**PENNSYLVANIA**

**PUBLIC UTILITY COMMISSION**

**Harrisburg, PA 17120**

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|  | Public Meeting held August 6, 2020 |
| Commissioners Present:  Gladys Brown Dutrieuille, Chairman  David W. Sweet, Vice Chairman  John F. Coleman, Jr.  Ralph V. Yanora |  |
| Pennsylvania Public Utility Commission  Office of Small Business Advocate  Office of Consumer Advocate  v.  Columbia Gas of Pennsylvania, Inc. | R-2020-3018835  C-2020-3019702  C-2020-3019714 |
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**OPINION AND ORDER**

**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is a Petition for Reconsideration of Staff Action filed on June 23, 2020, by Columbia Gas of Pennsylvania, Inc. (Columbia or Company) in the above-captioned proceeding, seeking reversal of the June 3, 2020 Order (*Extension Order*) issued by the Chief Administrative Law Judge Charles E. Rainey, Jr. (CALJ), in which he granted the Expedited Motion of the Bureau of Investigation and Enforcement (I&E) filed on May 29, 2020, in this proceeding (Expedited Motion), and the Answers to Columbia’s Petition filed by I&E, the Office of Consumer Advocate (OCA), and the Office of Small Business Advocate (OSBA).

By granting the Expedited Motion, the CALJ extended the established rate suspension period under Section 1308(d) of the Public Utility Code (Code) by twelve (12) days, from January 23, 2021, to February 4, 2021,[[1]](#footnote-2) for the purpose of establishing a reasonable procedural schedule in this proceeding.

After full consideration of the Petition, the Answers, the *Extension Order*, and the procedural schedule in this matter, for the reasons discussed more fully below, we shall grant, in part and deny, in part, the Petition, affirm the CALJ’s *Extension Order*, and direct the Office of Administrative Law Judge (OALJ) to modify the litigation schedule appearing in the Amended Prehearing Order issued by Administrative Law Judge (ALJ) Katrina L. Dunderdale on June 15, 2020, in this proceeding (*Amended Prehearing Order*) consistent with this Opinion and Order.

**Background**

On March 6, 2020, the Governor of the Commonwealth of Pennsylvania, Tom Wolf, issued the Proclamation of Disaster Emergency pursuant to Section 7301(c) of the Emergency Management Services Code, 35 Pa. C.S. §§ 7101, *et seq*. (*Executive Order*) to address the exigencies created by the COVID-19 global pandemic.

On March 15, 2020, the Commonwealth of Pennsylvania’s Deputy Secretary for Human Resources and Management issued an Executive Order implementing protocols for remote telework for state offices in Dauphin County and the Capital Complex, including the Commission’s offices, as amended, beginning March 16, 2020, and extending at least through a period effective as of the entry date of this Opinion and Order.

On March 19, 2020, the Governor’s Office issued an order closing all businesses that were not life sustaining.[[2]](#footnote-3)

On March 20, 2020, the Commission issued the *Emergency Order Re Suspension of Regulatory and Statutory Deadlines; Modification to Filing and Service Requirements*, Docket No. M-2020-3019262 (*Emergency Order*), to furnish guidance on the conduct of Commission proceedings during the pendency of the COVID-19 disaster emergency. Specifically, the *Emergency Order* directs, in part, that:

Parties to proceedings before the Commission are

encouraged to cooperate regarding the suspension, extension,

waiver or change of any regulatory, statutory or procedural

deadlines in connection with the performance of any obligation

prescribed by the Public Utility Code or other applicable law.

*Emergency Order* at 4. The *Emergency Order* further provides that:

[I]n pending rate case litigation, the Chief ALJ is authorized to

establish reasonable deadlines under the circumstances after

consideration of the positions of the parties and the presiding Administrative Law Judge. The Chief ALJ’s decision would then be subject to review by the Commission.

*Emergency Order* at 2. Additionally, in response to the *Executive Order*, the Commission adopted broader electronic filing practices, ceased paper service on and by the Commission for the duration of the emergency, and has encouraged other flexible procedures to allow the Commission to continue to operate through the emergency.

On April 13, 2020, the Pennsylvania Supreme Court ruled that the Governor’s *Executive Order* is a legal exercise of authority granted to the Governor under the Emergency Management Services Code. *See* *Friends of Danny DeVito et al. v. Tom Wolf, Governor, et al*., 227 A.3d 872 (Pa. 2020), 2020 Pa. LEXIS 1987 (*DeVito)*, \*25 (citing 35 Pa. C.S. § 7301(f)).

Beginning in late May 2020, the reopening phase began under Governor Wolf’s program that has allowed Counties to move towards reopening business and government locations through a series of progressively less-restrictive reopening protocols under the Governor’s Red-Yellow-Green designations.

