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December 19, 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; **ANSWER OF THE NATURAL GAS SUPPLIER
PARTIES TO THE OFFICE OF CONSUMER ADVOCATE'S PETITION
FOR RECONSIDERATION**

Dear Secretary Chiavetta:

Enclosed for electronic filing with the Commission is the Answer of the Natural Gas Supplier Parties to the Office of Consumer Advocate's Petition for Reconsideration in the above-captioned docket. Copies of the Answer 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,

Todd S. Stewart
Counsel for
Shiple Choice, LLC, and Interstate Gas Supply,
Inc. d/b/a IGS Energy ("NGS Parties")

TSS/jld
Enclosure

cc: Administrative Law Judge Jeffrey A. Watson
Office of Special Assistants (via email only: ra-OSA@pa.gov)
Per Certificate of Service

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: December 19, 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.	:	

**ANSWER OF
THE NATURAL GAS SUPPLIER PARTIES
TO PETITION FOR RECONSIDERATION
OF THE OFFICE OF CONSUMER ADVOCATE**

NOW COMES Shipley Choice, LLC d/b/a Shipley Energy (“Shipley”), and Interstate Gas Supply, Inc. d/b/a IGS Energy (“IGS”) (collectively “NGS Parties”), and hereby answer the Office of Consumer Advocate’s (“OCA”) Petition for Reconsideration (“Petition”) in the above-captioned proceeding pursuant to 52 Pa. Code §5.71. *et. seq.* The NGS Parties submit that the OCA has failed to raise any new or novel arguments and has failed in its effort to suggest that the Pennsylvania Public Utility Commission (“Commission”) overlooked or failed to consider any of its arguments and that its Petition must be denied.

I. INTRODUCTION

The Commission entered its Opinion and Order (“Opinion and Order”) in this matter on December 6, 2018. Important to the issues raised by the OCA, the Commission held that Columbia Gas of Pennsylvania’s (“Columbia”) practice of “on bill” billing only for

two former affiliates, to the exclusion of the NGS Parties and other providers of non-commodity products and services that are similar to those provided by the former affiliates, and who had requested such service, was discriminatory. Specifically, the Commission held:

We find that Columbia's billing practice constitutes "service" as the term is defined under Section 102 of the Code, 66 Pa. C.S. § 102, and is subject to the Commission's jurisdiction to determine whether the practice violates Sections 1502 and 2203(4), 66 Pa. C.S. §§ 1502 and 2203(4) prohibiting discrimination and anti-competitive practices in the provision of service. Further, we find that Columbia's "on bill" billing practice is unreasonable and discriminatory in this instance.¹

As a remedy for this discrimination, the Commission recognized that it could not compel Columbia to provide "on bill" billing for the NGS Parties or similarly situated entities, rather it could only require that if Columbia did provide the service, that it must do so on a non-discriminatory basis. Importantly, the Commission did recognize the need for "reasonable limitations" if Columbia chose to continue providing "on bill" billing.

Columbia must comply with Section 1502 of the Code and provide its "on bill" billing policy in a way that is nondiscriminatory. In other words, Columbia must either provide such a service to all entities that provide such non-basic services or must discontinue the "on bill" billing policy. Columbia may not continue to provide this ability to only the two entities referenced in this case. Should Columbia provide the service to all entities providing non-basic services, we recognize the potential need for reasonable limitations...²

¹ Opinion and Order at 44.

² Opinion and Order at 50.

In reaching these conclusions, the Commission made it clear that it had reviewed the arguments raised by the OCA, even going to such lengths as to recite the OCA's arguments:

The OCA raised consumer protection concerns regarding Columbia's present practice of "on bill" billing for non-commodity services offered by a third party. OCA M.B. at 7-8. The OCA suggested that the practice required thorough review to ensure consumer protection concerns are adequately addressed. The OCA argued against the NGS Parties' proposal to be permitted to engage in the same billing practice, while not opposing Columbia's *status quo*. OCA M.B. at 8-9.

The OCA also asserted that the record is deficient regarding the actual practice in place by Columbia and questioned how the non-commodity services are marketed to Columbia's customers. OCA St. No. 5-R at 7. Finally, the OCA questioned whether Columbia has authority to provide "on bill" billing since the practice is not reflected in Columbia's tariff or approved by a Commission order. OCA St. No. 5-R at 4.³

In short, there can be no reasonable doubt that the Commission reviewed the "policy" considerations raised by the OCA in its Briefs and Reply Exceptions.

II. STANDARD OF REVIEW

The Commission's standard for granting a Petition for Reconsideration filed under 66 Pa. C.S. § 703(g) and 52 Pa. Code § 5.572(a) is well-settled:

The standards for granting a Petition for Reconsideration were set forth in *Duick v. Pennsylvania Gas and Water Co.*, Docket No. C-R0597001 *et al.*, 56 Pa. P.U.C. 553, 559, (1982). Under the standards set forth in *Duick*, a Petition for Reconsideration may properly raise any matter designed to convince this Commission that we should exercise our discretion to amend or rescind a prior Order, in whole or in part. Such petitions are likely to succeed only when they raise "new and novel arguments" not previously heard or considerations that appear to have been overlooked or not addressed by the Commission. *Duick* at 559. It has also been held that, because a grant

³ Opinion and Order at 39-40.

of relief on such petitions may result in the disturbance of final orders, it should be granted judiciously and only under appropriate circumstances. *West Penn Power v. Pennsylvania Public Utility Commission*, 659 A.2d 1055 (Pa. Cmwlth. 1995), *petition for allowance of appeal denied*, No. 576 W.D., Allocatur Docket (April 9, 1996); *City of Pittsburgh v. PennDOT*, 490 Pa. 264, 416 A.2d 461 (1980).

