

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

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

PENNSYLVANIA UTILITY LAW PROJECT

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I. Introduction

CAUSE-PA files this Reply Brief in response to the arguments raised by the Bureau of Investigation and Enforcement (I&E) in its Main Brief.

A. Statement of the Case / Procedural History

CAUSE-PA incorporates by reference its statement of the case and procedural history included in its Main Brief filed on August 27, 2015. In addition, CAUSE-PA notes that Main Briefs were filed in this proceeding by the Office of Consumer Advocate (OCA), I&E, and Columbia. On the same day, a Joint Petition for Settlement was also filed, along with supporting statements of all parties, including CAUSE-PA.

B. Legal Standards and Burden of Proof

CAUSE-PA incorporates by reference its summary of the applicable legal standards and burden of proof included in its Main Brief. (CAUSE-PA Main Br. at 5).

II. Summary of Argument

Throughout its Main Brief, I&E makes several incorrect conclusions regarding the record evidence in this proceeding and applicable legal standards and obligations, leading it to the erroneous conclusion that Columbia's current cost recovery mechanism for its Hardship Fund program cannot temporarily continue to allow a reasonable time for Columbia to develop alternative fundraising programs.

First, I&E wrongly minimizes the history of Columbia's cost recovery mechanism, claiming that it is only tangentially relevant to the ultimate decision in this case. But the record regarding the long and unchallenged history of Columbia's cost recovery indicates that low

income customers have relied on the consistent availability of funds through the Hardship Fund program, that a dramatic and immediate cessation of the current cost recovery mechanism will result in harm to low income customers, and that temporarily continuing the mechanism will not cause appreciable harm to residential ratepayers. Indeed, this historical evidence is important in deciding whether it is just and reasonable to temporarily continue the Hardship Fund cost recovery mechanism, and should not be ignored or summarily dismissed.

I&E also posits a flawed interpretation of the Commission's Final Order with respect to Columbia's Universal Service and Energy Conservation Plan (Final USECP Order).¹ I&E misconstrues the Final USECP Order to advocate for immediate elimination of the funding mechanism, asserting that the Commission directed such a result – despite the lack of any such language in either the text or the ordering paragraphs of the Final USECP Order.

Then, by framing the remaining issue as a comparative analysis between parties' expert witness recommendations, I&E eschews the applicable evidentiary standard: whether Columbia's proposal to temporarily continue its current cost recovery mechanism is just and reasonable. Indeed, a full review of the record evidence shows that it is just and reasonable for Columbia to temporarily continue its current cost recovery mechanism because failure to do so would have a significant negative impact on low income populations and would violate the Commission's statutory universal service obligations. I&E, however, does not address this evidence, nor does it point to any evidence or law to support its position that cost recovery should immediately cease. Thus, I&E's positions should be rejected and Columbia's proposal to temporarily continue its current method of cost recovery should be approved.

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).

Finally, it is important to note that in its improper comparative analysis of the recommendations made by the parties' expert witnesses, I&E suggests that a viable solution would be to require Columbia to make shareholder contributions to cover the wide gap in funds that would result from immediate cessation of the cost recovery mechanism. While this suggestion has theoretical merit, and CAUSE-PA supports increased shareholder contributions to support the program – it would undeniably violate statutory and regulatory law which allows utilities full recovery of the costs of universal service and energy conservation programs. Indeed, the only reasonable and just solution, which is also in accord with the law, is to allow Columbia to temporarily continue its current cost recovery mechanism until either its next base rate case or its next Universal Service and Energy Conservation Plan filing.

III. Argument

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

In reviewing Columbia's historic and present funding mechanism for its Hardship Fund, I&E argues that "while a review of the history of Columbia's Hardship Fund is informative, it only merits tangential consideration regarding the narrow issue at hand." (I&E Main Br. at 6.) I&E is incorrect. The history of Columbia's Hardship Fund cost recovery is an important factor in deciding the issue at hand: Whether it is just and reasonable for Columbia to temporarily continue recovery of Hardship Funds through the USP Rider until its next base rate or Universal Service and Energy Conservation Plan proceeding. Indeed, the long and unchallenged history of Columbia's reliance on customer contributions to fund its Hardship Fund program - collected first through its contract with Citizens Energy Corporation and later through the USP Rider - is a clear indication that temporarily continuing the current cost recovery mechanism would not cause appreciable harm to Residential ratepayers and, thus, is not unjust or unreasonable. (See Columbia Main Br. at 7-10; CAUSE-PA Main Br. at 8-9). Likewise, the history of Columbia's Hardship Fund cost recovery is also a clear indication that low income customers rely on the availability of adequate levels of assistance through the Hardship Fund, as they have since 1984 when Columbia first contracted with Citizens Energy Corporation. (Id.). Thus, the history of Columbia's recovery method for Hardship Funds evidences the reasonableness of Columbia's proposal to temporarily continue its current cost recovery while it develops alternative fundraising efforts to replace the current funding scheme, and should not be summarily dismissed as tangential or irrelevant to the decision at hand.