On June 3, 2020, Governor Wolf renewed the *Executive Order* for an additional ninety days.[[3]](#footnote-4)

On July 1, 2020, the Commonwealth of Pennsylvania’s Secretary of the Department of Health issued an Order[[4]](#footnote-5) and on July 15, 2020, the Governor[[5]](#footnote-6) and the Secretary of Health[[6]](#footnote-7) each signed new orders, effective July 16, 2020, for statewide targeted mitigation efforts in response to the recent rise in COVID-19 cases. These Orders included, *inter alia*, mandating the use of universal face coverings in public, beginning immediately, and further directing the continuation of telework within the Commonwealth.

As of the entry date of this Opinion and Order the Commission’s office buildings remain closed due to the COVID-19 disaster emergency, however, the Commission remains fully operational with its staff teleworking.

**History of the Proceeding**

On February 19, 2020, Columbia submitted its Notice of Intent to file data and testimony in support of its proposed general base rate increase on or about March 20, 2020. Due to the then-emerging COVID-19 pandemic crisis, Columbia voluntarily requested a delay to the filing of its general rate case,[[7]](#footnote-8) and, on March 24, 2020, filed for a waiver of 52 Pa. Code § 53.52(b)(2), requesting a thirty-day extension for Columbia to file data and testimony in support of its proposed increase in base rates on or before April 28, 2020. By Secretarial letter dated March 27, 2020, the Commission granted Columbia’s request.

On April 24, 2020, Columbia filed Supplement No. 307 to Tariff Gas Pa. P.U.C. No. 9, issued to be effective for service rendered on and after June 23, 2020. The filing proposed changes to Columbia’s distribution base rates designed to produce an increase in annual revenues of approximately $100.4 million.

On April 27, 2020, I&E filed a Notice of Appearance. The OSBA and the OCA filed formal complaints on May 4, 2020 and May 5, 2020, respectively. The Community Action Association of Pennsylvania, the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA), and the Columbia Industrial Intervenors filed Petitions to Intervene.

By Order entered May 21, 2020 pursuant to 66 Pa. C.S. §1308(d), the Commission suspended Columbia’s general base rate increase filing by operation of law until January 23, 2021 (Suspension Order) and instituted an investigation to determine the lawfulness, justness, and reasonableness of the Company’s existing and proposed rates, rules and regulations. In compliance with the Commission’s Suspension Order, on May 29, 2020, Columbia filed Tariff Supplement No. 310, effective on January 23, 2021.

On May 29, 2020, I&E filed its Expedited Motion, requesting that the Commission extend the statutory suspension period by twelve days, from January 23, 2021 to February 4, 2021. In support of its Expedited Motion, I&E stated that additional time is needed to review the rate filing and present I&E’s case given that I&E’s staff members are currently working remotely due to the COVID-19 pandemic and, thus, lack access to full office resources. Expedited Motion at ¶ 15.

On June 2, 2020, Columbia and the OCA filed Answers to I&E’s Motion. In its Answer, Columbia proposed an alternative extension to the procedural schedule without involuntarily extending the statutory suspension period. Specifically, Columbia proposed that the procedural schedule be extended to allow consideration of the case at the Commission’s February 4, 2021 Public Meeting, the same Public Meeting date requested by I&E for consideration of this matter in its Motion, with compliance rates to become effective as of January 23, 2021, the end of the statutory suspension period.

On June 3, 2020, a telephonic prehearing conference was held with ALJ Dunderdale presiding and the CALJ participating. During the prehearing conference, the Parties argued their respective positions on I&E’s Motion. After deliberation with ALJ Dunderdale, the CALJ delivered his ruling granting I&E’s Motion and indicated a written order would follow.

On June 3, 2020, the CALJ issued the *Extension Order* granting I&E’s Expedited Motion and extending the Section 1308(d) suspension period until February 4, 2021. The *Extension Order* made no reference to Columbia’s alternative proposal. In the *Extension Order*, the CALJ directed any party seeking to challenge the ruling to file a Petition for Reconsideration from Staff Action pursuant to Section 5.44 of the Commission’s Regulations within twenty days.

On June 5, 2020, the Parties provided suggested dates for the litigation schedule. Thereafter, the presiding officer, ALJ Dunderdale, requested, and received, clarifying information about the technology and procedure to be used by witnesses and non-testifying participants at the telephonic public input hearings. On June 12, 2020, the presiding officer issued the Prehearing Order which memorialized the matters discussed by the Parties during the prehearing conference on June 3, 2020 and which established the litigation schedule.

On June 15, 2020, ALJ Dunderdale issued the *Amended Prehearing Order* establishing the litigation schedule, as agreed to by the Parties at the prehearing conference and consistent with the CALJ’s decision to grant additional procedural time in this proceeding.

As noted above, on June 23, 2020, Columbia filed the Petition currently before us. On July 6, 2020, I&E and the OCA each filed an Answer to the Petition. On July 10, 2020, the OSBA filed an Amended Answer to the Petition.

The Petition and Answers are now ripe for decision.

