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March 10, 2023

VIA ELECTRONIC FILING

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

RE: Pennsylvania Public Utility Commission v. Columbia Gas of Pennsylvania, Inc.; Docket Nos. R-2022-3032167 & C-2022-3032550; **MAIN BRIEF**

Dear Secretary Chiavetta:

Enclosed for filing with the Commission is the Main Brief of The Retail Energy Supply Association, Shipley Choice, LLC and NRG Energy, Inc. ("RESA/NGS Parties") in the above-captioned dockets. Copies of the Brief have been served in accordance with the attached Certificate of Service.

Thank you for your attention to this matter. If you have any questions, please do not hesitate to contact me.

Very truly yours,

Todd S. Stewart
Counsel for The Retail Energy Supply Association, Shipley Choice, LLC d/b/a Shipley Energy and NRG Energy, Inc. ("RESA/NGS Parties")

TSS/jld
Enclosure
cc: Deputy Chief Administrative Law Judge Christopher P. Pell (via electronic mail – cpell@pa.gov)
Administrative Law Judge John Coogan (via electronic mail – jcoogan@pa.gov)
Athena Delvillar, Legal Assistant (via electronic mail – 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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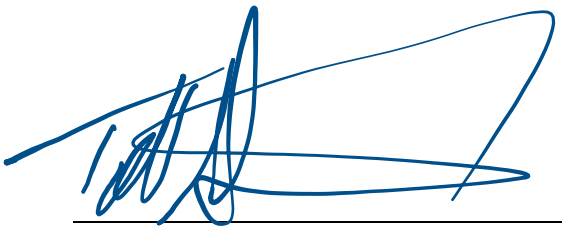

DATED: March 10, 2023

Todd S. Stewart

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission Office of Consumer Advocate Retail Energy Supply Association, Shipley Choice, LLC, and NRG Energy, Inc. v. Columbia Gas of Pennsylvania, Inc. Supplement No. 343 Proposed Tariff Modifications for Inclusion of the Green Path Rider	: : : : : : : : : : :	Docket Nos. R-2022-3032167 C-2022-3032404 C-2022-3032550

MAIN BRIEF
OF THE RETAIL ENERGY SUPPLY ASSOCIATION, SHIPLEY CHOICE, LLC AND NRG ENERGY, INC.

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DATED: March 10, 2023

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I. INTRODUCTION

The Green Path Rider Tariff ("GPR") is an effort by Columbia Gas of Pennsylvania, Inc., ("Columbia") to enter an existing market to sell a tariffed non-basic product that will displace competitive products that suppliers already offer. Columbia will rely upon its market power as the Natural Gas Distribution Company ("NGDC") and Supplier of Last Resort. The GPR product – 95% carbon offsets ("COFF") and 5% Renewable Natural Gas Attributes ("RNGA") – is intended to be sold in quantities that will match a customer's natural gas usage in order to "offset" the customer's carbon footprint associated with their natural gas consumption. Columbia intends to bill customers for the product as a non-basic service on the monthly gas bill, even though it refuses to allow suppliers the opportunity to include similar charges on the bill and despite the language of its tariff that does not permit suppliers to include the charges for such products along with commodity charges billed via purchase of receivables ("POR").

Not only is GPR anticompetitive, but it also fails to comply with the Pennsylvania Public Utility Commission's ("Commission") Standards of Conduct that plainly require competitive offerings of an NGDC to be separated, financially and physically, from the provision of regulated services.[1] Columbia's presentation shows that there will be cross subsidization of this product by other customers, providing even more reason to apply the Standards of Conduct. In short, GPR is not needed in today's market, because a competitive market for such products already exists and there simply is no good reason for Columbia to be permitted to offer the GPR as a tariffed non-basic service nor should Columbia be participating in the retail marketplace.

[1] 52 Pa. Code §§ 62.141-142.

A. Statement of the Case

On April 26, 2022, Columbia filed Supplement 343 to Tariff Gas Pa. P.U.C. No. 9, intending to modify its jurisdictional natural gas distribution tariff to include a newly proposed competitive offering called the Green Path Rider. Columbia initially requested that consideration of the GPR be consolidated with its then ongoing rate proceeding. However, the Presiding Administrative Law Judges ("ALJs") denied the request and the GPR was set on its own path. On May 18, 2022, the Retail Energy Supply Association ("RESA") along with NRG Energy, Inc. and Shipley Choice, LLC d/b/a Shipley Energy ("NGS Parties") filed a complaint against the tariff supplement.

The RESA/NGS Parties' Complaint addresses the main themes of their evidence in this case: that the GPR is anticompetitive in multiple ways, that it violates the Commission's Standards of Conduct, and will cause cross subsidization, among other faults. The evidence presented by the RESA/NGS Parties' witness supports these claims.

