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October 25, 2018

VIA ELECTRONIC FILING

Rosemary Chiavetta, Secretary
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**Re: Pennsylvania Public Utility Commission, et al. v. Columbia Gas of Pennsylvania,
Inc.
Docket Nos. R-2018-2647577, etc.**

Dear Secretary Chiavetta:

Enclosed please find the Reply Exceptions of Columbia Gas of Pennsylvania in the above-referenced proceeding. Copies will be provided as indicated on the Certificate of Service.

Respectfully submitted,

Michael W. Hassell

MWH/kl
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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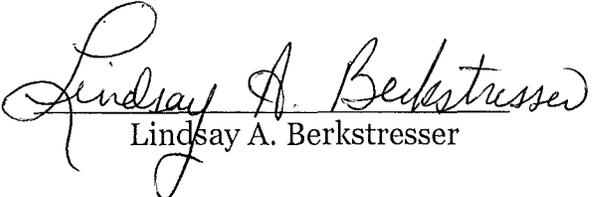
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Date: October 25, 2018


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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.	:	

REPLY EXCEPTIONS OF COLUMBIA GAS OF PENNSYLVANIA, INC.

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I. INTRODUCTION

Columbia Gas of Pennsylvania, Inc. (“Columbia”) hereby files these Replies to Exceptions in response to the Exceptions filed by the Natural Gas Supplier Parties (“NGS Parties”) to the Recommended Decision (“RD”) of Administrative Law Judge Jeffrey Watson (the “ALJ”) issued September 18, 2018. Columbia respectfully requests that the Pennsylvania Public Utility Commission (“Commission”) reject the NGS Parties’ Exceptions and adopt the RD in its entirety.

II. **REPLY TO NGS PARTIES’ EXCEPTION NO. 1: THE ALJ PROPERLY CONCLUDED THAT THE PUBLIC UTILITY CODE’S ANTI-DISCRIMINATION PROVISIONS DO NOT APPLY TO COLUMBIA’S BILLING FOR THE NON-COMMODITY PRODUCTS AND SERVICES OFFERED BY TWO UNAFFILIATED, NON-NGS ENTITIES. (RD, pp. 106-118)**

A. **The ALJ properly concluded that the non-commodity products and services provided by two unaffiliated, non-NGS entities do not constitute “service” subject to the Commission’s prohibition on discrimination.**

The NGS Parties contend that the ALJ erred in concluding that the Public Utility Code’s anti-discrimination provisions do not apply to Columbia’s billing for certain non-commodity products and services, such as repair and maintenance plans for customer-owned facilities, offered by two entities that are not natural gas suppliers (“NGSs”) and are not affiliated with Columbia.¹ According to the NGS Parties, billing for the non-commodity products and services offered by these unregulated entities constitutes “service” as that term is defined in Section 102 of the Public Utility Code, 66 Pa. C.S. § 102. As such, the NGS Parties contend that the anti-discrimination provisions of 66 Pa.

¹ As explained in Columbia’s Main Brief, 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 offered by these entities. This practice is referred to as “on bill” billing. Both CSP and Nicor are former Columbia affiliates; however, both entities ceased affiliation with Columbia over a decade ago. (Columbia St. No. 18-R, p. 3) (MB, pp. 7-9)

C.S. § 1502 prohibit Columbia from billing for the unregulated, non-commodity products and services offered by unaffiliated, non-NGS entities unless Columbia also provides these billing services to NGSs for other types of products. As the ALJ properly concluded, however, Columbia's billing for these non-commodity products and services is not "service" subject to the Commission's prohibition on discrimination. Therefore, Section 1502 does not prohibit Columbia from limiting the entities that the Company permits to include non-commodity charges on its bills. (RD, pp. 117-118)

Specifically, the NGS Parties' argue that because billing is a regulated function, Columbia's billing for the non-commodity products and services offered by two unregulated, nonaffiliated entities must be public utility service. In support of its argument, the NGS Parties cite the Public Utility Code's prohibition on discrimination in service at 66 Pa. C.S. § 1502, the Commission's regulations on billing for service other than basic service, and the Commission's decision in *SBG Management Services, Inc. / Marchwood Realty Co., L.P. v. Philadelphia Gas Works*, Docket No. C-2012-2308454 (Initial Decision January 13, 2016; Order entered October 4, 2018). The statutory provisions, regulations, and Commission precedent cited by the NGS Parties do not support their position.

1. The Public Utility Code's Anti-discrimination Provisions

Section 1502 prevents discrimination in any act performed by a utility involving the provision of utility service. See *PPL Electric Utilities Corp. v. Pa. PUC*, 912 A.2d 386 (Cmwlth. Ct. 2006) ("*PPL*").² Specifically, Section 1502 provides:

§ 1502. Discrimination in service.

