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October 15, 2018

VIA ELECTRONIC FILING

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

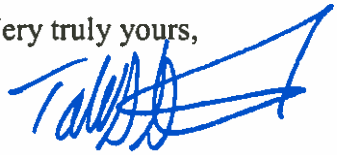
RE: Pennsylvania Public Utility Commission v. Columbia Gas of Pennsylvania, Inc.; Docket No. R-2018-2647577; **EXCEPTIONS OF THE NATURAL GAS SUPPLIER PARTIES TO RECOMMENDED DECISION OF ADMINISTRATIVE LAW JUDGE JEFFREY WATSON**

Dear Secretary Chiavetta:

Enclosed for electronic filing with the Commission is the Exceptions of The Natural Gas Supplier Parties to Recommended Decision of Administrative Law Judge Jeffrey Watson in the above-captioned docket. Copies of the Exceptions have been served in accordance with the attached Certificate of Service.

Thank you for your attention to this matter. If you have any questions related to this filing, please do not hesitate to contact my office.

Very truly yours,



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TSS/jld
Enclosure
cc: Administrative Law Judge Jeffrey A. Watson (via overnight delivery)
Per Certificate of Service
OSA (via email – ra-OSA@pa.gov)

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the parties, listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

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DATED: October 15, 2018

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission,	:	
	:	
v.	:	Docket Nos.: R-2018-2647577
	:	
Columbia Gas of Pennsylvania, Inc.	:	

EXCEPTIONS OF THE NATURAL GAS SUPPLIER PARTIES TO RECOMMENDED DECISION OF ADMINISTRATIVE LAW JUDGE JEFFREY WATSON

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DATED: October 15, 2018

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I. INTRODUCTION

NOW COME the Natural Gas Supplier Parties ("NGS Parties"), who for purposes of these exceptions are: Interstate Gas Supply, Inc, d/b/a IGS Energy ("IGS") and Shipley Choice, LLC, d/b/a Shipley Energy ("Shipley"), and Except to the Recommended Decision ("RD") of Presiding Administrative Law Judge, The Honorable Jeffrey Watson, in the above-captioned matter. The matter before the ALJ was entirely resolved through a Petition for Partial Settlement ("Settlement") – save a single contested issue which is the subject of the instant Exceptions. The NGS Parties do not take issue with any other part of the Settlement, but rather have submitted a statement in support of those "other" provisions. However, the RD holds that Columbia Gas of Pennsylvania, Inc.'s ("Columbia" or "the Company") *billing and collection* of non-commodity services (such as appliance sales, warranty and maintenance services) via the utility bill, is not "service" as that term is defined in the Public Utility Code[1] and therefore is not subject to Code's anti-discrimination provisions.[2] The NGS Parties submit that such conclusion is in error for a number of reasons and, accordingly, the NGS Parties Except.

As discussed more completely in the NGS Parties' Main and Reply Briefs, Columbia provides a billing service to two former affiliates.[3] The service, which also is referred-to as "on bill billing", includes the billing and collection of charges for non-commodity services such as service line and equipment warranties, installation and maintenance of HVAC equipment, and similar services. The record also is clear that the NGS Parties and other NGSs currently provide these very same services; despite the RD's incorrect statement that the products are different. The record also is clear that the NGS Parties requested that Columbia provide the same billing service

[1] 66 Pa. C.S. § 102
[2] 66 Pa. C.S. § 1502 & 2203(4)
[3] NGS Parties' Main Brief at 7-10.

to them, that Columbia refused, and that the inability to provide "on bill billing" disadvantages the NGS Parties' customers and their businesses. As more specifically described below, the NGS Parties submit that the gravamen of the RD's is to allow Columbia to continue providing the billing service for its former affiliates, while refusing to require Columbia to provide the service on similar terms and conditions to them was without basis in law or fact and should be reversed.