RESA/NGS Parties' witness John Holtz explained the GPR product as follows:

> The Green Path Rider is a proposed new rider to Columbia's tariff that would authorize Columbia to sell a new, non-commodity, value-added product to its non-shopping, non-CAP, non-flex customers[2] in rate classes RSS, SGSS, LGSS or MLSS, whose annual usage is less than 540,000 therms[3] per year. Columbia is proposing this program as a five-year pilot. The non-commodity product is a combination of 5% Renewable Natural Gas "environmental attributes" ("RNGA") and 95% Carbon Offsets ("COFF") in quantities that would be matched with a customer's natural gas consumption in a manner that would allow a qualified customer to offset the emissions caused by the customer burning gas, at a 50% or 100% offset level. Customers are charged on a per therm basis, $0.15 per therm for 50% offset or $0.30 per therm for 100% offset.

(RESA/NGS Parties' Statement No.1, 3:8-17).

[2] Non-shopping customers are those who take default service from the utility; CAP customers are those who participate in Columbia's Customer Assistance Program; and flex rate customers are large C&I customers' whose rates are discounted for competitive reasons, so non-flex customers are all other customers.

[3] A therm is equal to 100,000 Btu and is approximately equal to 100 cubic feet of natural gas. Therefore, a dekatherm, which is 10 therms, is roughly equal to 1000 cubic feet of gas, or 1 mcf.

There are a number of reasons why the RESA/NGS Parties believe that the GPR is anti-competitive. First and foremost is the intention of an existing monopoly entity seeking to enter a functioning competitive market for an existing product, to compete with those entities by providing a product/service that other parties are already providing, but at a price that will end up being below cost because it will be subsidized by captive ratepayers, and that will inevitably result in a monopoly, in this case Columbia, through its competitive advantage, driving other entities out of the market.

Columbia is the NGDC and default supplier and is supposed to provide access to services in a non-discriminatory manner.[4] However, the only way a customer can purchase GPR is to be a default service customer. The Regulations, however, prohibit the conditioning of the provision of default service on the customer also purchasing a "tied" service from an affiliate, or as in this case, a marketing unit.[5] That is exactly what Columbia has done. Columbia intends to bill customers for the GPR on the utility bill as a non-basic product, an option that is not available to NGSs, which is itself discriminatory. But critically, if a customer wants to receive a single bill that includes offsets, gas and delivery, it can only receive that service from Columbia – it cannot do so from a supplier. As witness Holtz testified, this provides an incentive for shopping customers to migrate to default service in order to take the service from Columbia.[6] The tied products are the GPR and the ability to receive a single bill for gas services.

The asymmetrical ability to bill for services is a critical issue because Columbia has exclusive access to its customers through the utility bill and other modalities that are paid for by

[4] 66 Pa. C.S. § 2203(4).
[5] 52 Pa. Code § 62.142(10). "NGDCs may not condition or tie the provision of a product, service or price agreement by the NGDC, including release of interstate pipeline capacity, to the provision of a product or service by its affiliated NGS."
[6] RESA/NGS Parties" St. No. 1, 3:8-17.

all customers. Columbia has customer service personnel answering phones that are paid for by all customers and administrative and general expenses related to the offering, and yet Columbia does not intend to recover these costs in the rates charged solely to GPR customers. Moreover, Columbia does not propose to earn a profit on the GPR thus ensuring that it will be priced at the bottom of the market.[7] These facts support the contention that GPR will be provided in a way that disadvantages other competitors who are already in the market and provides a barrier to those who otherwise might have entered the market.

B. Procedural History

On April 26, 2022, Columbia filed Supplement No. 343 to Tariff Gas Pa. P.U.C. No. 9 (Supplement No. 343) to become effective on January 1, 2023. Supplement No. 343 proposes the implementation of a 5-year pilot program, called the Green Path Rider, that would allow customers an option to reduce some or all of their emissions related to their natural gas usage. On the same day, Columbia filed a Motion to Consolidate Supplement No. 343 with its currently pending base rate case filed at Docket No. R-2022-3031211, so that both filings could be litigated as part of Columbia's base rate proceeding. The pending rate case was assigned to Deputy Chief Administrative Law Judge Christopher P. Pell and administrative Law Judge John Coogan.

On May 9, 2022, the Office of Consumer Advocate (OCA) filed a Public Statement and a formal Complaint against Supplement No. 343. The Complaint was docketed at C-2022-3032404.

On May 12, 2022, the ALJs issued an Order denying Columbia's Motion to Consolidate Supplement No. 343 with the pending base rate case at Docket No. R-2022-3031211 because it would not provide an adequate process for review of Columbia's proposed Green Path Rider.

[7] RESA/NGS Parties' St. No.1, 8:13-16; Exhibits JH-5 and JH-6.

On May 18, 2022, RESA and the NGS Parties filed a formal Complaint against Supplement No. 343. The Complaint was docketed at C-2022-3032550.

On May 19, 2022, Erika L. McLain, Esquire entered a Notice of Appearance on behalf of the Bureau of Investigation and Enforcement ("I&E"). Also on May 19, 2022, Steven Gray, Esquire entered a Notice of Appearance and filed a Notice of Intervention, Public Statement and Verification on behalf of the Office of Small Business Advocate ("OSBA").

