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August 17, 2015

VIA ELECTRONIC FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor (filing room)
PO Box 3265
Harrisburg, PA 17105-3265

RE: Pennsylvania Public Utility Commission v. Columbia Gas of Pennsylvania, Inc.; Docket No. R-2015-2469665; **EXCEPTIONS OF THE NATURAL GAS SUPPLIER PARTIES TO THE RECOMMENDED DECISION**

Dear Secretary Chiavetta:

Enclosed for filing with the Commission are the Exceptions of the Natural Gas Supplier Parties to the Recommended Decision in the above-captioned docket. Copies of the Exceptions have been served in accordance with the attached Certificate of Service.

If you have any questions concerning this filing, please do not hesitate to contact my office.

Very truly yours,

Todd S. Stewart
Counsel for Shipley Choice, LLC, Interstate Gas Supply, Inc. and Dominion Retail, Inc. ("NGS Parties")

TSS/jld
Enclosures
cc: ALJ Mark A. Hoyer (via email and first class mail)
Per Certificate of Service
OSA (via email – ra-OSA@pa.gov)

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: August 17, 2015

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission	:	
	:	
v.	:	Docket No. R-2015-2469665
	:	
Columbia Gas of Pennsylvania, Inc.	:	

EXCEPTIONS OF
THE NATURAL GAS SUPPLIER PARTIES
TO THE RECOMMENDED DECISION

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DATED: August 17, 2015

I. INTRODUCTION

The Recommended Decision's ("R.D.") "middle ground" position on the issue of the allocation of Universal Sharing Mechanism ("USM") revenue, is neither just nor reasonable because it expressly acknowledges that the present sharing allocation is not just or reasonable and then enshrines the same allocation percentages. The issue of Columbia Gas Company of Pennsylvania's ("Columbia" or the "Company") USM mechanism has been litigated before, as recently as the Company's 2014 1307(f) proceeding. In that case, the Pennsylvania Public Utility Commission ("Commission") found that there was insufficient evidence to conclude that the existing sharing mechanism must be changed, and instead ordered Columbia to file a study along with its 2015 1307(f) filing—which it did. In that study (Columbia Exhibit 16) Columbia states that while "capacity release" is the only type of transaction where 100% of the value is associated with capacity assets (storage and/or transportation), the vast majority of all the transactions that are called "off system sales" require the use of those same assets. RD at 24. And while Columbia's witness suggests that Columbia's access to gas is a necessary component of an off-system sales transaction, he never testifies that even one molecule of such gas must be purchase gas cost ("PGC") gas or whether PGC was ever a part of any off-system sales transaction. Columbia Statement No. 1-R at 4. That is, while those transactions do sometimes involve the sale of commodity, that commodity cannot be assumed to be PGC gas, nor must Columbia utilize PGC gas to engage in off-system sales.

The RD's failure to recognize this critical distinction is not, however, what makes it unjust or unreasonable, even though it clearly is the factual premise that, if properly appreciated, would likely have steered the decision in a different direction. What makes the RD unreasonable is the fact that it concludes that the present USM, which provides a default service customer a

USM credit that is 300% greater than a CHOICE customer (NGS Parties' Main Brief at 15-16), is unreasonable and then goes on to recommend a result that enshrines the same level of disparity. That is, the RD rejects the NGS Parties' position – that the lack of any discrete evidence on exactly what proportion of the off-system sales transaction (commodity v. capacity) is created by the value proposition for the end user and the utter lack of direct evidence that Columbia even needs to use one molecule of PGC gas for off-system sales – that the fairest and most efficient methodology would be to allocate 100% of the USM to the Purchase Gas Demand Charge ("PGDC"). The NGS Parties Exception No. 1 to the RD is based on this error.

What makes the RD unjust and unreasonable is the fact it concludes that Columbia's current USM is unsupported, but then inexplicably recommends implementation of a mechanism, that will, for the foreseeable future, provide the same allocation of revenue (approximately 300% more to PGC customers) that the RD just identified as being unsupportable. Furthermore, the RD's preferred USM methodology will still modify the USM sharing percentages going forward based upon shopping levels, which have nothing to do with the appropriateness of the allocation. Thus, the modified USM adopted in the RD does almost nothing to correct the current unsupportable and unreasonable USM methodology. For these reasons, with regard to the question of the appropriate allocation of USM revenues, the RD is in error and should be reversed. The NGS Parties' Exception No. 2 addresses this error.

