

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	
	:	Docket No. R-2015-2468056
	:	
v.	:	
	:	
Columbia Gas of Pennsylvania, Inc.	:	

Main Brief of the Coalition for Affordable Utility Services and Energy Efficiency in
Pennsylvania

PENNSYLVANIA UTILITY LAW PROJECT
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I. Introduction

A. Statement of the Case/ Procedural History

On March 18, 2015, Columbia Gas of Pennsylvania (“Columbia”) submitted a rate filing, Supplement No. 226 to its Tariff Gas PA PUC No. 9, which proposed to increase rates by approximately \$46.2 million per year, or 8.63%. According to Columbia’s calculations, its proposal would have increased the total bill for an average residential customer from \$90.04 to \$97.82 per month.

On April 8, 2015, CAUSE-PA filed a Petition to Intervene and, on April 9, 2014, the Commission entered an order suspending the implementation of Supplement No. 226 by operation of law until December 18, 2015, and opening an investigation to determine the lawfulness, justness, and reasonableness of the rates, rules, and regulations contained in the proposed Supplement No. 226. Formal Complaints were filed on behalf of the Office of Consumer Advocate (OCA), the Office of Small Business Advocate (OSBA), the Pennsylvania State University (PSU), and the Columbia Industrial Interveners (CII); and Petitions to Intervene were filed by Dominion Retail, Inc., Shipley Energy Company, and Interstate Gas Supply, Inc. (collectively, NGS Parties), and the Retail Energy Supply Association (RESA). On April 16, 2015, the Honorable Mary D. Long, Administrative Law Judge, presided over a Prehearing Conference, at which she granted intervention of CAUSE-PA, the NGS Parties, and RESA and set forth the schedule for litigation.

On June 19, 2015, pursuant to the litigation schedule established at the Prehearing Conference, each of the complaining and/or intervening parties of record circulated written direct testimony and exhibits. Written rebuttal testimony and exhibits were then circulated on July 16, 2015, by the Bureau of Investigation and Enforcement (I&E), OCA, OSBA, PSU, and Columbia,

and written surrebuttal testimony and exhibits were circulated on July 28, 2015, by I&E, OCA, OSBA, PSU, the NGS Parties, Columbia, and CAUSE-PA. Columbia circulated written rejoinder testimony on July 31, 2015.

On July 8, 2015 – after the circulation of parties’ direct testimony and before the circulation of the parties’ rebuttal testimony - the Commission issued a Final Order in a separately docketed proceeding regarding Columbia’s Universal Service and Energy Conservation Plan (Final USECP Order).¹ In relevant part, the Final USECP Order approved Columbia’s Hardship Fund program, summarized the comments of OCA and Columbia regarding the efficacy of Columbia’s recovery of Hardship Fund Program dollars through the Universal Service Program Rider (USP Rider), provided cursory analysis of Columbia’s cost recovery mechanism, and requested that the parties in this base rate proceeding address whether Columbia should continue to recover Hardship Fund Program dollars through the USP Rider. (Final USECP Order at 37-40).

Given the timing of the Final USECP Order (nearly a month after direct testimony was circulated, and just one week before rebuttal testimony was due), no party addressed the issue of cost recovery for Columbia’s Hardship Fund until surrebuttal testimony was filed by OCA witness Roger Colton, CAUSE-PA witness Mitchell Miller, and I&E witness Christopher Keller. Columbia addressed the issue through the Rejoinder Testimony of witness Nancy Krajovic. CAUSE-PA, OCA, and Columbia each argued that cost recovery through the USP Rider should continue until alternative mechanisms for funding are developed and deployed. I&E, however, opposed any continued recovery of funding for Hardship Fund dollars through the USP Rider,

¹ *Columbia Gas of Pennsylvania Inc. Universal Service and Energy Conservation Plan for 2015-2018 Submitted in Compliance with 52 Pa. Code § 62.4*, Final Order, Docket No. M-2014-2424462 (July 8, 2015).

arguing instead that the Commission's Final USECP Order directed Columbia to cease recovery of Hardship Fund dollars through the USP Rider.