**Discussion**

**A. Legal Standards**

In the *Emergency Order*, in pertinent part, we declared that while the *Emergency Order* is in effect, a decision by a Commission Bureau Director to suspend, extend, waive or change “any regulatory, statutory or procedural deadline,” is reviewable by the Commission pursuant to Section 5.44 of the Commission’s Regulations upon the filing of a petition for reconsideration of staff action by an affected party.[[8]](#footnote-9) *Emergency Order* at 2, 4, OP No. 6.

When evaluating appeals from a Commission staff action under 52 Pa. Code § 5.44, the applicable legal standard is that the moving party has the burden of proof.[[9]](#footnote-10) *See, e.g., Application of Airquest*, Docket No. A-2015-2493073 (Order entered December 8, 2016) (request for reconsideration of secretarial letter denying application for failure to comply with conditions); *Application of Dep’t of Transportation (Norfolk),* Docket No. A-2018-3003795 (November 19, 2019) (request for reconsideration of secretarial letter approving application with conditions).

In the *Emergency Order*, the Commission delegated authority to Bureau Directors, including the CALJ, to suspend, extend, waive, or change any statutory or regulatory deadline which may hinder, rather than further, the mission of the Commission. Specifically, we stated as follows:

Similar to other actions where we have delegated various duties to Commission bureaus, we now delegate the authority to determine the suspension, extension, waiver or change of any regulatory, statutory or procedural deadlines to individual Commission Bureau Directors whose bureaus are tasked with matters before the Commission. Each Bureau Director will make decisions regarding the necessity of modifying such deadlines. Modifications may result from a request by a party or the tribunal/bureau staff itself.

…

All Bureau Directors are hereby delegated the authority to suspend, extend, waive or change a statutory or regulatory deadline *which may hinder, rather than further, the mission of the Commission*, after consultation with all interested parties, as deemed necessary and appropriate.

*Emergency Order* at 2, 4, Ordering Paragraph (OP) No. 4 (emphasis added).

In applying such delegated authority in general base rate cases, we stated as follows:

[I]n pending rate case litigation, the Chief Administrative Law Judge is authorized to establish reasonable deadlines under the circumstances after consideration of the positions of the parties and the presiding Administrative Law Judge. The Chief Administrative Law Judge’s decision would then be subject to review by the Commission.

*Emergency Order* at 2.

We encouraged parties appearing before us in proceedings to cooperate regarding procedural extensions, stating as follows:

Parties to proceedings before the Commission are encouraged to cooperate regarding the suspension, extension, waiver or change of any regulatory, statutory or procedural deadlines in connection with the performance of any obligation prescribed by the Public Utility Code or other applicable law.

*Emergency Order* at 4, OP No. 1 (emphasis added).

Finally, it is well settled that we are not required to consider expressly or at length each contention or argument raised by the parties. [*Consolidated Rail Corporation v. Pa. PUC*,625 A.2d 741 (Pa. Cmwlth. 1993);](file:///C:\research\buttonTFLink?_m=69761b6202cb4178e2a6e6fe02f5751b&_xfercite=%3ccite%20cc=%22USA%22%3e%3c!%5bCDATA%5b2000%20Pa.%20PUC%20LEXIS%2067%20%5d%5d%3e%3c\cite%3e&_butType=3&_butStat=242&_butNum=5&_butInline=1&_butinfo=%3ccite%20cc=%22USA%22%3e%3c!%5bCDATA%5b625%20A.2d%20741%5d%5d%3e%3c\cite%3e&_fmtstr=FULL&docnum=5&_startdoc=1&_startchk=1&wchp=dGLSzS-lSlbz&_md5=ad2b02d95c2a9216e83b92a3570d4785) *also see, generally,* [*University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).](file:///C:\research\buttonTFLink?_m=69761b6202cb4178e2a6e6fe02f5751b&_xfercite=%3ccite%20cc=%22USA%22%3e%3c!%5bCDATA%5b2000%20Pa.%20PUC%20LEXIS%2067%20%5d%5d%3e%3c\cite%3e&_butType=3&_butStat=242&_butNum=6&_butInline=1&_butinfo=%3ccite%20cc=%22USA%22%3e%3c!%5bCDATA%5b485%20A.2d%201217%5d%5d%3e%3c\cite%3e&_fmtstr=FULL&docnum=5&_startdoc=1&_startchk=1&wchp=dGLSzS-lSlbz&_md5=9b1cc8319afd12440738bb82d74455ef) Thus, any argument in the Petition that we do not specifically address shall be deemed to have been duly considered and denied without further discussion.

**B. Petition and Answers**

1. **Columbia**

In the Petition, Columbia contends that the *Extension Order* is contrary to the Code, appellate case law, and the Commission’s own precedent, and exceeds the scope of Governor’s *Executive Order* and the Commission’s *Emergency Order* by impermissibly waiving, or modifying the operation of, Section 1308(d) of the Code, for the purpose of appropriate rate recovery. Petition at 1-2, 6-13. Columbia argues that, by its operation, Section 1308(d) is a substantive statute addressing an affected utility’s substantial property right – in relevant part, the right to rate relief in the event a final order from the Commission in a general base rate increase proceeding takes effect after the end date of the statutorily-mandated, seven-month rate suspension period. Petition at 11 (citing *Allegheny Ludlum Steel Corp. v. Pa PUC*, 447 A.2d 675 (Pa. Cmwlth. 1982), *aff'd*, 459 A.2d 1218 (1983).

