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July 25, 2022

**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-2022-3031211; **ANSWER OF THE RETAIL ENERGY SUPPLY  
ASSOCIATION, SHIPLEY CHOICE, LLC, AND NRG ENERGY, INC.'S TO  
COLUMBIA GAS OF PENNSYLVANIA, INC.'S MOTION TO COMPEL  
ANSWERS TO SET IV, QUESTION NO. 1(b) OF COLUMBIA'S  
INTERROGATORIES AND REQUESTS FOR PRODUCTION OF  
DOCUMENTS**

Dear Secretary Chiavetta:

Enclosed for filing with the Commission is the Answer of the Retail Energy Supply Association, Shipley Choice, LLC, and NRG Energy, Inc. (collectively "RESA/NGS Parties") to Columbia Gas of Pennsylvania, Inc.'s Motion to Compel Answers to Set IV, Question No. 1(b) of Columbia's Interrogatories and Requests for Production of Documents in the above-captioned docket. Copies 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  
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Association, Shipley Choice, LLC d/b/a  
Shipley Energy, and NRG Energy, Inc.  
("RESA/NGS Parties")*

TSS/jld  
Enclosure

cc: Deputy Chief Administrative Law Christopher P. Pell (via electronic mail – [Cpell@pa.gov](mailto:Cpell@pa.gov))  
Administrative Law Judge John M. Coogan (via electronic mail – [Jcoogan@pa.gov](mailto:Jcoogan@pa.gov))  
Athena Delvillar, Legal Assistant (via electronic mail – [sdelvillar@pa.gov](mailto:sdelvillar@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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Todd S. Stewart

DATED: July 25, 2022

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	
	:	
v.	:	Docket No. R-2022-3031211
	:	
Columbia Gas of Pennsylvania, Inc.	:	

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**ANSWER OF THE RETAIL ENERGY SUPPLY ASSOCIATION,  
SHIPLEY CHOICE, LLC, AND NRG ENERGY, INC.  
TO COLUMBIA GAS OF PENNSYLVANIA, INC.’S MOTION TO COMPEL ANSWERS  
TO SET IV, QUESTION NO. 1(b) OF COLUMBIA’S  
INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS**

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Pursuant to 52 Pa. Code § 5.342, The Retail Energy Supply Association (“RESA”), Shipley Choice, LLC, and NRG Energy, Inc. (collectively “RESA/NGS Parties”), submit this Answer to the Motion to Compel filed by Columbia Gas of Pennsylvania (“Columbia”), seeking to dismiss the Objections of RESA/NGS Parties to Columbia’s Set IV Interrogatories and Requests for Production of Documents, No. 1(b). RESA/NGS Parties objected to Columbia Gas-IV No. 1(b) on the grounds that the request is irrelevant and not reasonably tailored to lead to the discovery of admissible evidence in this proceeding. Additionally, the information sought is unduly burdensome and would require RESA/NGS Parties to undertake an unreasonable investigation and study to analyze all agreements for a five year period in order to determine what the percentage of all the various agreements that could be used are North American Energy Standards Board (“NASEB”) agreements, which is not allowed under the Commission’s discovery procedures and amounts to “an unreasonable annoyance, oppression, burden or expense”<sup>1</sup> upon the RESA/NGS Parties.

<sup>1</sup> 52 Pa. Code §5.361(a)(2).

## **I. INTRODUCTION**

Under 52 Pa. Code § 5.341(c), a party may propound interrogatories that relate to matters that can be inquired into under Section 5.321. Section 5.321(c) provides that a party is entitled to obtain discovery of any matter not privileged that is relevant to a pending proceeding and reasonably calculated to lead to the discovery of admissible evidence. 52 Pa. Code § 5.321(c). In addition, under Section 5.323, discovery may not include disclosure of legal research or legal theories. 52 Pa. Code § 5.323(a). Discovery is not permitted where it is overly broad or would cause unreasonably burden on a party. 52 Pa. Code § 5.361. While it is true that in a rate case, the general provisions of § 5.361(a), that excuse the need to respond to discovery requests that require a special study or that seek data that is not maintained in a particular format, are inapplicable, it also is true that such requests can amount to harassment or burden, and response can be excused.

In this case, as discussed below, Columbia Gas-IV No. 1(b) seeks information that is irrelevant and beyond the scope of discovery in this matter and is overly broad and unduly burdensome in forcing RESA/NGS Parties to undertake a study and analysis of all supplier agreements even if only those in the most recent 5 years. Columbia's concession only incrementally reduces the burden because the bulk of the contracts have been executed in the past 5 years. Therefore, in accordance with the Commission's regulations, RESA/NGS Parties request that Columbia's Motion to Compel be denied and that the Objection to Set IV, No. 1(b), be sustained.