Evidentiary hearings were held on August 4 and 10, 2015, at which time the parties' written, pre-served testimony was entered into the record. All parties waived cross-examination. Oral argument was also conducted at the August 10, 2015, evidentiary hearing with respect to a Motion in Limine filed by I&E on August 7, 2015, which sought to limit the issues for briefing – and the evidence upon which the briefing parties could rely – regarding the funding mechanism for Columbia's Hardship Fund. After hearing from parties, ALJ Long denied I&E's Motion in Limine, and ordered that parties could rely on the full evidentiary record in this proceeding to brief the Hardship Fund issue.

Throughout the proceeding, the Parties held numerous settlement discussions and, as a result, were able to agree to a Settlement of all but one issue in this proceeding. The remaining issue, which is the subject of this Brief, is whether Columbia should be permitted to continue to recover \$375,000 through the Universal Service Rider for the purpose of funding its Hardship Fund program.

B. Legal Standards and Burden of Proof

In Columbia's base rate filing, it proposed a USP Rider rate, which includes recovery of \$375,000 for the Hardship Fund. Thus, pursuant to section 315 of the Public Utility Code, the burden of proving that a rate proposal is just and reasonable rests on the public utility. 66 Pa. C.S. § 315. The utility meets this burden by presenting substantial evidence on the record to support its rate proposal. See Lower Frederick Twp. v. Pa. PUC, 409 A.2d 505, 507 (Pa. Commw. Ct. 1980).

II. Summary of Argument

It is imperative that the Commission approve Columbia's continued recovery of \$375,000 from the USP Rider to support its Hardship Fund program until either its next base rate case or Universal Service and Energy Conservation Plan proceeding. Approving deep cut to the program's primary funding source, without first identifying alternative funding mechanisms capable of meeting the overwhelming need, would eviscerate the available assistance, thereby undermining the Commission's statutory obligation to ensure that Universal Service programs are appropriately designed and adequately funded and to meet the needs of economically vulnerable customers.

First, the evidence on the record clearly demonstrates that the intent of the 2012 Base Rate Settlement provision, which established the current recovery mechanism, was to shift the costs of these hardship contributions from one subset of customers – those remaining on default service – to all of its residential customers. The parties to that Settlement did not evidence any intent for this recovery mechanism to be temporary, and thus – in the two short years since the recovery mechanism was approved – Columbia has not proposed or implemented any viable alternative funding mechanisms to replace the current cost recovery.

Further, the Commission unequivocally approved Columbia's current Hardship Fund program, and the corresponding program needs assessment and projected budget and enrollment levels for the program, in its Final USECP. Disapproving the current recovery mechanism, without first securing sufficient funds to restore the program to its approved budget level, would create additional acute hardships for Columbia's low income customers.

Experts Roger Colton, Mitchell Miller, and Nancy Krajovic all agree that disrupting the current funding mechanism, without first providing sufficient time for Columbia to develop and

implement a plan capable of raising sufficient substitute funds, would be a mistake. The facts on the record are clear: the need is great and the relief provided by the program is critical. On the other hand, there is nothing on the record to even suggest that continued cost recovery until the next base rate or Universal Service proceeding would materially impact the residential customer class.

For these reasons, CAUSE-PA urges the Commission to continue its approval of Columbia's cost recovery mechanism for its Hardship Fund program until its next base rate or Universal Service and Energy Conservation Plan proceeding.

III. Argument

Columbia must be allowed to continue recovering \$375,000 through the USP Rider to fund its Hardship Fund program until the next base rate proceeding or its Universal Service plan filing, whichever date comes first. A dramatic and deep cut in Columbia's already-approved Hardship Fund program funding would conflict with Universal Service program requirements and, in turn, would have a devastating impact on economically vulnerable households within Columbia's service territory. Rather than imposing deep cuts to a critically important program, the Commission should instead require Columbia to submit a plan to develop alternative funding, subject to a full evidentiary proceeding, which is designed to raise a comparable level of funding to fully restore the dollars currently recovered through the USP Rider.

