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April 26, 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; **EXCEPTIONS OF THE RETAIL ENERGY SUPPLY ASSOCIATION, SHIPLEY CHOICE, LLC AND NRG ENERGY, INC.**

Dear Secretary Chiavetta:

Enclosed for filing with the Commission is the Exceptions of the Retail Energy Supply Association, Shipley Choice, LLC and NRG Energy, Inc. ("RESA/NGS Parties") to the Recommended Decision issued April 19, 2023 in the above-captioned proceeding. 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 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: Office of Special Assistants (via electronic mail – ra-OSA@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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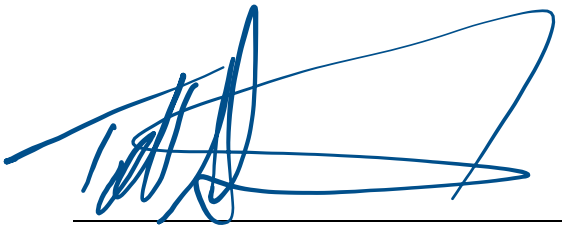

DATED: April 26, 2023

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	:	

EXCEPTIONS OF
THE RETAIL ENERGY SUPPLY ASSOCIATION,
SHIPLEY CHOICE, LLC AND NRG ENERGY, INC.
TO RECOMMENDED DECISION

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DATED: April 26, 2023

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I. INTRODUCTION

NOW COME the Retail Energy Supply Association ("RESA"), Shipley Choice, LLC d/b/a Shipley Energy and NRG Energy, Inc. (collectively "RESA/NGS Parties"), by and through their attorneys, Hawke McKeon & Sniscak, LLP, and hereby Except to the Recommended Decision ("RD") of Presiding Administrative Law Judges Christopher P. Pell and John M. Coogan ("ALJs"). The RD recommends approval of the Joint Petition for Non-Unanimous Settlement ("NUS") that would have the Commission approve Columbia Gas of Pennsylvania, Inc.'s ("Columbia") proposed Green Path Rider ("GPR") over the objection of two of the three parties that provided substantial testimony in the matter.[1] The GPR is Columbia's bid to enter the competitive world of selling a carbon neutral product and to add that product to its Pennsylvania regulated services tariff.[2] The recommendation to approve the GPR as a tariffed non-basic service is contrary to the law, anti-competitive, and fails to require the application of statutorily mandated competitive safeguards. The RD should be reversed in its entirety.

The Commission should not allow itself to be deceived by the lofty aspirations of the GPR. Rather, the record is clear that carbon neutral products are already available in the market and that Columbia's effort here is not merely to provide such products to default service customers but rather to use GPR to gain a competitive advantage by forcing all customers to pay the costs of the GPR.[3] The ALJ's conveniently overlooked these facts in their rush to approve the GPR because it was subject to a settlement.

[1] The OSBA submitted testimony that strongly opposed the GPR for a multitude of reasons, but nonetheless settled for Columbia's agreement to source the carbon offsets in North America rather than globally and similar miniscule concessions.
[2] RESA/NGS Parties' St. No. 1, 2:8-12.
[3] RESA/NGS Parties' St. No. 1, 7:14-9:2; RESA/NGS Parties' St. No. 1, 6:8-14; Columbia St. No. 1, pp. 5-6.

II. EXCEPTIONS

RESA/NGS Parties' specific exceptions to the RD are stated below.

1. Exception No. 1 – The RD Fails to Recognize the GPR as a Competitive Product (RD pp. 103-110).

The RD fails to appreciate that the GPR is a competitive non-basic product, nor does it consider the ramifications of that status. Columbia admits that the GPR is competitive, i.e., intended to compete with products already in the market; it admits that it is a non-basic product; and yet Columbia utterly failed to address the contention raised by RESA/NGS Parties and the OCA that such a product should not be permitted to be in Columbia's regulated services tariff, and the RD likewise leaves this argument unaddressed.[4] Approving GPR as proposed presents a number of problems, as discussed more completely in RESA/NGS Parties' Briefs and Comments which are incorporated herein by reference. Among these are that Columbia, as the NGDC, has market power already and is now seeking to enter the gas supply products market to sell a carbon offset product that is sold along with the default service commodity, in quantities intended to match customer's consumption in direct competition with suppliers.[5] When a default service provider, acting as the utility, seeks to sell competitive products, it has the ability even without trying to do so, to compete unfairly with suppliers trying to sell similar products and trying to pry customers away from default service by providing additional value for the customer.[6] GPR is Columbia's effort to stop that from happening. It is also obvious that Columbia expects that Commission approval of GPR as a tariffed service will suggest to potential customers some additional level of quality, to give it an even greater advantage over competitors.[7] GPR, as a product, is not within