We note that any issue, which we do not specifically address herein, has been duly considered and will be denied without further discussion. It is well settled that we are not required to consider expressly or at length each contention or argument raised by the parties. *Consolidated Rail Corp. v. Pa. PUC*, 625 A.2d 741 (Pa. Cmwlth. 1993); also *see, generally, University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).⁴

Accordingly, to meet the standard, not only must a party raise a “new and novel” argument, it also must overcome the threshold notion that the Commission must not stand up and knock down every argument raised by every party below.

In this case, however, the Commission did recite the arguments raised by the OCA, and simply found them to be without merit.

III. ARGUMENT

A. The OCA’s Petition fails to Satisfy the Appropriate Standard for a Grant of Reconsideration.

The OCA has failed to meet the *Duick* standard. That is, it has failed to raise an argument that it had not raised before the ALJ and before the Commission in its Replies to the NGS Parties Exceptions, neither can the OCA convincingly claim that the Commission overlooked any arguments in its deliberations. Indeed, the Commission’s Opinion and

⁴ *Petition of Duquesne Light Company for Approval of its Energy Efficiency and Conservation Plan; Petition for Reconsideration of the Office of Small Business Advocate*; Docket No. M-2009-2093217 (Opinion and Order entered December 23, 2009 at 3).

Order recites the entire litany of arguments the OCA accuses the Commission of having overlooked: 1) concerns regarding on-bill billing for non-commodity products offered by third parties (Opinion and Order at 39); 2) the need for a thorough review to ensure consumer protections are adequate (*Id.*); 3) that NGSs should not be permitted to procure “on-bill” billing from Columbia but providing the service to two former affiliates was acceptable (Opinion and Order at 40); 4) the deficiency of the record on how non-commodity services are marketed (*Id.*); 5) Columbia’s authority to provide “on-bill” billing because it has no tariff nor Commission order approving it (*Id.*); 6) the NGS Parties’ alleged failure to prove that requiring Columbia to provide “on-bill” billing to them is a reasonable solution (Opinion and Order at 43); 7) the consumer protection concerns, including customer confusion over inclusion of a line item for non-commodity products and including the charge in the total due (*Id.*) – among others. The OCA has failed to explain why the Commission’s extensive discussion of those same arguments, and implicit rejection of the same, can possibly lead one to the conclusion that the Commission “overlooked” them. Rather, the gist of the OCA’s contention is simply to vaguely refer to its prior arguments and the conjecture of its witnesses and suggest that because the Commission did not rule in its favor, the Commission must not have considered its arguments. The Commission has made it clear that this sort of approach does not meet the “new and novel” standard.

B. The OCA's Contention that "on-bill" billing is a "policy change" is an incorrect statement of the law.

At issue in this proceeding is the practice of "on-bill" billing. *The Natural Gas Choice and Competition Act*, 66 Pa. C.S. § 2205(c)(3), specifically authorizes natural gas distribution companies ("NGDC"), such as Columbia to provide billing services for natural gas suppliers ("NGS") and other entities, and to recover the costs thereof from the party using the service. Accordingly, the OCA's argument that the Commission authorizing Columbia to provide "on-bill" billing to all providers of non-commodity services is contrary to "policy" – completely misses the mark. Even if the Commission were to promulgate regulations, it could not deviate from the specific requirements of the statute which authorizes the service. The fact that the OCA does not even acknowledge the statute, appears to support the notion that the OCA's disagreement is with the statute, since any reference to it would point out the folly of its argument. The Commission found that the service, as it is currently being provided by Columbia, is discriminatory and has ordered Columbia either to cease providing the service, or to provide it to all comers in a "non-discriminatory" manor, subject to "reasonable limitations".⁵

The OCA asks the Commission to reconsider its order that Columbia either not provide the billing service or provide it to all providers of non-commodity services subject to reasonable limitations, and instead, and contrary to the express authority of 66 Pa. C.S. § 2205(c)(3), prevent Columbia from providing the service at all. Simply stated, there is no requirement in the statute that the Commission promulgate regulations on the provision

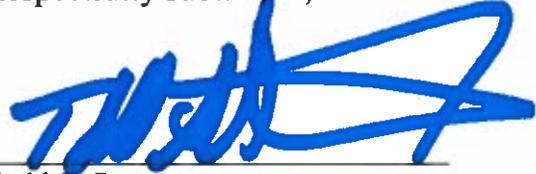
⁵ Opinion and Order at 50.

of billing service, apart from the general requirements that already apply – non-discrimination for example. There is nothing on the record of this proceeding to suggest that the manner in which Columbia otherwise provides the service or would provide the service to the NGS Parties if it chooses that path, would violate the applicable regulations. If the OCA had actual evidence, not conjecture, of any deviation from the applicable requirements, it did not put that evidence into the record and cannot now suggest that such exists. Ultimately, what the OCA requests by way of reconsideration, which is improper, is for the Commission establish a rulemaking, where none is required, before allowing an NGDC to provide a service that is clearly authorized by statute. If the OCA believes that such a rulemaking is needed, it should petition for one under 52 Pa. Code § 5.43 and state the “facts claimed to constitute the grounds requiring the regulation.” Vague and general concerns cannot stand in the way of the plain statutory language.

What is absolutely clear is that the Commission did not overlook the OCA’s views in this case – it simply did not adopt the OCA’s view, and that alone does not justify reconsideration. Nor has the OCA asserted any new or novel basis for granting reconsideration and its Petition must be denied.

WHEREFORE, the NGS Parties respectfully request that this Commission deny the OCA's Petition for Reconsideration.

Respectfully submitted,



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DATED: December 19, 2018