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December 31, 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 PETITION FOR RECONSIDERATION OF COLUMBIA GAS OF PENNSYLVANIA**

Dear Secretary Chiavetta:

Enclosed for electronic filing with the Commission is the Answer of the Natural Gas Supplier Parties to Petition for Reconsideration of Columbia Gas of Pennsylvania 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
Shipley 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 31, 2018

Todd S. Stewart

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 COLUMBIA GAS OF PENNSYLVANIA

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 Petition for Reconsideration ("Petition") filed by Columbia Gas of Pennsylvania ("Columbia") in the above-captioned proceeding pursuant to 52 Pa. Code §5.572 *et. seq*. The NGS Parties submit that Columbia 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 accordingly, its Petition must be denied.

I. INTRODUCTION

The Commission entered its Opinion and Order ("Opinion and Order") in this matter on December 6, 2018, and the Commission held that Columbia's 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's Opinion and Order expressly recognizes the need for "reasonable limitations", if Columbia chooses 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]

In reaching these conclusions in its Opinion and Order, the Commission removes all doubt that it had reviewed the arguments raised by all concerned parties, by reciting the arguments and dismissing most of them. In short, there can be no reasonable doubt that the Commission reviewed the "policy" considerations raised by Columbia 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

1 Opinion and Order at 44.

2 Opinion and Order at 50.

> 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 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).[3]

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 address the arguments raised by Columbia, and expressly found them to be meritless.

III. ARGUMENT

A. Columbia's Petition fails to Satisfy the Appropriate Standard for a Grant of Reconsideration.

The primary premise of Columbia's Petition is that the Commission "overlooked" certain "facts" that, had they not been overlooked, would have changed the outcome. These include: 1) the two former affiliates to whom it currently provides the "on bill" billing service are not regulated; 2) the NGS Parties who requested the "on bill" billing service are neither customers nor

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[3] *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).

ratepayers; and, 3) the fact that the two former affiliates are not NGSs. The second main premise of Columbia's Petition is that the Commission failed to consider certain contractual and/or "policy" concerns that Columbia believes would have changed the outcome. Columbia raises these arguments despite the obvious fact that the Commission clearly did consider these allegations in its deliberations, as evidenced by its Opinion and Order. It is disingenuous for Columbia to suggest otherwise.

The Commission plainly held that the fact that the recipients of the billing service, namely Columbia's former affiliates, are not providing regulated services is not relevant. What is relevant is the fact the billing service being provided is "service" and therefore is regulated. Likewise, the Commission found that billing for NGSs is part and parcel of the service that Columbia provides to them and is therefore subject to the anti-discrimination provision of both 66 Pa. C.S.§ 1502 and 2203(4).

With regard to Columbia's assertions that the Commission failed to consider the list of alleged "bad" consequences that it once again parades before the Commission, the arguments are all the same as those raised before. There is one exception, however. For the first time, and without having put the actual contract into the record of this proceeding, Columbia now suggests that it's contracts with its former affiliates may limit Columbia's ability to simply cancel its arrangements with those entities. This is wholly inappropriate, and any such references should be disregarded.

There simply is nothing new in any of Columbia's arguments that the Commission has not already considered and rejected. Failing to convince the Commission the first time is not sufficient reason for Columbia to get yet another opportunity to do so. Accordingly, its Petition should be denied.

B. The Commission Appropriately Found that the Billing Service as Currently Provided by Columbia is Unreasonably Discriminatory.

Columbia suggests that the Commission failed to consider that the two entities for whom it currently provides billing service are not regulated and the products and services these entities provide are not public utility services and that the NGS Parties are neither customers nor ratepayers of Columbia. First Columbia's contention is incorrect. The Commission clearly understands that Columbia's former affiliates are not NGSs regulated by the Commission. That is obvious on its face and does not need to be stated in the Commission Order.

Further, and more importantly, the recipients of the billing service and the nature of the services they provide are not necessary elements in determining whether the billing service, provided by Columbia as part of its regulated utility service, is also public utility service. The Commission appropriately found that it is utility service in deciding the third issue where it concluded:

> Columbia's billing practice is a term of its provision of service to the NGS Parties. Therefore, Columbia's billing practice is subject to Commission jurisdiction and governed by the prohibition on discrimination and anti-competitive practice of both Sections 1502 and 2203(4) of the Code.[4]

This statement is unambiguous and makes it clear that "on bill" billing service is utility service independent of the identity of the entity for whom it is being billed and without regard to the jurisdictional status of the underlying non-commodity product or service. What's more, the Commission already addressed this issue, like the others raised by Columbia, in its Opinion and Order.

Columbia also resorts to misquoting the Opinion and Order by suggesting that the Commission cited the case of *Aronson v. Pa. PUC*, 740 A.2d 1208 (Cmwlth. Ct. 1999) for purposes

[4] Opinion and Order, p. 48.

other than the notion that the Commonwealth Court has held that billing by utilities is utility service.[5] For that immutable purpose, *Aronson* remains relevant and was appropriately cited.

Columbia also resorts to pure sophistry in arguing that the Commission has failed to consider that the two former affiliates for whom Columbia currently provides the billing service are not NGSs and therefore that the requirements of 66 Pa. C.S. § 2203(4) do not apply. Clearly the Commission has found that billing service is part and parcel of distribution service and that the non-discrimination provision applies no matter who receives the service. Again, in this case the identity if the entity for whom the billing service is rendered is irrelevant. It does not matter that the two former affiliates are not NGSs, because distribution service must be provided in a non-discriminatory manner.