On June 14, 2022, The Pennsylvania State University filed a Petition to Intervene in this matter.

By Order entered on June 16, 2022, the Commission instituted an investigation into the lawfulness, justness, and reasonableness of the rates, rules, and regulations contained in the proposed Supplement No. 343 to Tariff Gas Pa. P.U.C. No. 9, and the tariff was suspended by operation of law until July 1, 2023. The Commission also ordered that the investigation include consideration of the lawfulness, justness, and reasonableness of Columbia Gas's existing rates, rules, and regulations.

In accordance with the Commission's June 16, 2022 Order, the matter was assigned to Deputy Chief Administrative Law Judge Christopher P. Pell and Administrative Law Judge John Coogan.

On June 30, 2022, the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania ("CAUSE-PA") filed a Petition to Intervene in this proceeding.

A Call-in Telephonic Prehearing Conference was held on July 6, 2022. Counsel for Columbia, I&E, OCA, OSBA, PSU, RESA/NGS Parties, and CAUSE-PA participated. A litigation scheduled was established including the submission of written testimony and two days of hearings. A single day hearing was held on February 15, 2022 at 10:00am at which the ALJs

received the testimony and exhibits and where Columbia witnesses Evans and Campbell were cross examined. All other testimony was submitted by stipulation, without cross examination. According to the schedule established, Main Briefs are due on March 10, 2023.

C. Burden of Proof

In this proceeding, Columbia seeks approval of its tariff supplement and, as such, has the burden of proving that its proposed Green Path Rider complies with the legal requirements. The proponent of a rule or order in any Commission proceeding bears the burden of proof, 66 Pa. C.S. § 332(a), and therefore, Columbia has the burden of proving its case by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600 (Pa. Cmwlth. 1990), *alloc. denied*, 529 Pa. 654, 602 A.2d 863 (1992). That is, Columbia's evidence must be more convincing, by even the smallest amount, than the evidence presented by the other parties. *Se-Ling Hosiery, Inc. v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950).

Additionally, this Commission's decision must be supported by substantial evidence in the record. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & Western Ry. Co. v. Pa. PUC*, 49 Pa. 109, 413 A.2d 1037 (1980). Upon the presentation by a utility of evidence sufficient to initially satisfy the burden of proof, the burden of going forward with the evidence to rebut the evidence of the utility shifts to the other parties. If the evidence presented by the other parties is of co-equal value or "weight," the burden of proof has not been satisfied. The Company now has to provide some additional evidence to rebut that of the other parties. *Burleson v. Pa. PUC*, 443 A.2d 1373 (Pa. Cmwlth. 1982), *aff'd*, 501 Pa. 433, 461 A.2d 1234 (1983).

While the burden of going forward with the evidence may shift back and forth during a proceeding, the burden of proof never shifts. The burden of proof always remains on the party

seeking affirmative relief from the Commission. *Milkie v. Pa. PUC*, 768 A.2d 1217 (Pa. Cmwlth. 2001). However, a party that offers a proposal in addition to what is sought by the original filing bears the burden of proof for such a proposal. *Pa. PUC, et al., v. Metropolitan Edison Co. (Metropolitan Edison Co.)*, Docket No. R-00061366C0001 (Order entered January 11, 2007); *Joint Default Service Plan for Citizens' Electric Co. of Lewisburg, PA and Wellsboro Electric Company for the Period of June 1, 2010 through May 31, 2013 (Citizens' Electric Co.),* Docket Nos. P-2009-2110798 and P-2009-2110780 (Order entered February 26, 2010).

II. ARGUMENT

The Green Path Rider is Bad Policy, is Contrary to Law, and Should be Rejected.

There are multiple reasons why the Commission should reject Columbia's filing, beginning with the fact that it is a non-basic product proposed to be sold through Columbia's regulated services tariff. It is bad policy to allow utilities to include non-basic services in their tariffs, because the service/product is not jurisdictional, not subject to Commission oversight, and not subject to the Commission complaint process. Establishing such non-basic products in the tariff also can give the impression that the product is superior in quality because the utility is billing for it and suggest that costs of the product/service could be recovered through distribution rates; when indeed, the income and expenses for such non-basic, competitive services are plainly required to be recovered outside of the regulated rate structure.[8] In short, the intention to provide a non-basic product as a tariffed item leads to two additional problems: 1) attempted cost recovery through regulated rates; and, 2) the related violation of the Commission's Standards of Conduct.

[8] 52 Pa. Code § 62.142(12).

Columbia offering the GPR product as a tariffed service appears to be an attempt to shield its offering from the Commission's Standards of Conduct but has the opposite effect. As discussed below, the Green Path Rider Service is subject to the Standards of Conduct.

