

LARRY R. CRAYNE, PC
Attorney at Law

238 Johnston Road
Pittsburgh, PA 15241

lrcrayne@comcast.net

(412) 831-5462
(412) 425-4029

ELECTRONICALLY FILED

January 31, 2014

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

**Re: Donna & Stephen Beck; Mike Kusturiss, Jr.; Mike Kusturiss, Jr.; John Ombres; and
Ronald Sherrard - Complaint Dockets Nos. C-2012-2328601; C-2013-2385910; C-2013-
2391855; C-2013-2393183; and C-2013-2394500.**

Dear Ms. Chiavetta:

Enclosed is an electronically filed copy of a Motion for Summary Judgment of Columbia Gas of Pennsylvania, Inc. in the above-captioned Formal Complaints. A copy of the document has been served on the Complainants.

Sincerely,


Larry R. Crayne

cc: Hon. Mary D. Long
301 Fifth Avenue
Suite 220, Piatt Place
Pittsburgh, PA 15222

Commonwealth of Pennsylvania

Before the Pennsylvania Public Utility Commission

In the Matter of:

Donna & Stephen Beck; Mike Kusturiss, Jr.;
Mike Kusturiss, Jr.; John Ombres; and Ronald Sherrard,

Complaint Docket
Nos. C-2012-2328601;
C-2013-2385910;
C-2013-2391855;
C-2013-2393183; and
C-2013-2394500.

VS.

Columbia Gas of Pennsylvania, Inc.,
Respondent.

Motion for Summary Judgment

AND NOW comes Respondent, Columbia Gas of Pennsylvania, Inc., (Columbia Gas), pursuant to 52 *Pa. Code*, Section 5.102, and files the following Motion for Summary Judgment:

A. Legal Insufficiency of Pleadings

1. Complainants in these proceedings have filed complaints opposing the Columbia Gas demand that Complainants decide whether to receive 100% of their natural gas service requirements from either Columbia Gas or privately owned natural gas wells.

2. Columbia Gas avers that the terms of the Columbia Gas tariff provide that Rate RSS is only available "...for the total requirements of any residential customer." Therefore, Columbia Gas avers that Complainants must decide if they wish to receive 100% of their natural gas requirements from Columbia Gas; otherwise, Columbia Gas plans to disconnect service to Complainants.

3. The language of the Columbia Gas Tariff Rate RSS is clear. A copy of Tariff Rate RSS is attached hereto as **Exhibit A**. A tariff is a set of operating rules imposed by the Commission that each public utility must follow in order to provide service to its customers. PPL Electric Utilities Corp. v. Pennsylvania Pub. Util. Comm'n, 912 A.2d 386 (Pa. Cmwlth. 2006) Each public utility must file a copy of its tariff with the Commission setting forth its rates, services, rules, regulations and practices so that the public may inspect its contents. 66 Pa. C.S. §1302; 52 Pa. Code §53.25; Philadelphia Suburban Water Co. v. Pennsylvania Pub. Util. Comm'n, 808 A.2d 1044 (Pa. Cmwlth. 2002). Public utility tariffs must be applied consistent with their language. Public utility tariffs have the force and effect of law and are binding on the

public utility and its customers. Pennsylvania Electric Co. v. Pennsylvania Pub. Util. Comm'n, 663 A.2d 281 (Pa. Cmwlth. 1995).

4. The Commission has no authority to allow a public utility to deviate from its tariff even where the Commission concludes it is in the public interest. Philadelphia Suburban Water Co. v. Pennsylvania Pub. Util. Comm'n, 808 A.2d 1044 (Pa. Cmwlth. 2002). A public utility may not charge a rate other than the rates set forth in its tariff. 66 Pa. C.S. §1303. Since the filed and approved Rate RSS is a tariff provision, having the force and effect of law, the language of Rate RSS requiring Complainants to receive 100% of their natural gas service requirements from Columbia Gas if they desire the continuance of service does not violate any provision of the Public Utility Code and does not constitute unreasonable service.