B. Interpretation of the Commission's USECP Order

In its Main Brief, I&E misinterprets the Commission's Final USECP Order, leading it to the incorrect and unreasonable conclusion that the Commission's request for parties in this Base Rate proceeding to *address* Hardship Fund cost recovery was an explicit directive to immediately eliminate the long-standing cost recovery mechanism. (I&E Main Br. at 4, 6). This misreading of the Commission's Final USECP Order should be rejected.

In its Main Brief, CAUSE-PA explained that the Commission's Final USECP Order did not alter the current cost recovery mechanism for Columbia's Hardship Fund, but rather *approved Columbia's Hardship Fund program in full, including the projected budget, enrollment, funding, and needs assessment*, as adequate to meet the needs of Columbia's low income population. (CAUSE-PA Main Brief at 9-11). We will not reiterate those arguments here, but it is important to further explain - in response to I&E's misinterpretation of the Final USECP Order - that the Commission did not set forth any directive to remove, alter, or in any way decrease its current cost recovery, either in the text of the Final USECP Order or in its ordering paragraphs. (Final USECP Order at 37-40, 53-54). Instead, the Commission made a request in the text of the Final USECP Order that parties in this base rate proceeding *address* the cost recovery mechanism, and it in no way issued any order or edict - either in the text or ordering paragraphs - regarding the ultimate outcome of the issue. (Final USECP Order at 37-40).

The Commission is fully capable of issuing clear directives, as evidenced by the thirteen explicit ordering paragraphs directing Columbia to take action on various aspects of its USECP. (Final USECP Order at 53-54). But with respect to Hardship Fund cost recovery, the Commission did not include any "directive" to eliminate the funding mechanism or anything else

concerning Columbia's Hardship Fund program.² The Commission's failure to include any ordering paragraphs, combined with its explicit approval of Columbia's Hardship Fund Program as proposed, clearly shows that the Commission gave the parties wide latitude to address the issue in this proceeding and did not order that the practice be immediately ceased, as advocated by I&E.

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

In its Main Brief, after inaccurately interpreting the Final USECP Order, I&E frames the issue before ALJ Long and the Commission as a comparative analysis of the parties' recommendations, arguing that its witness Christopher Keller offered the only acceptable solution: to "follow the Commission directive, and fund the Hardship Fund through voluntary donations and not mandatory contribution via the Rider USP." (I&E Main Br. at 7, quoting I&E St. No. 2-SR at 19). Beyond the fact that Mr. Keller was incorrect in his interpretation of the Commission's directive, discussed above and in our Main Brief, the decision in this proceeding turns on whether there is substantial evidence on the record to support the reasonableness and justness of Columbia proposal to temporarily continue its current Hardship Fund cost recovery through the USP Rider, thereby providing reasonable time to develop alternative fundraising programs.

In every rate proceeding, the burden of proof rests on the public utility to prove that its rate proposal is just and reasonable. 66 Pa. C.S. § 315. The utility meets this burden by presenting evidence on the record to support its rate proposal. See Lower Frederick Twp. v. Pa.

² In fact, despite addressing it in the text of its order (Final USECP Order at 37-40), the Commission did not even include an ordering paragraph directing parties in the instant proceeding to address the Hardship Fund issue. (Final USECP Order at 53-54).

PUC, 409 A.2d 505, 507 (Pa. Commw. Ct. 1980). “Although the ultimate burden of proof does not shift from the utility . . . , a party proposing an adjustment to a ratemaking claim of a utility bears the burden of presenting some evidence or analysis tending to demonstrate the reasonableness of the adjustment.” (Columbia Main Br. at 5 (internal citations omitted)).

