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November 7, 2011

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor North
P.O. Box 3265
Harrisburg, PA 17105-3265

**RE: Pennsylvania Public Utility Commission v. Columbia Gas of Pennsylvania, Inc.
Docket No. R-2010-2215623**

**Pennsylvania Communities Organizing For Change d/b/a ACTION United, Carol
Collington, and Nettie Pelton v. Columbia Gas of Pennsylvania, Inc.
Docket No. C-2011-2232186**

Dear Secretary Chiavetta:

Enclosed for filing is the Answer of Columbia Gas of Pennsylvania, Inc. to the Petition for Reconsideration and/or Clarification by Pennsylvania Communities Organizing for Change, Inc. d/b/a ACTION United, Carol Collington and Nettie Pelton for the above-referenced proceedings.

Copies have been provided to the persons as indicated on the certificate of service.

Respectfully Submitted,

Michael W. Hassell

MWH/skr

Enclosures

cc: Honorable Katrina L. Dunderdale
Certificate of Service

CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the foregoing have been served upon the following persons, in the manner indicated, in accordance with the requirements of § 1.54 (relating to service by a participant).

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Date: November 7, 2011



Michael W. Hassell

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	
	:	
v.	:	Docket No. R-2010-2215623
	:	
Columbia Gas of Pennsylvania, Inc.	:	
Pennsylvania Communities Organizing For Change, Inc., d/b/a ACTION United, Carol Collington, and Nettie Pelton	:	
	:	
v.	:	Docket Nos. C-2011-2232186
	:	
Columbia Gas of Pennsylvania, Inc.	:	

**ANSWER OF COLUMBIA GAS OF PENNSYLVANIA, INC.
TO THE PETITION FOR RECONSIDERATION AND/OR
CLARIFICATION BY PENNSYLVANIA COMMUNITIES
ORGANIZING FOR CHANGE, INC. d/b/a
ACTION UNITED, CAROL COLLINGTON AND NETTIE PELTON**

I. INTRODUCTION

Columbia Gas of Pennsylvania, Inc. ("Columbia") hereby submits this Answer to the Petition for Reconsideration and/or Clarification ("Petition") filed by Pennsylvania Communities Organizing for Change, Inc., d/b/a ACTION United, Carol Collington and Nettie Pelton ("PCOC"). PCOC seeks reconsideration and/or clarification of that portion of the Pennsylvania Public Utility Commission's ("Commission") Opinion and Order entered October 14, 2011, at Docket No. R-2010-2215623, et al., pertaining to Columbia's Customer Assistance Program ("CAP") Plus. In its Opinion and Order, the Commission directed Columbia to continue its CAP Plus program for low income customers pending further Commission consideration and disposition of the CAP Plus issues raised by PCOC.

For reasons explained herein, the Commission should take no further action at this time other than clarifying that the record in the proceeding demonstrates that Columbia applies LIHEAP grants to asked to pay amounts under the CAP Plus plan.

II. ARGUMENT

A. **PCOC's Contention That The Commission's Order Is Internally Inconsistent Should Be Resolved By Correcting The Order To Reflect The Record Evidence Which Demonstrates That Columbia Applies LIHEAP Grants To Reduce CAP Plus Changes.**

PCOC quotes two provisions of the Commission's Order, which PCOC considers to be "seemingly contradictory":

[Columbia is] to cease and desist its current practice under the CAP-Plus program to use each recipient's LIHEAP funds to first pay the costs of the CAP-Plus program before applying the remainder to each LIHEAP recipient's account. (Order at 57).

* * *

[Columbia] shall maintain its currently-effective Customer Assistance Plan-Plus program as presently operated until further action by the Commission. (Order at 66, Ordering Paragraph 14).

PCOC Petition, p. 1.¹ As explained below, and as previously explained in Columbia's Exceptions, PCOC has helped to create a seeming inconsistency that does not in fact exist.