² In its Main Brief, Columbia addressed why the *Natural Gas Choice and Competition Act's* prohibition on discrimination relates to natural gas supply service, 66 Pa. C.S. § 2203(4), does not apply here. (MB, pp. 10-12)

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.

In *PPL*, the Commonwealth Court determined that Section 1502 did not apply to a utility's conduct in referring its customers to an unregulated affiliate for tax consulting services because tax consulting 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." 912 A.2d at 408.

The NGS Parties claim that Section 1502 applies to their complaint of discrimination because they are "potential customers" of Columbia. (NGS Parties Exceptions, p. 4) This argument is without merit because the "service" the NGS Parties seek from Columbia is not natural gas service; it is access to Columbia's utility bill. The utility bill is ancillary to the actual Section 102 service that Columbia provides to customers—natural gas service. Thus, the NGS Parties are not utility customers or ratepayers.

Although the NGS Parties admit that the non-commodity products and services being offered are not public utility service, they attempt to shift the focus to "billing" by

stating that Columbia is providing billing for the unregulated services, and billing is a regulated function. (NGS Parties' Exceptions, pp. 2-3) The NGS Parties confuse the actual "service" at issue here. Both *PPL* and the instant case involve unregulated services provided by regulated utilities, i.e. Columbia's on bill billing and the *PPL* utility's provision of customer information to an affiliated third party. While the Commission regulates both Columbia and PPL, the actual service at issue in the current case and in *PPL*, i.e. repair and maintenance plans for customer-owned facilities and tax consulting services, are unregulated services offered by non-utility entities. Simply because a regulated entity is involved does not mean that the actual product or service being provided constitutes utility service.

The NGS Parties attempt to distinguish *PPL* from this case on several bases. First, the NGS Parties argue that Columbia does not provide the underlying non-commodity products and services. (NGS Parties' Exceptions, p. 3) However, the utility in *PPL* did not provide the underlying tax consulting services. They were provided by an unregulated affiliate.

The NGS Parties also note that Columbia uses ratepayer assets, such as the utility's billing system and personnel, to issue utility bills. (NGS Parties' Exceptions, p. 3) In *PPL*, utility employees, whose salaries are ultimately recovered by the utility through ratepayer funds, were providing the customer information to the third-party affiliate. Moreover, the revenues derived from the two unaffiliated, non-NGS entities are used to cover the costs associated with on bill billing. (Columbia St. No. 18-R, p. 3). Thus, ratepayers are not subsidizing Columbia's on bill billing.

Finally, the NGS Parties contend that a "vital" distinction between *PPL* and this case is that the referral service in *PPL* was being provided to an unregulated affiliate, not

utility customers, whereas here, the billing service is being provided to utility customers. (NGS Parties' Exceptions, p. 4) Again, the NGS Parties confuse the facts of *PPL* and the instant case. Utility customers were the ultimate recipient of the tax consulting services being offered by the unregulated affiliate in *PPL*³, just like utility customers are the ultimate recipient of the non-commodity products and services being provided by the two unaffiliated, non-NGS entities in this case. Thus, *PPL* and the instant case are not distinguishable on these bases.

To the contrary, the facts that the Court relied upon in *PPL* to make its determination that PPL's disclosure of information to an affiliate third-party did not constitute discrimination under Section 1502 are consistent with the facts in this case. In *PPL*, the Court looked at what entity was impacted by the alleged preferential treatment (rather than the entity who received the non-commodity products or services being provided by a third-party). In *PPL*, the entity impacted by PPL's disclosure of information was a non-customer third party that desired to have the information PPL was disclosing to an affiliated third-party. The Court determined that PPL's activities did not violate Section 1502 because the activities were unrelated to services to customers, and that PPL's customers were not the group and/or entity impacted by the alleged discriminatory activities. Specifically, the Court stated:

Section 1502, by its plain language, prohibits preferential and discriminatory activities that have to do with service classifications for *consumers*. Section 1502 protects customers of a public utility from being subjected to unreasonable discrimination or preferences concerning the establishment of different services for different classes of customers. In order to come within Section 1502, the conduct must relate to the public service the utility provides to its customers and the public. *Complainants*

³ The utility in *PPL* provided customer information to an affiliated third-party. That third-party provided the tax consulting service to the utility's customers. *PPL* at 408-409.

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 ratepayers. Therefore, this Court does not agree with the Commission that this is the type of discrimination or preferential treatment addressed by Section 1502.

PPL Elec. Utils. Corp. v. Pa. PUC, 912 A.2d 386, 408-409, 2006 Pa. Commw. LEXIS 665, *61-62 In the case at hand, the entities alleging discriminatory impact are the NGS Parties, who are not customers or ratepayers, but third-parties that want Columbia to provide them with non-commodity billing services.

