



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE
REFER TO OUR FILE

August 27, 2015

Secretary Rosemary Chiavetta
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

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

Dear Secretary Chiavetta:

Enclosed please find the Bureau of Investigation and Enforcement's (I&E) **Main Brief** in the above-captioned proceeding.

Copies are being served on parties as identified in the attached certificate of service. If you have any questions, please contact me at (717) 425-7593.

Sincerely,

Scott B. Granger

Prosecutor

Bureau of Investigation and Enforcement
PA Attorney I.D. #63641

SBG/sea
Enclosure

cc: Certificate of Service
ALJ Mary D. Long

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**MAIN BRIEF
OF THE
BUREAU OF INVESTIGATION & ENFORCEMENT**

Johnnie E. Simms
Chief Prosecutor
PA Attorney I.D. #33911

Richard A. Kanaskie
Deputy Chief Prosecutor
PA Attorney I.D. #80409

Scott B. Granger
Prosecutor
Attorney ID #63641

Bureau of Investigation & Enforcement
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Dated: August 27, 2015

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I. INTRODUCTION.

A. Statement of the Case / Procedural History

On March 19, 2015, Columbia Gas of Pennsylvania, Inc. (“Columbia” or “Company”) filed Supplement No. 226 to Tariff Gas Pa. P.U.C. No. 9 (“Supplement No. 226”) to become effective May 18, 2015. Supplement No. 26 contained proposed changes in rates, rules, and regulations calculated to produce \$46.2 million (8.63%) in additional annual revenues based upon a pro forma fully projected future test year (“FPFTY”) ending December 31, 2016.

The Bureau of Investigation and Enforcement (“I&E”) entered its appearance in this proceeding, while the Office of Consumer Advocate (“OCA”), the Office of Small Business Advocate (“OSBA”), the Columbia Industrial Intervenors (“CII”)¹ and the Pennsylvania State University (PSU) filed Complaints. The OCA Complaint was filed at Docket No. C-2015-2473682. The OSBA Complaint was filed at Docket No. C-2015-2477816. CII’s Complaint was filed at Docket No. C-2015-2477120 and PSU’s Complaint was filed at Docket C-2015-2476623. All of the Complaints were consolidated in this rate proceeding for hearing and disposition.

Petitions to Intervene were filed by the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (“CAUSE-PA”), joint petitioners Interstate Gas Supply, Inc. d/b/a IGS Energy, Shipley Choice LLC d/b/a Shipley Energy and Dominion Retail, Inc. d/b/a Dominion Energy Solutions (“NGS Parties”). In addition, the Retail Energy Supply Association (RESA) filed a Petition to Intervene.

¹ Members of the CII include the following: Glen-Gery Corporation and Knouse Foods Cooperative, Inc.

On April 9, 2015, the Commission issued an Order initiating an investigation of Columbia's proposed general rate increase and suspending Columbia's Supplement No. 226 until December 18, 2015, unless permitted by Commission Order to become effective at an earlier date.

At the same time the investigation into Columbia's Base Rate case was proceeding the Commission was moving forward with its evaluation of Columbia's Universal Service and Energy Conservation Plan for 2015-2018 that was filed back on June 2, 2014 at Docket No. M-2014-2424462 (the "USECP Proceeding"). The subject of this litigated matter was originally addressed in that proceeding. The Commission had issued a Tentative Order ("USECP Tentative Order") in the USECP Proceeding on March 26, 2015 in which the Commission invited Comments from interested parties on whether monies for Hardship Fund grants should be recovered, and if so, how.² On July 8, 2015, after reviewing all Comments provided by the interested parties, the Commission issued a Final Order ("USECP Final Order"). The Commission specifically addressed the subject of this litigated matter (the Hardship Fund) in the USECP Final Order wherein it stated:

Although funding a Hardship Fund program through employee, customer, and stockholder contributions is less consistent than a flat charge added to Columbia's USP Rider, other NGDCs and the EDCs are able to fund their programs using only voluntary resources. We are not persuaded that Columbia cannot do so as well.

We agree with the OCA that the Commission and relevant parties should address this issue through Columbia's current base rate proceeding at Docket No. R-2015-2468056.³

² USECP Tentative Order at 28.

³ USECP Final Order at 39-40.