It is incorrect to state that Columbia's current practice applies LIHEAP funds to first pay the costs of CAP Plus before applying a remainder to the recipient's LIHEAP account. To the contrary, Columbia applies the entire LIHEAP grant to the recipient's asked to pay amount for all customers, including CAP customers. Columbia Exc., pp. 26-29. Further, if a LIHEAP grant is received which exceeds the customer's asked to pay amount, the excess amount is applied to the customer's account as a credit to pay future asked to pay amounts. These procedures are in

¹ PCOC failed to number the first page of its Petition, and thus page 2 is numbered as page 1. Columbia will reference the pages as numbered in the Petition.

compliance with Department of Public Welfare (“DPW”) requirements and the Commission’s directives. See *Equitable Gas Company, LLC’s Universal Service and Energy Conservation Plan for 2010-2012 (“Equitable USECP Order”)*, Docket No. M-2009-2111130, Order entered October 31, 2011, Order at pp. 3, 17. PCOC did not dispute these facts on the record or in its Replies to Exceptions.

The apparent confusion with respect to Columbia’s process of applying LIHEAP grants to customers’ asked to pay amounts appears to have arisen from PCOC’s contentions that including a Plus amount in computing a CAP customer’s asked to pay amount has the effect of using the LIHEAP grant to pay the cost of the CAP Plus program. This appears to have been misinterpreted by the Administrative Law Judge and the Commission as meaning that Columbia deducted an amount from LIHEAP benefits to pay the Plus amount before crediting any remaining balance to a CAP customer’s account. Columbia reiterates that it does not deduct any amounts up front from a customer’s LIHEAP grant, but instead complies with DPW’s rules by crediting the entire grant to the customer’s account and applying the grant to the customer’s asked to pay amount under CAP Plus.

Based upon the foregoing explanation, Columbia would support a clarification of the Commission’s Order that would remove the “cease and desist” provision as superfluous, because Columbia does not in fact do what the Order directs Columbia to cease.² This would correct the alleged “inconsistencies” which PCOC now attempts to use as its justification for reconsideration.

² Columbia did not seek clarification of the cease and desist provision because it was not using any procedure that is contrary to the provision.

B. If The Commission Grants Clarification Of The Process To Be Used To Rule On The Reserved CAP Plus Issue, It Should Make Clear That Evidence From DPW Must Be Provided By A DPW Witness And Not Through Hearsay Letters.

PCOC requests that the Commission clarify the specific process that it intends to use to resolve the CAP Plus issue, and requests that such proceeding be undertaken “expeditiously.” PCOC further requests that the process include full evidentiary hearings, along with transferring the record developed in this proceeding.

Columbia takes no position with respect to whether further evidentiary hearings should be required regarding the reserved CAP Plus issues.³ However, if further hearings are to be held, Columbia respectfully requests that the Commission make clear that any evidence regarding DPW’s position on the reserved CAP Plus issue must be presented through a DPW-sponsored witness.

One of the most contentious, and awkward, aspects of this proceeding was PCOC’s efforts, after submission of rebuttal testimony in the proceedings, to seek to subpoena a DPW witness, and then, in lieu of the witness appearing, seeking to submit into evidence a letter from a DPW official. In that letter, the DPW official offers tentative opinions about the legality of Columbia’s CAP Plus model, even though the official acknowledged he had not reviewed Columbia’s CAP Plus model. *DPW Letter*. The letter ultimately was admitted into evidence

³ PCOC refers to “constitutional due process” rights of LIHEAP recipients in their LIHEAP benefits. PCOC Petition, pp. 5-6. No party has been deprived of its due process rights in this proceeding. Furthermore, as explained herein, Columbia has deprived no customer of their LIHEAP benefits. All customers who receive LIHEAP have the grant credited in full to their account. PCOC is continuing to confuse the issue of treatment of a customer’s LIHEAP grant with the power of the Commission to decide what are the asked to pay amounts to be required from CAP customers. Columbia RB, pp. 34-36.

solely to identify that it exists and not for the truth of the matters asserted therein or the correctness of the tentative legal conclusions contained in the letter. Tr. 130-31.