Columbia submits that the Commonwealth Court has affirmed that the Commission does not have the power to extend the effective date of rates beyond the suspension period provided in Section 1308(d). Petition at 8-9, 11 (citing, *inter alia*, *Bell Telephone Co. of Pa. v. Pa. PUC*, 452 A.2d 86 (Pa. 1982), *aff’d per curiam*, 482 A.2d 1272 (Pa. 1984) (*Bell Tel. Co*.) (rejecting a Commission Order that prevented the application of newly authorized base rates until the approval of a compliance filing after the end of the statutory suspension period); citing also, *Phila. Suburban Water Co. v. Pa. PUC*, 808 A.2d 1044, 1056 (Pa. Cmwlth. 2002) (“[A]n agency cannot waive a mandate of statute because it is in the public interest”… “a statutory command defines the public interest, and an administrative agency established to enforce that statutory command simply lacks the authority to issue countermand orders.”). Columbia further argues that the Commission’s own precedent acknowledges a utility’s statutory right to have new rates go into effect no later than the end of the suspension period. Petition at 9 (citing *Petition of Philadelphia Electric Company for Declaratory Order*, Docket No. P‑890349, 1989 Pa. PUC LEXIS 56 (Opinion and Order entered Mary 3, 1989).

Columbia argues that: (1) by the terms of the Governor’s *Executive Order* and the Commission’s *Emergency Order*, neither document permits or authorizes an administrative agency’s waiver or modification of substantive statutes, like Section 1308(d) but rather both documents only address procedural statutes and regulations; (2) adhering to Section 1308(d)’s rate suspension period would not “prevent, hinder or delay necessary action in coping with [the COVID-19] emergency” or interfere “with the overall conduct of Commission business in the public interest during the emergency.” Petition at 9-10 (citing the *Executive Order* and *Emergency Order*); and (3) the Parties can review this base rate case and the Commission can issue an order without modifying the suspension period even if the Commission’s decision is not issued before the expiration of the suspension period, so long as the associated and appropriate rate relief is provided. As such, Columbia argues, the Commission’s ability to administer the Code will not be hindered by the statutorily mandated suspension period for rates to become effective, and no change to that suspension period date is necessary. Petition at 6-8, 12. Accordingly, Columbia argues the Commission must follow the operation of Section 1308(d) because an involuntary extension of statutory suspension, without the accompanying and appropriate rate relief, exceeds the scope of the Governor’s *Executive Order* and the Commission’s *Emergency Order*. Petition at 9-13.

Additionally, Columbia contends the *Extension Order* does not address its alternative proposal presented in this proceeding. Petition at 2, 13-15. Columbia submits that, despite its opposition to extending the statutory suspension period, it presented a reasonable alternative to I&E’s request, which would have granted I&E’s request for an extension of the procedural schedule but allow Columbia to implement compliance rates after approval by the Commission, effective as of the end of the statutory suspension period, or January 23, 2021, utilizing a recoupment surcharge. Regarding the recoupment surcharge, Columbia asserts as follows:

[T]o the extent the *Emergency Order* authorizes a modification to the process set forth in Section 1308(d), it unquestionably must also authorize a billing adjustment back to the statutory suspension date.

Petition at 13, fn. 12. Columbia submits that I&E agreed to its alternative proposal. Petition at 13-15 (citing Tr. at 9). Columbia explains that although its proposal to use a recoupment surcharge is slightly different from the refund plus interest process for rate recovery set forth in Section 1308(d), it achieves the same substantive result. Petition at 14 (citing Tr. at 10, 15; *Pa. PUC v. West Penn Power Company, et al.*,Docket Nos. R‑2014-2428742, *et al.* (Order entered October 22, 2014) *(West Penn Power)* (approving voluntary suspension of rates beyond statutory period provided that utility will recoup through a surcharge revenues lost at the final approved rates for the period from the end of the statutory suspension period through the date the Commission makes its approved rates effective by approving the requisite compliance filing)).

Columbia requests that we acknowledge this alternative procedural schedule and make a ruling upon it in this Opinion and Order. Petition at 2, 13-15.

