

Chantel Armstrong,	:	C-20031079
Connie Packard,	:	C-20031080
Isabel Chrisman,	:	C-20031081
Barbara A. Overbeck,	:	C-20031082
Irwin A. Popowsky, Consumer Advocate,	:	C-20031083
Martha Buhl,	:	C-20031086
Shirley Howard,	:	C-20031092
Sarah Sanders,	:	C-20031093
Winnifred L. Roesch,	:	C-20031094
Norma Armour,	:	C-20031095
Mary Carrow,	:	C-20031096
Wayne E. Schmidt,	:	C-20031097
Quinten C. Johnson,	:	C-20031098
William D. Swartzfager,	:	C-20031099
Charles W. Cook,	:	C-20031100
Kane Borough,	:	C-20031101
Gloria Dowell,	:	C-20031102
Nina J. Nogar,	:	C-20031103
Kay L. Copley,	:	C-20031104
Lars and Karen Olsson,	:	C-20031105
Scott and Mary Smith,	:	C-20031106
Rodney G. Peterson,	:	C-20031118
Grace M. Runyan,	:	C-20031119
Clyde W. Anderson,	:	C-20031120
Bernadine Swanson,	:	C-20031134
Jack Safreed,	:	C-20031140
Gary Leonard,	:	C-20031141
Martha Jerman,	:	C-20031142
Thomas and Mary Ann Vantine,	:	C-20031147
Kevin L. Ott,	:	C-20031148
James B. Ewing,	:	C-20031154
Mildred L. Smith,	:	C-20031161
Hazel Walton,	:	C-20031163
Alberta Barbour,	:	C-20031167
Gerald Rook,	:	C-20031168
Doris Swanson,	:	C-20031169
James E. Snyder,	:	C-20031170
Daniel J. Rook,	:	C-20031171
Thomas R. Rook,	:	C-20031172
Gerrod Willover,	:	C-20031173
Virginia McCullough,	:	C-20031174
Audrey Troutman,	:	C-20031175
David W. Lawson,	:	C-20031176
L. Sherwood Anderson,	:	C-20031177
Robert Fiscus,	:	C-20031178
Dan Michael Burggraf,	:	C-20031179

Amy Hulings,	:	C-20031180
Harry Hulings,	:	C-20031181
Dorris Grolemond,	:	C-20031182
Walter S. Seth,	:	C-20031238
Eugene Walker,	:	C-20031248
Carolyn Ingersoll,	:	C-20031257
Steven E. Rose,	:	C-20031710
Becky Olson	:	C-20031788
Sue E. Holt	:	C-20042458
	:	
	:	
v.	:	
	:	
Gasco Distribution Systems, Inc.	:	

FIRST INTERIM ORDER

This order grants an amended motion of Gasco Distribution Systems, Inc. (Gasco) to consolidate a number of formal complaints and for an extension of time to answer the complaints (Motion).

Background

On January 15, 2003 Gasco submitted an interim Gas Cost Rate (GCR) filing for its Kane Division which the Commission assigned to Docket No. M-00021629. At its Public Meeting of February 20, 2003, the Commission authorized the proposed GCR to become effective for service rendered on and after February 1, 2003. A Secretarial Letter dated February 25, 2003, states that on February 14, 2004 the Office of Consumer Advocate (OCA) filed a complaint against Gasco's proposed GCR rate and that the Commission's authorization of the proposed rate does not dismiss the OCA's complaint which will be assigned to the Office of Administrative Law Judge for hearings. The Secretarial Letter concludes by noting that if it is determined from such hearings that the authorized rate is unjust or unreasonable any revenues recovered in excess of rates ultimately determined to be just and reasonable will be refunded, with interest, to Gasco's ratepayers.

On August 1, 2003 Gasco submitted an annual GCR filing for its Kane Division which the Commission assigned to Docket No. M-00031722. At its Public Meeting of August 21, 2003, the Commission approved the proposed GCR to become effective with service rendered on and after September 1, 2003.

Beginning on February 14, 2003, ninety-four Gasco customers (listed in the caption above)¹ and the OCA filed formal complaints against Gasco's GCR filings.

On January 8, 2004, this proceeding was assigned to me.

Gasco filed its Motion on February 19, 2004 and the OCA filed an answer to the Motion on February 24, 2004.