Any future attempt to abuse the Commission's process by seeking to subpoena a witness, who could have been presented as part of PCOC's direct case, and then attempting to enter into the record a letter in lieu of the witness appearing at hearing, cannot be countenanced if the Commission decides to hold further hearings on the CAP Plus issue. If further evidence is to be received regarding DPW's review of Columbia's CAP Plus model, that evidence cannot be provided by hearsay, but must be presented by a witness sponsored by DPW, who would be subject to cross-examination like any other witness.⁴ See, RD, p. 78, fn. 139.

C. PCOC Has Failed To Satisfy The Standards For Reconsideration.

The Commission's standards for granting reconsideration following final orders are set forth in *Duick v. Pennsylvania Gas and Water Co.*, 56 Pa. P.U.C. 553, 559 (1982):

“A petition for reconsideration, under the provisions of 66 Pa.C.S. § 703(g), may properly raise any matters designed to convince the Commission that it should exercise its discretion under this code section to rescind or amend a prior order in whole or in part. In this regard we agree with the Court in the Pennsylvania Railroad Company case, wherein it was said that [p]arties ..., cannot be permitted by a second motion to review and reconsider, to raise the same questions which were specifically considered and decided against them....’ What we expect to see raised in such petitions are new and novel arguments, not previously heard, or considerations which appear to have been overlooked or not addressed by the Commission.”

PCOC's request for reconsideration does not meet the Commission's standards for reconsideration as enunciated in *Duick*, and therefore should be denied.

⁴ This procedural directive is particularly important to emphasize, given PCOC's use of a similar letter tactic that is attached to its Petition.

1. PCOC's Request For Reconsideration Is Premature.

PCOC contends that the Commission has overlooked its arguments. However, such contention is unsupportable. The Commission's Order indicates it understands the issues presented, but that the Commission desires to take sufficient time to reach a conclusion on those issues. The Commission further recognized that a final decision on the issues raised by PCOC will have a significant effect upon other utilities' customer assistance programs. Order at p. 56. It is evident that a decision of such far reaching impact should be examined in a deliberate fashion. That deliberation may ultimately lead the Commission to conclude that further evidence is needed, from DPW⁵ and other utilities, before rendering a decision. In any event, it is premature for PCOC to assert that the Commission has overlooked or failed to address the issues presented.

For the foregoing reasons, PCOC's request for reconsideration should be denied as premature.

2. PCOC's Request That The Commission Reconsider And Suspend Columbia's CAP Plus Plan Pending Final Determination Is Without Merit.

PCOC contends that the Commission should suspend the Plus portion of CAP Plus customers' asked to pay amounts. PCOC asserts this approach "would cause the least amount of harm" pending a final Commission decision on the CAP Plus issue. PCOC Petition, pp. 9-10. Columbia disagrees.

CAP Plus is a Commission-approved program. CAP Plus was developed in direct response to DPW's 2009 directive that utilities could no longer apply LIHEAP grants against the

⁵ As explained above, because PCOC failed to present a DPW witness in the proceeding, the existing record is not fully developed as to DPW's factual understanding of Columbia's CAP-Plus model, or DPW's interpretation of the legal ramifications of that model.

CAP shortfall, but instead must credit the grants to each customer's account for payment of the customer's asked to pay amount.⁶ As a result of the directive, and in order to maintain the balance between CAP customers' payment responsibilities and the subsidy of CAP customers provided by other non-CAP residential customers, CAP Plus was agreed to in Columbia's 2010 base-rate case settlement. Columbia MB, p. 29. The Commission approved Columbia's proposed CAP Plus plan by Order entered October 19, 2010 at Docket No. P-2010-2195759.

Because CAP Plus is a previously-approved program, it is not appropriate to terminate, even on a temporary basis, the CAP Plus plan asked to pay amount until the Commission makes an affirmative determination as to PCOC's claim that CAP Plus is not legal. PCOC erroneously asserts that the ALJ and the Commission "implicitly endorsed" a conclusion that Columbia's CAP Plus violates federal law and policy. PCOC Petition, p. 9. Columbia strenuously disagrees. At no point did the Commission conclude, implicitly or more importantly explicitly, that the CAP Plus plan's asked to pay amount was illegal under federal law, as is evident from the Commission's decision to allow the CAP Plus to continue pending a final decision on the merits. Unless and until the Commission concludes that PCOC has met its burden of proving that CAP Plus is illegal, the CAP Plus program should continue in effect.

