



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
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IN REPLY PLEASE
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September 11, 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) **Reply 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/snc
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	:	

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

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Dated: September 11, 2015

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I. INTRODUCTION.

A. Statement of the Case / Procedural History

The Bureau of Investigation and Enforcement (“I&E”) filed its Main Brief (“I&E MB”) on August 27, 2015. I&E provided a statement of the case and procedural history in its Main Brief, which does not need to be repeated or replied to in this, I&E’s Reply Brief.¹ Also on August 27, 2015 the following parties file their respective Main Briefs; Columbia Gas (“Columbia MB”), Office of Consumer Advocate (“OCA MB”), and CAUSE-PA (“CAUSE MB”); (collectively, the “Parties”).

And finally, I&E, along with the other Joint Petitioners, filed a separate Statement in Support of the Joint Petition for Partial Settlement on August 27, 2015.

B. Legal Standards and Burden of Proof

All of the Parties agree that typically, in a base rate proceeding, the utility has the burden of proof with regard to the reasonableness of rates and modifications included in its filing.² The OCA points out that the issue of whether such recovery should continue was placed into this case by the Commission's Order in the USECP case.³ In that

¹ For reference purposes, 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. On July 8, 2015, after reviewing all Comments provided by the interested parties, the Commission issued a Final Order (“USECP Final Order”).

² OCA MB at 3 (*citing* 66 Pa. C.S. § 315(a)). *Accord* I&E MB at 3; CAUSE MB at 5; and Columbia MB at 5.

³ OCA MB at 4.

proceeding, Columbia had the burden of proving the reasonableness of its proposal to recover monies through the USP Rider to fund the Hardship Fund.⁴

Columbia argues that tariff provisions previously approved by the Commission are deemed just and reasonable and, therefore, a party challenging a previously-approved tariff provision bears the burden to demonstrate that the Commission's prior approval is no longer justified.⁵ However, Columbia's argument fails because, as noted *supra*, OCA correctly pointed out, Columbia had the burden of proving the reasonableness of its proposal to recover monies through the USP Rider to fund the Hardship Fund in the USECP proceeding.⁶ The OCA also noted that Columbia continues to bear the burden of proof - and was given the opportunity to provide the last word - in THIS proceeding with regard to the continuing recovery of the Hardship Fund funding through the USP Rider beyond the Final Order to be issued in this proceeding.⁷ And even more to the point, Columbia bears the burden of proving that its argument to defer resolution of the recovery of the Hardship Fund funding to Columbia's next base rate case satisfies the Commission's clear directive to address this issue in this current base rate case as stated in the USECP Final Order.⁸

⁴ OCA MB at 4 (*citing* USECP Final Order at 2-3; and 52 Pa. Code §§ 62.1 – 62.8).

⁵ Columbia MB at 6.

⁶ *See* Footnote 4, *supra*.

⁷ OCA MB at 4. *Accord* I&E MB at 3-4.

⁸ USECP Final Order at 39-40.

II. SUMMARY OF ARGUMENT.

As I&E stated in its Main Brief, 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.⁹ The Commission stated unequivocally that it was not persuaded that Columbia cannot fund their Hardship Fund through using only voluntary resources and therefore recovery should be removed from the USP Rider.¹⁰

The issue now before this tribunal is two-fold: (1) - has any Party offered a recommendation that fulfills the Commission's directive to "address this issue through Columbia's current base rate proceeding at Docket No. R-2015-2468056;"¹¹ and, (2) - has any Party offered a recommendation that fulfills the Commission's directive to fund the Hardship Fund through only voluntary resources rather than through mandatory contributions from ratepayers through the USP Rider?

As I&E argued in its Main Brief, 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.¹² 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.¹³ The Commission, however, has already determined that Columbia cannot continue to fund its Hardship

⁹ USECP Final Order at 39-40.

¹⁰ USECP Final Order at 39.

¹¹ USECP Final Order at 40.

¹² I&E MB at 4-10.

¹³ OCA MB at 8 and Columbia MB at 12.

Fund program through mandatory contributions through the USP Rider; but shall instead fund its Hardship Fund program using only voluntary resources.¹⁴ 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 recovery of the Hardship Fund funding from the USP Rider in this proceedings recommended decision.¹⁵ I&E's recommendation complies with the Commission's directives to both address the issue in this proceeding and to discontinue the recovery 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.¹⁶ 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 above under sub-issue (1). To the extent that it is the intention of CAUSE-PA to eliminate the recovery of the Hardship Fund funding from the USP Rider and for Columbia to provide the \$375,000 using only 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

¹⁴ USECP Final Order at 39-40.