II. SPECIFIC EXCEPTIONS:

1. **The RD concludes that because the underlying non-commodity services are not public utility service, the non-discrimination provisions of 66 Pa. C.S. § 1502, cannot apply. This conclusion is erroneous for several reasons. (RD 106-118).**

The RD incorrectly concludes that the billing service provided by Columbia to its former affiliates does not equate to public utility service and is thus not subject to the anti-discrimination provisions of 66 Pa. C.S. § 1502. This conclusion is erroneous. Commission precedent is clear that billing and collections fall within the umbrella of public utility service;[4] there is unambiguous authorization for Natural Gas Distribution Companies ("NGDC") to provide billing services in the Public Utility Code, 66 Pa. C.S. § 2205(c); and, the Commission has regulations dealing with the billing and collection of other than basic services,[5] such as the services at issue here. In the face of this overwhelming and controlling law, the RD instead relied upon a single case that stands for

[4] *Sbg Mgmt. Servs., Inc. / Marchwood Realty Co., L.P. v. Phila. Gas Works;* C-2012-2308454, (Initial Decision of ALJ Vero entered Jan. 13, 2016, affirmed by Opinion and Order entered October 4, 2018)("It is every public utility's duty to "furnish and maintain adequate, efficient, safe, and reasonable service and facilities" in conformity with the regulations and orders of the Commission. 66 Pa.C.S.A. § 1501. "The term ""service" is [u]sed in its broadest and most inclusive sense, [and] 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 ... in the performances of their duties...." 66 Pa.C.S. § 102. The statutory definition of "service" is to be broadly construed. *Country Place Waste Treatment Co., Inc. v. Pa. Public Utility Commission,* 654 A.2d 72 (Pa.Cmwlth. 1995). Thus, the term "service" is clearly broad enough to include the billing and collection practices of a public utility, and also the conduct of its employees towards its customers." Initial Decision at page 31).

[5] 52 Pa. Code §§ 56.23 & 56.83.

the proposition that for the anti-discrimination provisions of 66 Pa. C.S. § 1502[6] to apply, the service complained of must be public utility service,[7] which implicitly holds that billing service is not public utility service. The RD's holding stands *PPL* on its head. The record is clear that Columbia does not provide the underlying non-commodity services and so the case it relies upon is obviously inapposite. Rather, the service at issue in this case that is analogous to PPL's provision of customer information to its affiliate in the *PPL* case, is the billing service Columbia provides to its former affiliates -- and that billing service clearly is public utility service.

The RD's reliance on *PPL*, and the conclusions it reaches as a consequence, are wrong for several reasons. First, the NGS Parties are not claiming that Columbia is discriminating in the provision of non-commodity services, rather, Columbia is refusing to provide the billing services for the NGSs that it provides to its former affiliates. Moreover, the RD implicitly concludes that the provision of billing service (which is the service in which Columbia is discriminating) is not a public utility service, even though Columbia uses ratepayer assets to provide the service.

The relevant facts of *PPL* are that utility employees were providing information and customer leads to an affiliated sales tax consulting company in order to give an advantage over its competitors, who were the complainants before the Commission. The Commission found that those actions constituted discrimination under Section 1502. On appeal, PPL argued, and the Court found, that the provision of sales tax consulting services was not public utility service, which the ALJ in this case appears to have found convincing, while also holding that providing the information and leads to its affiliate likewise was not public utility service. The factual scenario upon which the Court's conclusion is based is quite different from what we have here.

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[6] 66 Pa. Code § 1502 prohibits a utility from providing "an unreasonable preference or advantage" in providing public utility service.