[4] 66 Pa. C.S. § 1302.
[5] RESA/NGS Parties' St. No. 1, 8:1-21.
[6] RESA/NGS Parties' St. No. 1, 9:5-7.
[7] RESA/NGS Parties' Main Brief ("MB") at 7.

the Commission's jurisdiction. Nonetheless Columbia proposes to bundle it with default service and place it in its tariff while claiming that it is not a gas supply product -- in direct contradiction of the facts. If GPR were being proposed appropriately, i.e., through a properly separated affiliate or competitive division, Columbia's competitive advantage aside, there would be little room to argue that it could not do so. But by seeking to compete, and using default service to do so, Columbia is violating the basic structure of the restructured market – default service is utility service and competitive services are not. The RD failed to recognize that basic premise and in doing so, would violate the law.

2. <u>Exception No. 2</u> – The RD failed to Mandate Application of the Standards of Conduct. (RD, pp. 106-109).

GPR is being proposed to be sold on a volumetric basis tied to a customer's natural gas consumption, on the premise that it will offset the carbon emissions associated with the customer's consumption and will be billed on the customer's utility bill. It is being proposed to be sold as a tariffed service, when no other non-basic service offered by Columbia is sold that way. Clearly, as presented, GPR is a gas supply product and most certainly subject to the Commission's Standards of Conduct. The Standards of Conduct require the separation of personnel and expenses as between jurisdictional and competitive services.[8] The RD fails to appropriately consider the anti-competitive implications of this failure to separate the expenses and personnel responsible for GPR and fails to consider the harm to Columbia's distribution customers that do not avail themselves of GPR. The RD is oblivious to the fact that *all* of Columbia's customers will be subsidizing a portion of the costs of GPR through base rates.[9] This is one of the precise harms the regulations were intended to prevent.

[8] 52 Pa. Code §§ 62.142(9), (12) & (13).
[9] RESA/NGS Parties' St. No. 1, 6:8-14; Columbia St. No. 1, pp. 5-6.

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."[10] Columbia's activities here fall squarely into the definition of marketing activities and it clearly is acting as a marketing operation. The product clearly is "related to" natural gas supply services being offered by Columbia to compete with products already in the market.[11] Moreover, only default service natural gas customers will be eligible for this competitive service that competes with other similar products in the marketplace and the product is natural gas bundled with carbon offsets and RNGA. Moreover, if Columbia itself does not believe that GPR is a gas supply product, why is it being offered in the company's tariff? There should be no doubt that Columbia's GPR activities are subject to the requirements of the Standards of Conduct. 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*."[12] In *Dominion*, the Commonwealth Court found that the standards of Conduct do apply to competitive products provided by a utility, regardless of whether provided by an affiliate or the utility itself, and yet here where Columbia proposes to provide what is clearly a competitive product, the RD fails to apply the law and require the imposition of the Standards of Conduct.

The Standards of Conduct require that Columbia allocate to the GPR all the costs or expenses for general administration or support to the GPR.[13] The Standards also require that the GPR function "maintain separate books and records" and that [t]ransactions between the NGDC

[10] 52 Pa. Code § 62.141, Affiliated NGS, (ii).
[11] *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) ("*Dominion"*).
[12] *Permanent Standards of Conduct*, Docket No. L-00030162; 36 Pa.B. 1748 (emphasis in original).
[13] 52 Pa. Code § 62.142(9).

and its marketing function may not involve cross-subsidies.[14] 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 actions 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.[15]

These statutorily mandated 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 rationale for why the Standards of Conduct do not apply was the incorrect assertion that because the GPR is not being provided as an affiliate, the Standards of Conduct do not apply.[16] Mr. Kempic's argument entirely misses the mark and should have been 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. But rather than address this point, the RD gives Columbia a pass. Moreover, and contrary to the RD's assertion to the contrary, the suppliers never argued that they should have the exclusive ability to sell competitive products, as that clearly is not the law. Rather, the suppliers did suggest that when utilities compete, they

[14] 52 Pa. Code § 62.142(12).
[15] 52 Pa. Code § 62.142(13).
[16] Columbia St. No. 4-RJ, 1-2.

must do so fairly, and that the Standards of Conduct are the guardrails to ensure that happens. The RD's claim that it cannot see how the Standards of Conduct could apply to Columbia providing GPR defies reason and the plain language of the regulations and must be reversed.

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. The RD found to the contrary and is in error.

3. <u>Exception No. 3</u> – The RD Errs in not finding that billing the GPR on the Utility Bill while refusing to do the same for Suppliers is a violation of law. (RD pp 109-110).