5. Further, since the filing of these complaints, the Commission has ruled on the substantive issue of the application of the Columbia Gas Tariff Rate RSS to dual feed services. On December 24, 2013, the Commission entered a Final Order in the complaint of *Thomas Gaskin v Columbia Gas of Pennsylvania, Inc.*, at Docket No. C-2013-2367940. The *Gaskin* complaint involved a dual feed service identical to the complaints in these proceedings. In *Gaskin*, ALJ Barnes concluded on page 7 of her Initial Decision:

“Given the recent changes in the federal pipeline safety laws which are applicable as minimum standards in Pennsylvania and the company’s DIMP program, I find the company is reasonably applying its RSS rate tariff in offering Complainant 100% of his natural gas service needs at the service property. To offer the customer a choice between 100% supply service and no service at all is not a discriminatory or unreasonable application of the language of the tariff supplement regarding the availability of RSS rates.”

Therefore, there no longer exists any factual or legal question regarding the proper interpretation and application of Columbia Gas Tariff Rule RSS to dual feed services.

6. The Commission may dismiss any complaint without a hearing if, in its opinion, a hearing is not necessary in the public interest. 66 Pa. C.S., Section 703 (b); 52 Pa. Code, Section 5.21 (d). Dismissing a complaint is appropriate and in the public interest when there are no genuine questions of material fact and the Respondent is entitled to judgment as a matter of law. *Lehigh Valley Power Comm. v. Pa. P.U.C.*, 563 A.2d 548 (Pa. Commonwealth Ct. 1989); *Edan Transportation Corp. v. Pa., P.U.C.*, 623 A.2d 6 (Pa. Commonwealth Ct. 1993). Complainants’ demands are legally insufficient. The complaints are insufficient as to substance in that the Commission has confirmed Columbia Gas Tariff Rate RSS as valid. A hearing would be a fruitless exercise and a waste of Columbia Gas and Commission resources.

7. Consequently, the averments of these Complaints fail to allege a violation of the Public Utility Code, Commission regulations or the Columbia Gas filed and approved tariff as a matter of law. Since no factual issue pertinent to the resolution of these complaints exists, a hearing is unnecessary. The Respondent is entitled to judgment as a matter of law. Granting the Columbia Gas motion for dismissal of these Complaints is appropriate in these circumstances.

Wherefore, Columbia Gas moves that these Complaints be dismissed for legal insufficiency, that there is no genuine issue as to a material fact presented by these Complaints which requires a hearing, that Columbia Gas is entitled to judgment as a matter of law and that Columbia Gas be allowed to proceed to disconnect service to Complainants if they fail to elect to receive full requirements service from Columbia Gas Tariff Rate RSS.

Notice to Plead

To: Donna & Stephen Beck; Mike Kusturiss, Jr.; Mike Kusturiss Jr., John Ombres; and Ronald Sherrard:

You are hereby notified to file a written response to the above Motion for Summary Judgment within twenty (20) days from service hereof or a judgment may be entered against you. The response must be mailed to the Secretary of the Public Utility Commission:

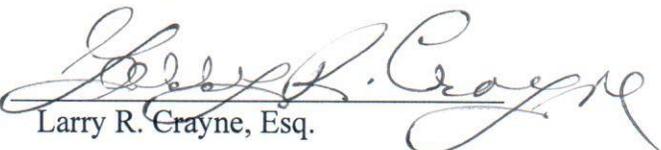
Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

Administrative Law Judge Mary D. Long
301 Fifth Avenue
Suite 220, Piatt Place
Pittsburgh, PA 15222

A copy of your response must also be mailed to:

Larry R. Crayne, PC
Attorney at Law
238 Johnston Road
Pittsburgh, PA 15241

Respectfully submitted,
Columbia Gas of Pennsylvania, Inc.

By: 
Larry R. Crayne, Esq.

Columbia Gas of Pennsylvania, Inc. Canceling Fortleth and Forty-Second Revised Page No. 76

RATE RSS - RESIDENTIAL SALES SERVICE

APPLICABILITY

Throughout the territory served under this Tariff.

AVAILABILITY

Available, at one location, for the total requirements of any residential customer.

RATE

The customers under this rate schedule shall be subject to a Customer Charge, a Gas Supply Charge, a Distribution Charge, a Weather Normalization Adjustment, a Pass-through Charge and a Gas Cost Adjustment (when applicable). (C)

The rate information is detailed in the Rate Summary pages of this tariff.

If a customer transfers to this rate from Rate RDS-Residential Distribution Service then for a period of twelve months, the rate shall be adjusted to exclude the amount per thm equal to the current Commodity "E" Factor which is reflected on the customer bill as the Gas Cost Adjustment. (C)

The Distribution Charge may be flexed in accordance with the Flexible Rate Provisions set forth in the Rules and Regulations of this Tariff. (C)

MINIMUM CHARGE

The minimum charge shall be the Customer Charge. (C)

STATE TAX ADJUSTMENT SURCHARGE

The charges described in this rate schedule are subject to a State Tax Adjustment Surcharge as set forth in this tariff.

