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March 22, 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; **REPLY BRIEF**

Dear Secretary Chiavetta:

Enclosed for filing with the Commission is the Reply 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.

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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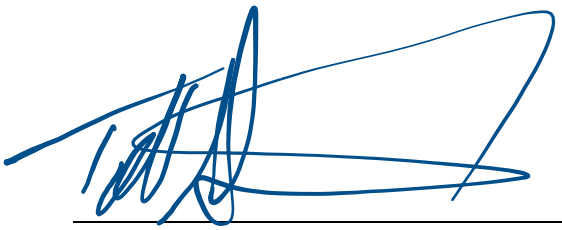

DATED: March 22, 2023

Todd S. Stewart

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission	:	Docket Nos. R-2022-3032167
Office of Consumer Advocate	:	C-2022-3032404
Retail Energy Supply Association,	:	C-2022-3032550
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	:	

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

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DATED: March 22, 2023

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I. INTRODUCTION AND COUNTER STATEMENT OF THE CASE

Regardless of the purpose or intentions of Columbia Gas of Pennsylvania ("Columbia") in filing Supplement No. 343 to its Pennsylvania Tariff – Gas Pa. P.U.C. No. 9, the so-called "Green Path Rider" ("GPR"), it suffers from numerous flaws that make it unsuitable, and illegal as a tariffed, default service product. Columbia's Main Brief ("Columbia MB") does not provide any new basis for approval, nor does it support the approval of the GPR. Rather, as discussed at length in the Main Brief of the Retail Energy Supply Association ("RESA"), Shipley Choice, LLC d/b/a Shipley Energy ("Shipley") and NRG Energy, Inc. ("NRG") (collectively "RESA/NGS Parties"), the GPR is a competitive non-basic product, yet was submitted as a tariff supplement seeking Commission approval, for which Columbia plans to recover the O&M expenses related to the offering through base distribution rates, despite proposing to collect the IT related startup costs from the initial GPR customers. Perhaps most egregious is the fact that GPR is being offered as a competitive product and yet Columbia has proposed to not apply any of the requirements of the Standards of Conduct, 52 Pa. Code §§ 62.141-142.

The evidence shows that Columbia's market strength as the incumbent Natural Gas Distribution Company ("NGDC") and as the default service provider, will allow it to market a product that already is available to customers in the market and use its control of the consolidated customer bill to keep NGSs from providing competing products on a comparable basis.[1] In short, if the Commission feels the GPR has any redeeming qualities that justify not rejecting it outright, which RESA/NGS Parties do not believe exist, the Commission should consider the harm that allowing a utility to provide a competitive product without application of the Standards of Conduct

[1] RESA/NGS Parties' St. No. 1, 15:19-16:6; RESA/NGS Parties' St. No. 1-SR, 3:14-19.

will cause, and enforce the Regulations that require separation of personnel, require separation of expenses and revenues and which otherwise require Columbia to compete on a more level playing field.

II. ARGUMENT

A. Green Path Program Design (Columbia MB 6-8)

Columbia's MB, like its tariff filing, suggests that the GPR product is something it is not. Despite the fact that the GPR product is 95% carbon offsets and 5% RNG attributes, Columbia discusses it throughout the materials provided to the Commission, as "RNG environmental attributes and carbon offsets."[2] The so-called market surveys that Columbia submitted with its filing do not even mention carbon offsets. Yet Columbia puts the RNG-like part of the product front and center. Columbia certainly is free to portray the GPR in any manner it chooses, but its effort to downplay the Carbon Offset content, which is the majority of the product, while upselling the RNG environmental attributes, could have the tendency to mislead people into thinking the product is something that it is not.[3]

Columbia also makes an effort to not mention the source of the carbon offsets, which according to at least one witness could come from virtually anywhere in the world.[4] Coupled with the lack of any examples of what the oft-touted consumer education materials might look like, this use of information about a competitive product appears to be an effort by Columbia to leverage its status as the utility to convince customers that the product is somehow more worthy than others. This approach is distressing to competitors because it is only possible because of Columbia's market power but should also be distressing to the Commission because the imprimatur sought by

[2] RESA/NGS Parties' St. 1-SR, 7:1-11.
[3] RESA/NGS Parties' MB at 9.
[4] OSBA Statement No. 1, lines 120—132.

a utility filing a competitive product as a tariffed service goes beyond merely seeking to impact the judgement of its prospective customers – it seeks to involve the Commission as further endorsement. The Commission should not put its finger on the competition scale in favor of an incumbent in the manner that Columbia seeks here.

