Hawke McKeon & Sniscak LLP
ATTORNEYS AT LAW

Todd S. Stewart
Office: 717 236-1300 x242
Direct: 717 703-0806
tsstewart@hmslegal.com

100 North Tenth Street, Harrisburg, PA 17101 Phone: 717.236.1300 Fax: 717.236.4841 www.hmslegal.com

March 29, 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; **COMMENTS OPPOSING NON-UNANIMOUS SETTLEMENT OF NON-SETTLING PARTIES, THE RETAIL ENERGY SUPPLY ASSOCIATION, SHIPLEY CHOICE, LLC AND NRG ENERGY, INC.**

Dear Secretary Chiavetta:

Enclosed for filing with the Commission is the Comments Opposing Non-Unanimous Settlement of Non-Settling Parties, The Retail Energy Supply Association, Shipley Choice, LLC and NRG Energy, Inc. ("RESA/NGS Parties") to in the above-captioned dockets. Copies of the Comments 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).

VIA ELECTRONIC MAIL

Michael W. Hassell, Esquire
Lindsay A. Berkstresser, Esquire
Nicholas A. Stobbe, Esquire
Post & Schell, P.C.
17 North Second Street, 12th Fl.
Harrisburg, PA 17101
mhassell@postschell.com
lberkstresser@postschell.com
nstobbe@postschell.com
Counsel for Columbia Gas of Pennsylvania, Inc.

Amy E. Hirakis, Esquire
NiSource Corporate Services Company
800 North 3rd Street, Suite 204
Harrisburg, PA 17102
ahirakis@nisource.com
Counsel for Columbia Gas of Pennsylvania, Inc.

Theodore J. Gallagher, Esquire
Columbia Gas of Pennsylvania, Inc.
121 Champion Way, Suite 100
Canonsburg, PA 15317
tjgallagher@nisource.com
Counsel for Columbia Gas of Pennsylvania, Inc.

Thomas J. Sniscak
Whitney E. Snyder
Phillip D. Demanchick, Jr.
Hawke McKeon & Sniscak, LLP
100 North Tenth Street
Harrisburg, PA 17101
tjsniscak@hmslegal.com
wesnyder@hmslegal.com
pddemanchick@hmslegal.com
Counsel for The Pennsylvania State University

Steven C. Gray, Senior Supervising
Assistant Small Business Advocate
Office of Small Business Advocate
555 Walnut Street
1st Floor, Forum Place
Harrisburg, PA 17101
sgray@pa.gov

Erika L. McLain, Esquire
Pennsylvania Public Utility Commission
Bureau of Investigation & Enforcement
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120
ermclain@pa.gov

Barrett C. Sheridan
Lauren E. Guerra
Harrison W. Breitman
Aron J. Beatty
Office of Consumer Advocate
555 Walnut Street
5th Floor, Forum Place
Harrisburg, PA 17101-1923
OCAColumbiaGreenPathRider@paoca.org

John W. Sweet, Esq.
Ria M. Pereira, Esq.
Lauren N. Berman, Esq.
Elizabeth R. Marx, Esq.
Pennsylvania Utility Law Project
118 Locust Street
Harrisburg, PA 17101
pulp@pautilitylawproject.org
Counsel for CAUSE-PA

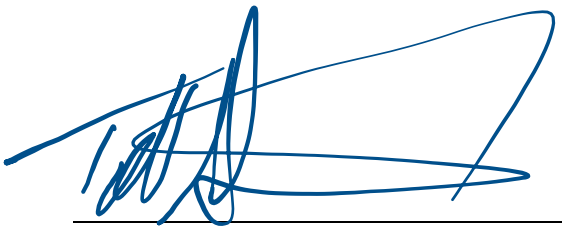
Barbara R. Alexander
Barbara Alexander Consulting LLC
83 Wedgewood Dr.
Winthrop, ME 04364
OCAColumbiaGreenPathRider@paoca.org

Robert D. Knecht
Industrial Economics, Incorporated
5 Plymouth Road
Lexington, MA 02421
rdk@indecon.com

Angela Vitulli
Industrial Economics, Incorporated
2067 Massachusetts Avenue
Cambridge, MA 02140
avitulli@indecon.com

Mark Ewen
Industrial Economics, Incorporated
2067 Massachusetts Avenue
Cambridge, MA 02140
mewen@indecon.com

James L. Crist, P.E.
Lumen Group, Inc.
4226 Yarmouth Drive, Suite 101
Allison Park, PA 15101
JLCrist@aol.com



DATED: March 29, 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	:	

COMMENTS OPPOSING NON-UNANIMOUS SETTLEMENT OF NON-SETTLING PARTIES, RETAIL ENERGY SUPPLY ASSOCIATION, SHIPLEY CHOICE, LLC D/B/A SHIPLEY ENERGY AND NRG ENERGY, INC.