RIDER PGC

The Pass-through Charge and the Gas Supply Charge include recovery of purchased gas costs pursuant to the Purchased Gas Cost Rider of this tariff. (C)

USP COSTS AND CUSTOMER CHOICE COSTS

Rider Universal Services Plan and Rider Customer Choice as specified within Rider USP and Rider Customer Choice in this tariff will be reflected in the Pass-through Charge on the customer bill. (C)

DISTRIBUTION SYSTEM IMPROVEMENT CHARGE

Rate RSS is subject to a Distribution System Improvement Charge as specified within Rider DSIC of this Tariff.

(C) Indicates Change

Issued: June 13, 2013

M. R. Kempic
President

Effective: July 1, 2013

Ex. A
Pg 1 of 2

RATE RSS – RESIDENTIAL SALES SERVICE (CONTINUED)

TERMS OF PAYMENT

Bills for sales service will be rendered monthly and are due and payable upon presentation. All bills shall be paid on or before the final date of payment shown on the bill, which date shall be not less than twenty (20) days after presentation (date of postmark).

Effective with bills due after May 1, 2001, if the customer fails to pay the full amount of any bill a delayed payment penalty charge of one and one-quarter percent (1 1/4%) per month will accrue on the customer's bill that is unpaid on the due date consistent with Paragraph 4.13.3.2.3 of the Columbia Rules Applicable to Distribution Service.

SPECIAL PROVISIONS

1. If service under this rate schedule is discontinued at the request of the Customer, the Company shall be under no obligation to reconnect service to the same Customer on the same premises until the Customer pays the monthly minimum charge for each month of the intervening period, but not to exceed twelve (12) months.

2. Where a customer has installed a gas light(s) in lighting devices approved by the Company, and the gas used by such light(s) is unmetered, the gas consumed by such light(s) shall be assumed to be two thousand (2,000) cubic feet per month when the Btu/hr input rating for such light(s) is 2,700 or less. For each additional 1,350 Btu/hr or fraction thereof, the assumed consumption shall be increased by one thousand (1,000) cubic feet per month. Such assumed consumption shall be billed under the rates contained herein, or if in combination with metered usage under this rate schedule, shall be added to the customer's metered usage and the total billed under the rates contained herein.

RULES AND REGULATIONS

The Rules and Regulations Governing the Distribution and Sale of Gas of this Tariff, which are not inconsistent with the provisions of this rate schedule, shall govern, where applicable, the supply of gas service under this rate schedule.

(C) Indicates Change

Issued: June 13, 2013

M. R. Kempic
President

Effective: July 1, 2013

Ex. A
Pg 2 of 2

Certificate of Service

I hereby certify that I have this day served a true and correct copy of the foregoing document upon the participants, listed below, in accordance with the requirements of Sec. 1.54 (relating to service by a participant).

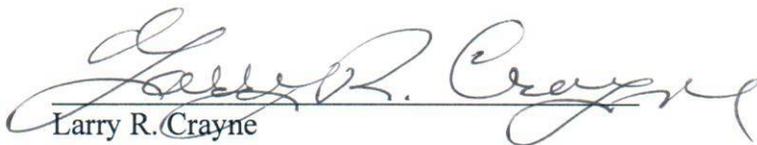
DONNA & STEPHEN BECK
2202 GRACE CHURCH ROAD
KNOX PA 16232
C-2012-2328601

DAVID BAYARD WOLF ESQUIRE
12 NORTH JEFFERSON AVENUE
CANONSBURG PA 15317
Representing Mike Kusturiss Jr.
C-2013-2385910 & C-2013-2391855

ROBERT TAYLOR ESQUIRE
TAYLOR & ALSKO
337 MERCHANT STREET
AMBRIDGE PA 15003
Representing John Ombres
C-2013-2393183

RONALD SHERRARD
110 FARM LANE
WARREN PA 16365
C-2013-239450

Dated this 3/5th day of Jan, 2014



Larry R. Crayne
238 Johnston Road
Pittsburgh, PA 15241

Counsel for
Columbia Gas of Pennsylvania, Inc.