B. Rate and Cost Recovery (Columbia MB 9-11)

As discussed in the RESA/NGS Parties' Main Brief, Columbia has proposed GPR as a tariffed service, even though it will be a non-basic product.[5] Such a practice is not authorized by the Public Utility Code.[6] The Code makes it clear that a tariff is to contain rates "within the jurisdiction of the Commission."[7] Green Path is not within the jurisdiction of the Commission and hence has no place in Columbia's tariff, and indeed, should not have been filed with the Commission.[8]

Columbia filed GPR with the Commission, at least in part to avoid the application of the Standards of Conduct, which if applied would thwart Columbia's intention to subsidize the service by using distribution rates paid by all customers to pay for the overheads associated with GPR and to avoid the physical separation requirements for employees. That Columbia has not proposed to offer GPR through an affiliate is of no moment, as the Regulations make it clear that competitive products sold by the marketing operation of a utility are also subject to the Standards.[9] Without the financial separation that the Standards require,[10] Columbia's cost recovery proposal will recover all overheads associated with the program through a distribution service revenue

[5] RESA/NGS Parties' St. No. 1, 6:17-7:2; Exhibits JH-2 and JH-3.
[6] 66 Pa. C.S. § 1302.
[7] *Id*.
[8] It is noteworthy that Columbia admits on page 16 of its Main Brief that it offers other non-basic products and that the GPR is no different. However, Columbia nowhere states that it includes any of those other products in its tariff.
[9] The Commonwealth Court agrees that the Standards of Conduct apply to utilities that provide competitive products. *Dominion Retail, Inc. v. Pennsylvania Public Utility Commission*, 831 A.2d 810 (Pa. Cmwlth. 2003).
[10] 52 Pa. Code §§ 62.142(9) & (12).

requirement like every other distribution cost. Columbia's cost recovery proposal is not reasonable and should not be approved.

C. Competitive Market Issues (Columbia MB 14-24)

The Natural Gas Choice and Competition Act does not prohibit utilities from offering competitive products, however it does restrict competition as a component of NGDC service or default service.[11] It also is true that the Competition Act envisions competitive products being offered, and those products could possibly include carbon offsets. However, it also is true that Columbia's tariff expressly prohibits suppliers from billing charges for carbon neutral products via the purchase of receivables ("POR") program, and because Columbia is statutorily the only party that may issue a consolidated bill (a bill that contains charges for distribution service and commodity charges - whether rendered for default service or competitive supply from an NGS)[12] and because Columbia intends to bill for the non-basic GPR using the utility bill, it is providing itself an advantage that puts suppliers at a disadvantage. This is plain discrimination.[13] Regardless, Columbia has not proposed to break out and separately recover the expense of billing for GPR or including that expense as part of the GPR charge. Rather, Columbia intends to recover billing costs from all customers as a general overhead expense, including competitive supply customers, even though it will not bill carbon offset product charges for suppliers. Such a result is wrong for two reasons. First, as discussed above, it violates the Standards of Conduct. Second, it violates the Commission's order in a prior case involving Columbia, where Columbia refused to bill for other non-commodity products being offered by NGSs on the utility bill even though

[11] 66 Pa. C.S. §§ 2209(c)(3) & (4).
[12] 66 Pa. C.S. § 2205(c).
[13] 66 Pa. C.S. § 1502.

Columbia was billing for the same products for former affiliates.[14] The Commission found that to be discrimination. Columbia argues here that in the subsequent *IGS v. Metropolitan Edison*,[15] the Commission fashioned a distinction, stating that providing service to oneself is not discrimination under Section 1502. However, the Commission did not state in *IGS*, that the still disputed, "service to oneself" exception carved out in a case involving the electric industry would relieve a natural gas distribution company of the duty under Section 2203(4) to provide services, including billing, on a non-discriminatory basis, as the Commission found in *Columbia* and which it should find here.[16]

The bottom line is that billing for a particular "competitive" non commodity product for one's own marketing operation, which is subject to the Standards of Conduct, while not doing the same for a competing NGS who has no choice but to use the Utility consolidated bill, is discrimination and independently violates both 52 Pa. Code § 62.142(11) and 66 Pa. C.S. § 2203(4). It is discrimination in the provision of billing service, which this Commission has many times concluded is part of the broadly defined term "service" found at 66 Pa. C.S. § 102.

While it is true that the NGS Parties do assert that competitive products such as the GPR should be the domain of the Competitive market, it is the manner in which Columbia proposed the GPR that is offensive as much as the market power behind it. However, it is the form of the program was proposed which makes it illegal. That is, if Columbia were required to engage all the competitive safeguards that the General Assembly envisioned when it authorized NGDCs to provide competitive products, it could potentially provide the GPR with an acceptable level of

[14] *Pa. PUC v. Columbia Gas of Pa., Inc., D*ocket No. R-2018-2647577 (Opinion and Order entered December 6, 2018)(*Columbia*).
[15] *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).
[16] *Columbia*, slip op. at pp. 47-49.

competitive harm, but only with the *quid pro quo* of applying the competitive safeguards. Statutes are to be read in *pari materia,* which means that the requirement for the Standards of Conduct must be read to be consistent with the ability of NGDCs to provide new competitive products, and for Columbia to assert that it may offer competitive products and at the same time argue that it should not be subject to the Standards of Conduct, is contrary to the law and must be rejected.[17] Columbia freely admits (Main Brief, pg. 15) that it desires to compete with NGSs in offering the GPR. Columbia cannot have it both ways. If it wants to compete, Columbia can only do so with the application of the competitive safeguards that are the Standards of Conduct.

