

COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE

555 Walnut Street, 5th Floor, Forum Place
Harrisburg, Pennsylvania 17101-1923
(717) 783-5048
800-684-6560 (in PA only)

IRWINA. POPOWSKY
Consumer Advocate

FAX (717) 783-7152
consumer@paoca.org

November 8, 2011

Rosemary Chiavetta
Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

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

PCOC et al. v. Columbia Gas of
Pennsylvania
Docket No. C-2011-2232186

Secretary Chiavetta:

Please find enclosed the Office of Consumer Advocate's Answer to PCOC et al.'s Petition for Reconsideration and/or Clarification of the Opinion & Order Entered October 14, 2011 in the above referenced proceeding.

Copies have been served as shown on the Certificate of Service.

Respectfully Submitted,

A handwritten signature in cursive script that reads "Tanya J. McCloskey".

Tanya J. McCloskey
Senior Assistant Consumer Advocate
PA Attorney I.D. # 50044

Enclosures

cc: Hon. Katrina L. Dunderdale/ALJ
Certificate of Service

*138872

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 No. C-2011-2232186
	:	
Columbia Gas of Pennsylvania, Inc.	:	

**ANSWER OF THE OFFICE OF CONSUMER ADVOCATE
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

The Office of Consumer Advocate is in receipt of the Petition for Reconsideration and/or Clarification filed by Pennsylvania Communities Organizing for Change, Inc. d/b/a ACTION United, Ms. Carol Collington and Ms. Nettie Pelton (PCOC) in the above-captioned proceeding. PCOC seeks reconsideration or clarification of the Commission's Opinion and Order of October 14, 2011 regarding Columbia Gas of Pennsylvania, Inc.'s (Columbia) Customer Assistance Program referred to as CAP-Plus. In its Order, the Pennsylvania Public Utility Commission (Commission) directed Columbia to maintain its currently effective CAP-Plus program for low income customers as presently operated. Order at 60. The Commission

determined to hold in abeyance PCOC's challenge to Columbia's existing CAP-Plus program finding that there was insufficient time to render a thorough and reasoned decision on this matter within the regulatory time constraints inherent in a Section 1308(d) base rate proceeding. Order at 56.

The Office of Consumer Advocate (OCA) understands the Commission's decision to take the necessary time to make a thorough and reasoned decision regarding Columbia's CAP-Plus. The record in this proceeding is extensive and provides the Commission the most thorough analysis to date of the many complex issues involved in trying to integrate the changed Department of Public Welfare (DPW) policy directives regarding LIHEAP into the utility-operated Customer Assistance Programs. Specifically, the OCA presented the testimony of a nationally renowned expert on low income utility issues, Roger Colton, to address the many complex issues related to Columbia's CAP-Plus. Mr. Colton has been involved with the development of the vast majority of ratepayer-funded affordability programs in the nation and has worked for the federal LIHEAP office over the last fifteen years to develop particular information with respect to the integration of ratepayer-funded affordability programs and LIHEAP. See, OCA St. 3 at 1-2, App. A; OCA St. 3-R at 2. Mr. Colton, who also received his law degree in 1981, filed extensive Rebuttal Testimony (OCA St. 3-R) and Supplemental Rebuttal Testimony (OCA St. 3-SR) setting forth the legal and policy support for the CAP-Plus program approved for, and implemented by, Columbia in response to the change in DPW policy in 2009 that required the LIHEAP grant be applied to a CAP customer's "asked-to-pay" amount rather than to the CAP customer's CAP shortfall amount.

As Mr. Colton testified, the Columbia CAP-Plus program provides a reasonable balance of the burdens and responsibilities of a Customer Assistance Program in response to the

change in DPW policy. The Columbia CAP-Plus program was designed in response to the new DPW directive that altered nearly twenty years of successful integration between Customer Assistance Programs and the federal LIHEAP program to provide affordable bills to customers. The change in DPW policy not only disrupted the operation of the successful CAP programs in Pennsylvania, but overlaying this directive on the existing CAP program model had significant cost consequences for non-CAP customers who pay for the program—including low income customers, near low income customers and LIHEAP recipients who are not in CAP. Recognizing these cost consequences and the inefficiency of reducing the already affordable “asked-to-pay” amount even further, CAP-Plus was designed to address the DPW directives and integrate those directives into the ratepayer-funded energy assistance program.