In response to the Commission's USECP Final Order; I&E, OCA and CAUSE-PA witnesses made recommendations regarding the recovery of the Hardship Fund funding in their surrebuttal testimonies, and the Company addressed the issue in its rejoinder testimony; all of which are set forth in full and discussed herein, *infra*, at Section III (c).

Furthermore, the parties engaged in numerous settlement conferences in an attempt to reach an amicable resolution regarding this issue. No agreement was reached and this issue was reserved for Briefing.

B. Legal Standards and Burden of Proof

It is axiomatic that the burden of proof in any proceeding involving a utility's existing or proposed rates is on the utility.⁴ To satisfy this burden, Columbia must prove by a preponderance of evidence that its existing and proposed rates are just and reasonable.⁵ A preponderance of the evidence is such evidence that is more convincing, by even the smallest amount, than that presented by another party.⁶ If a preponderance of evidence is submitted, the burden of going forward with evidence shifts to opposing parties to produce credible evidence of at least co-equal weight. While the burden of going forward may shift back and forth between the parties, the ultimate burden of persuasion with respect to the justness and reasonableness of Columbia's present and proposed rates remains with the Company. Further, this Commission must ensure that any adjudication is supported by substantial evidence. "Substantial evidence" is such

⁴ See 66 Pa.C.S. §§1301, 315(a); *Brockway Glass Co. v. Pennsylvania Public Utility Commission*, 437 A.2d 1067 (Pa. Commw. 1981); *Lower Frederick Twp. v. Pennsylvania Public Utility Commission*, 409 A.2d 505 (Pa. Commw. 1980).

⁵ *Samuel J. Lansberry, Inc. v. Pennsylvania Public Utility Commission*, 578 A.2d 600 (Pa. Commw. 1990).

⁶ *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950).

relevant evidence that a reasonable mind might accept as adequate to support a conclusion.⁷

II. SUMMARY OF ARGUMENT.

The issue before the presiding officer is not whether Columbia's Hardship Fund has merit, nor whether the recovery of the Hardship Fund funding should come from the USP Rider. Those issues have already been resolved by the Commission in the USP Final Order. The Commission stated unequivocally that it was not persuaded that Columbia cannot fund their Hardship Fund through using only voluntary resources.⁸

The issue now before this tribunal is two-fold: (1) - have the parties offered recommendations that fulfill the Commission's directive to "address this issue through Columbia's current base rate proceeding at Docket No. R-2015-2468056"⁹; and, (2) - have the parties offered any recommendations that fulfill the Commission's directive to fund the Hardship Fund through only voluntary resources rather than through mandatory contributions from ratepayers through the USP Rider?

Regarding sub-issue (1), Columbia and OCA have both failed to present recommendations that fulfill the Commission's directive to address the issue in this current base rate case. The Commission has already determined that Columbia cannot continue to fund its Hardship Fund program through mandatory contributions through the USP Rider; therefore, both Columbia's and OCA's recommendations are not in compliance with the Commission's clear directive.

⁷ *Norfolk & Western Ry. Co. v. Pennsylvania Public Utility Commission*, 413 A.2d 1037 (Pa. 1980);

⁸ See USECP Final Order at 39.

⁹ USECP Final Order at 40.

Regarding sub-issue (2), I&E has presented a recommendation that this tribunal order Columbia to remove the Hardship Fund funding from the USP Rider in this proceedings recommended decision. I&E's recommendation complies with the Commission's directives to both address the issue in this proceeding and to discontinue the collection of Hardship Fund funding through mandatory contributions through the USP Rider.

Also regarding sub-issue (2), to the extent that it is the intention of CAUSE-PA for Columbia to temporarily provide the \$375,000 using voluntary resources, not the USP Rider, until alternative fundraising programs can be found, then I&E would have no objection and CAUSE-PA's recommendation could be found in compliance with the Commission's clear directive.

III. ARGUMENT.

A. History of the Recovery of the Amount of Contributions to Hardship Fund.

The Commission reviewed the history of Columbia's funding of its Hardship Fund in Columbia's USECP Proceeding.¹⁰ Columbia's Hardship Fund is a donation matching program, whereby customers, shareholders, and members of the community can make donations that are matched by Columbia dollar for dollar. The \$375,000 came about as a result of a contract Columbia had with Citizens Energy Electric dating back several decades which was eventually cancelled by Columbia. And while a review of the history of Columbia's Hardship Fund is informative, it only merits tangential consideration

¹⁰ See USECP Tentative Order at 25-28, and USECP Final Order at 36-39.

regarding the narrow issue at hand. I&E does not question the merits of Columbia's Hardship Fund, nor does I&E wish to define the amount of monies Columbia relegates to the Hardship Fund.