The Commission should instead impose the sharing mechanism proposed by the NGS Parties that allocates 100 % of USM revenues to all customers equally through the PGDC on the same basis. Such an allocation would recognize that CHOICE customers pay for the critical assets at the same level as the default service customers, and thus, deserve an equal share of the profits from the optimization of those assets.

The second issue that was reserved for briefing is, simply stated, whether there was sufficient doubt raised in the testimony of Matt White, on behalf of the NGS Parties, to justify the Commission requiring Columbia to perform a study in its next 1307(f) case regarding the present means by which it recovers the costs of pipeline and storage capacity cause CHOICE customers to subsidize default service customers. Columbia's extensive argument in opposition to the request, in essence, states "we have always done it this way, and a study would be hard to do, so don't make us do it." The fact is, the costs for the capacity assigned to NGSs who participate in the CHOICE program are charged to and paid for by those NGSs. Those are the assets that deliver the 1/365th of a customer's annual expected usage every day, no peaking assets, no excess, rather it is the assets that allow for flat deliveries day in and day out. And yet, Columbia charges CHOICE customers the same PGDC rate (minus the amount billed to NGSs) that it charges default service customers. The PGDC rate charged to CHOICE customers appears to include some recovery of capacity costs that are used to provide daily deliveries to default service customers. Columbia's lengthy response did not refute the premise of the request, but rather provided a multitude of arguments as to why such a study would be impractical. On that basis, the RD rejected the NGS Parties request and in doing so, committed error that must be corrected by the Commission. The NGS Parties' Exception No. 3 addresses this error.

The fundamental legal underpinnings of these three Exceptions is that the *Pennsylvania Public Utility Code*, 66 Pa. C.S. § 1304, prohibits any unreasonable discrimination as to rates as between similarly situated customers. Likewise, the *Natural Gas CHOICE and Competition Act*, 66 Pa. C.S. § 2203(4) requires NGDCs to provide distribution service to all retail gas customers on a non-discriminatory basis. The unsupported allocations enshrined in the RD and that are the subject of Exceptions 1 & 2 clearly violate these prohibitions by setting up a contrived rate scheme that clearly discriminates shopping and non-shopping customers with no factual basis for doing so, rendering the process arbitrary as well as discriminatory. Exception No. 3 also implicates these same two statutory requirements. If there is the obvious appearance of an unwarranted subsidy, and the Commission did not seek to determine whether there was in fact such a subsidy, and the extent thereof, then the Commission would be failing in its duties to ensure non-discriminatory rates. For all the reasons stated herein, as well as those stated in its main and reply briefs, the NGS parties hereby request that the following Exceptions be granted and that the RD of Administrative Law Judge Mark Hoyer be revised accordingly.

II. ARGUMENT

EXCEPTION NO. 1 – The RD erred by rejecting the NGS Parties' proposal. (RD at 65)(NGS Parties' MB at 7-13).

The NGS Parties' proposal is that USM revenue be shared equally by the customers because all customers (including CHOICE customers) pay for the assets that make it possible for Columbia to engage in transactions to maximize revenues from the otherwise under-utilized assets. Stated differently, the only assets paid for by customers that are necessary for Columbia to engage in any of the transactions described in Columbia Exhibit 16 (whether labeled capacity release or off-system sales,) are the capacity assets that all customers pay for on an equivalent basis through the PGDC. The NGS parties propose, therefore, that the USM revenue be returned to all customers in the same fashion, through the PGDC. The NGS Parties submit that there is no evidence on the record in this matter that refutes this position.