Consolidation

Gasco's Motion relies on the Commission's regulations regarding consolidation of proceedings. In addition, Gasco's Motion asks for an extension of time to file its answers to the complaints until I rule on its Motion and asks that it be allowed to file one answer instead of individual answers to each complaint. The OCA's answer supports consolidation of the complaints with Gasco's GCR filings, as well as any other complaints related to Gasco's GCR that may be filed. The OCA's answer references two complaints which are not the subject of Gasco's Motion, namely, the complaint of Becky Olson at Docket No. C-20031788 and the complaint of Sue E. Holt at Docket No. C-20042458.

Although some complaints include allegations about Gasco's service, allegations about the level of Gasco's rates is the common issue raised in all of the complaints. The Commission's regulations authorize presiding officers to order proceedings with a common

¹ The complaint of Ronald E. Royer at Docket No. Z-01150834 is an ability to complaint case, not a complaint against Gasco's GCR filings. For this reason, the order below severs Mr. Royer's complaint so that it can be scheduled for a separate hearing. Mr. Royer's complaint does not appear in the caption of this proceeding, but a copy of this order will be mailed to him.

question of law or fact to be consolidated.² With the exception of Mr. Royer's complaint at Docket No. Z-01150834, the complaints captioned above present identical factual issues and common questions of law.

I shall approve Gasco's Motion. Consolidating these complaints into one proceeding avoids unnecessary costs and delay. The order below consolidates the complaints captioned above. As noted in footnote 1 above, Mr. Royer's complaint, which does not appear in the caption to this proceeding, is severed from this proceeding so it can be litigated separately.

One other matter pertaining to consolidation needs to be discussed. As noted above, the Commission's investigation into Gasco's interim GCR filing is docketed at M-00021629 and its investigation against Gasco's annual GCR filing is docketed at M-00031722. Normally, complaints against existing rates under investigation by the Commission are assigned docket numbers which begin with the Commission's investigation docket number and carry a suffix of C0001, C0002, etc. Here, however, "C" docket numbers were assigned to each of the complaints against both GCR filings. The "M" docket proceedings have not been assigned to me so they are not consolidated with the complaints at issue here. The burden of proof that the GCR rates are just and reasonable, however, remains with Gasco because the OCA complaints and many of the other complaints were filed against Gasco's proposed annual GCR rates.³

Gasco's answer

When Gasco filed its Motion, the date for it to file answers to each of the complaints in this proceeding had expired. Earlier, Gasco had sought and received from Chief Administrative Law Judge Robert Christianson an indefinite extension of time to answer the complaints with the understanding that Gasco would seek to consolidate all of the complaints so they could be litigated at one time. The OCA gave its consent to a delay in the filing of answers.

² 52 Pa. Code §5.81.

³ *Schellhammer v. Pennsylvania Public Utility Commission*, 629 A.2d 189 (Pa. Cmwlth. Ct. 1993).

The complaints in this proceeding raise similar issues of fact and law. For this reason, Gasco's request to delay filing an answer until the matters can be consolidated makes sense. In addition, rather than filing an answer to each of the similar complaints, consolidation of the proceedings allows Gasco to file one answer to all complaints. This creates administrative efficiency and minimizes the costs to all parties.

Gasco's request for a delay in the deadline for filing answers and its request to file one answer are granted. If later complaints are filed against Gasco's Kane Division GCR filings, they are automatically consolidated with this proceeding and Gasco's answer to the above-captioned complaints shall be considered an answer to any new complaints.

Gasco's Notice to Plead

Addressing another matter, the OCA's answer asks that Gasco not include the "Notice to Plead" which it included in its Motion because of the OCA's concern that it is confusing. The following "Notice to Plead" appears before Gasco's Motion:

You are hereby notified to file a written response to the attached Amended Motion to Consolidate and for Extension of Time to Answer within ten (10) days from the date of service hereof in accordance with 52 Pa. Code §5.103(c). Failure to file a response may result in a decision on the motion being entered against you.

The language of 52 Pa. Code §5.103(c) is as follows:

(c) *Response to motions.* A participant has 10 days from the date of service within which to answer or object to a motion, unless the period of time is otherwise fixed by the Commission or the presiding officer.