A. Green Path Rider Program Design

The Green Path Rider is a proposed addition to Columbia's tariff that would authorize Columbia to sell a new, non-commodity, value-added product to its non-shopping, non-CAP, non-flex customers in rate classes RSS, SGSS, LGSS or MLSS, whose annual usage is less than 540,000 therms per year.[9] As discussed at length in this Brief, RESA/NGS Parties have a number of concerns with this proposal. With regard to the product itself, there are a few concerns. First, the market research that Columbia claims supports the need for it to offer the GPR was conducted by asking questions exclusively concerning renewable natural gas ("RNG"), not Renewable Natural Gas Attributes ("RNGA") and not Carbon Offsets ("COFF"). Without addressing the benefits of either of these products, it is clear that Columbia has not established that its default service customers, particularly commercial customers, are prepared to spend substantial sums to purchase RNGA or COFF products from Columbia. Its so-called "market research" carries no weight as it was geared solely to RNG which is a physical product, and which is very different from the attribute products that Columbia has proposed in this proceeding.[10] So apart from its desire to do so, Columbia has provided no evidence to support why a utility should be permitted to provide a non-basic product as a tariffed product.

Columbia has proposed a product that is predominantly COFFs (95%) and yet even it its presentation to the Commission in the form of a proposed tariff, represents the product as being

[9] RESA/NGS Parties' St. No. 1, 3:8-12.
[10] RESA/NGS Parties' St. No. 1, 3:8-12.

RNG.[11] The concern is that Columbia's intention appears to be to lead customers to the conclusion, by including some small increment of RNG attributes, that what they are buying is actually RNG, i.e., "green gas", when instead they will be purchasing mere offsets, that could be from COFFs or RNG produced literally anywhere in the world.[12] If Columbia provides such a product (which it should not be permitted to do), it should be required to thoroughly and prominently explain what customers will be buying, with no reference to RNG.

B. Green Path Rider Rate and Cost Recovery

1. The Green Path Rider is Inappropriately Proposed as a Tariffed Service.

Columbia has proposed the Green Path Rider as a non-basic service, yet it has included it in its tariff. A non-basic product or service should not be included in Columbia's jurisdictional Tariff and to do so is contrary to the Public Utility Code.[13] Section 1302 makes it clear that a utility's tariff is to contain only "rates established by it and collected or enforced, or to be collected or enforced, *within the jurisdiction of the commission*."[14] While this may seem like a purely technical argument, it is not. Rather, this simple fact gives rise to a host of critical and dispositive issues. First, while Section 1509 of the Code[15] does not explicitly require it, the Commission's Regulations mandate that charges for non-basic products and services, which include the GPR (See Exhibit JH-2), be charged separately from basic service charges.[16] But the impact of this distinction goes much deeper and implicates Columbia's intention to recover the costs of a non-jurisdictional, non-basic product from jurisdictional distribution customers.[17]

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[11] RESA/NGS Parties' St. 1-SR, 7:1-11.
[12] OSBA Statement No. 1, lines 120—132.
[13] 66 Pa. C.S. § 1302.
[14] *Id*., emphasis added.
[15] 66 Pa. C.S. § 1509.
[16] 52 Pa. Code § 56.13.
[17] Columbia Tariff Filing Requirements, Response to §53.52(a)(3), page 3 of 17. ("Columbia will seek recovery of capital and O&M costs associated with its proposal in a base rate case.")

Columbia has not proposed any intention to separate the operations or expenses related to the Green Path Rider from other expenses of providing Natural Gas Distribution Service or Default Service.[18] Accordingly, it can only be assumed that Columbia intends to provide the GPR product using its existing Operations and Maintenance ("O&M") structure including its administrative employees, its existing billing system (which it admits that it already has modified to allow it to bill the GPR), the same customer service personnel, the same office space, the same computers, etc. and to recover these costs as an undefined portion of its jurisdictional distribution costs as part of a base rate filing.[19] GPR, however, is not jurisdictional and is not distribution service, nor is it default service. GPR is a competitive non-basic service, being provided by the marketing operation of Columbia, whether structurally separate or not. Columbia's proposal violates the Commission's regulations that require the separation of personnel and expenses as between jurisdictional and competitive services.[20] Setting aside for a moment the anti-competitive implications of this failure to separate the expenses and personnel responsible for GPR, consider the harm to Columbia's distribution customers that do not avail themselves of GPR – they will be subsidizing a portion of the costs of the service through base rates.[21] This is one of the precise harms the regulations were intended to prevent.

The Commission's Regulations at 52 Pa. Code § 62.141, define "Affiliated NGS" as "An NGS engaging in marketing activities related to natural gas supply services by the marketing division or marketing operation of an NGDC."[22] Columbia's activities here fall squarely into the definition of marketing activities, and the product clearly is "related to" natural gas supply services

[18] RESA/NGS Parties' St. No. 1, 10:6-21.
[19] See FN 17, *infra*.
[20] 52 Pa. Code §§ 62.142(9), (12) & (13).
[21] RESA/NGS Parties' St. No. 1, 6:8-14; Columbia St. No. 1, pp. 5-6.
[22] 52 Pa. Code § 62.141, Affiliated NGS, (ii).

being offered by Columbia to compete with products already in the market.[23] The Green Path Rider product will be promoted as a means of reducing or eliminating the carbon footprint associated with a customer's natural gas consumption and will be sold in quantities that will be based on the customer's actual usage. Moreover, only default service natural gas customers will be eligible for this competitive service that competes with other similar products in the marketplace. There can be no doubt that Columbia's GPR activities are subject to the requirements of the Standards of Conduct.