## **II. THE REQUESTED INFORMATION IS NOT RELEVANT TO THE INSTANT PROCEEDING**

Columbia's request is to have the supplier parties review every contract that they have executed for gas supply, with a wholesale supplier or customer, for the past 5 years, to determine what percentage of those contracts are of the form published by NAESB. Columbia claims that the request is related to the RESA/NGS Parties' request in this proceeding, that Columbia provide confirmation for all five daily delivery cycles, for scheduling gas to arrive at the Columbia city gas.

Columbia's claim is overstated. It is true that the RESA/NGS Parties have advocated in this case for confirmations for all five cycles. However, knowing what percentage of a supplier's contracts are on the NAESB form as opposed to some other, has nothing to do with confirmations. It also is true that in its Rebuttal, Columbia's witness suggested that the RESA/NGS Parties don't need to know if their gas supply has been cut on an interstate pipeline, because the NAESB contract provides for damages in the event that a cut caused the supplier to incur penalties. In response to this testimony, the supplier parties propounded discovery asking: 1) if Columbia requires the NAESB contract; or, 2) if Columbia even knew if suppliers used the NAESB contract. It was these requests that spawned Columbia's efforts, its claim that the requests were simply two ships passing in the night notwithstanding. The regulation (52 Pa. Code § 5.321(c)) that Columbia cites for the permissible scope of discovery does not list "responding to another parties' discovery" as defining the scope of discovery. It is clear that were it not for the RESA/NGS Parties questions, Columbia would not have decided to fire back with its own question, and to go many steps further. It also is important to note that the RESA/NGS parties agreed to answer the question on whether they use NAESB contracts, which is all Columbia needed to make its point. However, Columbia should have asked the question before it submitted its testimony hinging its primary argument on the content of the contracts without even knowing if suppliers use the NAESB contract. Not only is Columbia's request beyond the scope of permissible discovery, but it is also untimely as well, as it would support testimony that Columbia has already submitted. Based on the lack of direct relevance and the untimeliness of the request it is clear that it was submitted for some purpose other than making any point about the prevalence of the NAESB contract in the industry. Relevance of discovery is not governed by the principle of "they asked about it so I can ask too". Rather, relevance at its core, means that a request can be anchored to some fact at issue. In this case, the percentage of a supplier's contracts that are NAESB does not meet the test.

### **III. THE REQUEST IS BURDENSOME, EVEN WITH COLUMBIA'S MODIFICATION**

Columbia's Motion conjectures that determining how many customers use what type of contract would not be difficult or time consuming. Columbia's argument may be true for Columbia but at least one of the parties that would respond has multiple entities with licenses in multiple jurisdictions. As such, under ordinary circumstances, the information sought in Columbia Gas-IV No. 1(b) would be barred by 52 Pa. Code § 5.361(4), as an unreasonable investigation and analysis would be required to analyze what percentage of RESA/NGS Parties agreements are NASEB agreements. While 52 Pa. Code § 5.361(b) may not limit discovery on this provision standing alone, because this is a rate case, the request is burdensome, nonetheless. In the totality, including the fact that Columbia has already argued the applicability of NAESB provisions without knowing if suppliers even use NAESB contract, and when it had the opportunity to conduct discovery before addressing that point, but did not, it is clear that Columbia's purpose is other than providing testimony. To require the RESA/NGS Parties to conduct a study under these circumstances is in fact a burden they should not have to bear.

### **IV. THE REQUEST APPEARS TO HAVE BEEN MADE TO HARASS OR RETALIATE**

Columbia claims that its request was innocently asked without any impetus whatsoever from the RESA/NGS Parties' request to Columbia asking if it even knew if suppliers use the NAESB contract. Without knowing the answer to that question, Columbia's testimony on the impact of the NAESB contract terms is pure speculation. Rather than simply ask, however, if suppliers do use the NAESB contract, which is not permissible but at least understandable, Columbia responded to the question propounded by the RESA/NGS Parties with one that went much further and which appears to have been prompted by the desire for retaliation, its protestations of innocent coincidence notwithstanding.

The RESA/NGS Parties did not raise the issue of the purported impact of the NAESB contract on a dispute over whether Columbia should provide the tools that allow suppliers to proactively address supply issues, before the supply is actually cut, by providing confirmations for all 5 delivery cycles. In opposing the RESA/NGS Parties' request, it was Columbia that raised the issue of the impact of the NAESB contract in providing for after-the-fact damages for supply cuts, without knowing if suppliers use the NAESB contracts. And it was Columbia, after the RESA/NGS Parties inquired whether Columbia knew if suppliers used the contracts, that Columbia propounded Set IV, and No. 1(b) in particular. The request should not be permitted for all the reasons set forth herein and accordingly, the RESA/NGS Parties Objection should be sustained and the Motion to Compel denied.

**V. CONCLUSION**

WHEREFORE, RESA/NGS Parties respectfully request that their Objection to Columbia Set IV, No. 1(b) be sustained and that Columbia's Motion to Compel be denied, for all the arguments made herein.

Respectfully submitted,



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DATED: July 25, 2022