1. **I&E**

In its Answer, I&E requests the Commission to deny Columbia’s Petition because the Commission’s *Emergency Order* granted the CALJ the authority to extend statutory deadlines. I&E contends that in normal circumstances, a utility’s proposed rates would take effect at the end of the seven-month suspension period under Section 1308(d). However, I&E argues, the Parties to this base rate proceeding are not working under normal circumstances given the existence of the COVID-19 pandemic and the Commission’s *Emergency Order*. I&E Answer at 5-6. I&E argues that the Commission’s *Emergency Order* provides the Commission the authority to suspend, extend, waive, or change any regulatory, statutory or procedural deadlines prescribed in the Code or the Commission’s Regulations, as a result of the Governor’s *Executive Order*. I&E Answer at 6. I&E criticizes Columbia and other similarly-situated stakeholders for failing to seek clarification of the Commission’s authority under the *Emergency Order* and argues that the absence of such a request for clarification only furthers I&E’s position that Columbia acknowledged the Commission’s authority to modify, waive or extend a substantive statute when the *Emergency Order* was issued. I&E Answer at 6.

As for Columbia’s alternative proposal, I&E acknowledges that it agreed to this proposal at the telephonic prehearing conference before both the presiding ALJ and the CALJ, but I&E seeks to clarify that it is I&E’s understanding that Columbia is not requesting that the procedural schedule with the twelve extra days be altered but rather Columbia is only requesting that the recovery period begin on January 23, 2021, which is the end of the seven-month rate suspension period under Section 1308(d). Thus, I&E requests that if the Commission decides that the Columbia base rate case suspension date of January 23, 2021 applies, that such date only applies to the effective date of new rates and that it shall not impact the extended procedural schedule already approved in this proceeding. I&E Answer at 7-8.

1. **OCA**

In its Answer, the OCA requests the Commission to deny Columbia’s Petition and contends that the CALJ acted within his authority according to the Governor’s *Executive Order* and the Commission’s *Emergency Order* when he decided to extend the suspension period in Section 1308(d) of the Code. The OCA argues that Columbia’s reading of these documents is too narrow, as both documents clearly apply to regulatory statutes, not just procedural deadlines. In support thereof, the OCA submits that the Commission’s *Emergency Order* even references rate cases and the deadlines associated with rate cases. The OCA argues that the statutory suspension period is a deadline that drives the rate case schedules. OCA Answer at 6-8. In addition, the OCA argues that the cases cited by Columbia in its Petition are unpersuasive, as these cases were determined at times when the Commonwealth was not in the midst of a global pandemic or while the Commission’s *Emergency Order* was in place. OCA Answer at 9‑10. Furthermore, the OCA argues this case is distinguishable from *Bell Tel. Co*. because “[i]n the instant case, there is no disagreement that the rates determined by the Commission will go into effect at the end of the suspension period established by the CALJ.” OCA Answer at 9. Moreover, the OCA notes that in *West Penn Power*, the case was settled prior to the end of the original expiration of the statutory period and the surcharge mechanism did not take effect. OCA Answer at 9. Furthermore, the OCA notes that the Parties in support of the extension are facing limitations brought on by the COVID-19 pandemic, including for example, personnel working remotely, not having usual access to physical files, photocopying, U.S. mail, support staff and other support services. The OCA argues that this list of challenges created by the COVID-19 pandemic *will* “prevent, hinder or delay” the necessary action of thoroughly investigating the rate increase filing and having a decision before the expiration of the suspension period. OCA Answer at 10-11.

As for Columbia’s alternative proposal, the OCA submits that Columbia’s proposal was rightfully not a factor in the CALJ’s decision because his decision was “whether or not the parties requesting or in support of the extension of the statutory suspension period presented a basis for exercising his authority granted to him” through the Governor’s *Executive Order* and the Commission’s *Emergency Order*. The CALJ determined that the Parties in support of the extension did, in fact, provide a basis for concluding that, under the circumstances surrounding the COVID-19 pandemic, it was reasonable to extend the deadline of the statutory suspension period by twelve days. OCA Answer at 12-13. In sum, the OCA argues that the CALJ was under no mandate by the *Emergency Order* to adopt Columbia’s proposal or to make accommodations for Columbia in extending the statutory suspension period. OCA Answer at 13.

1. **OSBA**

In its Amended Answer, the OSBA argues that the Pennsylvania Supreme Court has ruled that the Governor’s *Executive Order* is a legal, valid exercise of authority granted to the Governor and has also ruled that statutes “prescribing the procedures of the conduct of Commonwealth business,” as well as the Commission’s “orders, rules or regulations” may be suspended while the Governor’s *Executive Order* is in effect. OSBA Amended Answer at 3 (citing *DeVito* at \*25). The OSBA argues that Columbia’s citations to *Bell Tel. Co*. and other appellate cases do not, in any way, overturn *DeVito* nor do they support Columbia’s argument that the Commission lacks the authority to suspend Section 1308(d), a “regulatory statute”, because none of the cited cases were decided during an ongoing disaster emergency or global pandemic. OSBA Amended Answer at 4.

