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July 29, 2015

BY ELECTRONIC FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor (filing room)
Harrisburg, PA 17120

RE: Pennsylvania Public Utility Commission v. Columbia Gas of Pennsylvania, Inc.;
Docket No.: R-2015-2468056; **ANSWER OF THE PENNSYLVANIA STATE
UNIVERSITY TO THE MOTION OF COLUMBIA GAS OF
PENNSYLVANIA, INC. FOR A PROTECTIVE ORDER**

Dear Secretary Chiavetta:

Enclosed please find The Pennsylvania State University's Answer to the Motion of Columbia Gas of Pennsylvania, Inc. for a Protective Order. Copies will be provided as indicated on the Certificate of Service.

If you have any questions concerning these documents, please do not hesitate to contact the undersigned.

Very truly yours,

Thomas J. Sniscak
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William E. Lehman

*Counsel for
The Pennsylvania State University*

TJS/WEL/das
Enclosures

cc: Per Certificate of Service

MAILING ADDRESS: P.O. BOX 1778 HARRISBURG, PA 17105

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission	:	
v.	:	Docket No. R-2015-2468056
Columbia Gas of Pennsylvania, Inc.	:	
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Office of Consumer Advocate	:	
v.	:	Docket No. C-2015-2473682
Columbia Gas of Pennsylvania, Inc.	:	
-----	:	
Office of Small Business Advocate	:	
v.	:	Docket No. C-2015-2477816
Columbia Gas of Pennsylvania, Inc.	:	
-----	:	
Columbia Industrial Intervenors	:	
v.	:	Docket No. C-2015-2477120
Columbia Gas of Pennsylvania, Inc.	:	
-----	:	
Pennsylvania State University	:	
v.	:	Docket No. C-2015-2476623
Columbia Gas of Pennsylvania, Inc.	:	

**ANSWER OF
THE PENNSYLVANIA STATE UNIVERSITY
TO THE MOTION OF COLUMBIA GAS OF PENNSYLVANIA, INC.
FOR A PROTECTIVE ORDER**

TO ADMINISTRATIVE LAW JUDGE MARY D. LONG:

The Pennsylvania State University (“PSU”), by and through its attorneys, Hawke McKeon & Sniscak LLP, hereby files its Answer in opposition to Paragraph 7 of the proposed Order attached to Columbia Gas of Pennsylvania, Inc.’s (“Columbia”) Motion for Protective Order (“Motion”) filed yesterday, July 28, 2015 by Columbia, and hereby proposes alternative amendments which if made would result in PSU not objecting to the Motion and Amended Protective Order.

1. PSU agrees with the background and statements made in paragraphs 1 through 10 of the Motion.

2. The paragraph which PSU opposes is as follows and provides a general exception to the specific provisions of the proposed Order:

7. No other person may have access to the Proprietary Information except as authorized by order of the Commission or the Presiding Administrative Law Judge. Such persons shall use and disclose such information only in accordance with this Protective Order.

The problem with this stated general exception is that it works to essentially swallow up the specific and defined Rule which identifies who may or may not have access to Highly Confidential information. Specifically, it is a loophole which would allow otherwise Restricted persons from gaining access to that information when the more specific Order Paragraph 5 Rule allows access by the parties to review the information to a

Information deemed as “HIGHLY CONFIDENTIAL” material may be provided to a “Reviewing Representative” who is:

- (i) An expert or an employee of an expert retained by a party for the purposes of advising, preparing for or testifying in this proceeding; or
- (ii) A person designated by agreement between the producing party and the non-producing party as a Reviewing Representative for purposes of HIGHLY CONFIDENTIAL PROTECTED MATERIAL; and who is

(iii) Not a “Restricted Party” as defined in Paragraph 6 of this Protective Order.

A qualified “Reviewing Representative” for “HIGHLY CONFIDENTIAL” material may review and discuss “HIGHLY CONFIDENTIAL” material with their client or with the entity with which they are employed or associated, to the extent that the client or entity is not a “Restricted Person”, but may not share with or permit the client or entity to review the “HIGHLY CONFIDENTIAL” material. Such discussions must be general in nature and not disclose specific “Highly Confidential” information.

3. Columbia’s counsel in Columbia’s Motion at paragraph 11 mentions in very general terms a concern it has about its ability to respond to Surrebuttal or rejoinder testimony “through further designations of Highly Confidential material.” It also references that the issue arose earlier in this proceeding, and that the parties were able to resolve their differences. This generalized concern is insufficient and no basis to argue against tightening this loophole or amending the paragraph to reflect such resolution. In fact, the resolution permitted was for another Columbia employee who did not meet the restricted person definition to review such testimony and indeed such person did so and also recently submitted supplemental rebuttal testimony on the subject. So, for starters, there is no problem existing to be solved by Columbia’s insistence on this loophole, and there is no reason why the same resolution could not happen again should such situation arise again.

4. It is a general rule of contract interpretation that specifics control over generals, and for that matter, that is the same view and analysis that is employed when construing legislation. There is no reason that the agreed specifics of whom should be entitled to review Highly Confidential information and who are Restricted Persons should be set aside to suit Columbia’s convenience and want to use Restricted Persons in situations which its Stipulated Protected Agreement and the proposed Proprietary Order preclude in *specific* language. Stated differently, if a party agrees to the specifics, then it should not be permitted to escape that agreement or provision simply because, for whatever reasons, it has not elected to utilize those

alternatives that are available under paragraph 5(a)(i)(ii)(iii) of the Proposed Order as a qualified “Reviewing Representative” for “Highly Confidential” material.

5. Thus, paragraph seven should be amended as follows:

7. No other person may have access to the Proprietary Information except as authorized *sua sponte* by order of the Commission or the Presiding Administrative Law Judge. Such persons shall use and disclose such information only in accordance with this Protective Order.

6. In the alternative, the following sentence should be added to the end of paragraph

7:

Any party seeking relief under this section must first establish as a prerequisite to relief that:

(i) It is unable under paragraph 5 to retain “an expert or employee of an expert retained by a party” for the purposes of advising, preparing or testifying in this proceeding; that it has been unable to achieve “a person designated by agreement between the producing party and the nonproducing party as a Reviewing Representative for purposes of highly confidential protected material; that it has no other employees or representatives who are not a restricted party as defined in paragraph six of this protective order.

7. In closing, it should be noted that in the instance referred to by Columbia’s counsel, the matter was resolved pursuant to paragraph 5(ii) as a person who was an employee of Columbia that was not restricted was able to review the information and indeed did file supplemental rebuttal testimony. On that basis alone, one could say there is no need at all for paragraph 7 as paragraph 5(ii) takes care of that potential situation. However, PSU respectfully requests that its proposed revision and alternative revision above be adopted so that there is no general loophole that can trump what essentially are agreed to specifics. Such amendment will discourage parties from going to the Commission and the Presiding Administrative Law Judge and instead will encourage them to resolve their differences pursuant to paragraph 5(ii) pertaining to Highly Confidential materials.

WHEREFORE, PSU respectfully requests that either of the foregoing revisions to paragraph 7 be made.

Respectfully submitted,



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Counsel for The Pennsylvania State University

DATED: July 29, 2015

CERTIFICATE OF SERVICE

Docket Nos. R-2015-2468056, C-2015-2473682,
C-2015-2477816; C-2015-2477120 and C-2015-2476623

I hereby certify that I have this day served a true copy of the foregoing document upon the parties, listed below, in the manner indicated below, and in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

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Dated: July 29, 2015