B. Interpretation of the Commission's USECP Order.

The Commission stated unequivocally that they agreed with the OCA that the Commission and relevant parties should address the Hardship Fund issue through this current base rate case proceeding.¹¹ Furthermore, the Commission made it very clear that other NGDCs and EDCs are able to fund their hardship fund programs using only voluntary resources, and the Commission was not persuaded that Columbia cannot do so as well.¹² The Commission could not have been clearer. Columbia must remove the recovery of the Hardship Fund funding from its USP Rider and find ways to fund its program using voluntary resources, and the Commission wants the issue addressed in this base rate proceeding. There is no other way to interpret the plain language of the USECP Final Order.

All of the relevant parties hereto, Columbia, OCA, and CAUSE-PA, were also parties in the USECP Proceeding and filed Comments and/or Reply Comments in that proceeding. Furthermore, all of those parties had ample opportunity under Commission regulations to file exceptions to the USECP Final Order or to petition for clarification or reconsideration. However, none of the parties took any action following the USECP Final Order to address any perceived ambiguity and they cannot now ask for redress from

¹¹ See USECP Final Order at 40.

¹² See USECP Final Order at 39.

the Commission's USECP Final Order in this proceeding. Therefore, we must move forward.

The issue now before this tribunal is two-fold: (1) - have the parties offered recommendations that fulfill the Commission's directive to address the Hardship Fund funding issue in this current base rate case; and, (2) - have the parties offered any recommendations that fulfill the Commission's directive to fund the Hardship Fund through only voluntary resources rather than through mandatory contributions from ratepayers through the USP Rider?

C. Parties Recommendations Regarding the Recovery of the Hardship Fund Contributions through the USP Rider.

Columbia did not address the Hardship Fund issue in its initial filing in this base rate proceeding, and no party presented any testimony or other evidence in their direct or rebuttal testimony regarding the Hardship Fund issue. Ultimately, I&E, OCA and CAUSE-PA addressed the issue in surrebuttal testimony and Columbia addressed it in rejoinder.

I&E witness Christopher Keller addressed the issue in his surrebuttal testimony.¹³ Mr. Keller recommended that "the Company follow the Commission directive, and fund the Hardship Fund through voluntary donations and not mandatory contribution via the Rider USP."¹⁴

¹³ See I&E St. No. 2-SR at 17-19.

¹⁴ I&E St. No. 2-SR at 19.

OCA witness Roger D. Colton addressed the issue in his surrebuttal testimony.¹⁵ Mr. Colton ultimately stated “I am recommending that the current recovery mechanism agreed to in the 2012 settlement be continued until Columbia’s next base rate case.”¹⁶

CAUSE-PA witness Mitchell Miller addressed the issue in his surrebuttal testimony.¹⁷ Mr. Miller recommended that “the \$375,000 in Hardship Funds currently recovered through the USP Rider should temporarily continue while the Company – with input from and in collaboration with interested parties – develops alternative fundraising programs capable of raising funds equal to or greater than the Hardship Fund amount currently recovered through the USP Rider.”¹⁸

Columbia witness Nancy J. D. Krajovic addressed the issue in her rejoinder testimony.¹⁹ Ms. Krajovic ultimately stated “Columbia endorses OCA’s proposal to allow the current recovery to continue until the Company’s next base rate case but in the meantime ramp up the fundraising efforts and seek replacement for this funding.”²⁰

IV. CONCLUSION.

As stated *supra*, the issue now before this tribunal is two-fold: (1) - have the parties offered recommendations that fulfill the Commission’s directive to “address this issue through Columbia’s current base rate proceeding at Docket No. R-2015-2468056”²¹; and, (2) - have the parties offered any recommendations that fulfill the

¹⁵ See OCA St. No. 4-S at 7-11.

¹⁶ OCA St. No. 4-S at 11.

¹⁷ See CAUSE-PA St. No. 1-SR at 9-10.

¹⁸ CAUSE-PA St. No. 1-SR at 10.