As for Columbia’s alternative proposal, the OSBA submits that it opposed this proposal at the prehearing conference and rejects Columbia’s representation that there was an agreement regarding it between Columbia and I&E. OSBA Amended Answer at 5. Furthermore, the OSBA rejects Columbia’s legal assertion that public utilities “unquestionably” must be granted a billing adjustment retroactive to the original suspension date per a recoupment surcharge. *Id*. The OSBA submits that the issue of “making public utilities whole” in light of a disaster proclamation is not before the Commission at this time and it would be inappropriate for the Commission to decide the issue of “retroactive billing adjustments” in the context of a scheduling dispute. *Id*. at 5‑6. The OSBA submits that Columbia had full control over when to file its base rate case and it should have been aware of the risk that the rate relief it seeks could be delayed. *Id*. If and when the issue of retroactive billing adjustments is ripe for adjudication, the OSBA will fully respond at that time. *Id*. at 6.

**C. Disposition**

In the Commission’s *Emergency Order*, we stated that “in pending rate case litigation” the CALJ has delegated authority to “establish reasonable deadlines under the circumstances.” *Emergency Order* at 2. We delegated the authority to the CALJ to “suspend, waive or change a statutory or regulatory deadline which may hinder, rather than further, the mission of the Commission, after consultation with all interested parties, as deemed necessary and appropriate.” *Emergency Order* at 4.

Here, in its Expedited Motion as stated above, I&E set forth its reasoning, *inter alia*, as to why its lack of access to full office resources due to the COVID-19 pandemic created the need for additional time in the procedural schedule for it to fully review, consider, and develop adequately supported positions in this proceeding. Furthermore, the OCA and the OSBA also offered supporting reasons as set forth above. Based on the Parties’ positions the CALJ found it appropriate in his *Extension Order* to grant I&E’s request to extend the statutory rate suspension period by twelve days *for the purpose of establishing a reasonable procedural schedule in this proceeding*.

We view the CALJ’s decision in the *Extension Order* as an authorized departure from the Commission’s traditional procedural practice to use the Section 1308(d) seven-month rate suspension period for a final Commission action. Traditionally, this longstanding scheduling practice has been observed by the Commission and the parties in general base rate increase cases in pursuit of serving the public interest by ensuring the timely implementation of new, just, and reasonable rates on customer bills and avoiding the burden of subsequent rate adjustments through refunds. Pursuant to this longstanding practice, the presiding officer and the parties typically will establish a procedural schedule for the litigation of a rate case by working backwards from the appropriate Public Meeting occurring before the end of the suspension period that ensures sufficient time for the litigation process and the Commission’s review, to take final action at that Public Meeting.

In the Petition and Answers, the Parties have raised arguments to either support or reject the issue of whether or not the Commission has the authority to waive or amend the statutory suspension period for the purpose of delaying Columbia’s right to appropriate rate recovery as of the end of the suspension period in this case, or January 23, 2021 via the *Extension Order.* Specifically, Columbia argues the Commission does not have the authority to waive or modify its right to rate relief beginning as of the end of the statutory suspension period. However, the other Parties argue that we do have such authority pursuant to the Governor’s *Executive Order* and the Commission’s *Emergency Order*, so long as Columbia is permitted to implement the finally approved rates as of the end of the modified suspension period, or February 4, 2021.

To decide the issue, we must first acknowledge that our authority under the *Emergency Order* is derived from the authority conferred by the Governor’s *Executive Order*. The Governor’s *Executive Order* was issued pursuant to the Emergency Management Services Code, 35 Pa. C.S. § 7101.

Governor Wolf’s *Executive Order* provides, in pertinent part:

FURTHER, I hereby suspend the provisions of any regulatory statute prescribing the procedures for conduct of Commonwealth business, or the orders, rules or regulations of any Commonwealth agency, if strict compliance with the provisions of any statute, order, rule or regulation would in any way prevent, hinder, or delay necessary action in coping with this emergency. Commonwealth agencies may implement emergency assignments without regard to procedures required by other laws, except mandatory constitutional requirements, pertaining to performance of public work, entering into contracts, incurring of obligations, employment of temporary workers, rental of equipment, purchase of supplies and materials, and expenditures of public funds.

*Executive Order* at 2.

As the Pennsylvania Supreme Court stated in *Devito*, *supra*, that, regulatory statutes “prescribing the procedures of the conduct of Commonwealth business,” as well as “orders, rules or regulations” may be suspended while the Governor’s *Executive Order* is in effect “if strict compliance with the provisions of any statute, order, rule or regulation would in any way prevent, hinder or delay necessary action in coping with the emergency.” *DeVito* at \*25 (citing 35 Pa. C.S. § 7301(f)).

We acknowledge that the *Executive Order* applies to regulatory statutes and that the suspension authority conferred by the *Executive Order* applies if: (1) the regulatory statute that is subject to suspension is one “prescribing the procedures for the conduct of Commonwealth business….” and (2) only if “strict compliance” with the statute would “in any way prevent, hinder, or delay necessary action in coping with this emergency.” *Executive Order* at 2. The Commission, in its *Emergency Order* expounded on those criteria by noting that suspension of deadlines would be appropriate if adhering to the deadline would “hinder, rather than further, the mission of the Commission, after consultation with all interested parties, as deemed necessary and appropriate.” *Emergency Order* at 4.