Moreover, even if one were to disagree, and conclude that there was some component of gas supply in addition to capacity involved in some of the USM transactions, no party can contend that there is any evidence on the relative value that the gas component provided to the purchaser; much less, the evidence that the gas component justifies 300% more USM revenue allocation to the PGC. Indeed, the evidence presented on the record by NGS parties (which was ignored in the RD) was that Columbia's purchase of NGS gas is inconsequential to whether Columbia was able to earn revenues from its capacity assets. Thus, in this vacuum, the only allocation methodology that is supportable is that proposed by the NGS Parties, which does not discriminate but rather shares the USM revenue equally.

As discussed at length in the NGS Parties' Main and Reply Briefs, there are a number of factual assertions that have taken on the mantel of fact in this case, when indeed they have not been established as such. Among those assertions, the primary and most critical, is the factual assertion that Columbia's purchase of gas for PGC customers is related to the amount of revenue Columbia is able to earn as part of any off-system sales transaction. This assertion is not proven in the record, and yet it is the primary basis for the OCA's opposition to the NGS Parties' position, as discussed in the OCA's Brief (OCA MB at p. 3, fn. 1; MB at 7) and appears to form the basis of the ALJ's conclusion that the NGS Parties' proposal fails to account for Columbia's use of PGC gas as part of off-system sales transactions. (RD at 66). However, when one actually reads the rebuttal testimony of Mr. Catron, the only place where Columbia's testimony directly addresses the notion of whether it actually needs to use, or in fact has used PGC gas to make off-system sales, Mr. Catron equivocates:

> While Mr. White speculates that Columbia could engage in off system sales transactions regardless of whether it had supply obligations for retail customers, the fact remains that Columbia is purchasing supplies to ensure that gas is available to meet needs [*sic*] of its core customers (PGC and CHOICE) at all times, up to design day conditions and the availability of those supplies, and capacity, is needed to make off-system sales.

CPA St. No 1-R, 4:14-19. This statement hardly confirms that the sale of PGC is needed to engage in off-system sales transactions, and even if it did, the testimony provides no basis on which to impose the current USM mechanism that allocates 93% of the actual dollars to default service customers. NGS Parties' MB at 16. Even if the OCA's overreaching interpretation of Mr. Catron's testimony were correct, and the Company did use PGC gas to make off-system sales, there is not so much as an *iota* of evidence in the record to suggest how much incremental revenue Columbia was able to achieve from its use of PGC gas. As Mr. White notes in his testimony presented in the proceeding, any entity that held Columbia's pipeline asset could engage in the same USM transactions with wholesale gas; thus Columbia's obligation to purchase retail gas for customers in no way affects Columbia's ability to earn USM revenues from the pipeline assets it holds. NGS St. No. 1, 8 – 9.

The only specific attribution of revenue relates to capacity release, not the sales component, and as Mr. Catron unequivocally states, it is "impossible" to distinguish how end users value the transaction as between the commodity (which may or may not be PGC gas) and capacity. What this means is that there is ***no*** evidence to support a USM allocation which effectively allocates 300% more USM revenues to PGC customers. Rather, the RD justified adopting a USM sharing mechanism that allocates significantly more revenue to the PGC based on mere conjecture.

The NGS Parties respectfully submit that their proposal is supported in the record – Mr. White has testified that the value of all the so-called "off-system sales" transactions is based solely on Columbia's ability to employ its excess capacity resources, as commodity is in abundant supply and it is capacity that is in short supply. NGS Parties St. No. 1 at 12-15 and 1-SR at 3-8. Accordingly, it was error for the Presiding Administrative Law Judge to reject the NGS Parties' proposal.

EXCEPTION No. 2 – The USM Adjustment Mechanism Approved by the RD is Unjust, Unreasonable, and Fails to Correct the Same Issues that are inherent in the Current USM. (RD at 66-68)(NGS Parties' MB at 13-16).

There are obvious factual deficiencies at the heart of the reasoning by which the RD rejected the NGS Parties' proposal to share 100% of the USM revenues with all customers equally through the PGDC. Unfortunately, the RD's endorsement of the USM adjustment methodology proposed by the Commission's Bureau of Investigation and Enforcement ("I&E") suffers the same flaw. The ALJ starts out in the correct direction, by expressly finding that the current 60/40 sharing mechanism is not reasonable:

> The undersigned ALJ first concludes that the existing 60 percent/40 percent split contained in Columbia's filing and supported by the OCA in this proceeding is not reasonable in light of the USM study conducted by Columbia. (RD at 65).

