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March 25, 2019

VIA Electronic Filing

Rosemary Chiavetta  
Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street  
Harrisburg, PA 17120-3265

**Re: Columbia Gas of Pennsylvania, Inc.'s Response to the Exceptions of  
the NGS Parties to Columbia's Compliance Report  
R-2018-2647577**

Dear Secretary Chiavetta:

Enclosed for filing, please find Columbia Gas of Pennsylvania, Inc.'s Response to the Exceptions of the Natural Gas Supplier Parties to Columbia's Compliance Report in the above referenced matter.

If you have any questions regarding this matter, you may contact me by phone or e-mail.

Very truly yours,

A handwritten signature in blue ink that reads "MB Moore".

Meagan B. Moore  
Counsel for  
Columbia Gas of Pennsylvania, Inc.

Enclosures

cc: Commission's Bureau of Technical Utility Services  
Certificate of Service

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission :

v.

Docket No. R-2018-2647577

Columbia Gas of Pennsylvania, Inc.

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**RESPONSE OF COLUMBIA GAS OF PENNSYLVANIA, INC.  
TO THE EXCEPTIONS OF THE NATURAL GAS SUPPLIER PARTIES  
TO COLUMBIA’S COMPLIANCE REPORT**

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Columbia Gas of Pennsylvania, Inc. (“Columbia” or the “Company”), pursuant to 52 Pa. Code § 5.592(c), hereby submits this Response to the Exceptions of the Natural Gas Supplier Parties (“NGS Parties”) to Columbia’s Compliance Report (“Exceptions”) filed on March 20, 2019, in the above-captioned proceeding. The NGS Parties filed Exceptions to the Company’s Report Regarding “On-Bill” Billing (“Report”), which the Company filed on March 18, 2019. The Exceptions allege that Columbia’s Report does not comply with the Commission’s December 6, 2019 Order (“Order”) and request that the Pennsylvania Public Utility Commission (“Commission”) reject Columbia’s Report and direct the Company immediately to submit a new report whereby Columbia submits that it has either terminated the two existing contracts under which it currently provides on-bill billing services, or has opted to provide on-bill billing services to all qualified entities.

The NGS Parties’ Exceptions are meritless and should be denied. In order to support its position that Columbia’s Report does not comply with the Order, the NGS Parties mischaracterize the Order, cite inapposite case law, and disregard the facts of the

underlying proceeding. For these reasons, as explained more fully below, Columbia respectfully requests that the Commission deny the NGS Parties' Exceptions.

### I. **Response to Exceptions**

NGS Parties' Exception No. 1: Columbia's Report does not comply with the Commission's December 6, 2019 Order

The NGS Parties argue that Columbia's Report does not comply with the Commission's Order because the Order requires Columbia to report how it *has* complied with the Order by the time the report was submitted. In other words, according to the NGS Parties, the Order required that Columbia either immediately cease providing on-bill billing service or begin providing this service to all qualified entities. The NGS Parties' argument mischaracterizes the Order and over-simplifies the issues involved in Columbia's compliance with the Order through the implementation of its decision to discontinue its on-bill billing practice.

The Order directs Columbia to "report to this Commission's Bureau of Technical Utility Services, within 60 days of entry of this Opinion and Order, its *methodology for coming into compliance* with Section 1502 of the Code." (Order at 51, emphasis added). The Order did not direct Columbia to have completed compliance by the time the Company filed its report, but instead directed Columbia to report how it will comply. Accordingly, Columbia's Report provides that the Company will comply with the Order by discontinuing its on-bill billing practice. As Columbia currently has two on-going contracts with two unaffiliated, non-natural gas suppliers<sup>1</sup> for on-bill billing services, the Report also details the Company's methodology for discontinuing the service for these

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<sup>1</sup> Columbia currently has contracts with Columbia Service Partners, Inc. ("CSP") and Nicor. If Columbia does not allow renewal of these contracts, the CSP contract will terminate September 2019 and the Nicor contract will expire January 2023.

two entities. Because Columbia is contractually obligated to provide on-bill billing service to these two entities for a set period of time, the Company must address how it will deal with these obligations in its methodology for coming into compliance with the Order, and indeed has done so. The Report indicates that Columbia will end the contracts at the conclusion of the current contract terms. Contrary to the NGS Parties' characterization of the Order, the Order did not direct Columbia to discontinue this practice immediately or by a specific date, but instead directed Columbia to report to the Commission its methodology on how it will come into compliance. Thus, Columbia's Report complies with the directive of the Order.