Initially, we note that the provisions of the *Executive Order* are applicable to the Code since it is a regulatory statute. Therefore, the Commission, as the agency with the oversight and enforcement of the Code, may exercise the authority conferred by the *Executive Order*. Our *Emergency Order* stated:

All Bureau Directors are hereby delegated the authority to suspend,

extend, waive or change a statutory or regulatory deadline *which may hinder, rather than further, the mission of the Commission*, after consultation with all interested parties, as deemed necessary and appropriate

*Emergency Order* at 2, 4, Ordering Paragraph (OP) No. 4 (emphasis added).

With respect to the application of this delegated authority in general base rate cases, we stated as follows:

[I]n pending rate case litigation, the Chief Administrative Law Judge is authorized to establish reasonable deadlines under the circumstances after consideration of the positions of the parties and the presiding Administrative Law Judge. The Chief Administrative Law Judge’s decision would then be subject to review by the Commission.

*Emergency Order* at 2.  

In particular we note that the *Emergency Order* grants the CALJ the authority to suspend, extend, waive or change a statutory or regulatory deadline *which may hinder, rather than further, the mission of the Commission*, after consultation with all interested parties, as deemed necessary and appropriate. We conclude that the CALJ properly considered the basis presented by the moving party, I&E, regarding the vast challenges facing the Parties, and the potential impact to the public, due to the COVID-19 emergency, and the litigation in this matter. Governor Wolf and this Commission recognize that we have been and continue to be in unprecedented and challenging circumstances in the Commonwealth, the nation, and the globe. Consequently, litigating a base rate case without, *inter alia*, office resources, an in-person hearing, etc., may be challenging. As a result, the current circumstances may hinder the mission of the Commission concerning this matter and the public interest. Therefore, the CALJ’s decision to extend the procedural schedule reflects a proper exercise of his authority pursuant to both Section 1308(d) of the Code and the *Emergency Order* to provide more time for the Parties to review, analyze, and prepare adequately-supported positions in this proceeding.

Based on the foregoing analysis, we shall affirm the CALJ’s decision in the *Extension Order* to grant I&E’s request for an additional twelve days in the procedural schedule. Therefore, the presiding ALJ shall modify, if necessary, the procedural schedule consistent with this Opinion and Order.

Because we are only authorizing the extension or suspension of *deadlines* and not of substantive rights, failure to meet the seven-month deadline would result in the proposed rates going into effect by operation of law.  Therefore, we find that Columbia is entitled to the appropriate rate relief in accordance with Section 1308(d) of the Code immediately following the end of the original statutory rate suspension period, which, in this case, is January 23, 2021.

We note, however, that the Recommended Decision is due in a case with a statutory deadline 60 days before the last reasonable public meeting prior to the expiration of the suspension date.[[10]](#footnote-11) As the Commission may alter the staff recommendation at a public meeting, there must be sufficient time for staff to prepare and enter a revised Commission Opinion and Order. In this situation, the date of the suspension expiration is February 4, 2021, and that means that the last reasonable public meeting at which the Commission may consider the staff recommendation is the prior public meeting, or January 14, 2021. Accordingly, the Recommended Decision of the presiding ALJ is due to be issued on or before Friday, November 20, 2020.[[11]](#footnote-12)

Additionally, we shall reserve the following issues to be addressed at the appropriate stages in this proceeding for final adjudication: (1) the appropriate rate recovery immediately following the end of the Section 1308(d) suspension period until the date the final rates are approved in a final Commission order and take effect in the utility’s compliance tariff filing; and (2) the appropriate mechanism for implementing such rate recovery. We shall direct the Parties to address the foregoing rate recovery issues at the appropriate stages in this proceeding and direct the OALJ to fully address the issues and provide a recommended disposition thereof in the Recommended Decision.

**Conclusion**

Based upon our review of the Petition, the Answers, the *Extension Order*, the procedural schedule in this matter, and applicable law, we shall grant and deny, in part, the Petition and affirm the *Extension Order*, consistent with this Opinion and Order; **THEREFORE,**

**IT IS ORDERED:**

1. That the Petition for Reconsideration of Staff Action filed on June 23, 2020, by Columbia Gas of Pennsylvania, Inc. in the above-captioned proceeding, at Docket No. R-2020-3018835, is denied in part and granted in part, consistent with this Opinion and Order.

2. That the *Order Granting the Expedited Motion of the Bureau of Investigation and Enforcement to Extend the Statutory Suspension Period During the Emergency Interruption of Normal Operations of the Pennsylvania Public Utility Commission*, issued on June 3, 2020, by Chief Administrative Law Judge Charles E. Rainey Jr., in the above-captioned proceeding, at Docket No. R-2020-3018835, is affirmed insofar as it grants the Motion for Extension filed by the Commission’s Bureau of Investigation & Enforcement, consistent with this Opinion and Order.