The NGS Parties' Exception No. 1 should be rejected because the ALJ properly concluded that Section 1501 does not apply to acts by the utility that are not related to public utility service, and the non-commodity products and services offered by unaffiliated, non-NGS entities do not amount to public utility service. *See PPL*. (RD, p. 120)

2. Commission's Regulations on Billing and Collection

The NGS Parties argue that the existence of Commission regulations on billing and collection for charges other than basic service⁴ necessarily means that the underlying non-commodity service being billed is jurisdictional. (NGS Parties' Exceptions, p. 4) The NGS Parties cite 52 Pa. Code §§ 56.23 and 56.83, which provide:

⁴ Basic services are defined as:

- (i) Services necessary for the physical delivery of residential public utility service.
- (ii) The term also includes default service as defined in this section.

Nonbasic services are defined as:

Optional recurring services which are distinctly separate and clearly not required for the physical delivery of public utility service or default service.

52 Pa. Code § 56.2.

§ 56.23. Application of partial payments between public utility and other service.

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.

§ 56.83. Unauthorized termination of service.

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.

* * *

The Commission's regulations concerning billing and termination procedures where services other than basic service are involved simply address the manner in which a utility bills and collects for these nonbasic services by giving priority to payment for basic utility service. They do not regulate the actual nonbasic service being billed. The very purpose of these regulations is to allow the Commission oversight of the billing and collection for nonbasic charges in order to protect customers from adverse utility service consequences related to non-payment of non-jurisdictional services.

The NGS Parties' argument that the non-commodity services offered by two unaffiliated, non-NGS entities are jurisdictional because Columbia bills for them and the Commission regulates utility billing practices is without merit and should be rejected.

3. Commission Precedent cited by NGS Parties

The NGS Parties cite *SBG Management Services, Inc. / Marchwood Realty Co., L.P. v. Philadelphia Gas Works*, Docket No. C-2012-2308454 (Initial Decision January 13, 2016; Order entered October 4, 2018) as general support for their argument. (NGS Parties Exceptions, p. 2) *SBG Management Services* involved a complaint brought by customers of a utility alleging improper billing, meter reading, and late payment charges concerning the natural gas service provided to the customers. There, the Commission determined that a public utility's billing and collection practices for natural gas service are included within the definition of service in Section 102.

SBG Management Services is of little relevance to this case. *SBG Management Services* does not address billing for nonbasic utility services, such as the non-commodity products and services involved here, nor does it involve a complaint of discrimination in service. Even so, the RD is not inconsistent with the Commission's holding in *SBG Management Services*. The RD recognizes that the Commission oversees utilities' billing practices. (RD, p. 114)

The Commission precedent cited by the NGS Parties provides no support for overturning the well-reasoned conclusion of the ALJ that the non-commodity services offered by unaffiliated, non-NGS entities are not public utility services subject to the Commission's prohibition on discrimination. (RD, pp. 112, 118) Therefore, the NGS Parties' Exception No. 1 should be rejected.

B. The RD does not exempt the utility bill from Commission regulation, as the NGS Parties contend.

The NGS Parties argue that the Commission would "cede oversight over Columbia's billing practices" if it adopted the RD. (NGS Parties Exception, p. 5) This is

simply not the case. As the ALJ stated, Columbia has established that it follows all of the Commission's standards and billing practices concerning residential utility service, including the regulations with respect to billing and collection of charges for non-commodity products and services. (RD, p. 114) For example, Columbia separately identifies on its bills the charges for non-commodity services and will not terminate service for nonpayment of the non-commodity charges. (Columbia MB, pp. 19-23) Nothing in the RD suggests that Columbia would not be obligated to continue complying with the Commission's regulations on billing and collection practices, both with respect to charges for basic utility service and non-commodity services, in the future.

The NGS Parties state that the RD "implicitly holds that billing service is not public utility service." (NGS Parties Exceptions, p. 3) The NGS Parties misinterpret the RD. The RD does not conclude that billing is not a regulated service, implicitly or otherwise. In fact, the RD acknowledges that billing is a regulated function. (RD, p. 114) It is the non-commodity products and services, e.g. repair and maintenance plans for customer-owned facilities, that are not public utility service. These are unregulated services provided by nonjurisdictional entities. Columbia does not market these services to the public. (Columbia MB, pp. 21-22) Columbia simply includes the charges for these products and services on the utility bill. The Commission can, and does, oversee the utility bill, including charges for nonbasic service, without regulating the actual nonbasic service. *See* 52 Pa. Code, Ch. 56.

