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March 20, 2019

VIA ELECTRONIC FILING

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

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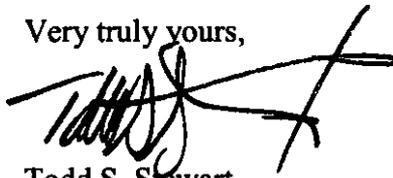
RE: Pennsylvania Public Utility Commission v. Columbia Gas of Pennsylvania, Inc.; Docket No. R-2018-2647577; **EXCEPTIONS OF THE NATURAL GAS SUPPLIER PARTIES TO COMPLIANCE REPORT**

Dear Secretary Chiavetta:

Enclosed for electronic filing with the Commission is the Exceptions of the Natural Gas Supplier Parties to Compliance Report 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,



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

TSS/jld
Enclosure

cc: Bureau of Technical Utility Services
Per Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,	:	
	:	
v.	:	Docket No. R-2018-2647577
	:	
Columbia Gas of Pennsylvania, Inc.	:	

**EXCEPTIONS OF
THE NATURAL GAS SUPPLIER PARTIES
TO COMPLIANCE REPORT**

NOW COME the Natural Gas Supplier Parties (“NGS Parties”), by and through their counsel in this matter, Hawke McKeon & Sniscak LLP, and hereby Excepts, pursuant to 52 Pa. Code § 5.592(c), to the “Compliance Report” filed by Columbia Gas of Pennsylvania, Inc. (“Columbia”), on or about March 18, 2019. The Report in question was required by the Pennsylvania Public Utility Commission’s (“Commission”) Order in the above-captioned matter entered December 6, 2018 (“Order”).¹ While it appears that the Compliance Report was required by, and ostensibly submitted pursuant to 52 Pa. Code § 5.591, the NGS Parties contend that the “compliance report” submitted by Columbia does not comply with either the order, or the requirement of Section 5.591, in that it does not reflect compliance with the Order. The Order required:

16. That Columbia Gas of Pennsylvania, Inc. submit to this Commission’s Bureau of Technical Utility Services, within 60 days of the entry date of this Opinion and Order, *a report detailing its compliance with Sections 1502 and 2203(4) of the Public Utility Code, 66 Pa. C.S. §§ 1502, 2203(4).*²

¹ See Ordering Paragraphs 15 & 16, slip. Op. pp. 53-54.

² *Id.*, p. 54 (emphasis supplied).

Columbia has not complied with the Order, nor does it intend to do so any time soon. Its so-called “Report” fails even to recognize that: 1) its present provision of on-bill billing is discriminatory, i.e., illegal; and, 2) that the Commission stated that it must either provide that service for all qualified entities or cease offering the service. The Order did not contain a third option that would allow Columbia to continue to provide a discriminatory service for more than three years after it has been found to be illegal as the Order found. Rather, the Order required a report outlining how Columbia was now complying with the Order. As such, the Compliance Report is not appropriately captioned, and it does not otherwise comply with the Order.

1. In its Order, the Commission expressly found that Columbia’s current practice of providing “on-bill” billing only for its former affiliates, and not for all qualified entities, constitutes discrimination in the provision of billing service in violation of 66 Pa. C.S. § 1502 and 2203(4). The Order went on to require that Columbia shall submit “a report detailing its compliance with Sections 1502 and 2203(4) of the Public Utility Code, 66 Pa. C.S. §§ 1502, 2203(4).” (Order at 54).

2. On March 18, 2019, Columbia submitted a report in which it proposes that it will continue to provide “on-bill” billing service for Columbia Service Partners (“CSP”) through September 2019, or an additional 6 months, and for Nicor Energy Services (“NICOR”) through January of 2023, or an additional 46 months.

3. Based upon Columbia’s representations, it would remain non-compliant with the Commission’s Order for nearly 4 additional years, which was not contemplated by the Order that required Columbia to report on how it was now complying.

4. The law is clear that one cannot contract around the law. That is, once the Commission concluded that the two billing contracts were discriminatory, those contracts became

illegal and should not be permitted to continue at all, unless Columbia decides to remedy the discrimination by providing the same service to NGSs—which it did not do. An agreement that violates a statutory provision, “or which cannot be effectively performed without violating [a] statute, is illegal, unenforceable, and void *ab initio*.” *Gramby v. Cobb*, 282 Pa. Superior Ct. 183, 188, 422 A.2d 889, 892 (1980). The Commonwealth Court and the Commission have held that utilities cannot, by private contract, usurp the Commission’s regulations or its police power. *See Application of Silver Water Co.*, No. A-210025F003, 1993 WL 855901, at *9 (Nov. 2, 1993), *aff’d*, 165 Pa. Commonwealth Ct. 463 (1994). (“Consequently, any private contract cannot be performed in derogation of valid statutes. Therefore, it is not reasonable for PSWC to assume that it can, by private contract, usurp the police power of this Commission to regulate the rates and service of public utilities in the Commonwealth.”). The Commission held in this case that the practice of on-bill billing in the manner being provided by Columbia was in violation of statute, hence, no contract can protect any continued performance of the service.

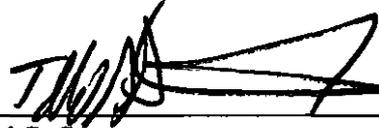
5. The Commission does have the authority under 66 Pa. C.S. § 508 to cancel such contracts, and although its Order contained no reference to Section 508, the Commission could easily remedy that omission. If Columbia does not immediately cease and desist, the NGS Parties request that the Commission use that authority to terminate the contracts in question.

6. Moreover, it is critical to recognize that the contracts that are alleged to contain the extended terms that Columbia cites as a basis for continuing its illegal behavior, have never been placed into evidence in the case, are not subject to review by any party, and therefore are not an appropriate basis for the Commission even considering allowing such illegal conduct to continue.

7. In short, the NGS Parties submit that Columbia’s Report is contrary to the Commission’s Order and fails completely to state any basis to conclude that there is or will be any

timely compliance with the Commission's Order. Accordingly, the NGS Parties submit that Columbia's report is not in compliance with the Commission's Order and request that it be rejected, and that Columbia be required immediately to submit a report that will bring it into compliance with the Commission's December 6, 2018 Order.

Respectfully submitted,



DATED: March 20, 2019

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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: March 20, 2019



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