C. The Commission Specified the Legally Necessary Remedy for Columbia's Discriminatory Practices.

Providing on-bill billing service, such as that Columbia currently provides, is authorized by the Natural Gas Choice Act, 66 Pa. C.S. §2205(c)(3). The statute not only authorizes the service, but it makes it clear that it is voluntary on the part of the NGDC to offer the service, so long as it does not discriminate while offering the service. Moreover, the Commission has a role in establishing the appropriate fee, only if the parties cannot agree and seek Commission assistance. This same provision also contains a requirement that the statute itself is not to be construed as authorizing the recovery of incremental costs of the billing service from customers other than those receiving the service billed-for, or the provider of the service.

Accordingly, having correctly concluded that Columbia's provision of on-bill billing for two former affiliates is a clear example of unwarranted discrimination, the Commission was left with two alternatives: it could follow the law, and allow Columbia to make the decision of whether

[5] Opinion and Order, p. 45.

it wanted to provide the service at all; or, it could disregard the law and require Columbia to stop completely.

Recognizing that it cannot violate the law, the Commission made the only reasonable choice and allowed Columbia the option – provide the service legally (i.e., without discrimination), or not at all. The Commission did provide some leeway for Columbia if it chooses to continue to provide the on-bill service but was clear that the status quo is not an option.

The Commission's Order does not opine on Columbia's contractual position, and indeed, since Columbia never raised the issue on the record, its contractual status should not be an issue at this point. Moreover, Columbia failed to introduce the contract or any specific provision thereof into the record, so it is disingenuous for Columbia to now attempt to rely on alleged contractual provisions it did not feel were important earlier. This is simply an inappropriate attempt by Columbia to suggest facts into the record after the record is closed.

Moreover, it is a commonly understood legal principal that parties cannot contract around the law. So irrespective of what Columbia's contract says (and we don't know because Columbia has not placed it into the record) it cannot be used as a pretense to prevent Columbia from following its legal obligation to not discriminate.

Columbia also throws red-herrings into the mix by suggesting that the NGS Parties have requested to have Columbia bill for new and innovative products such as loyalty rewards, for which Columbia opines it would need to spend uncounted dollars of ratepayer funds to gain the capability. This is fiction. The NGS Parties have made it clear throughout that the products and services for which they have sought equivalent treatment are the same sorts of products for which Columbia

currently bills. Further, NGS parties have repeated that they understand they would be charged on a similar basis as the current recipients of the service.[6]

Because Columbia already offers products and services for its former affiliates, it should be straight forward to calculate the incremental costs. All Columbia must do is charge interested NGSs the same as it is charging its former affiliates that receive billing services. Furthermore, because these services are already being provided, it is highly unlikely that the incremental costs will be great, as Columbia suggests without providing any supporting evidence.

The law is clear that the entity receiving the billing service or that entities' customers must foot the bill for the incremental costs of the billing service. 66 Pa. C.S. § 2205)(c)(3). Moreover, the Commission gave Columbia the option to create reasonable conditions on the provision of the billing service and more importantly, already limited the mandate "Columbia must either provide such a service to all entities that provide such non-basic services or must discontinue the "on bill" billing policy.[7] For example, if Columbia presently is able to bill for a limited set of non-basic products and services, under the Commission's new requirement, it could decide to open the service to providers of only those services who can meet its technical requirements, and who are willing to pay for the service. That could end up being a very small group indeed. At bottom however, the statute provides the guidance on the cost recovery and provides Columbia the option to provide the service, so long it does not run afoul of the non-discrimination provisions.

With regard to the "policy issues" so oft repeated, not only by Columbia, but by the other parties seeking reconsideration, the answer is simple: the General Assembly has already established the policy and the Commission cannot disregard the clear language of the law. Section 2205(c)(3) is not ambiguous and does not require regulations. The practice of on-bill billing is not

[6] NGS Parties Main Brief, *passim*.
[7] Opinion and Order, p. 50.

new, and the Commission has had regulations regarding payment priority and non-termination for non-basic products and services for many years. Section 2205(c)(3) in its present form has been law for nearly 20 years, so claims of a policy change are patently false. Again, Columbia re-hashes the same specious arguments that have been made throughout this case; that customers will be confused, that marketers are not to be trusted and so on, despite any actual evidence that those impacts have ever occurred. In short, the Commission considered the policy arguments, rejected them, and should do so once more. Moreover, to the extent Columbia seems concerned about customer confusion, the NGS parties find it odd that Columbia does not have the same concern for confusion or abuse when it allows its former affiliates to bill for services.

In obvious desperation, Columbia again raises the very same first amendment argument that the Commission addressed and rejected in its Opinion and Order. First, the case it cites is inapposite, because the letter at issue in the MAPSA case did indeed require a tacit endorsement, where the simple act of billing, which Columbia already is required to do, does not imply endorsement.[8] Columbia completely fails to explain how the Commission's Order could violate its 1st Amendment Rights without 66 Pa. C.S.§ 2205(c)(1) doing the same. The reason is simple, there is no violation.

Finally, Columbia throws the hail Mary and suggests that a rulemaking is needed before it can offer on-bill billing, completely disregarding the fact that it has been providing the same service for many years without regulations. It is difficult to imagine how one could now suggest that regulations are needed.

[8] *Mid Atlantic Power Supply Association v. PECO Energy Company*, Docket No. P-00981615 (recommended Decision entered January 11, 1999).

IV. CONCLUSION

Columbia raises no new or novel arguments and completely failed to meet the standard for reconsideration. Moreover, it continues its impetuous effort to resist the obvious, that it simply cannot be allowed to provide a regulated billing service to its two former affiliates on a patently discriminatory basis. The policy decision has been reached and it must abide by the Code.

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

Respectfully submitted,

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DATED: December 31, 2018