¹⁹ See Columbia St. No. 112-RJ at 1-4.

²⁰ Columbia St. No. 112-RJ at 4.

²¹ USECP Final Order at 40.

Commission's directive to fund the Hardship Fund through only voluntary resources rather than through mandatory contributions from ratepayers through the USP Rider?

Regarding sub-issue (1), Columbia and OCA have both failed to present recommendations that fulfill the Commission's directive to address the issue in this current base rate case. Both Columbia and OCA presented recommendations to continue to recover Hardship Fund funding through the USP Rider and address the funding issue in Columbia's next base rate case. The Commission, however, has already determined that Columbia cannot continue to fund its Hardship Fund program through mandatory contributions through the USP Rider; but shall instead fund its Hardship Fund program using only voluntary resources. Therefore, both Columbia's and OCA's recommendations are not in compliance with the Commission's clear directive.

Regarding sub-issue (2), I&E has presented a recommendation that this tribunal order Columbia to remove the Hardship Fund funding from the USP Rider in this proceedings recommended decision. I&E's recommendation complies with the Commission's directives to both address the issue in this proceeding and to discontinue the collection of Hardship Fund funding through mandatory contributions through the USP Rider.

Also, regarding sub-issue (2), CAUSE-PA has presented a recommendation whereby the \$375,000 in Hardship Funds currently recovered through the USP Rider temporarily continue while the Company develop alternative fundraising programs. To the extent that it is the intention of CAUSE-PA to temporarily continue to collect the \$375,000 from the USP Rider, then CAUSE-PA's recommendation is not in compliance

with the Commission's directive as discussed under sub-issue (1). To the extent that it is the intention of CAUSE-PA for Columbia to provide the \$375,000 using voluntary resources until alternative fundraising programs can be found, then I&E would have no objection and CAUSE-PA's recommendation could be found in compliance with the Commission's clear directive.

In consideration of all of the above, I&E respectfully submits that I&E's recommendation is in compliance with the Commission's clear directive and addresses the issue as directed in the USECP Final Order. Additionally, if it is CAUSE-PA's intention that Columbia temporarily provides the \$375,000 using voluntary resources until alternative fundraising programs can be found, then I&E would have no objection and CAUSE-PA's recommendation could be found in compliance with the Commission's clear directive. I&E respectfully submits that it has met its burden to support I&E's recommendation that ALJ Mary D. Long recommend and the Commission order that the recovery of the Hardship Fund funding be removed from Columbia's USP Rider and that Columbia fund its Hardship Fund program using only voluntary resources.

V. PROPOSED FINDINGS OF FACT.

1. The Commission issued a Tentative Order (“USECP Tentative Order”) in the USCEP Proceeding at Docket No. M-2014-2424462 on March 15, 2015.

2. In its USECP Tentative Order the Commission invited comments from interested parties on whether monies for Hardship Fund grants should be recovered, and if so, how.

3. After reviewing all of the comments provided by the interested parties, the Commission issued a Final Order (“USECP Final Order”) in the USECP Proceeding at Docket No. M-2014-2424462 on July 8, 2015.

4. In its USECP Final Order the Commission stated: “Although funding a Hardship Fund program through employee, customer, and stockholder contributions is less consistent than a flat charge added to Columbia’s USP Rider, other NGDCs and the EDCs are able to fund their programs using only voluntary resources. We are not persuaded that Columbia cannot do so as well.”

5. In its USECP Final Order the Commission stated: “We agree with the OCA that the Commission and relevant parties should address this issue through Columbia’s current base rate proceeding at Docket No. R-2015-2468056.”

6. Columbia, OCA and CAUSE-PA were all parties in Columbia’s USECP Proceeding.

7. Columbia, OCA and CAUSE-PA all filed comments and/or reply comments in response to the USECP Tentative Order.

8. No party in the USECP Proceeding filed exceptions or petitioned for clarification or reconsideration regarding the USECP Final Order.

9. I&E witness Keller recommended that "the Company follow the Commission directive, and fund the Hardship Fund through voluntary donations and not mandatory contribution via the Rider USP."

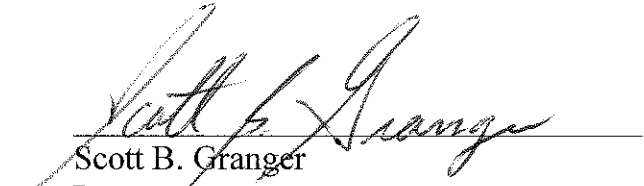
VI. PROPOSED CONCLUSIONS OF LAW.