In its Main Brief, CAUSE-PA pointed to substantial record evidence supporting the reasonableness of Columbia’s proposal to temporarily continue its current cost recovery until the next base rate or the next universal service proceeding. (See CAUSE-PA Main Br. at 13-14). CAUSE-PA also explained that any cut to the Commission-approved Hardship Fund budget would violate the Commission’s statutory obligations with respect to Universal Services. (CAUSE-PA Main Br. at 11); see also 66 Pa. C.S. §§ 2203(7)-(8); 52 Pa. Code § 62.1, 62.3. On the flipside, however, I&E does not point to a single piece of record evidence or law to support the reasonableness of its proposal to immediately eliminate the current Hardship Fund cost recovery mechanism, nor does it point to any evidence to show how Columbia’s proposal to continue its current cost recovery would be unjust or unreasonable. It merely rests on its erroneous conclusion that the Commission directed Columbia to eliminate the funding mechanism, without any attempt to explain or offer evidence of how such an action would be just and reasonable for Columbia’s customers. Indeed, in reviewing the totality of the record evidence, Columbia’s proposal is clearly supported by substantial evidence demonstrating that temporarily continuing the current cost recovery is just and reasonable, and should be approved. (CAUSE-PA Main Br. at 14).

Before concluding, it is important to briefly address a legal error which arose in I&E’s comparative analysis of the recommendations made by each party’s witness. I&E points to CAUSE-PA witness Mitchell Miller’s recommendation, and suggests that one reading of his

recommendations could be to order the temporary continuation of funding through voluntary resources only. (I&E Main Br. at 5, 8). I&E notes that it is not opposed to such a solution as an alternative to its recommendation for a straight and immediate cut. (Id.). Presumably, I&E is suggesting that if Columbia cannot raise the funds through new fundraising initiatives, it would be required to make up the difference with shareholder contributions. CAUSE-PA agrees that this would be a good solution to prevent the severe impact that an immediate cut would have on low income consumers. However, it is undeniable that such an order is likely to violate statutory and regulatory laws that allow jurisdictional utilities full recovery of the costs of universal service and energy conservation programs. See 66 Pa. C.S. § 2203(6). Of course, Columbia could voluntarily commit shareholder dollars to make up the difference between its fundraising efforts and the approved Hardship Fund budget, which CAUSE-PA encourages to the extent that it does not detract from the matching donations already made by Columbia's shareholders. (Final USECP at 36). However, I&E's suggestion is not one capable to being adopted by the Commission in this proceeding because it would order shareholders to contribute unrecoverable funds to the Hardship Fund program, which is disallowed by statute.

Ultimately, all parties agree that in the end, cost recovery through the USP Rider must be phased out. The question that remains is whether Columbia should be required to cut the funding immediately, or be allowed a reasonable time – either the next base rate or universal service proceeding – to develop alternative fundraising programs. The only reasonable and just solution, which is also in accord with the law, is to allow Columbia to temporarily continue its current cost recovery mechanism until either its next base rate case or its next Universal Service and Energy Conservation plan filing. To hold otherwise would create a significant gap in funds to support the Hardship Fund, which in turn would cause untold harm to low income consumers

who are increasingly reliant on the availability of adequate funds through the program (CAUSE-PA Main Br. at 13-14) and would violate the Commission’s statutory duty to ensure that Universal Service programs are adequately funded and appropriately designed. (CAUSE-PA Main Br. at 11, citing 66 Pa. C.S. § 2203(8), 52 Pa. Code §§ 62.1, 62.3); see also 66 Pa. C.S. § 2203(7).³

³ The Commission is required “**at a minimum** [to] continue the level and nature of the consumer protections, policies and services within its jurisdiction that are in existence as of the effective date of [the Natural Gas Competition Act] to assist low income retail gas customers to afford natural gas services.” 66 Pa. C.S. § 2203(7).

IV. Conclusion

The arguments raised by I&E in opposition to temporarily continued cost recovery for Columbia's Hardship Fund are contrary to statutory and regulatory law and unsupported by the record evidence presented in this proceeding. The record clearly shows that it is just and reasonable for Columbia to temporarily continue its Hardship Fund cost recovery mechanism to allow sufficient time to develop alternative fundraising mechanisms. As such, I&E's arguments should be rejected and Columbia's proposal should be approved.

Respectfully Submitted,

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