Contrary to the arguments of PCOC, CAP-Plus complies with all federal laws.¹ As detailed in the OCA’s Briefs and the Testimony of Roger Colton, CAP-Plus does not treat LIHEAP as a resource; CAP-Plus does not treat LIHEAP recipients adversely; and CAP-Plus does not subsidize non-LIHEAP recipients or energy vendors. See, OCA M.B. at 42-64; OCA R.B. at 23-40. It is the authority of this Commission to determine how much of the total bill the CAP customer will be asked to pay and the CAP-Plus program establishes that amount in a manner designed to balance the interests of all customers. The bottom line is that while LIHEAP governs how the LIHEAP grant is applied to the CAP participant’s bill, it does not govern the determination of what the bill of the CAP participant should be in the first instance. The

¹ PCOC repeats many of its legal arguments through an attached Letter dated October 25, 2011, to the Department of Public Welfare from the Pennsylvania Public Utility Law Project. This letter is not part of the record of this proceeding and should be disregarded by the Commission. PCOC also attaches another letter to its Petition that was from DPW to the Secretary of the Commission in this proceeding. That letter was included in the record of this proceeding for a limited purpose and was not admitted for the truth of any matter asserted in the Letter. Tr. 123-131.

Commission established the “asked-to-pay” amount through approval of the CAP-Plus program and the program should be continued as it is fully consistent with state and federal law.²

The OCA notes its willingness to continue to work with the Commission, the regulated energy utilities, the Department of Public Welfare, PCOC and other interested low income advocates to finally resolve this issue. The DPW directive disrupted decades of work in designing CAP programs that sought to reach a reasonable balance of the needs of low income, payment troubled customers and those customers that must pay the costs of the programs. In these difficult economic times, this balance needs to be restored and certainty brought to these programs which have become an ever growing part of utility operations in Pennsylvania.

II. ANSWER

A. Reconsideration of The Commission’s Decision To Hold The Issue Of CAP-Plus In Abeyance Is Not Necessary.

Through its Petition, PCOC seeks reconsideration by the Commission of its decision to hold in abeyance a decision on the issues raised by PCOC on the legality of CAP-Plus. As part of this reconsideration request, PCOC first requests that the Commission reconsider its decision to hold these issuances in abeyance or that the Commission clarify whether it intends to initiate another proceeding to make this determination. The OCA respectfully submits that there is no need for the Commission to reconsider its decision to hold the issues in abeyance. PCOC raises concern that its due process rights may be violated if the Commission does not do so. PCOC Pet. at 5-7. The Commission’s Order states that it will

² The Commission recently approved two other CAP program design changes to address the new DPW directive. In a universal service case involving Equitable Gas Company, the Commission approved Equitable’s proposal to raise the percentage of income payments and the CAP minimum payments in response to the DPW directive. Equitable Gas Company, LLC’s Universal Service and Energy Conservation Plan for 2010-2012, M-2009-2111130 (Order entered Oct. 31, 2011). In a universal service case involving the four UGI affiliates, the Commission approved a reduction in the maximum CAP credit allowance as a means to address the cost consequences of the DPW directive. UGI Utilities, Inc.-Gas Division, UGI Utilities, Inc.-Electric Division, UGI Penn Natural Gas, Inc., and UGI Central Penn Gas, Inc. Universal Service and Energy Conservation Plan for 2011-2013, M-2010-2186052 (Order entered Oct. 31, 2011).

dispose of this issue at a “future date.” Order at 56. There is no indication that the Commission’s future action will deprive any party of their due process rights or that the Commission will decide the matter on anything less than the full record that has been established in this proceeding. As the OCA reads the Order, the Commission simply sought to take additional time with this lengthy and complex record so that it could reach a thorough and reasoned decision. The OCA supports the Commission’s Order on this point and submits that no reconsideration of this point is necessary.³