3. That, consistent with this Opinion and Order, the Petition for Reconsideration of Staff Action filed on June 23, 2020, by Columbia Gas of Pennsylvania, Inc. in the above-captioned proceeding, at Docket No. R-2020-3018835, is granted insofar that the general base rates that result from this proceeding shall be effective as of the end date of the statutory suspension period in this proceeding under Section 1308(d) of the Public Utility Code, unless another date is approved by the Commission.

4. That the effective date of the rates that result from this proceeding shall be January 23, 2021, unless another date is approved by the Commission.

5. That Administrative Law Judge Katrina L. Dunderdale shall modify the *Prehearing Order* issued on June 15, 2020, if necessary, consistent with this Opinion and Order.

6. That the Recommended Decision in this proceeding be issued and filed on or before November 20, 2020, in this proceeding.

7. That, consistent with this Opinion and Order, we shall direct the Parties to address at the appropriate stages in this proceeding, and direct the Office of Administrative Law Judge to fully address in the Recommended Decision to be issued in this proceeding, the following issues related to rate recovery: (1) the appropriate amount of rate recovery starting from the end of the Section 1308(d) suspension period, January 23, 2021, until the date the final rates are approved in a final Commission order and take effect in the utility’s compliance tariff filing; and (2) the appropriate mechanism for implementing such rate recovery.

**BY THE COMMISSION,**



Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: August 6, 2020

ORDER ENTERED: August 20, 2020

1. The Public Meeting dates scheduled for the early part of 2021 include as follows: January 14, 2021, February 4, 2021, and February 25, 2021. [↑](#footnote-ref-2)
2. *See Order of the Governor of the Commonwealth of Pennsylvania Regarding the Closure of All Businesses That Are Not Life Sustaining*, as amended; *see also Order of the Secretary of the Pennsylvania Department of Health Regarding the Closure of All Businesses That Are Not Life Sustaining*, as amended. [↑](#footnote-ref-3)
3. *See* *Amendment to Proclamation of Disaster Emergency* renews the Proclamation for an additional ninety (90) days from June 3, 2020. [↑](#footnote-ref-4)
4. *See Order of the Secretary of the Pennsylvania Department of Health Requiring Universal Face Coverings*, effective July 1, 2020. [↑](#footnote-ref-5)
5. *See Order of the Governor of the Commonwealth of Pennsylvania Directing Targeted Mitigation Measures*, effective July 16, 2020. [↑](#footnote-ref-6)
6. *See Order of the Secretary of the Pennsylvania Department of Health Directing Mitigation Measures*, effective July 16, 2020. [↑](#footnote-ref-7)
7. Had Columbia proceeded with filing its general rate increase on March 20, 2020 as it originally intended, the end date of the Section 1308(d) suspension period would have been December 20, 2020. [↑](#footnote-ref-8)
8. Under the *Emergency Order*, review pursuant to Section 5.44 applies for any extension granted up to ninety days. Beyond ninety days, any request for a suspension, extension, waiver or change of any regulatory, statutory or procedural deadline may only be considered upon expedited certification of the question by the CALJ or Bureau Director directly to the Commission. *See Emergency Order* at 2, 4, OP No. 5. [↑](#footnote-ref-9)
9. The Commission’s *Emergency Order* providing authority to Bureau Directors and the CALJ provides that the decisions of Bureau Directors, which would be issued as Secretarial Letters or as an order, are subject to Commission review under 52 Pa. Code § 5.44. Orders of the CALJ or any ALJ are already subject to interlocutory review under 52 Pa. Code § 5.302, since both Sections 5.302 and 5.44 ultimately place the burden of proof on the petitioner, therefore the outcome would be the same under either standard. 52 Pa. Code §§ 5.302, 5.44. [↑](#footnote-ref-10)
10. The 60 days is comprised of 30 days for Exceptions and Reply Exceptions, 20 days for the Office of Special Assistants to review the record and prepare a recommendation on those Exceptions, and nine days for the Commissioners’ and their staff to consider the record, Exceptions, and recommendation and, if necessary, prepare a motion on the OSA recommendation, all while considering the 30 to 50 other Public Meeting staff reports appearing on a typical Public Meeting agenda. A reasonable time for preparation of a rewrite following the public meeting is between 10 and 14 days. We assume that all of those involved in the Expedited Motion seeking extension of time are aware of this schedule. [↑](#footnote-ref-11)
11. We note that the Motion passed at the August 6, 2020 Public Meeting contained an inadvertent administrative error as it noted that the last reasonable public meeting at which the Commission may consider a staff recommendation was January 21, 2021. However, the correct date for the Commission’s January 2021 Public meeting is January 14, 2021. The November 20, 2020 deadline was based on the incorrect Public Meeting date of January 21, 2021, but it should have been based on the correct date of January 14, 2021. We trust that the ALJ will make the appropriate adjustment in the schedule to adhere with the 60-day requirement, as previously explained above, for this proceeding. [↑](#footnote-ref-12)