Having established that the Standards of Conduct apply to the offering of the GPR, it is necessary to catalogue the impact of these requirements on the GPR – none of which are accounted for in Columbia's request for approval of the GPR. At the outset, and as discussed above, the Standards of Conduct require that Columbia allocate all the costs or expenses for general administration or support to the GPR.[24] The Standards also require that the GPR function "maintain separate books and records" and that [t]ransactions between the NGDC and its affiliated NGS may not involve cross-subsidies.[25] This same section also requires that shared facilities be fully and transparently allocated as between the NGDC and the competitive functions; and that "accounts and records shall be maintained so that the costs incurred on behalf of an affiliated NGS are clearly identified." None of these are proposed as part of the GPR. Finally, the Standards require that employees, including those with responsibility for "marketing and customer service" may not be shared with the competitive function and must maintain physically separate offices.[26]

[23] *Dominion Retail, Inc. v. Pennsylvania Public Utility Comm'n*, 831 A.2d 810 (Pa. Cmwlth. 2003) (Commonwealth Court agreed that Standards of Conduct were applicable to a utility providing competitive products but found that application of Standards of Conduct to particular gas supply product was not warranted because it was not intended to compete with Supplier offerings).
[24] 52 Pa. Code § 62.142(9).
[25] 52 Pa. Code § 62.142(12).
[26] 52 Pa. Code § 62.142(13).

These protections are necessary to ensure that Columbia does not offer competitive products and services that are paid for or otherwise will harm captive ratepayers who cannot escape the intent to impose GPR costs on them. Also, it is obvious that requiring separation of employees and expenses is a step toward leveling the competitive playing field by ensuring that those same captive ratepayers are not forced to give Columbia a leg-up in the competitive market by offering a product whose price would not cover the cost of providing it.

Columbia's position in this matter, left largely unexplained by Columbia President Mark Kempic, is that the Standards of Conduct do not apply.[27] Mr. Kempic's sole retort is that because Columbia will not be providing the GPR through an affiliate, the Standards of Conduct do not apply. As discussed above, Mr. Kempic's argument entirely misses the mark and must be rejected – the Regulations clearly apply to competitive activities regardless of whether they are provided by an affiliate or the utility marketing operation – which the GPR clearly is. In fact, in its Rulemaking Order promulgating the Standards of Conduct, the Commission made it clear that these standards apply "*without regard to the structural relationship of the LDC's marketer to the LDC*."[28] In short, the GPR is a competitive non-basic service and should not be included in Columbia's tariff. Also, the Standards of Conduct apply to Columbia's provision of the GPR, and the GPR does not comply with the requirements of the Standards of Conduct. Accordingly, the GPR must be rejected as illegal.

C. Consumer Protections and Customer Education

RESA/NGS Parties have no position on these issues.

[27] Columbia St. No. 4-RJ, 1-2.
[28] *Permanent Standards of Conduct*, Docket No. L-00030162; 36 Pa.B. 1748 (emphasis in original).

D. Competitive Market Issue

Columbia has a natural monopoly in the distribution of natural gas.[29] Columbia also has a tremendous advantage in the sale of natural gas through default service, because all customers start, and most remain, on default service.[30] At the moment, the market for carbon offsets and RNG attributes is competitive, but nascent. However, proposing that the monopoly delivery/sales entity engage in the sale of these products – as a tariffed product – is intended to exploit those monopoly positions to drive competition from the market or prevent additional competition in the first place. Columbia's plan is even more sinister than simply exploiting its obvious advantages, and also includes pricing the product below the actual cost of providing it and passing on those costs to other customers. As the RESA/NGS Parties' witness stated, customer inertia (the tendency to remain on default service) is already a significant barrier for suppliers trying to provide energy supply options for customers. By offering the program at the "cost" of the offsets, but without including Columbia's overheads and other indirect costs of the program, Columbia will make it even more difficult for suppliers to win customers and requiring that customers remain as default customers to receive the product makes it worse.[31]

As if Columbia's intention to exploit its obvious competitive advantages were not enough, Columbia also has another advantage that is less obvious. By virtue of its role as the distribution company, Columbia is the default biller.[32] In a practical sense, this means is that if a customer desires to receive a single bill for all their natural gas related services, which would include carbon offsets and RNGA associated with their natural gas consumption, along with their distribution charges and their commodity charges, Columbia is the only entity that is permitted to issue such a

[29] RESA/NGS Parties' St. No. 1, 8:2-3.
[30] *Id*. at lines 3-4.
[31] RESA/NGS Parties' St. No. 1, 8:1-9:2.
[32] 66 Pa. C.S. § 2205(c).