A. History of Recovery of Amounts from Customers through Rates to Contribute to Hardship Funding

In Columbia's 2012 Base Rate proceeding, parties to that proceeding, including I&E, agreed to a joint settlement which allowed Columbia to collect \$375,000 from the USP Rider for the purpose of funding its Hardship Fund program. Columbia witness Nancy Krajovic explained in Rejoinder Testimony that the recovery mechanism in the 2012 Settlement was designed to fill the gap that resulted when Columbia cancelled its purchase gas contract with Citizens Energy Corporation (Citizens), which generated \$375,000 in funds for the Hardship Fund:

Columbia entered into an agreement with Citizens in 1984 that provided for the purchase of gas through Citizens as a broker at a benchmark rate. Citizens would then donate the margin between the benchmark price and the current spot market price to the Dollar Energy Fund for disbursement to Columbia's low income customers. The gas purchases from Citizens were reflected and recovered as Purchased Gas Costs. ... The agreement was consequently amended and approved by the Commission in 1994 to maintain the annual funding. The payments by Columbia to Citizens continued to be reflected as Purchased Gas Costs.

(Columbia Statement 112-RJ, Krajovic, at 2-3). Ms. Krajovic went on to explain why the contract with Citizens was later cancelled, thereby eliminating the funds available through the contract used to sustain the Hardship Fund:

In 1984, all residential customers bought their gas supply through Columbia Gas. Today, under CHOICE, customers can choose an alternative supplier and in doing so are exempt from paying the cost of this program. There is no justification that only a portion of the residential customers should support the Hardship Fund. Secondly, the transaction was subject to administrative fees retained by the Citizens Energy Corporation that could be avoided by canceling the contract.

(Columbia Statement 112-RJ, Krajovic, at 3). Thus, it is clear that the intent in the Settlement was to shift the costs of these hardship contributions from one subset of customers – those remaining on default service – to all of its residential customers. There was no indication in the Settlement that the funding mechanism would be temporary and, thus, there was no action by Columbia to develop a non-ratepayer funded mechanism to eventually replace the USP Rider funds.

B. Interpretation of the Commission's USECP Order

From the outset in addressing the Commission's Final USECP Order, it is important to be clear that the Commission explicitly approved Columbia's Hardship Fund program for program years 2015-2018, including its anticipated participation level, funding structure, and administrative design. After describing the program's funding sources and eligibility criteria, the Commission explained in its USECP Order:

We continue to find that **Columbia's Hardship Fund program complies with Commission regulations**, therefore we require no changes regarding this program in Columbia's Revised 2015-2018 Plan at this time.

(Final USECP Order at 36-37 (emphasis added)). The Commission also explicitly approved Columbia's projected needs assessment, enrollment levels, and program budget for its Hardship

Fund program for 2015-2018, and found that Columbia's projections would adequately meet the needs of its low income customers. (Final USECP Order at 47-50). In relevant part, the Commission noted that the budget projection included the \$375,000 from the USP Rider, but nonetheless approved the Hardship Fund budget in total, finding that the projected budget would "adequately serve the need in Columbia's service territory." (Final USECP Order at 50). The Commission noted that the approved budget could be adjusted in the future "based on *changing needs*," but did not allow for future budget reduction based on approved cost recovery. (Final USECP Order at 50). Also important is the Commission's finding that its approval of the projected enrollment level was "not intended to limit Columbia's ability to increase program enrollment beyond these projected levels." (Final USECP Order at 49). The Commission did not indicate that it would accept decreased enrollment.

In discussing the Hardship Fund, the Commission noted that it was "concerned" about Columbia's reliance on the USP Rider to fund the Hardship Fund program because other utilities – with the exception of PGW – primarily fund their Hardship Fund program through voluntary contributions. (Final USECP Order at 38-39). The OCA and Columbia were the only commenters to provide input on cost recovery in the USECP proceeding. The OCA raised general concerns about the use of the USP Rider to collect Hardship Funds, and asked that the issue to be deferred to this base rate proceeding. Columbia claimed the recovery mechanism was essential to maintain program viability because customer donations have sharply decreased and fundraising events do not provide an adequate level of funding.