¹⁵ I&E MB at 7-10.

¹⁶ CAUSE MB at 13.

the Commission's clear directive. The record, however, does not clarify CAUSE-PA's true intention as the only testimony CAUSE-PA submitted after the USECP Final Order was the surrebuttal testimony of CAUSE witness Miller.¹⁷

III. ARGUMENT.

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

All parties to this issue express their agreement in their main briefs that Columbia's Hardship Fund is a program that provides financial assistance to residential customers who need help temporarily paying their bills.¹⁸ OCA noted in its Main Brief that typically, Hardship Funds are funded by voluntary donations from ratepayers, and are matched by public utility's shareholders.¹⁹ This method of funding a hardship fund was supported and in fact recommended by the Commission in its USECP Final Order.²⁰

Columbia's recitation of the history of the Hardship Fund funding in its Main Brief highlights how the funding transformed from a voluntary contribution by Citizens Energy negotiated at arms-length by and between Columbia and Citizens Energy,²¹ to a mandatory contribution from all residential non-CAP customers through the Rider USP, regardless of how they purchased gas.²² The Commission has found this current situation using the Rider USP to be fundamentally unfair.²³

¹⁷ CAUSE-PA St. 1-SR at 10. *See also*, CAUSE MB at 13-15.

¹⁸ OCA MB at 5. *Accord* I&E MB at 5, Columbia MB at 7, and, CAUSE MB at 8.

¹⁹ OCA MB at 5.

²⁰ USECP Final Order at 39-40.

²¹ Columbia MB at 8-9.

²² Columbia MB at 9-10.

²³ USECP Final Order at 39-40.

CAUSE-PA reminds us that the recovery mechanism in Columbia's 2012 Base Rate proceeding Settlement was designed to fill the gap that resulted when Columbia cancelled its purchase gas contract with Citizens Energy, which generated \$375,000 in funds for the Hardship Fund.²⁴

The Commission reviewed the history of Columbia's funding of its Hardship Fund in Columbia's USECP Proceeding.²⁵ And while a review of the history of Columbia's Hardship Fund is informative, it only merits tangential consideration regarding the narrow issue at hand. Furthermore, neither I&E nor any of the other Parties 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. I&E's concern is that the current recovery of the Hardship Fund funding is mandatory contributions through the USP Rider, rather than from voluntary sources, a mechanism not employed by any other NGDC, and a situation that the Commission has found to be fundamentally unfair.²⁶

B. Interpretation of the Commission's USECP Order.

In its Main Brief, and in agreement with I&E's position, CAUSE-PA notes that the Commission 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.²⁷ CAUSE-PA also pointed out that the Commission, in response to the comments of Columbia and OCA, explained that it was not persuaded that Columbia cannot fund their programs using only

²⁴ CAUSE MB at 8.

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

²⁶ I&E MB at 4-10.

²⁷ CAUSE MB at 10 (*citing* USECP Final Order at 38-39).

voluntary resources.²⁸ CAUSE-PA then confirmed, in agreement with I&E, that the Commission agreed with the OCA's comments, in the USECP proceeding, that this base rate proceeding was the correct venue in which to address the Hardship Fund recovery issue.²⁹

CAUSE also included a discussion about the merits of the Hardship Fund and the amount of dollars dedicated to the Hardship Fund noting that the Commission approved of the Hardship Fund program as part of Columbia's USECP Plan.³⁰ Furthermore, CAUSE-PA reminds us that the Commission felt the projected budget, which included the \$375,000, would adequately serve the need in Columbia's service territory.³¹ I&E, as stated in its Main Brief, does not challenge the merits of the Hardship Fund, nor does I&E oppose the amount budgeted for the Hardship Fund.³² As stated *supra*, I&E's concern is that the current recovery of the Hardship Fund funding is through a mandatory contributions through the USP Rider rather than from voluntary sources; a situation that the Commission has found to be fundamentally unfair.³³

Columbia's argument, as set forth in its Main Brief, that the Commission did not mandate the immediate removal of the \$375,000 hardship funding from the USP Rider in its USECP Final Order and therefore the Commission did not intend the immediate cessation of the recovery of the \$375,000 recovery through the USP Rider,³⁴ ignores one

²⁸ CAUSE MB at 10.