consolidated bill. Coupled with the fact that Columbia's tariff appears to prohibit NGSs from including charges for carbon neutral products in customer balances collected via Purchase of Receivables ("POR"), and that Columbia intends to recover the GPR charges as a non-commodity charge on the consolidated bill (an option Columbia refuses to make available to suppliers) suppliers who offer these products in Columbia's service territory are at a severe competitive disadvantage. Suppliers are required to send their own bill for the products, which is an arrangement that customers do not want.[33]

The Commission has previously held that Columbia's provision of billing service for non-commodity products falls under the definition of "service" in Section 102 of the Public Utility Code, 66 Pa. C.S. § 102.[34] The Commission also held that Columbia's provision of such services is regulated by Section 2203(4) of the Code and that Columbia must offer such services, i.e., billing for non-commodity products, in a non-discriminatory fashion under the mantel of providing equal access to the distribution system.[35] While the Commission has since sought to walk back its *Columbia* decision, as applied to the electric industry, in doing so it has distinguished that decision in a manner that requires its application here.[36] Columbia cannot provide billing for its provision of GPR without providing the same billing for suppliers on equal terms. For all the reasons stated herein, it is the RESA/NGS Parties' position that the provision of the GPR product is itself anti-competitive and should not be permitted, but Columbia's employing a blatantly anti-competitive approach to billing this product makes the detrimental nature of the GPR even more apparent.

[33] RESA/NGS Parties' St. No. 1, 11:10-12:14.
[34] *Pa. PUC v. Columbia Gas of Pa., Inc.,* Docket No. R-2018-2647577 (Opinion and Order entered December 6, 2018, slip op. at p.44) (*Columbia*).
[35] *Columbia* at pp. 47-49.
[36] *IGS, et al v. Metropolitan Edison Co., et al;* Docket No. C-2019-3013805, et seq. (Opinion and Order entered August 26, 2021, slip op at pp. 23-28.

One of the goals of opening the market for natural gas to competition was to allow suppliers to bring new and innovative products to market. The General Assembly recognized that the NGDCs have a natural monopoly in the distribution market but still allowed them to participate in bringing new products, but also made it clear, through requiring Standards of Conduct, that those competitive services were not to be provided as part of the utility function. To do otherwise is to invite the sorts of behavior Columbia proposes here. The Commission should not endorse utilities entering the market with clearly competitive products that leverage their monopoly advantage to the detriment of competitors and captive ratepayers.

III. CONCLUSION

Columbia's GPR proposal is an effort by Columbia to enter an existing competitive market, and by relying on its existing market power and name recognition, coupled with its ability to use regulated distribution rates charged to captive ratepayers to subsidize the O&M costs of the product, which provide the unique ability to price the product below the actual cost of providing it. Columbia has proposed this product as a tariffed product, even though it is not a jurisdictional product, in an effort to lend credibility to its cross-subsidy intentions. These efforts must fail. The Natural Gas Choice and Competition Act, 66 Pa. C.S. § 2209(c)(3) mandates regulations that prohibit cross-subsidies and the Commission's Standards of Conduct do just that.[37] Moreover, Columbia intends to bill for this product on its monthly utility bill, an option that it refuses to provide to NGSs operating on its system and which provides an enormous competitive advantage. While the encouragement of customers to seek to take responsibility for their carbon emissions is a laudable goal, Columbia's proposal here will have negative impacts that will dwarf any benefit it might provide.

[37] 52 Pa. Code § 62.141-142.

If the Commission were to believe that Columbia should none-the-less be permitted to offer Green Path, it should mandate that the Standards of Conduct apply, and require that Columbia offer the same billing options to suppliers to provide their products as Columbia would use for the GPR. Otherwise, GPR must be rejected as discriminatory, illegal and bad policy.

IV. PROPOSED FINDINGS OF FACT

1. The Green Path Rider is a proposed addition to Columbia's tariff that would authorize Columbia to sell a new, non-commodity, value-added product to its non-shopping, non-CAP, non-flex customers in rate classes RSS, SGSS, LGSS or MLSS, whose annual usage is less than 540,000 therms per year. (RESA/NGS Parties' St. No. 1, 2:8-12).

2. The non-commodity GPR product is a combination of 5% Renewable Natural Gas "environmental attributes" ("RNGA") and 95% Carbon Offsets ("COFF") in quantities that would be matched with a customer's natural gas consumption in a manner that would allow a qualified customer to offset the emissions caused by the customer burning gas. (RESA/NGS Parties' St. No. 1, 2:12-17).

3. Columbia does not propose to earn a profit on its provision of GPR. (RESA/NGS Parties' St. No. 1, 6:8-14).

4. Columbia will not recover any costs, other than the offsets/attributes and the administration of the credits, from GPR customers; meaning that all overhead and general expenses, such as billing, office space, and customer service costs related to the program will be recovered from all customers through distribution rates. (RESA/NGS Parties' St. No. 1, 6:8-14; Columbia St. No. 1, pp. 5-6).

