previously recorded expenses that generated the billing.

The Commission has examined the Agreement and has determined that it appears to be reasonable and consistent with the public interest; however, approval of the Agreement does not preclude the Commission from investigating during any formal proceeding, the reasonableness of any charges under the Agreement; **THEREFORE,**

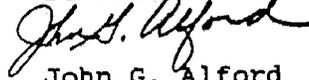
**IT IS ORDERED:**

1. That the Affiliated Interest Agreement between Columbia Gas of Pennsylvania, Inc., Columbia Gas of Maryland, Inc., Columbia Gas of Ohio, Inc. and Columbia Service Partners, Inc. be, and hereby is, approved.

2. That acceptance does not preclude the Commission from investigating during any formal proceeding the reasonableness of any charges under the Agreement.

3. That this docket be marked "Closed".

**BY THE COMMISSION,**

  
John G. Alford  
Secretary

(SEAL)

ORDER ADOPTED: July 18, 1996

ORDER ENTERED: JUL 18 1996



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

IN REPLY PLEASE  
REFER TO OUR FILE

FEBRUARY 19, 2004

G-00960483

MARK R KEMPIC SENIOR ATTORNEY  
NISOURCE  
650 WASHINGTON RD  
PITTSBURGH PA 15228

Re: Affiliated Interest Agreement Between Columbia Gas of Pennsylvania, Inc.,  
Columbia Gas of Maryland, Inc., Columbia Energy Services Corporation,  
Columbia Gas of Ohio, Inc., and NiSource Retail Services, Inc.

Dear Mr. Kempic:

On January 8, 2004, Columbia Gas of Pennsylvania, Inc., Columbia Gas of Maryland, Inc., Columbia Energy Services Corporation, Columbia Gas of Ohio, Inc., and NiSource Retail Services, Inc. filed an Affiliated Interest Agreement. This agreement is filed in accordance with the requirements of Section 2102(b) of the Public Utility Code, 66 Pa. C.S. §2102(b). This filing is an amendment to an existing Commission approved Affiliated Interest Agreement between Columbia Gas of Pennsylvania, Inc. and several of its affiliates. Columbia Gas of Pennsylvania, Inc. is amending the agreement in order to provide services to a newly formed affiliate, NiSource Retail Services, Inc.

Upon review of the companies' filing, it does not appear that this filing is unreasonable or contrary to the public interest. Therefore, this filing is hereby approved. However, approval of this filing does not constitute a determination that such filing is consistent with the public interest, and that the associated costs or expenses are reasonable or prudent for the purposes of determining just and reasonable rates. Furthermore, the Commission's approval is contingent upon the possibility that subsequent audits, reviews, and inquiry, in any Commission proceeding, may be conducted, pursuant to 66 Pa. C.S. §§2102, *et seq.*

In addition, this approval will apply only to the agreement(s), service(s), matters, and parties specifically and clearly defined under this instant filing as well as under any associated and previously filed filings.

Sincerely,

James J. McNulty  
Secretary

cc: Kerry Klinefelter, FUS  
Janet Patrick, Secretary's Bureau