I. INTRODUCTION

The Retail Energy Supply Association ("RESA"), Shipley Choice, LLC d/b/a Shipley Energy and NRG Energy, Inc. (collectively "RESA/NGS Parties") offer the following Comments to the proposed Non-Unanimous Settlement ("NUS") filed with the Commission on March 22, 2023, in this matter. The RESA/NGS Parties oppose the NUS and maintain that the NUS and the Green Path Rider ("GPR") program it would authorize, are not in the public interest and should be rejected by the Pennsylvania Public Utility Commission ("Commission"). There are numerous flaws in the GPR and the NUS (settlement between Columbia Gas of Pennsylvania ("Columbia") and two other parties)[1], including: attempting to "tariff" a non-basic service; failing to apply the

[1] The Office of Small Business Advocate ("OSBA") and The Commission's Bureau of Investigation and Enforcement ("I&E").

Standards of Conduct which will result in cross-subsidization of the costs of GPR; failing to structurally separate the provision of GPR from the provision of regulated services; discriminating against suppliers in the provision of billing service for the GPR, in addition to the assertion of market power by an incumbent utility seeking to enter a competitive market and seeking the Commission's blessing to do so.

Columbia and two parties out of seven were able to achieve a settlement that would allow Columbia to offer a tariffed competitive product – the so-called GPR (a combination of 95% carbon offsets and 5% renewable natural gas attributes) – to default service customers on Columbia's system. The NUS fails to recognize, let alone resolve however, a number of contested issues that have been litigated in this matter by the three parties that oppose the Settlement.[2] Any one of these issues, when appropriately resolved, will prove fatal to the GPR and fatal to the NUS.

The NUS would approve the GPR with a few modifications that do not address the fundamental issues raised by RESA/NGS Parties, and others, and ignores the basic question of whether it is appropriate for a natural gas utility to include a non-basic product, one intended to compete with natural gas suppliers and others, in its distribution service tariff. This issue is not one of mere semantics; rather, the inclusion of a competitive product in its tariff signals Columbia's intention to offer a competitive product as part of its regulated service offerings, and to not apply the separation requirements (books, personnel, etc.) required by the Commissions Regulations at 52 Pa. Code §§ 62.141-142. This arrangement also signals Columbia's intention to subsidize GPR so that all distribution customers pay for its operation. Columbia makes the pallid assertion that there is nothing in the record to suggest that it will do so, but that is countered with a complete

[2] The Settlement is opposed by The Office of Consumer Advocate ("OCA"), the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania ("CAUSE-PA"), and the Retail Energy Supply Association ("RESA"), Shipley Choice, LLC d/b/a Shipley Energy and NRG Energy, Inc. (collectively "RESA/NGS Parties"). The Pennsylvania State University does not oppose the Settlement.

absence of any denial that it will not seek such recovery coupled with the clear statement that it intends to propose recovering the O&M costs in a future rate case. If Columbia intended to recover the O&M costs as part of GPR, it should have proposed that recovery in this proceeding and did not. Columbia's intentions are clear. It is also obvious that Columbia expects that the imprimatur of the Commission (in the form of tariff approval) when added to the GPR will suggest some additional level of quality. While GPR is not jurisdictional to the Commission as a product, Columbia's provision of the product is subject to the Standards of Conduct which is not addressed in the NUS.

Apart from the failure to address the competitive nature of its proposal, Columbia seeks approval of the NUS by offering what it characterizes as a "concession" - to limit the carbon offsets it sells via GPR, to projects within North America. There is no evidence on the record that this change in the terms of the GPR will improve the offering or address any of the competitive issues not addressed in the Settlement. There is no evidence that limiting the projects to those located in North America would create more accountability or provide more favorable results for customers than the scope of the initial offering -- which was global. Simply put, there is no new or improved basis declared in the NUS that overcomes the reality that the GPR is bad policy, will harm the competitive market, is potentially bad for customers, and should otherwise be rejected, as should the NUS. At bottom, however, GPR is a competitive non-basic product. The Commission should not even consider approving it in the first instance.