However, it becomes clear that the ALJ mistakenly agrees with the premise that PGC gas is a necessary component of off-system sales, and he chooses to recommend what can properly be called an 'adjustment mechanism' proposed by I&E. The flaw in approving I&E's adjustment mechanism is that it in no way alters the current disparity in the amount of USM revenues being allocated between PGC and CHOICE customers, but rather effectively maintains the USM allocation at current levels of sharing, at levels that the ALJ has already deemed to be unreasonable.

Furthermore, while the sharing mechanism adopted by the RD may have modified the USM mechanism to ensure the allocation of revenues to the PGC does not increase as shopping increases. The RD's recommended USM mechanism actually does the exact opposite. As shopping declines, a higher percentage of USM revenues would be allocated to the PGC. As Mr. White made clear, "[t]his methodology would actually have the potential to worsen the inequity of the USM revenue allocated between PGC customers and CHOICE customers." (NGS Parties' Statement No. 1-R at 4:17-18). Thus, the mechanism proposed in the RD actually fixes one problem, just to create another problem. However, there is no evidence in this record that shows in any meaningful way that increased shopping levels have anything to do with Columbia's ability to make off-system sales.

That is, there is no factual basis to conclude that Columbia will need to retain fewer capacity assets if shopping increases. It is possible that Columbia would need the same amount of capacity assets, but there is no basis to conclude that it would require fewer such assets. And while it may be true that Columbia would need to purchase fewer actual gas supplies, there is no evidence in this record as to how much such supplies are a part of or valued by off-system sales transactions. Accordingly, there is no basis to conclude that an increase in shopping will increase or decrease capacity release or off-system sales revenue. Stated differently, there is no evidence, other than unsupported conclusions, that changes in shopping levels correlate with USM revenue.

However, there is evidence showing that increases in shopping increase the disparity caused by the current shopping mechanism. The reason for this is that as the denominator of the equation by which the PGCC share of revenue is allocated shrinks – as more customers shop and no longer pay the PGCC – the amount of revenue allocated per customer increases dramatically.

In what the NGS Parties can only hope was an effort to address this singular disparity in the future, Columbia proposed in this case, an elaborate mechanism that will adjust the allocation of the credit moving forward so when all customers are shopping, 100% of the credit will be allocated to those CHOICE customers. There are two major flaws with this approach: 1) it fails to recognize that the current allocation levels are unjust and unreasonable; and, 2) it only adjusts the allocation percentages if shopping levels change. This latter problem is worsened by the fact that the current disparate credit mechanism actually discourages customers from shopping by creating the illusion that PGC gas is less expensive than it really is because of the subsidy being provided by CHOICE customers to default service customers. In short, by imposing the adjustment mechanism, the RD simply enshrines the current flawed methodology with the hope that someday if more customers shop (in spite of the economic incentives to not do so) perhaps the allocation will change. Tragically, the adjustment mechanism does not solve the flawed allocation percentages that appear to have led the ALJ to reject the current USM.

If the Commission intended to require Columbia to conduct yet another study to expressly determine the appropriate value proposition for off-system sales transactions – as between the commodity and the capacity – with a goal of adjusting the current 60/40 sharing mechanism to account for the result, an adjustment mechanism such as the one recommended by the ALJ might make sense. The NGS Parties have posited, however, that such an effort is not needed because the facts make it clear that 100% of the USM revenue should be allocated to all customers through the PGDC. However, if the Commission were to nonetheless tread the path of imposing any adjustment mechanism, it must first adjust the percentages to some fact-based levels, not today's conjectured and unsupported numbers. The RD failed to recognize this necessary first step and therefore is in error.

EXCEPTION No. 3 – The RD Wrongly Rejects the NGS Parties' Request for a Study. (RD at 82-83)(NGS Parties' MB at 18-20).