Although Columbia's methodology for discontinuing its on-bill billing practice does not immediately terminate on-bill billing, Columbia's Report explained how the Company will accomplish that objective while avoiding the repercussions of any possible breach of two legally enforceable contracts. Columbia takes this approach as it is mindful that a breach of contract could result in legal costs and monetary damages, which is not in the best interest of the Company or its customers. At the conclusion of the current contract terms, however, the on-bill billing will cease to exist.

NGS Parties' Exception No. 2: Columbia is attempting to "contract around the law" by continuing to perform under illegal contracts

The NGS Parties assert that Columbia's continued performance under the two contracts is equivalent to Columbia attempting to "contract around the law," as these contracts are no longer legal. This argument has no merit and suggests that the NGS Parties lack understanding of the cases it cites on page 3 of its Exceptions. The NGS

Parties cite to two cases, *Gramby v. Cobb*<sup>2</sup> and *Application of Silver Water Company*<sup>3</sup>, for the proposition that the CSP and Nicor contracts became illegal as soon as the Commission determined that Columbia's on-bill billing practice was discriminatory. The cited cases do not support such a conclusion. In *Gramby* and *Silver Water Company*, the reason that the contracts were found to be invalid by the courts is that the contracts were unlawful at the time they were executed. In both cases, the contracts were executed without being approved by the governing administrative agencies, as required by statute. These cases are akin to the situation of a public utility executing a contract for the sale of its property without applying for Commission approval pursuant to Section 1102(a)(3) of the Public Utility Code. 66 Pa. Code § 1102(a)(3). Here, however, the contracts were legally valid when they were initially executed by Columbia as the Company obtained affiliated interest agreement approval from the Commission for its contracts with CSP and Nicor.<sup>4</sup> Furthermore, the Order did not find the CSP and Nicor contracts to be unlawful. As discussed below, pursuant to Section 508 of the Public Utility Code, 66 Pa. Code § 508, the Commission has the authority to cancel contracts that it determine are not in the public interest; however, the Commission made no such determination here. As such, these contracts remain valid.

NGS Parties' Exception No. 3: The Commission should invoke its authority under Section 508 of the Public Utility Code to cancel the Company's two existing contracts to remedy Columbia's non-compliance with the Commission's Order.

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<sup>2</sup> *Gramby v. Cobb*, 282 Pa. Superior Ct. 183, 422 A.2d 899 (1980).

<sup>3</sup> *Application of Silver Water Co.*, No. A-210025F003, 1993 WL 855901 (Nov. 2, 1993), aff'd 165 Pa. Commonwealth Ct. 463 (1994).

<sup>4</sup> Columbia sought Commission approval for these agreements because at the time the agreements were executed, CSP and Nicor were affiliates. The Orders approving the agreements were entered on July 18, 1996 and February 19, 2004 at Docket No. G-00960483.

The NGS Parties argue that the Commission should use its authority under Section 508 of the Public Utility Code to cancel the CSP and Nicor contracts immediately. Although the Commission has this authority, the NGS Parties fail to recognize that the Commission is required to provide reasonable notice and opportunity to be heard to CSP and Nicor prior to taking such action. *See* 66 Pa. Code § 508.

NGS Parties' Exception No. 4: It is not appropriate to consider the two existing contracts as they relate to Columbia's methodology for coming into compliance with Section 1502 of the Code because the contracts were never subject to review by any party in this proceeding and not placed into evidence.

The fact that the existing contracts were not put into the record in the underlying proceeding does not render the contracts illegal, unenforceable, irrelevant or nonexistent. It was an undisputed fact in the underlying proceeding that Columbia is a party to two contracts that require Columbia to provide on-bill billing services to CSP and Nicor. In order to avoid legal repercussions and associated costs that could result from any possible breach of either or both of these contracts, Columbia's Report provides a methodology that ends the on-bill billing practice at the natural conclusion of these two contracts. Columbia acknowledges that the Commission, in its January 17, 2019 Order addressing Columbia's Petition for Reconsideration, found that it was inappropriate to reference these contracts because the contracts are not part of the record in this proceeding, but it is critical to note that no party in this proceeding sought to have Columbia terminate its contracts with CSP or Nicor. In fact, the NGS Parties specifically stated that they were "not seeking to stop Columbia from offering this service to its former affiliates, rather the NGS Parties simply seek the same access, at 'arms-length', that Nicor and CSP were afforded." (NGS Parties' Main Brief at 7). As such, the contract terms relating to when