In response to the positions of the OCA and Columbia, the Commission explained that it was "not persuaded that Columbia cannot [fund their program using only voluntary resources]" and agreed with the OCA that this base rate proceeding was the correct venue in which to

address the Hardship Fund recovery issue. Nonetheless, *despite raising questions about the recovery mechanism*, the Commission found that Columbia's Hardship Fund program was compliant with Commission regulations and approved it as a component of Columbia's 2015-2018 Universal Service portfolio.

Chief amongst the Commission's duties in reviewing and approving a Universal Service program is its statutory responsibility to ensure that Universal Service programs are adequately funded and appropriately calculated to meet the needs of low income residents within the service territory. 66 Pa. C.S. § 2203(8); 52 Pa. Code §§ 62.1, 62.3. Gutting the Hardship Fund of a primary source of funding, without allowing sufficient time to design, review, and implement an alternative fundraising plan, would undermine the Commission's Universal Service program obligations and would cause untold harm to vulnerable Pennsylvania households.

C. Parties' Recommendations on the Recovery through Rider USP of \$375,000 to Contribute to Hardship Funding

Witnesses for OCA, I&E, Columbia, and CAUSE-PA recommended various approaches to the Hardship Fund cost recovery, which are addressed in turn below. A review of these proposals, together with a prudent review of the record, evidences a clear need to continue funding the Hardship Fund through the USP Rider until Columbia's next base rate or Universal Service proceeding, whichever is first. Such a result is unquestionably in the public interest, as it ensures continued access to necessary emergency assistance for vulnerable households, which in turn prevents increased terminations and higher uncollectible expenses.

First, I&E witness Christopher Keller asserts that the Commission "directed that relevant parties should address the issue of funding the Hardship fund through a means other than the Rider USP." (I&E Statement 2-SR, Keller, at 17-19). Of note, Mr. Keller's testimony makes no

assertion that continued recovery of Hardship Fund dollars through the USP Rider – especially in the short term - would be in any way harmful to residential ratepayers. Nonetheless, he recommended that Columbia “follow the Commission directive, and fund the Hardship fund through voluntary donations and not mandatory contribution via the Rider USP.” Id. Mr. Keller did not make any recommendation for transition between the current cost recovery and voluntary fundraising efforts, presumably because he recommends a straight cut to the funding.

Mr. Keller’s recommendation evidences a fundamental misunderstanding of the Final USECP Order which, as explained at length above, approved Columbia’s Hardship Fund program, along with its projected budget, needs assessment, and projected enrollment. Indeed, while the Commission’s Final USECP Order lists several directives, it **does not** order Columbia to make any changes to its Hardship Fund program, including the method or level of funding currently employed by Columbia to adequately serve its low income population. It merely questions whether the current cost recovery method is appropriate, and directs that the parties in this proceeding to further explore the issue.

For its part, OCA argues that cost recovery through the USP Rider was “a temporary response to unusual circumstances” that “was not intended to create a new permanent responsibility on the part of ratepayers.” (OCA Statement No 4-S, Colton, at 10). However, OCA witness Roger Colton notes that because the issue was raised very late in this proceeding, and alternative funding mechanisms have not yet been developed, it is prudent to continue the cost recovery mechanism currently in place until Columbia’s next base rate proceeding. (OCA Statement No 4-S, Colton, at 11). In the interim, Mr. Colton suggests that Columbia be directed to “ramp up its fundraising efforts and continue to seek a replacement for this funding.” (OCA Statement No 4-S, Colton, at 11). Mr. Colton asserts, “By reserving this issue for the Company’s

next rate case, the Company will have the opportunity to plan for the possibility of the Hardship Fund dollars being removed from the USP Rider.” (OCA Statement No 4-S, Colton, at 11). He goes on to suggest specific recommendations for successful fundraising programs, and recommends specific strategies – such as seeking a new aggregation contract and working with community partners – to raise sufficient replacement funding.