The NGS Parties' witness reviewed Columbia's filing and concluded that there is a definite appearance that CHOICE customers are subsidizing default service (also referred to as "PGC") customers through the PGDC. (NGS Parties' St. No. 1 at 15-17).

As discussed above, the PGDC is the rate mechanism by which Columbia recovers the costs of the pipeline and storage capacity it purchases both in its role as the default supplier and in its role as operator of the distribution system. As default supplier it must deliver gas into the system to serve the baseload needs of customers who have not shopped. As distribution system operator, it must have assets to meet the vagaries of weather and usage based variances that inevitably arise, so that PGDC assets allow the Company to flow more gas on high usage days, or inject gas into storage when usage is lower than anticipated. The PGDC rate mechanism recovers the costs of these two general categories of expenses from all CHOICE-eligible customers. The PGDC for CHOICE customers is adjusted to account for the fact that Columbia directly assigns pipeline capacity on two interstate pipelines to NGSs that serve CHOICE customers and those NGSs pay for that capacity directly to the pipeline, so Columbia assumes, for purposes of calculating the PGDC, that those charges are paid by the NGS' customers and does not charge them twice.

It was this mechanism that Mr. White was reviewing when he concluded that it appears that CHOICE customers are subsidizing default service customers. The reasoning is that if all the costs of all the capacity assets were thrown into the PGDC bucket, including the costs of the pipeline assets assigned to NGSs, then a single unified PGDC would be fair, as all customers would be paying the average per unit costs of that bundle of assets. But that is not what is happening. Rather, Columbia extracts the costs of the pipeline capacity assigned to NGSs for their required daily deliveries of 1/365th of annual customer usage, and charges that to the NGSs. In other words, those costs are taken out of the bucket before the average per unit cost is calculated. What this means is that NGS customers pay separately for the pipeline capacity that is used to serve them, but then are required to pay a PGDC that includes all the costs of the baseload capacity used to supply PGC customers, who, by the way, make up of 2/3 of Columbia's customers. Mr. White does not dispute the inclusion of the peaking assets in the PGDC bucket, because those benefit all customers. But he does object to the inclusion of pipeline assets used to make PGC daily deliveries because they clearly are not used to deliver gas to NGS customers. This is the basis of Mr. White's analysis.

In its testimony and in its main brief, Columbia focused on convincing the ALJ that it was simply impossible to separate out financial responsibility for capacity assets on a customer specific basis and therefore it would be impossible for Columbia to perform the requested study. Columbia also argued, for a number of reasons, none of which refutes Mr. White's contention that there is a strong appearance of a subsidy, that requiring it to perform such a study would be unreasonable. The RD adopts this position and is therefore in error.

The NGS Parties submit that neither Columbia's impassioned misdirection nor the ALJ's apparent belief that Columbia in fact does not know what capacity assets it uses to serve its customers, changes the obvious – CHOICE customers appear to be subsidizing default service customers. Columbia's protests simply cannot be allowed as a reason to excuse it from providing the analysis that either confirms this fact, so that it can be corrected, or disproves that which appears to be otherwise obvious. The NGS Parties Except to the RD's acceptance of Columbia's diversionary tactics, and request that Columbia be required to perform the requested study.

III. CONCLUSION

While the NGS Parties appreciate the analytical effort of the RD, they disagree with nearly all of its conclusions with respect to their issues of concern. It is absolutely clear that under any construction of the actual evidence, that CHOICE customers receive a USM credit that is unconscionably and discriminatorily small when compared to the value they contribute to the PGDC that pays for the assets that make the revenue possible in the first instance. The RD's failure to recognize and remedy this obvious discrimination is in error. Likewise, the RD's failure to recognize the need to adjust the USM sharing mechanism before imposing an adjustment mechanism also constitutes reversible error. Finally, in failing to recognize the high degree of potential discrimination caused by the current USM mechanism and the inherent subsidy of default service that results, the RD similarly is in error. For all these reasons, as well as those stated in their main and reply Briefs, the NGS Parties Except to the RD and request that the Commission reverse and revise it in accordance with these exceptions.

Respectfully submitted,

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DATED: August 17, 2015