[7] *PPL Elec. Utilities Corp. v. Pa. P.U.C.*; 912 A.2d 386 (Pa.Cmwlth. 2006)("*PPL*")

The Court in *PPL* importantly held that the discrimination must relate to conduct that is public utility service. In *PPL* the conduct alleged to be discriminatory was PPL's provision of information to its affiliate to the exclusion of competitors, while in this case, the conduct that the NGS Parties contend is discriminatory is Columbia's provision of billing service which uses ratepayer funded assets and which clearly is utility service. The RD mistakenly adopts Columbia's misleading suggestion that because the non-commodity service activities of its two former affiliates and the NGS parties are not public utility service, the claim of discrimination is not valid. Finally, it is vital to this analysis to consider the entities to whom the alleged service is being provided. In the *PPL* case, the recipient of the "service" was the unregulated affiliate, whereas in this case, it is Columbia's customers who obtain the benefit of a single bill or the burden of Columbia's refusal to provide it. The NGS Parties are also customers, or potential customers more accurately, for Columbia's billing service. Columbia's argument is patently incorrect, should not have been relied upon by the RD, and doing so was in error.

The RD presents a house-of-cards argument built entirely on the premise that billing customers and collecting from those same customers for non-commodity products, using the very same utility billing system and personnel that it uses to bill for natural gas products is not public utility service because the underlying non-commodity service is not public utility service. This contention was proven wrong in the NGS Parties Main Brief and is fallacious. The Commission has regulations regarding how these types of services can be billed and collected, 52 Pa. Code §§ 56.23 & 56.83, and the RD makes much ado about Columbia's adherence to those regulations without ever acknowledging that there would be no basis for the Commission to have regulations governing the billing service if the service were not jurisdictional service.

Not only is the RD's conclusion wrong, but it is dangerous. Exempting the utility bill from regulation could lead to a situation where the Commission has no authority or enforcement power over Columbia's billing services. Clearly the Commission does not want to cede oversight over Columbia's billing practices regardless of what Columbia decides to do with the utility bill. Unfortunately, that is what the Commission will do if it adopts the RD.

Again, the fact that the billing is a "service" as that term is defined in Section 102, is reinforced by the authorization at 66 Pa. C.S. § 2205(c)(3), that allows NGDC's to provide "billing services" to a "natural gas supplier other entity". And thus, having established that billing is indeed a service, it is clear that the anti-discrimination provisions of 66 Pa. C.S. § 1502 prevent Columbia from unreasonably discriminating against the NGS Parties in favor of its former affiliates.

Billing service is public utility service and is the service at issue in this case. Columbia receives cost recovery and a rate of return for its billing system, just like it does for its pipes in the ground. Columbia's insistence on discriminating in the provision of the service has no rational basis other than to benefit its former affiliates and it should not be permitted to continue the service unless it allows others equivalent services at similar rates.

2. The RD erred in finding that the NGS Parties failed to carry their burden of proving a violation. (RD 114)

The RD erred in concluding that the NGS Parties have not carried their burden of proving unreasonable discrimination, despite the evidence that: 1) the NGS Parties provide non-commodity services to customers in the Columbia service territory that are comparable to those provided by Columbia's former affiliates (NGS Parties St. No. 2, 2:20-3:4); 2) the NGS Parties asked Columbia to provide similar billing services to them at terms comparable to those charged the former affiliates and Columbia refused to provide the services (NGS Parties' St. No. 2; 6:8-11); 3)

the NGS Parties and their customers are unreasonably disadvantaged by Columbia's refusal (NGS Parties St. No. 2, 2:18-5:3; and, 4) Columbia's refusal is based upon the fact that it currently provides the service to its two former affiliates (NGS Parties' St. No. 2-SR, 8:4-12).

The NGS Parties proffered the testimony of Anthony Cusati, III, in support of their contention that Columbia's refusal to provide billing services to them, while Columbia provides the service for two former affiliates is discriminatory. Mr. Cusati testified that:

> My understanding is that this entity called Columbia Service Partners ("CSP") provides warranty services that cover such things as gas and water/sewer service lines and HVAC system. The products and services for CSP are currently being billed on the utility bill. Other NGS, including the NGS Parties, provide similar products/services, and yet we have unequal access to provide the convenience to the customer by having them billed by the utility.