1. Columbia's current method of funding its Hardship Fund programs through mandatory contributions from ratepayers using its USP Rider is arbitrary, unfair, unreasonable, unjust and/or discriminatory.

VII. PROPOSED ORDERING PARAGRAPHS.

1. Columbia's current USP Rider is not approved.
2. Columbia is prohibited from collecting funding for its Hardship Fund programs through mandatory contributions from ratepayers using its USP Rider.
3. Columbia shall remove the recovery of Hardship Fund funding from its USP Rider.
4. Columbia shall fund its Hardship Fund programs using only voluntary resources.

Respectfully submitted,



Scott B. Granger
Prosecutor
PA Attorney I.D. #63641

Dated: August 27, 2015

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

CERTIFICATE OF SERVICE

I hereby certify that I am serving the foregoing **Main Brief** dated August 27, 2015, in the manner and upon the persons listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party):

Served via Electronic and First Class Mail

Michael W. Hassell, Esquire
Lindsay A. Berkstresser, Esquire
Michael W. Gang, Esquire
Devin T. Ryan, Esquire
Post & Schell, PC
17 North Second Street – 12th Floor
Harrisburg, PA 17101

Theodore J. Gallagher, Esquire
Columbia Gas of Pennsylvania, Inc.
121 Champion Way, Suite 100
Canonsburg, PA 15317

Andrew S. Tubbs, Esquire
NiSource Corporate Service Company
800 N. Third Street, Suite 204
Harrisburg, PA 17102

Patrick Cicero, Esquire
Harry S. Geller, Esquire
Elizabeth R. Marx, Esquire
PA Utility Law Project
118 Locust Street
Harrisburg, PA 17101-1923
(*Counsel for CAUSE PA*)

Erin Gannon, Esquire
Office of Consumer Advocate
555 Walnut Street
5th Floor Forum Place
Harrisburg, PA 17101-1923

Daniel G. Asmus, Esquire
Office of Small Business Advocate
300 North Second Street
Suite 202
Harrisburg, PA 17101

Thomas J. Sniscak, Esquire
William H. Lehman, Esquire
Hawke McKeon & Sniscak, LLP
100 N. 10th Street
Harrisburg, PA 17101
(*Counsel for PSU*)

Todd S. Stewart, Esquire
Hawke McKeon & Sniscak, LLP
100 N. 10th Street
Harrisburg, PA 17101
(*Counsel for NGS Parties*)

Charis Mincavage, Esquire
Elizabeth P. Trinkle, Esquire
McNees Wallace & Nurick
100 Pine Street
P.O. Box 1166
Harrisburg, PA 17108
(Counsel for CII)

Thomas J. Sniscak, Esquire
Christopher M. Arfaa, Esquire
William E. Lehman, Esquire
Hawke McKeon & Sniscak LLP
100 North Tenth Street
Harrisburg, PA 17101

John F. Povilaitis, Esquire
Karen O. Moury, Esquire
Buchanan Ingersoll & Rooney PC
409 North Second Street
Suite 500
Harrisburg, PA 17101-1357
(Counsel for RESA)

Served via Electronic Mail

Hobart J. Webster, Esquire
hwebster@paoca.org

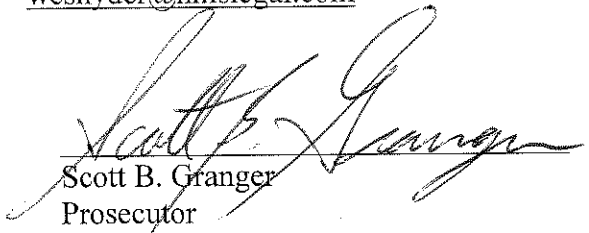
Rebecca Nace
rnace@paoca.org

Ms. Witten
MWhitten@LaCapra.com

Denise Smith
DSmith@paoca.org

Amy Hirakis, Esquire
ahirakis@paoca.org

Whitney E. Snyder, Esquire
wesnyder@hmslegal.com


Scott B. Granger
Prosecutor
Bureau of Investigation and Enforcement
PA Attorney I.D. No. 63641