Columbia's attempt to refute the supplier's argument that Columbia will seek to convert supplier customers into default service customers by offering them GPR, which will only be available to default service customers; by suggesting that all such products should be available to all customers is indicative of its callous disregard for the facts. Columbia alone can offer the package to customers: gas, delivery and carbon offsets, all on the same bill, and it appears to be counting on that combination for part of its advantage.

Columbia also addresses the supplier arguments regarding the unequal billing relationship between Columbia and suppliers on its system. Columbia plans to use a utility asset[18], its billing system that (except for a minor $186,000 upgrade) is paid-for by all ratepayers, to bill for a competitive service – the GPR. Despite this clear violation of the Standards of Conduct, Columbia boldly states that the suppliers are free to not participate in POR and simply bill for Carbon offset charges and natural gas commodity on their own--stating that "there is nothing that would prevent

[17] 1 Pa. C.S. § 1932. ("**(a)** Statutes or parts of statutes are in pari materia when they relate to the same persons or things or to the same class of persons or things. **(b)** Statutes in pari materia shall be construed together, if possible, as one statute.")

[18] Columbia also intends to use other assets and personnel to perform other functions for the GPR.

an NGS from offering products similar to the Green Path Rider and billing for them."[19] The ability to use a billing system that ratepayers paid-for is an absolute advantage to Columbia. That ability is also an obstacle to suppliers to provide the same types of products, because there is a clear disparity in customer perception of a consolidated bill listing all gas-related charges versus receiving multiple bills for the same service.[20] Columbia's proposed billing scheme is anything but non-discriminatory, as discussed herein and should not be approved.

Finally, Columbia seeks to draw a distinction between what it proposes for GPR and the requirements for the application of the Standards of Conduct. Columbia claims that because it is not offering the GPR through an affiliate, and because the product is being offered as a non-basic rather than basic service product, the Standards of Conduct do not apply. Columbia's argument is simply incorrect. It is the fact that the GPR is a competitive product, not that it will be billed as a non-basic product, that is determinative of the application of the Standards of Conduct. Here Columbia admits that it intends to compete with suppliers in offering GPR. And while it is true that Columbia does not propose to use an affiliate to market GPR, it is clearly marketing a competitive product with marketing personnel (i.e., a "marketing operation") and the Standards of Conduct, by their own definition, apply.[21] The Commonwealth Court has previously determined that the standards do apply to an NGDC that provides new products and that the test is whether the product is intended to compete, which in this case Columbia admitts.[22] Columbia's analysis falls short. GPR is a competitive product, it is not natural gas supply but is related to natural gas supply and is clearly intended to compete with natural gas suppliers on Columbia's system.

[19] Columbia MB at 20.
[20] RESA/NGS Parties' St. No. 1, 11:10-22.
[21] 52 Pa. Code § 62.141.
[22] *Dominion Retail.*

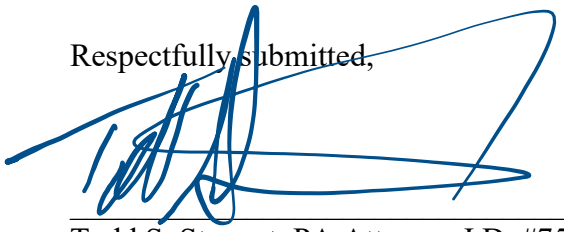
III. CONCLUSION

Columbia's GPR proposal is an unapologetic effort to enter and dominate an existing competitive market, 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. These advantages provide Columbia the unique ability to price the product below cost, because all of the overheads are paid for by all customers, not just GPR customers as it should be. This form of subsidy is not available to suppliers whose shareholders must support new products.[23]

Columbia has proposed this product as a tariffed product, even though it is not a jurisdictional product, in a further attempt to lend credibility to its cross-subsidy intentions. Columbia's efforts must be rejected. 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.[24] 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. Columbia cannot be permitted to use the cause of carbon reduction to damage a nascent competitive market and to avoid the Standards of Conduct. The Commission must reject this effort as discussed more thoroughly in the RESA/NGE Parties' Main Brief.

[23] RESA/NGS Parties' St. No. 1, 15:5-10.
[24] 52 Pa. Code § 62.141-142.

Respectfully submitted,



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DATED: March 22, 2023