NGS Parties' St. No. 2, 2:21-3:4. Mr. Cusati went on to posit that one of the benefits of allowing for on-bill billing of non-commodity products is innovation and suggested that the market is evolving to provide additional value-added products, and that allowing on-bill-billing of these products will benefit customers. NGS Parties' St. No. 2, 4:7-5:3.

Contrary to the RD's statement that the NGS Parties are seeking a mandate that Columbia open its billing service to all providers of non-commodity products, and that Columbia's failure to do so is unreasonably discriminatory -- the NGS Parties continue to contend that 66 Pa. C.S. § 2205(c) permits, but does not require Columbia to provide such service, but so long as Columbia provides the billing service to one entity, the anti-discrimination requirements of § 1502 apply and prevent Columbia from unreasonably refusing to provide the service to others on similar terms.

The NGS Parties further note, that they maintain an ongoing business relationship with the Company and that, coupled with the other regulatory requirements associated with their service, make it more than reasonable for NGS parties to bill for the same products for which Columbia

allows it former affiliate to bill. In-fact greater rational exists to allow NGSs to bill on the regulated utility bill given that the companies for which Columbia currently provides the service don't even have to be certified by the Commission, nor does the Commission have a means of regulating those companies. Mr. Cusati was unambiguous on this point:

> NGSs are unique, however, in that they are subject to the jurisdiction of the Commission. NGSs must be licensed by the Commission and are subject to civil penalties, suspension or forfeiture of their license if they engage in unfair or deceptive marketing practices or otherwise do not follow the PAPUC rules. The Commission does not have the same oversight over non-NGSs and thus it would be unreasonable to allow those entities to bill for non-commodity services on the utility bill, even though it is reasonable to allow for NOSs to bill for non-commodity services. NGS also have a pre-existing billing and business relationship with Columbia of Pennsylvania, by virtue of the fact that they supply commodity service to customers residing in the utility territory. NGSs have executed an NGS Choice Distribution Aggregation Agreement, trade electronic transactions (enrollment, usage, billing and payment data) with CPA daily, and provide an energy service that is directly tied to the non-commodity products and services that they desire to be billed. These other "entities" don't have such a relationship, have not entered into an aggregation agreement with CPA and don't provide the same energy services that NGSs do.
>
> NGS Parties' St. No. 2-SR, 4:8-22.

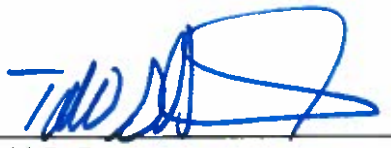
Rather than provide a rational basis for its refusal to treat NGSs similarly to its former affiliates (other than its preference to maintain the advantaged position those entities were able to "negotiate" while they were affiliates) Columbia resorted to dissembling and the RD erred in adopting its flawed reasoning. In short, the NGS Parties have shown that they provide similar services to the former affiliates, that they already have a billing relationship with Columbia and that they are subject to regulation by the Commission – making the discrimination against them unreasonable when compared to the former affiliates.

III. CONCLUSION

The RD mistakenly relies upon the twisted logic employed by Columbia in its effort to continue its discriminatory practice of providing a billing service it calls "on bill billing" to two former affiliates, for products and services that the NGS Parties also provide, but for whom Columbia refuses to provide the same billing service. The service clearly is jurisdictional, in that the service provided is being paid through Columbia's rate base just like Columbia's distribution service, and clearly falls under the requirements of Section 1502.

Moreover, the NGS Parties do not contend that the Commission can order Columbia to provide the service to them, but the Commission can find that Columbia's refusal to provide the service to the NGS Parties, while providing the service to its two former affiliates without a good reason (or a reason that overcomes all the reasons why providing the service for NGSs should predominate), is unreasonable discrimination and a violation of 66 Pa. C.S. § 1502. Such a finding could produce two outcomes: either Columbia offers the service to the NGS Parties on the same terms; or it cannot provide the service to anyone. The NGS Parties obviously favor the former outcome and respectfully request whatever relief the Commission believe fairness requires.

Respectfully submitted,



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