B. CAP-Plus Should Not Be Suspended Pending A Final Determination.

PCOC also seeks reconsideration of the Commission’s determination to allow Columbia to continue to operate its CAP-Plus program while the Commission is fully considering the record developed here. Instead, PCOC asks the Commission to suspend Columbia’s CAP-Plus. The OCA strenuously opposes this request. Columbia’s CAP-Plus program is a fully approved, tariffed program that should continue to operate without disruption, particularly as we head into the winter heating season. As the ALJ concluded after a review of the complete record in this proceeding:

The current federal provisions and directives require that the LIHEAP grant must go towards that LIHEAP recipient’s account, however, because the Commission is the regulatory agency with authority to determine the bill Columbia Gas may issue, the LIHEAP recipient’s account may include the monthly Plus amount – and there is no resulting violation of the current federal provisions and directives.

R.D. at 137 (emphasis in original).

The ALJ correctly recognized the key fact here – it is solely within this Commission’s authority to determine how much a ratepayer must pay for the service being

³ If the Commission intended to establish a separate proceeding for consideration of the issue rather than taking additional time with the record in this proceeding, the OCA would agree that the Commission should clarify this point.

provided while DPW determines how the LIHEAP grant is to be applied to the bill of the ratepayer.⁴ R.D. at 137-138. All that the CAP-Plus program does is establish the amount of the ratepayer's total energy bill that the ratepayer will be required to pay. Columbia then, fully in accord with DPW directives, applies the entire LIHEAP grant to that amount, known as the "asked-to-pay" amount. OCA St. 3-SR at 5; Columbia St. 117-RJ at 4. As explained thoroughly in the OCA's Briefs, Exceptions and Reply Exceptions, and as summarized in the Introduction of this Answer, Columbia's CAP-Plus program is fully in accord with federal law.

There has been some confusion regarding a portion of the ALJ's decision that was inadvertently carried forward into the Commission's decision. PCOC attempts to use this misunderstanding to argue that the Commission has recognized inherent deficiencies and illegalities in the CAP-Plus so it must be suspended. PCOC Pet. at 9. Specifically, PCOC points to the following sentence in the Commission's Opinion:

We shall also direct Columbia 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. A similar sentence appears in the ALJ's Recommended Decision at Recommended Ordering Paragraph 10. R.D. at 142. In her discussion, the ALJ expressed concern that Columbia was removing the annualized CAP-Plus payment from the LIHEAP grant first, similar to an example the ALJ provided in Appendix C. R.D. at 134, Appendix C.

⁴ Previously, DPW agreed that the LIHEAP grant would be applied to the portion of the ratepayer bill that the customer was not asked to pay known as the CAP shortfall. This is the method used in the Percentage of Income Payment Programs (PIPP) in Pennsylvania for decades and is the method that continues to be used in every other state that operates a PIPP. OCA St. 3-R at 35-46. Pennsylvania DPW continues to stand alone amongst the state LIHEAP offices in reaching the conclusion that the LIHEAP grant can no longer be applied to the CAP shortfall. OCA St. 3-R at 35.


The OCA filed Exceptions to the ALJ's discussion of this point, as did Columbia. OCA Exc. at 4-7; Columbia Exc. at 26-29. In Exceptions, both the OCA and Columbia explained that the ALJ had misunderstood this one point and that Columbia applies the LIHEAP grant to the customer's asked to pay amount exactly as required by federal law. See also, OCA St. 3-SR at 5; Columbia St. 117-RJ at 4. The OCA would not object to a clarification of the Commission's Order that corrects this misunderstanding and removes the unnecessary directive. But, the fact that this directive appears in the Commission's Order cannot be used by PCOC to support reconsideration or suspension of the Columbia CAP-Plus program.

Both Pennsylvania practice and federal law have sought to integrate and closely coordinate the ratepayer-funded CAP program and the federally-funded LIHEAP program so that the program efforts are "mutually reinforcing" in pursuing the goal of affordable energy service. OCA St. 3-R at 3-4. The CAP-Plus approach achieves this result and balances the interests of CAP participants and those residential non-CAP participants who must pay the portion of the bill that the CAP customer is not asked to pay. There is simply no basis to suspend Columbia's CAP-Plus as requested by PCOC.