²⁹ CAUSE MB at 10 (*emphasis added*).

³⁰ CAUSE MB at 9-11.

³¹ CAUSE MB at 10.

³² I&E MB at 5 and 10.

³³ I&E MB at 4-10.

³⁴ Columbia MB at 10-11.

of the Commission's strongest underlying doctrines, that the Commission favors amicable settlements on disputed issues.³⁵ The very nature of a settlement requires compromise on the part of all parties. The Commission ordered the Parties to "address" the Hardship Fund issue in the current base rate case so that the Parties could fashion a mutually agreeable resolution to the Hardship Fund funding issue. It is the Parties, not the Commission, that are in the best position to evaluate the prevailing circumstances surrounding this issue and "address" it by fashioning the most reasonable and workable solution.

Therefore, it is much more likely that the Commission intended for the Parties to "address" the issue so that the Parties could agree on an amicable and workable solution, rather than leaving it to the Commission, which would only be left with the undesirable choice of simply cutting the funding recovery from the USP Rider.

The OCA, in its Main Brief, reminded the Parties that OCA witness Roger D. Colton responded to the Commission's directive in the USECP Tentative Order by raising the issue and questioning whether collecting hardship funds through the Rider USP is proper and whether this practice should continue.³⁶ The OCA notes that Mr. Colton, in the USECP proceeding, objected to Columbia paying for hardship funds with ratepayer dollars but recommended that the Company be provided time to plan for the removal of the funds are removed from Rider USP.³⁷ Specifically, OCA witness Colton recommended that Columbia be directed to ramp up its fundraising efforts, continue to

³⁵ 52 Pa. Code § 5.231.

³⁶ OCA MB at 6.

³⁷ *Id.*

seek a replacement for the funding and be directed to “address” the issue in its next base rate case.³⁸

The OCA then makes the same failed argument made by Columbia that if the Commission had determined that Columbia should end its practice of collecting Hardship Funds through Rider USP, then the Commission would have specifically directed Columbia to make that change in its USECP Order.³⁹ The OCA then incorrectly states that instead, the Commission's USECP Order directed that the issue be “examined” in the base rate case.⁴⁰

To the contrary, the Commission specifically stated, and put Columbia on notice, that the Commission was not persuaded by Columbia’s arguments that it needed to recover the Hardship Fund funding through mandatory ratepayer contributions via the USP Rider.⁴¹ Furthermore, the Commission directed the parties to “address”⁴² the issue and not simply “examine” the issue as argued by OCA. Again, as stated *supra*, this argument made by OCA ignores the Commission’s strong stance in favor of settlements.

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³⁸ OCA MB at 6-7 (*emphasis added*).

³⁹ OCA MB at 7.

⁴⁰ OCA MB at 7 (*emphasis added*).

⁴¹ USECP Final Order at 39.

⁴² USECP Final Order at 39-40 (*emphasis added*).

⁴³ 52 Pa. Code § 5.231.

In summary, 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.⁴⁴ 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.

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

The OCA, in its Main Brief, reiterated its recommendation that Columbia should be allowed to continue recovering the funds from ratepayers through the USP Rider until the Company files its next base rate case, with the Company being directed to include in its next filing a plan to address the issue.⁴⁵ OCA cited to OCA witness Colton’s testimony explaining why Hardship Funds should not be recovered through the universal service rider, then nevertheless recommended that the Company be provided time to plan for the replacement of this funding before the funds are removed from the rider.⁴⁶

Columbia, in its Main Brief, reiterated its support of the OCA’s proposal to continue to recover the \$375,000 in hardship funding through the USP Rider.⁴⁷ Columbia mistakenly argues that the OCA’s proposal addresses the Commission’s

⁴⁴ USECP Final Order at 40 (*emphasis added*).

⁴⁵ OCA MB at 8.

⁴⁶ *Id.*

⁴⁷ Columbia MB at 12.

directive in its USECP Final Order.⁴⁸ Columbia then claims that it intends to immediately examine additional fund raising efforts.⁴⁹

CAUSE-PA, in its Main Brief, begins by arguing that it is in the public interest to continue funding the Hardship Fund through mandatory contributions from ratepayers via the USP Rider until Columbia's next base rate or Universal Service proceeding, whichever is first.⁵⁰ CAUSE-PA then cites to CAUSE-PA witness Miller who 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.⁵¹ CAUSE ends by arguing that 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.⁵²

Finally, as I&E noted in its Main Brief, only I&E witness Christopher Keller made a recommendation that complies with the Commission's clear directive in its USECP Final Order.⁵³ 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."⁵⁴

⁴⁸

Id.