Columbia can lawfully terminate the contracts were not at issue in this proceeding and Columbia had no reason to make these contract terms a part of the record. Although the specific termination provisions were not made part of the record, the fact that these two contracts existed, presumably with expiration terms, is part of the record. Further, pursuant to 52 Pa.Code § 5.408, the Commission may take official notice of facts not appearing in the evidence of record. 52 Pa.Code § 5.408(c). Columbia submits that it is appropriate for the Commission to take official notice of the existence of the CSP and Nicor contracts, and the fact that the CSP contract will terminate September 2019 and the Nicor contract will expire January 2023.

Further, it is disingenuous for the NGS Parties to state that the Commission should give no consideration to the two contracts because the contracts were not subject to review by the parties in this proceeding. Columbia made the two contracts available to all parties that had executed confidentiality agreements in the underlying rate case. In fact, it was the NGS Parties that formally requested copies of these contracts from Columbia as part of the discovery process, specifically at NGS Parties Set 5, Question No. 3. As the party that formally requested the opportunity to review the contracts in discovery and that was provided this opportunity, it is insincere for the NGS Parties to state in its Exceptions that no party had the opportunity to review the contracts terms. This is yet another example of the NGS Parties attempting to mischaracterize the facts. What is more, the contracts were available for review, but the NGS Parties neglected to review the contracts in full during this proceeding. Columbia's Response to NGS Parties Set 5, Question No. 3 is attached hereto as Attachment A.

## II. Conclusion

To comply with the Order, Columbia has opted to end its on-bill billing practice, and is indeed seeking to do so by allowing the two existing on-bill billing contracts to expire at their contractual end dates or sooner if contractually feasible, and avoid the legal repercussions and associated costs that could result from any possible breaches of those contracts. Columbia's approach not only complies with the Order to provide a *methodology for coming into compliance*, but achieves it without opening the Company up to possible legal and financial consequences that could result from breaching the two contracts. Columbia respectfully requests that the Commission deny the NGS Parties Exceptions. Additionally, Columbia proposes to file periodic status reports every six months from the date of this response to keep the Commission apprised of the status of its contracts with CSP and Nicor until both contracts are brought to an orderly conclusion.

Respectfully submitted,



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Date: March 25, 2019

*Attorney for  
Columbia Gas of Pennsylvania, Inc.*

# ATTACHMENT A

Question No. NGS Parties 5-003  
Respondent: J. Mays  
Page 1 of 1

COLUMBIA GAS OF PENNSYLVANIA INC.

R-2018-2647577

Data Requests

NGS Parties – Set 5

Question No. NGS Parties 5-003:

Does NiSource or any affiliate receive a royalty or other payment for the billing of non-commodity services on the Columbia of Pa bill?

- a. If yes, what is the amount of the payment and how is it calculated?
- b. If yes, is the royalty or other payment included in Columbia's earnings for purposes of calculation of Columbia's rate of return?
- c. If yes, provide copies of any written agreements that provide for the payment of royalties or other similar payments.

Response:

- a. The amount of payment (or Other Revenue) associated with this non-commodity service is \$212,494.53. Please see response NGS 3-001 for the calculation method.
- b. Yes, the revenues for these services are included in account 495. This account is included in Exhibit 103, pages 14 & 15 of 15, lines 12 on both pages, and is included in the revenue requirement calculation (also rate of return calculation) as Other Operating Revenue on Exhibit 102, Schedule 3, line 11.
- c. See HIGHLY CONFIDENTIAL Attachments A and B to this response. The Attachments will be made available for review at the offices of Post & Schell to counsel of record who have executed an acceptable confidentiality agreement.

## VERIFICATION

I, Nicole Paloney, hereby state that the facts above set forth are true and correct (or are true and correct to the best of my knowledge, information and belief) and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements made herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).

Date: 3-25-2019

Nicole Paloney  
Nicole Paloney  
Director of Rates and Regulatory Affairs  
Columbia Gas of Pennsylvania, Inc.

## CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the participants, listed below, in accordance with the requirements of § 1.54 (relating to service by a participant)

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Dated: \_\_\_\_\_

3-25-2019



Meagan B. Moore