II. TERMS OF THE SETTLEMENT

Neither the terms of the NUS nor the various statements in support alter the inadequacy of the NUS or the GPR. The NUS introduces six revisions to the GPR: 1) a shortening of the term of the "pilot" from five years to three; 2) a requirement that Columbia file an annual report; 3) a

requirement that Columbia submit customer education materials to the statutory advocates 30 days before Columbia intends to use the materials and the ability of the parties to discuss the materials; 4) that Columbia will provide surveys at enrollment and exit; 5) that Columbia will recover costs, limited to a minor IT upgrade and annual consumer education expense, from GPR customers; and, 6) that previously noted "concession" that Columbia limit its acquisition of carbon offsets to those produced from projects in North America.

1. **Shortened Pilot.** Columbia has agreed to shorten the initial term of the "pilot" from 5 years to 3. It then has the opportunity to extend the pilot for another 2 years. This change does not alter the 5-year contract obligation that Columbia undertook to provide the carbon offsets and RNG attributes, and so it is fairly certain that all this term accomplishes is that Columbia be required to make an additional filing after three years to extend the GPR.

2. **Annual Report.** Columbia has agreed to file a report annually. The report will be information that any seller of such products would already collect. The only concession is that Columbia file it with the Commission.

3. **Customer Education.** Columbia has agreed to provide proposed customer education materials for review by the public advocates at least 30 days prior to using it. There is no ability of the advocates to veto or approve the materials, only to discuss them with Columbia. The only concession here is to provide the advocates with a sneak peek at education materials.

4. **Customer Surveys**. Columbia agreed to conduct entry and exit surveys of the customer's GPR experience. This is valuable information for any marketer and in this case, because if approved it will be a regulatory requirement, Columbia will recover the costs of collecting the data in base rates from all customers. Columbia did not commit to recovering these

costs only from the GPR customers. This is not a concession at all, but a clever way to get all the customers to subsidize GPR.

5. **Cost Recovery**. The NUS is as notable for what it does not say about cost recovery as it is in what it says. It states that Columbia will recover "the one-time information technology ("IT") costs and annual expense for consumer education will be recovered only from participating customers through the Green Path Rider rate." The NUS does not agree that Columbia will recover all costs associated with GPR only from GPR customers, nor does the initial GPR filing. The only concession is that Columbia recovers consumer education costs from GPR customers and any agreement to recover ALL costs of GPR from GPR customers is noticeably absent, highlighting the point that distribution customers will inevitably subsidize the GPR if it is not rejected.

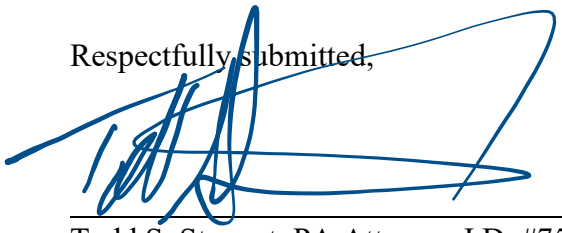
6. **Origin of Carbon Offsets.** Columbia's initial proposal is that the Carbon Offsets that are 95% of the GPR product be sourced from non-determinate sources; that is, they could come from projects anywhere in the world. In its presentation, Columbia referred to projects in other states as being comparable, but the offsets in those programs were decidedly more local, i.e., from within the same state. As a "concession" Columbia has agreed to purchase offsets for GPR, from sources in North America. There is no evidence in the record to support the implicit suggestion that offsets sourced from North America are somehow of a higher quality or produce better results, only that they are obtained closer to home. None of the parties to the NUS cite any record evidence to support that this ringfencing is an upgrade that makes the whole GPR worthwhile, because it is not.

III. CONCLUSION

The NUS is flawed because the underlying GPR is flawed. It never should have been introduced as a tariffed product, never should have been proposed without the Standards of

Conduct, in fact, it should not have been submitted to the Commission for approval because it is not a jurisdictional product. Putting aside the existential flaws and focusing on the NUS, it is not in the public interest because it cannot improve, for the purposes of seeking approval, a product that should never have been submitted for approval in the first instance. The Commission should reject the GPR tariff as inappropriately filed, reject the settlement, and make it clear that if Columbia wants to offer a competitive product such as GPR in the future, that it must abide by the Standards of Conduct and not seek to stick all of its distribution customers with the bill.

Respectfully submitted,



Todd S. Stewart, PA Attorney I.D. #75556
Hawke McKeon & Sniscak LLP
100 North Tenth Street
Harrisburg, PA 17101
tsstewart@hmslegal.com
Telephone: (717) 236-1300
Facsimile: (717) 236-4841

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

DATED: March 29, 2023