Gasco's "Notice to Plead" is accurate in that it alerts Gasco's customers of the deadline⁴ included in 52 Pa. Code §5.103(c). The additional language that the "failure to file a response may result in a decision on the motion being entered against you" might confuse complainants not familiar with legal proceedings. A decision directing that the complaints be consolidated would be "against" a complainant not wanting its complaint consolidated with the others. Whether the complaints are consolidated or not, each complainant will have the opportunity to be heard, so the words "a decision on the motion being entered against you" do not mean that a complainant not responding to Gasco's Motion will lose his or her case. It simply means that the presiding officer will render a ruling on the motion without the benefit of input by complainants not responding to the Motion. If in the future Gasco includes a similar "Notice to Plead" in other motions it files in this proceeding, it is hoped that Gasco follows the notice with an explanation similar to the one appearing in this paragraph. This will avoid confusion to a reader not learned in the law.

The possibility of a settlement

One other matter needs to be addressed for the benefit of all complainants. Gasco and the OCA are exchanging information⁵ about the GCR rates in an attempt to settle the matter.⁶ On April 15, 2004 counsel for Gasco and the OCA will inform me of the status of their settlement negotiations.

If Gasco and the OCA do settle this matter, the OCA will provide all complainants with a copy of the settlement agreement along with a letter explaining their options. The options will be to join in the settlement, oppose the settlement or take no position on the settlement. If I find that the settlement is in the public interest, I will issue an initial decision approving it. A copy of the initial decision will be mailed to you. If I reject the settlement, I will issue an order explaining the reasons for rejecting the settlement. The order, a

⁴ The ten day deadline of Section 5.103(c) is extended by three days because Gasco served its Motion by mail. 52 Pa. Code §1.56(b) (regarding date of service). Gasco served its motion on February 19, 2004, so three days are added to the February 29 deadline, making March 3, 2004 the deadline for complainants to have filed answers to Gasco's Motion.

⁵ This process of exchanging information is called "discovery" and is set forth in the Commission's regulations at 52 Pa. Code §§5.321-373.

⁶ The Commission has a policy of encouraging settlements. 52 Pa. Code §5.231.

copy of which will be mailed to you, will schedule hearings on the reasonableness and the justness of the GCR rates.

If Gasco and OCA do not settle this matter, the Commission will hold hearings, one of which will be in the Kane Division. This hearing will be similar to the hearing held in Kane on June 21, 2002 in the proceeding where 226 customer in the Kane Division filed rate and service complaints against Gasco. The Kane Division hearing will give Kane Division customers who filed complaints in this proceeding, those whose names appear in the caption at the beginning of this order, the opportunity to testify under oath or to make unsworn statements. Later, the Commission will hold evidentiary hearings on the technical aspects of the GCR rates. After this, I will issue a recommended decision a copy of which will be mailed to you. The Commission will review this decision, render a final order and send a copy of the final order to you.

Finally, no party may communicate with me about any issue in this proceeding. This kind of communication, called an ex parte communication, is prohibited by the Public Utility Code and the Commission's regulations. To correct this, a party would have to send a copy of its letter to all other parties, 95 in all.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the motion of Gasco Distribution Systems, Inc. to consolidate and for extension of time to answer is granted.
2. That the formal complaints of the complainants whose names and docket numbers appear in the caption of this order, with the exception of the complaint of Ronald E.

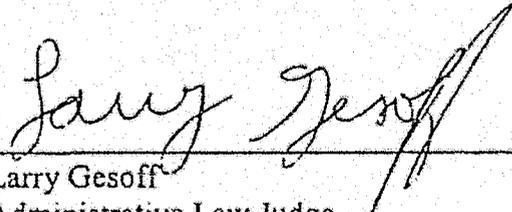
Royer, at Docket No. Z-01150834, are consolidated for the purposes of litigation, the rendering of an initial decision, and the entry of a final Commission order.

3. That, on or before March 31, 2004, Gasco Distribution Systems, Inc. file one answer to the formal complaints of the complainants described in paragraph two of this order, and serve copies of its answer upon the Secretary of the Commission, the formal complainants described in paragraph two of this order and the presiding officer of this proceeding.

4. That any future formal complaints filed against Gasco's GCR rate while the record in this proceeding remains open are automatically consolidated with this proceeding and that the answer Gasco Distribution System, Inc. files in compliance with paragraph three of this order is deemed to be an answer to any such formal complaints.

5. That the complaint of Ronald E. Royer against Gasco Distribution Systems, Inc., at Docket No. Z-01150834, is severed from this proceeding and shall be scheduled for an initial hearing in due course.

Dated: March 3, 2004



Larry Gesoff
Administrative Law Judge