III. CONCLUSION

For the reasons set forth herein, the OCA respectfully submits that PCOC's Petition for Reconsideration of the Commission's October 14, 2011 Order should be denied. The Commission should take the necessary time to reach a thorough and reasoned decision given the full, detailed and complex record that has been presented to it on the Columbia CAP-Plus Program. The OCA would not object to a clarification of the Order to remove the portion of the Order that directs Columbia to cease and desist using LIHEAP funds to first pay the costs of CAP-Plus since Columbia does not use the LIHEAP funds in such a manner.

Respectfully submitted,


Tanya J. McCloskey
Senior Assistant Consumer Advocate
PA Attorney I.D. # 50044
E-Mail: TMcCloskey@paoca.org
Candis A. Tunilo
PA Attorney I.D. # 89891
E-Mail: CTunilo@paoca.org
Erin L. Gannon
PA Attorney I.D. # 83487
E-Mail: EGannon@paoca.org
Assistant Consumer Advocates

Counsel for:
Irwin A. Popowsky
Consumer Advocate

Office of Consumer Advocate
555 Walnut Street 5th Floor, Forum Place
Harrisburg, PA 17101-1923
Phone: (717) 783-5048
Fax: (717) 783-7152

DATED: November 8, 2011
150194

CERTIFICATE OF SERVICE

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

PCOC et al. v. Columbia Gas of Pennsylvania, Inc.
Docket No. C-2011-2232186

I hereby certify that I have this day served a true copy of the foregoing, the Office of Consumer Advocate's Answer to PCOC et al.'s Petition for Reconsideration and/or Clarification of the Opinion & Order Entered October 14, 2011, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code Section 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 8th day of November 2011.

SERVICE BY E-MAIL and INTEROFFICE MAIL

Charles Daniel Shields, Esquire
Carrie Wright, Esquire
Office of Trial Staff
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

David Huff
Brent Killian
Ed Berzonsky
Bureau of Fixed Utility Services
Commonwealth Keystone Bldg.
400 North Street
Harrisburg, PA 17120

SERVICE BY E-MAIL and FIRST CLASS MAIL

Michael W. Gang, Esquire
Michael W. Hassell, Esquire
Andrew S. Tubbs, Esquire
Post & Schell, P.C.
17 North Second Street
12th Floor
Harrisburg, PA 17101

Theodore J. Gallagher, Esquire
Kimberly S. Cuccia, Esquire
Mark Kempic, Esquire
Columbia Gas of Pennsylvania, Inc.
Southpointe Industrial Park
501 Technology Drive
Canonsburg, PA 15317

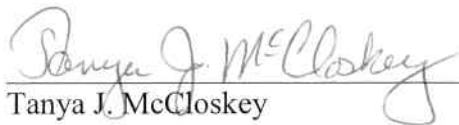
Daniel G. Asmus, Esquire
Elizabeth Rose Triscari, Esq.
Assistant Small Business Advocate
Office of Small Business Advocate
Commerce Building, Suite 1102
300 North Second Street
Harrisburg, PA 17101

Todd S. Stewart, Esq.
Hawke McKeon & Sniscak LLP
100 North Tenth Street
P.O. Box 1778
Harrisburg, PA 17105-1778

Charis Mincavage, Esq.
McNees Wallace & Nurick LLC
100 Pine Street
P.O. Box 1166
Harrisburg, PA 17108-1166

Thomas J. Sniscak, Esq.
William E. Lehman, Esq.
Hawke McKeon & Sniscak, LLP
100 N. 10th Street
P.O. Box 1778
Harrisburg, PA 17105-1778

Patrick M. Cicero, Esq.
Harry Geller, Esq.
Julie George, Esq.
118 Locust Street
Harrisburg, PA 17101



Tanya J. McCloskey
Senior Assistant Consumer Advocate
PA Attorney I.D. # 50044
E-Mail: TMcCloskey@paoca.org
Erin L. Gannon
PA Attorney I.D. # 83487
E-Mail: EGannon@paoca.org
Candis A. Tunilo
Assistant Consumer Advocates
PA Attorney I.D. # 89891
E-Mail: CTunilo@paoca.org
Counsel for
Office of Consumer Advocate
555 Walnut Street
5th Floor, Forum Place
Harrisburg, PA 17101-1923
Phone: (717) 783-5048
Fax: (717) 783-7152
138861