Columbia witness Nancy Krajovic fully endorsed Mr. Colton’s recommendation “to allow recovery to continue until the Company’s next base rate case but in the meantime ramp up the fundraising efforts and seek a replacement for this funding.” (Columbia Statement No. 112-RJ, Krajovic, at 4). In explaining the need for a stable funding mechanism for the Hardship Fund, Ms. Krajovic explained that “Columbia continues to see an increase in fuel fund utilization.” (Columbia Statement No. 112-RJ, Krajovic, at 3-4).

CAUSE-PA witness Mitchell Miller recommended a similar approach to the one described by OCA and endorsed by Columbia, suggesting that the cost recovery mechanism continue until Columbia drafts and implements a plan to raise comparable funding to replace the \$375,000 currently recovered through the USP Rider. (CAUSE-PA St. 1-SR, Miller, at 10). In addressing the importance of the Hardship Fund to remain funded at approved levels, Mr. Miller explained:

Hardship funds are critically important for families who are struggling to make ends meet. Many of the customers who access Hardship Fund assistance do not qualify for LIHEAP, or are unable to obtain LIHEAP without the additional assistance of Hardship Funds. ... [I]n balance, the temporary increased costs to ratepayers is justified as a means to ensuring continued access to sufficient hardship funding for vulnerable households while a more long term funding solution is established.

(CAUSE-PA St. 1-SR, Miller, at 9-10 and n.9).

In reviewing the record in full, it is abundantly clear that low income customers² have disproportionately high energy burdens, and a correspondingly high level of payment-based termination. (CAUSE-PA St. 1, Miller, at 9-11). The Hardship Fund program is designed to assist low income customers who are not otherwise eligible for sufficient assistance to address their need, but who nonetheless need financial assistance due to a temporary hardship. (Final USECP Order at 36-37). Indeed, the program serves as a stop-gap to avoid termination after all other options have been exhausted. (CAUSE-PA St. 1-SR, Miller, at 9-10). In turn, the program measurably decreases terminations and the corresponding uncollectible expenses associated with those terminations. (See CAUSE-PA St. 1, Miller, at 9-11). As explained above, Columbia's Hardship Fund program was approved to serve an estimated 2,800 households at a projected budget of \$409,000. (Final USECP Order at 49 T.4). Cutting \$375,000 of a \$409,000 budget would grossly undercut the availability of funds to assist the estimated 2,800 customers served annually through this program.

On the other hand, there is no evidence on the record to even suggest that continued collection of Hardship Fund dollars through the USP Rider would negatively impact residential ratepayers, especially in the short run.

² The definition of low income, for the purpose of the Hardship Fund, extends to those living at or below 200% FPL, which is still well below the Self Sufficiency Standard in Columbia's service territory. As the record shows, individuals living below the Self Sufficiency Standard have insufficient income to meet their basic needs. Mr. Miller explained:

The Self Sufficiency Standard is a tool that measures the income that a family must earn to meet their basic needs. It is calculated by finding the costs of 6 basic needs – housing, child care, food, health care, transportation, and taxes – without the help of public subsidies. Unlike the federal poverty level, which does not change based on geographic location or family composition, the Self Sufficiency Standard accounts for the varied costs of these 6 basic needs in different geographical areas and for different aged household members. ***The average Self Sufficiency Standard for the Columbia Gas service territory for a family of four (two adults, one preschool age child, and one school-age child) is \$50,435. In comparison, a family of four living at 150% of the poverty level has an income of just \$35,775, much less than is necessary to meet the six basic categorical needs.*** (CAUSE-PA St. 1, Miller, at 9-10 (internal citations omitted, emphasis added)).

IV. Conclusion

A full review of the relevant evidence, including the history of Columbia's recovery of Hardship Funds through the USP Rider, the Commission's Final USECP Order approving the Hardship Fund program, and the Parties' testimony and recommendations in the current proceeding all point to the same conclusion: Columbia must be allowed to continue recovering \$375,000 through the USP Rider until its next base rate case or its next Universal Service Plan proceeding. To hold otherwise would undermine the Commission's duty to ensure that Universal Service programs are adequate to address the needs of consumers within Columbia's service territory, and would harm low income households.

Respectfully Submitted,

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