In addition, the Commission has recently authorized several other utilities to modify their customer assistance program designs in response to DPW's directive regarding how federal

⁶ The CAP shortfall is the discount provided to the CAP customer, reflecting the difference between the customer's bill at full tariffed rates and the customer's asked to pay amount. The CAP shortfall is paid by Columbia's non-CAP residential customers through Columbia's Rider USP – Universal Service Program. Prior to adoption of DPW's 2009 directive, CAP customers were given an affordable bill, based upon Commission guidelines, typically by requiring the customer to pay a percentage of their income. Because the CAP customer was asked to pay an affordable amount, LIHEAP grants were credited against the CAP shortfall to reduce the amount collected by Columbia from non-CAP residential customers through Rider USP.

LIHEAP grants are applied to the accounts of CAP customers. In the *Equitable USECP Order*, the Commission approved Equitable Gas Company, LLC's proposal to increase CAP customers' asked to pay amounts to offset what would otherwise result in a \$3.8 million increase in the CAP shortfall paid by non-CAP customers as a result of the DPW directive. (*Equitable USECP Order* at p. 7). The Equitable approach effectively achieves the same result as Columbia's CPA Plus through a slightly different mechanism of adjusting the customer's percentage of income payment. Similarly, in *UGI Utilities Inc. Universal Service and Energy Conservation Plan for 2011-2013*, Docket No. M-2010-2186052, Order entered October 31, 2011 ("*UGI USECP Order*"), the Commission authorized UGI Utilities, Inc. to lower the maximum CAP credits provided to CAP customers to mitigate the effect of the DPW directive. (*UGI USECP Order* at p. 25). As these decisions demonstrate, the Commission is moving forward with proposals to correct the imbalance between CAP customers' asked to pay responsibilities and non-CAP customers' CAP shortfall responsibilities created by DPW's directive. As such, there is no basis to suspend Columbia's similar efforts to reestablish an appropriate balance through CAP Plus.

Columbia also disagrees with PCOC's assertion that it seeks to balance the interests of CAP and non-CAP customers. PCOC Petition, p. 10. CAP Plus provides that each CAP customer receives an affordable bill even if the customer does not receive a LIHEAP grant. Columbia St. 117-R, pp. 10-12; OCA St. 3-R, p. 14. Every CAP customer is eligible to apply for and receive LIHEAP, which will then be applied to the customer's account to be credited against the customer's CAP Plus asked to pay amount. Columbia St. 117-R, p. 9; OCA St. 3-R, pp. 32-33. The Plus charge is designed to reduce the CAP shortfall required to be paid by non-CAP residential customers. In contrast, under PCOC's proposal, CAP customers asked to pay amount

would be reduced, resulting in an approximately \$4.9 million⁷ annual increase to the CAP shortfall, which would increase non-CAP residential customers' bills by \$4.9 million through Rider USP. Furthermore, as the record demonstrates, under PCOC's proposal, some CAP customers receiving LIHEAP benefits would pay nothing towards their gas bill from their income. Columbia MB, p. 32; Columbia RB, p. 34; Columbia Reply Exc., p. 24. This is not a balanced approach, and PCOC should not claim it to be so, and PCOC has offered no solution in this proceeding that would achieve such a balance.

For reasons explained above, PCOC's proposal that the Commission reconsider and suspend CAP Plus pending a Commission decision on PCOC's issues should be rejected. However, if the Commission were to adopt such a proposal, the Commission simultaneously should direct that Columbia is authorized to increase the Rider USP rate to non-CAP customers to recover the additional \$4.9 million annual increased shortfall that would be created.⁸

3. PCOC Has Not Demonstrated That CAP Plus Violates Federal Law.

The body of PCOC's Petition does not present PCOC's legal arguments regarding whether CAP Plus violates federal law. Clearly, PCOC would be hard pressed to seek "reconsideration" of such legal issues, where these arguments are advanced in the record, briefs and exceptions and the Commission has yet to render a decision on the merits of the legal issues. However, by an action disturbingly similar to what occurred during the litigation phase of the proceeding, PCOC seeks to present its legal arguments through a letter, this time sent by PCOC to DPW, which PCOC has attached to its Petition.