5. Columbia intends to bill for GPR on the utility bill as a non-basic product and spent $186,000 to upgrade its billing system to allow it to charge the GPR as a separate line item. (RESA/NGS Parties' St. No. 1, 6:17-7:2; Exhibits JH-2 and JH-3).

6. Columbia filed almost identical Green Path Rider proposals in several states and at least one state has rejected it. (RESA/NGS Parties' St. No. 1-SR, 2:8-9).

7. Columbia's GPR is being offered as a competitive product that is tied to Columbia's default service – that is, it is available only to default service customers, when such products heretofore have been the domain of the competitive market. (RESA/NGS Parties' St. No. 1, 7:14-9:2).

8. Carbon offsets and RNGA, such as those to be included in the Green Path product, are competitive products that are being provided by suppliers in the market at large. Customers have access to these products in the competitive market and can affirmatively choose to purchase the products that meet their individual needs and/or personal sustainability goals. (RESA/NGS Parties' St. No. 1, 7:14-9:2).

9. Columbia's offering of the GPR would leverage its monopoly position as the NGDC and default service provider to sell to the same customers that natural gas suppliers' market-to, while exerting advantages such as billing and marketing, and the ability to subsidize the product with revenues from captive ratepayers while offering a "no-profit" price. (RESA/NGS Parties' St. No. 1, 8:1-21).

10. Suppliers typically sell carbon offset products along with energy in the electric and gas industries, sometimes included at no additional charge as a means of differentiating a "green" product from a "brown" product, i.e., typical system power. (RESA/NGS Parties' St. No. 1, 9:5-7).

11. Columbia is offering the GPR as a tariffed service, being billed as a non-basic product. Columbia's tariff lists no other non-basic products and does not even define non-basic products. The sale of COFF's and RNGA is not jurisdictional to the Commission. There is no legitimate basis for Columbia to place the GPR in its tariff, except in an effort to avoid the application of the Standards of Conduct. (RESA/NGS Parties' St. No. 1, 9:11-10:21).

12. The Standards of Conduct would require, among other things, that Columbia not provide any preference for Green Path over service provided by an NGS, which Columbia clearly intends to do. The Standards of Conduct also would require Columbia to allocate "the costs or expenses for general administration or support services provided to its affiliated NGS," and would require Columbia and the Green Path product to maintain separate books and records; to provide but a few examples of the requirements. (RESA/NGS Parties' St. No. 1, 10:9-21).

13. There are many participants in the market that buy and sell COFFs and RNGAs. (RESA/NGS Parties' St. No. 1, 11:3-6).

14. The Natural Gas Choice and Competition Act assigned the role of default biller to the NGDC, in this case Columbia. Only Columbia can send bills to customers that include distribution charges. If a supplier wishes to provide service in a particular service territory -- because customers do not want separate bills for commodity and delivery – the supplier's only realistic billing option is the have the utility bill the suppliers' charges. Columbia's tariff explicitly prohibits suppliers from including charges for carbon neutral products in the customer charges that are billed through purchase of receivables programs. (RESA/NGS Parties' St. No. 1, 11:10-22).

15. Columbia will not allow suppliers to bill for non-basic products on the utility bill. (RESA/NGS Parties' St. No. 1, 12:1-14).

16. Columbia claims it will recover all costs of administering the GPR in the rate charged to customers, however its testimony only addressed the GPR specific costs, not the general or overhead expenses associated with running the program. (RESA/NGS Parties' St. No. 1, 14:2-15:4).

17. By not recovering all the costs associated with the GPR in the rate charged to GPR customers, Columbia's "at cost" pricing approach will allow it to underprice the market. (RESA/NGS Parties' St. No. 1, 14:2-15).

18. Columbia's cost recovery mechanism creates a strong likelihood that start-up costs will be borne by all customers if the sales projections differ from expectations. (RESA/NGS Parties' St. No. 1, 14:15-19).

19. Pricing a value-added product below cost will allow Columbia to gain market share at the expense of its competitors, because it can pass costs on to captive ratepayers. Suppliers do not have captive ratepayers and must recover all product costs in the rate charged to customers. Unlike Columbia, supplier shareholders take the risk. (RESA/NGS Parties' St. No. 1, 15:5-10).

20. Despite Columbia's claim that it will not market the GPR product to shopping customers, it nonetheless creates an environment that will entice those customers to migrate to default service to buy the GPR because it will be the only product that can be included on a customer's utility bill, and it will be priced at the bottom or below market. Because customers will only be eligible for GPR if they are default service customers, there is a substantial risk that customers will switch to default service, which is not supposed to compete, in order to obtain a tied competitive product. (RESA/NGS Parties' St. No. 1, 15:19-16:6).

21. Columbia's proposed tariff in this matter uses the term RNG interchangeably with RNGA, leading to the conclusion that Columbia could repeat this inaccuracy in marketing materials. (RESA/NGS Parties' St. No. 1, 16:9-20).