The NGS Parties' allegation that the Commission will no longer have "authority or enforcement power over Columbia's billing services" if the RD is adopted is not justified. Therefore, the NGS Parties' Exception No. 1 should be rejected.

III. REPLY TO NGS PARTIES EXCEPTION NO. 2: THE RD CORRECTLY CONCLUDED THAT COLUMBIA'S DECISION TO LIMIT THE ENTITIES PERMITTED TO INCLUDE NON-COMMODITY CHARGES ON COLUMBIA'S BILL TO TWO UNAFFILIATED, NON-NGS ENTITIES IS NOT UNREASONABLY DISCRIMINATORY.

The NGS Parties argue that the ALJ erred by finding that Columbia has not discriminated against them by including on Columbia's bills charges for the non-commodity services offered by two unaffiliated, non-NGS entities without billing for the non-commodity products and services offered by NGSs. (NGS Parties' Exceptions, pp. 5-7) The NGS Parties' argument is incorrect because Columbia is not required to bill for non-utility products offered by any entity, and even if a discrimination standard were applied in this case, Columbia's decision to limit those entities with access to Columbia's bills is not unreasonably discriminatory.

The ALJ properly recommended that "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." (RD, p. 117) 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," the regulations do not require that Columbia include these charges on the utility bill. *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 nonbasic charges, as set forth in 52 Pa. Code §§ 56.13 and 56.83.

The NGS Parties argue that 66 Pa. C.S. § 2205(c) “permits, but does not require” Columbia to bill for non-commodity products and services offered by the NGS Parties, “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.” (NGS Parties’ Exceptions, p. 6) While Section 2205 requires Columbia to bill for natural gas supply service provided by NGSs, neither Section 2205 nor Section 1502 suggest that Columbia must bill for any other products or services, other than natural gas service, that NGSs offer, or that Columbia must bill for other products offered by NGSs if it bills for products offered by non-NGS third parties.

The NGS Parties’ position fails to recognize that different treatment is acceptable if it is not unreasonable. 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). In this case, there are differences between the entities involved and the non-commodity products and services being offered that justify different treatment.

The NGS Parties allege that they offer non-commodity services that are “comparable” to those provided by the two unaffiliated, non-NGS entities. (NGS Parties Exceptions, p. 5) While some of the services offered by the NGS Parties may be similar to those offered by the two unaffiliated, non-NGS entities, the NGS Parties seek to include on Columbia’s bills charges for products and services that are much broader and

go well beyond the scope of the clearly defined non-commodity services that the two unaffiliated entities offer. (Columbia St. No. 18-R, p. 3) For example, 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)

As explained in Columbia's Main Brief, the Office of Consumer Advocate expressed concern that the NGS Parties' request for non-commodity charges to appear on the utility bill could result in an improper linkage of commodity and non-commodity products because the NGS Parties market both commodity and non-commodity products. (OCA St. No. 5-R, pp. 8-9) Marketing these products together could lead customers to elect both services when it is not in their best interest. This concern is not applicable to Columbia's existing billing contracts with the two non-NGS entities because, unlike NGSs, Columbia does not sell or market the non-commodity products, and the two non-NGS entities do not offer natural gas supply services. (Columbia St. No. 18-SR, p. 7)

The NGS Parties claim that they are disadvantaged by Columbia's refusal to allow them access to Columbia's bills with respect to charges for non-commodity services. (NGS Parties, p. 6) Although the NGS Parties do not explain how they are disadvantaged, any disadvantage is not the result of unlawful discrimination. Columbia's decision to limit on bill billing to the non-commodity services offered by two unaffiliated, non-NGS entities does not favor one NGS over another, nor does it favor an affiliate over an NGS. 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.

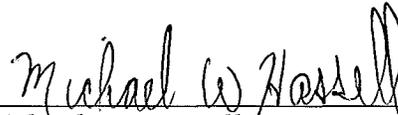
Although these entities were at one time affiliated with Columbia, those affiliations ceased over a decade ago. (Columbia St. No. 18-R, p. 3)

Columbia's decision not to offer NGSs an on bill billing option for their non-commodity products and services as it does for two unaffiliated, non-NGS entities does not rise to the level of unreasonable discrimination. Therefore, the ALJ properly concluded that the NGS Parties have failed to demonstrate that Columbia has violated the Public Utility Code's anti-discrimination provisions, and the NGS Parties' Exception No. 2 should be denied. (RD, pp. 117-118)

IV. CONCLUSION

For the foregoing reasons, and for reasons explained in Columbia's Main Brief and Reply Brief, the Commission should reject the NGS Parties' Exceptions and adopt the Recommend Decision of Administrative Law Judge Jeffrey Watson in its entirety.

Respectfully submitted,



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