⁷ The \$4.9 million reflects the total LIHEAP grants received by CAP customers in the 2010-2011 heating season.

⁸ Rider USP authorizes recovery of the shortfall. Therefore, if the shortfall were to be increased as a result of adoption of PCOC's proposal to suspend the Plus amount, Columbia should be authorized to simultaneously increase Rider USP to avoid an undercollection of costs.

The Commission should give no consideration to this attached letter. It reflects yet another effort to submit evidence and argument regarding DPW's positions, this time after the close of the record. It further reflects an attempt to influence DPW through the presentation of biased assertions without an opportunity for the utilities or Commission to respond,⁹ and seeks to convince DPW that DPW has authority to direct the Commission to alter the design of CAP rates. *PCOC Letter*, pp. 5-6.

With respect to the substance of PCOC's legal arguments, Columbia has explained in its briefs and reply exceptions that CAP Plus does not violate federal law.

First, Columbia has explained that CAP Plus does not use LIHEAP benefits as a resource in setting a customer's asked to pay amount. Columbia MB, pp. 32-33; Columbia RB, p. 33; Columbia Reply Exc., pp. 15-16, 21. A CAP customer's actual receipt, or eligibility to receive, LIHEAP benefits does not change such customer's asked to pay amount. The CAP Plus asked to pay amount is based upon payment criteria developed from the customer's reported income (without consideration of the customer's LIHEAP grant).

Second, Columbia has explained that CAP Plus does not treat CAP customers receiving LIHEAP adversely to non-CAP customers receiving LIHEAP. Columbia has graphically demonstrated in its Reply Brief the unreasonableness of PCOC's contention that a CAP customer that receives a reduced rate is treated "adversely" as compared to a non-CAP customer that pays the cost of such reduction. Columbia MB, pp. 34-37. CAP customers receiving LIHEAP are charged an asked to pay amount that is less than the full tariffed rates that non-CAP customers are required to pay. Further, non-CAP customers are required to pay through Rider USP the

⁹ The letter from PCOC counsel to DPW was sent October 25, 2011 with no apparent service of the letter upon the Commission or utilities (other than as an attachment to PCOC's October 31, 2011 Petition).

CAP shortfall resulting from the discounted asked to pay amounts charged to CAP customers. No rational application of the term “adversely” could be used to compare the treatment of CAP customers receiving LIHEAP to non-CAP customers receiving LIHEAP.¹⁰

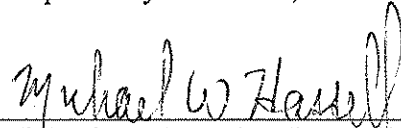
Any assertion that CAP-Plus violates federal law is without merit, and cannot serve as a basis to grant reconsideration.

¹⁰ It is similarly difficult to comprehend how PCOC can claim that Columbia’s CAP customers will “subsidize” non-CAP customers. *PCOC Letter* at p. 3. Indeed, as explained by Columbia, PCOC’s claim is belied by the fact that non-CAP customers receive no CAP discount and also pay the Rider USP charge. Columbia RB, pp. 12-15.

III. CONCLUSION

PCOC's request for reconsideration should be denied. The Commission should clarify its Order to remove the directive for Columbia to cease and desist using LIHEAP funds to first pay costs of CAP Plus, as Columbia does not use LIHEAP funds in such a manner. If the Commission clarifies its Order to specify the process to be used to rule on the reserved CAP Plus issue, it should clearly direct that any evidence to be presented from DPW must be provided through a DPW-sponsored witness.

Respectfully submitted,



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Date: November 7, 2011

Attorneys for Columbia Gas of Pennsylvania, Inc.

VERIFICATION

I, Mark R. Kempic, hereby state that the facts above set forth are true and correct (or are true and correct to the best of my knowledge, information and belief) and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements made herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).

Date: 11-7-11



Mark R. Kempic
Director, Rates & Regulatory Policy
Columbia Gas of Pennsylvania, Inc.