22. The carbon offset programs operated by DTE and NICOR are not similar to Columbia's program. The DTE program only sells carbon offsets that are produced in Michigan, a far cry from Columbia's proposal where the COFFs could come from anywhere in the world. The Nicor program is a newly implemented pilot. (NGS Parties St. No. 1-SR, 2:14-20).

23. The Bell Doctrine states that "a vertically integrated, regulated firm's participation in a downstream market can have anticompetitive effects."[38] In response to Columbia testimony that there was no testimony about Columbia luring customers away from competitive service to take regulated services, Mr. Holtz made it clear that not only was it too soon to tell, but also because customers are not asked a reason when they switch, it would be impossible to reach a conclusion based on current data. (NGS Parties St. No. 1-SR, 2:20-3:9).

24. Columbia has a monopoly over the delivery of natural gas and a practical monopoly over billing using the utility consolidated bill. For many customers, the monthly bill is the only interface they ever have regarding gas service. (NGS Parties St. No. 1-SR, 3:14-19).

25. Columbia's proposal to provide GPR by exercising its monopoly power is an effort to gain an unfair competitive advantage. (NGS Parties St. No. 1-SR, 4:8-12).

26. Columbia's proposal to sell the GPR product at cost only makes sense if its ultimate intention is to control the market-otherwise to invest capital into a program that does not provide a return makes no sense. Granted, Columbia's other customers will be paying the overhead and

[38] Kiesling, Lynne. "Incumbent Vertical Market Power, Experimentation, and Institutional Design in the Deregulating Electricity Industry," *The Independent Review.* Vol. 19, No. 2 (Fall 2014), p. 242. Available at: https://www.jstor.org/stable/24563277.

administrative costs, so Columbia may not lose money, but such an investment appears to be the long game of buying market share. (NGS Parties St. No. 1-SR, 4:16-5:3).

27. Witness Evans' contention that GPR is not tied to default service is provably false. A customer cannot purchase GPR unless they are a default service customer, and the cost of the program is based on the customer's commodity usage. (NGS Parties St. No. 1-SR, 5:7-15).

28. Suppliers are prohibited from including the charges for carbon neutral products on customer bills that are billed via POR. Columbia's tariff at page 247, states:

> 4.13.4.6 The Company will purchase only receivables associated with the NGS's Natural Gas Supply Services charges and no other products or services that may be provided by NGSs. The Natural Gas Supply Services charges eligible under the POR program shall not include any charges associated with the following: termination fees, energy efficiency service or equipment, a non-recurring charge billed by an NGS for calling the NGS call center or negotiating a payment arrangement, security deposits charged by an NGS, other equipment or services provided by an NGS such as heating equipment repairs or maintenance policies or any charges associated with carbon based attributes, including value added green products like carbon attributes. (emphasis added).

29. Section 4.13.4.6 of Columbia's tariff coupled with Columbia's refusal to allow NGS to bill for carbon neutral products as non-basic services, make it impossible for Suppliers to sell such products to customers who only want to receive a single bill. (NGS Parties St. No. 1-SR, 6:20-26).

30. Section 21.1 of Columbia's tariff applies when a customer qualifies for more than one rate, because there is no alternative rate issue here – GPR is an add on that can only be purchased with default service, not in place of it. (NGS Parties St. No. 1-SR, 8:5-11).

V. PROPOSED CONCLUSIONS OF LAW

1. The proposed Green Path Rider is a competitive offering and is subject to the Commission's Standards of Conduct. (66 Pa. C.S. § 2209).

2. The Green Path Rider does not comply with the requirements of the Commission's Standards of Conduct. (52 Pa. Code § 62.141-142).

3. The Green Path Rider is a non-jurisdictional product and should not be included in Columbia's Jurisdictional Tariff. (66 Pa. C.S. § 1302).

4. All of the expenses of the Green Path Rider must be separated from jurisdictional distribution costs for ratemaking and reporting purposes and be reasonably allocated as between the regulated and competitive function. (52 Pa. Code § 62.142 (9) & (12)).

5. All personnel who perform functions for The Green Path Rider must be physically separated from utility personnel. (52 Pa. Code § 62.142 (13)).

6. Columbia must provide on-bill billing for the similar non-commodity products offered by Natural Gas Suppliers on its system, or it shall not be permitted to utilize that function for its own provision of the GPR. (66 Pa. C.S. § 2203 (4)).

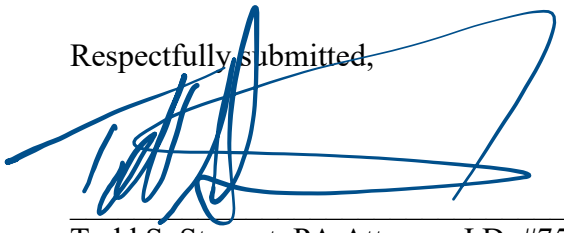
VI. PROPOSED ORDERING PARAGRAPHS

1. Columbia Green Path Rider is not approved.

Alternatively

2. Columbia may provide GPR as a separate function separated as required by and expressly subject to the Standards of Conduct, so long as the billing inequities, as described herein, are corrected.

Respectfully submitted,



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