⁴⁹

Columbia MB at 12.

⁵⁰

CAUSE MB at 11.

⁵¹

CAUSE MB at 13.

⁵²

CAUSE MB at 14.

⁵³

I&E MB at 7-10.

⁵⁴

Id. Accord I&E St. No. 2-SR at 19.

To summarize, as I&E argued in its Main Brief, both the OCA and Columbia failed to present recommendations that fulfill the Commission's directive to address the Hardship Fund funding recovery issue in this current base rate case.⁵⁵ Also, as I&E argued in its Main Brief, CAUSE-PA presented a recommendation that to the extent 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.⁵⁶ However, to the extent that it is the intention of CAUSE-PA to eliminate the recovery from the USP Rider and for Columbia to provide the \$375,000 using only 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 set forth in its USECP Final Order.⁵⁷ The CAUSE-PA argument regarding whether collecting the funds through the USP Rider would harm residential customers is a false argument, as the real concern is that they are mandatory, not harmful.

IV. CONCLUSION.

After a complete review of the Parties' Main Briefs and the arguments made therein, I&E is not persuaded that any Party, other than I&E, made a definitive recommendation that is in compliance with the clear directive of the Commission as set forth in its USECP Final Order.

⁵⁵ I&E MB at 7-9.

⁵⁶ I&E MB at 8-10.

⁵⁷ I&E MB at 10.

As stated in I&E's Main Brief, the issue before this tribunal is two-fold: (1) - has any Party offered a recommendation that fulfills the Commission's clear directive to "address this issue through Columbia's current base rate proceeding at Docket No. R-2015-2468056";⁵⁸ and, (2) - has any Party offered any recommendation that fulfills the Commission's directive to fund the Hardship Fund through only voluntary resources rather than through mandatory contributions from ratepayers through the USP Rider?

As I&E argued in its Main Brief, 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.⁵⁹ 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.⁶⁰ 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.⁶¹ 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 recovery of the Hardship Fund funding from the USP Rider in this proceedings recommended decision.⁶² I&E's recommendation complies with the

⁵⁸ USECP Final Order at 40.

⁵⁹ I&E MB at 4-10.

⁶⁰ OCA MB at 8 and Columbia MB at 12.

⁶¹ USECP Final Order at 39-40.

⁶² I&E MB at 7-10.

Commission's directives to both address the issue in this proceeding and to discontinue the recovery of Hardship Fund funding through mandatory contributions through the USP Rider.

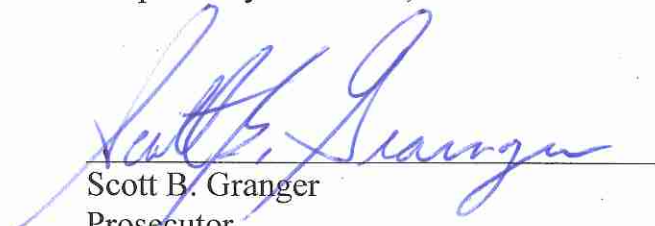
Also, regarding sub-issue (2), CAUSE-PA has presented a recommendation whereby the \$375,000 in Hardship Funds currently recovered from ratepayers through the USP Rider temporarily continues while the Company develops alternative fundraising programs.⁶³ The precise intention of CAUSE-PA's recommendation has not been fully clarified. However, to the extent that it is the intention of CAUSE-PA to temporarily continue to collect the \$375,000 from ratepayers through the USP Rider; then, CAUSE-PA's recommendation is not in compliance with the Commission's directive as discussed above under sub-issue (1). To the extent that it is the intention of CAUSE-PA to eliminate the recovery of the Hardship Fund funding from ratepayers through the USP Rider and for Columbia to provide the \$375,000 using only 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 only voluntary resources until alternative fundraising programs can be found, then I&E would have no

⁶³ CAUSE MB at 13.

objection. Furthermore, 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.

Respectfully submitted,



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

Dated: September 11, 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 **Reply Brief** dated September 11, 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):

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