Columbia is not only the default service provider, it also is the default biller.[17] That means that for a customer that wants 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 consolidated bill. Indeed, Columbia's tariff appears to prohibit NGSs from including charges for carbon neutral products in customer balances collected via Purchase of Receivables ("POR").[18] What that means is that Columbia's proposal to recover the GPR charges as a non-commodity charge on the consolidated bill (an option Columbia refuses to make available to suppliers) will place suppliers who offer these products in Columbia's service territory 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.[19]

[17] 66 Pa. C.S. § 2205(c).
[18] RESA/NGS Parties' St. No. 1-SR, 6:20-26.
[19] RESA/NGS Parties' St. No. 1, 11:10-12:14.

The Commission has previously held that Columbia's provision of billing service for non-commodity products is "service" as defined in Section 102 of the Public Utility Code, 66 Pa. C.S. § 102.[20] The Commission also held that Columbia's provision of billing service is regulated by Section 2203(4) of the Code, and held that Columbia must offer billing for non-commodity products, in a non-discriminatory fashion under the mantel of providing equal access to the distribution system.[21] While the Commission has since slightly changed its view of its *Columbia* decision, it has nonetheless distinguished that decision in a manner that requires its application here – that is Columbia should be required to provide billing equity.[22] Columbia should not be permitted to provide billing for its provision of GPR without providing the same billing for suppliers on equal terms or not provide it at all. 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.

4. <u>Exception No. 4</u> – The RD violates the express language of the Public Utility Code by placing the burden of proof and persuasion on the parties in opposition to the NUS. (RD at 106).

The RD states at page 106, "We do not find the arguments raised by the parties opposing the proposed GPR are sufficiently persuasive to merit denial of Columbia's proposal." This statement is indicative of the substance of the entire RD and assumes that the GPR should be approved, unless the opposing parties prove otherwise. The Public Utility Code places the burden

[20] *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*).
[21] *Columbia* at pp. 47-49.
[22] *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. The Commission found that 66 Pa. C.S.§ 2203(4) provides an independent basis to require a natural gas distribution company to provide service to suppliers on an equivalent basis, which is not subject to the "service to oneself" argument accepted by the Commission in the First Energy case.

of proof in this matter squarely on Columbia and the settling parties as the proponent of a rule or order and in the case of Columbia, because this matter involves approval of a tariff that contains rates.[23] The fact that there is a settlement does not shift the burden. (RD at p.9). It is Columbia that must prove that GPR is just and reasonable and it is Columbia that left unanswered serious questions about the legality of its proposal. It has not proposed to apply the standards of conduct, it has tariffed a competitive product and it has not explained why it should be able to do so.

III. CONCLUSION

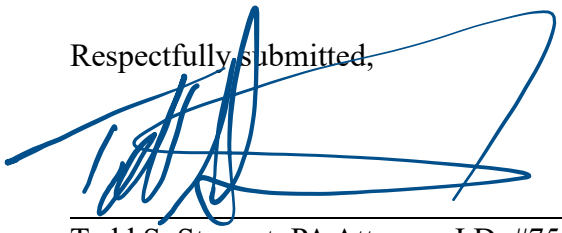
Lowering one's carbon footprint is all the rage now, despite the fact that for many years competitive energy suppliers have been offering carbon neutral products to their supply customers. Columbia now seeks to enter the carbon neutral market by bundling carbon offsets and a minimal amount of Renewable Natural Gas Attributes ("RNGA") (a product already available in the market) with default service gas that it plans to offer to customers below cost in its tariff. It will be below cost because most of the costs of the program will be recovered in Columbia's distribution rates. As the distribution provider, Columbia is counting on its status as the regulated monopoly to convince customers to sign up. Columbia does not propose to apply the Standards of Conduct, even though it admits that the GPR is a competitive product.

Rather than critically analyze the law, the RD throws up its hands and claims it cannot determine whether the standards of conduct should apply and would thus give Columbia a pass – it would allow GPR to be in the tariff, would allow it to be provided bundled with default service and be billed on the utility bill, which suppliers are not permitted to do, allow GPR to be provided without the standards of conduct, and allow all distribution customers to subsidize the service. The RD must be reversed.

[23] 66 Pa. C.S. §§ 315, 332(a).

WHEREFORE, RESA/NGS Parties respectfully Except to the Recommended Decision in this matter and request that it be reversed in its entirety. In the alternative, Columbia should be required, at a minimum, to apply the Standards of Conduct to its provision of GPR.

Respectfully submitted,



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DATED: April 26, 2023