

COMMONWEALTH OF PENNSYLVANIA



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August 16, 2018

Rosemary Chiavetta, Secretary
PA Public Utility Commission
Commonwealth Keystone Bldg.
400 North Street
Harrisburg, PA 17120

Re: Pa. Public Utility Commission
v.
Columbia Gas of Pennsylvania, Inc.
Docket No. R-2018-2647577

Dear Secretary Chiavetta:

Attached for electronic filing please find the Office of Consumer Advocate's Main Brief in the above-referenced proceeding.

Copies have been served per the attached Certificate of Service.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Lauren M. Burge".

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Attachments

cc: Honorable Jeffrey A Watson, ALJ
Certificate of Service

*256699

CERTIFICATE OF SERVICE

Re: Pennsylvania Public Utility Commission :
v. : Docket No. R-2018-2647577
Columbia Gas of Pennsylvania, Inc. :

I hereby certify that I have this day served a true copy of the following documents, the Office of Consumer Advocate's Main Brief, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 16th day of August 2018.

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission :
 :
 v. : Docket No. R-2018-2647577
 :
 Columbia Gas of Pennsylvania, Inc. :

MAIN BRIEF OF THE
OFFICE OF CONSUMER ADVOCATE

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Dated: August 16, 2018

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I. INTRODUCTION

A. Background

Columbia Gas of Pennsylvania, Inc. (Columbia, CGPA, or the Company) is engaged in the business of furnishing natural gas service to approximately 426,000 residential, commercial, and industrial customers in portions of 26 counties in western, northwestern, southern, and central Pennsylvania. On March 16, 2018, Columbia filed with the Pennsylvania Public Utility Commission (Commission) Supplement No. 267 to its Tariff Gas – Pa. P.U.C. No. 9 (Supplement No. 267) to become effective on May 15, 2018. In its filing, Columbia proposed to increase rates to produce additional overall revenues of \$46.9 million, or 8.16% over present revenues.¹ On April 20, 2018, Columbia filed Supplemental Direct Testimony to address the effect of the Tax Cuts and Jobs Act of 2017 (TCJA) on the Company's tax liability, and the Company's proposal to return this amount to customers. Columbia St. No. 10-S.

Columbia also proposed to increase the residential monthly customer charge from \$16.75 to \$18.25. Additionally, if the Company's proposal were approved in its entirety, the Company would be permitted to recover an 8.10% overall rate of return on its original cost rate base, including a 10.95% return on common equity. The Company's proposed return on common equity included 20 basis points in recognition of the Company's claimed management efficiency.

B. Procedural History

As detailed above, on March 16, 2018, Columbia filed Supplement No. 267. On March 20, 2018, the Office of Consumer Advocate (OCA) filed a Formal Complaint in opposition to the Company's proposed rate increase. On March 22, 2018, the Bureau of Investigation and

¹ Under the Company's proposal, the total bill for a typical residential customer purchasing 70 therms of gas per month would have increased from \$91.63 to \$99.88, or by approximately 9%.

Enforcement (I&E) filed a Notice of Appearance in this matter. On March 28, 2018, the Office of Small Business Advocate (OSBA) filed a Formal Complaint. On March 30, 2018, Shipley Choice, LLC, Dominion Energy Solutions, Inc., and Interstate Gas Supply, Inc. (NGS Parties) filed a Petition to Intervene. On April 4, 2018, the Community Action Association of Pennsylvania (CAAP) also filed a Petition to Intervene. On April 6, 2018, the Pennsylvania State University (PSU) filed a Formal Complaint. On April 9, 2018, the Columbia Industrial Intervenors (CII) filed a Complaint. On April 10, 2018, the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA) filed a Petition to Intervene and Answer. On April 16, 2018, Direct Energy also filed a Petition to Intervene in this matter.

On April 5, 2018, the Commission entered an Order suspending Supplement No. 267 until December 15, 2018, pursuant to Section 1308(d) of the Public Utility Code, 66 Pa. C.S. § 1308(d), and initiated an investigation into the lawfulness, justness, and reasonableness of the proposed and existing rates, rules, and regulations. Subsequently, this matter was assigned to Administrative Law Judge (ALJ) Jeffrey A. Watson.

A Prehearing Conference was held on April 18, 2018, and the ALJ issued a Prehearing Order on May 1, 2018.² On June 7, 2018, the OCA filed the Direct Testimony of its witnesses: Dante Mugrace, OCA Statement No. 1; Marlon F. Griffing, OCA Statement No. 2; Jerome D. Mierzwa, OCA Statement No. 3; and Roger D. Colton, OCA Statement No. 4. Direct Testimony was also filed by I&E, OSBA, the NGS Parties, CAAP, CAUSE-PA, Direct Energy, and PSU. The OCA notified the ALJ and the parties on June 18, 2018 that it was adding Barbara R. Alexander as an additional witness in this proceeding. On June 21, 2018, a Public Input Hearing was held in Washington, PA. On July 3, 2018, the OCA submitted the Rebuttal Testimonies of:

² A First Amended Prehearing Order was issued on June 21, 2018 to correct an omission from the litigation schedule in the May 1, 2018 Prehearing Order.

Jerome D. Mierzwa, OCA Statement No. 3-R; and Barbara R. Alexander, OCA Statement No. 5-R. OSBA, CAUSE-PA, CII, Direct Energy, PSU, and the Company also filed Rebuttal Testimony. On July 17, 2018, the OCA submitted the Surrebuttal Testimony of: Dante Mugrace, OCA Statement No. 1-SR; Marlon F. Griffing, OCA Statement No. 2-SR; Jerome D. Mierzwa, OCA Statement No. 3-SR; and Roger D. Colton, OCA Statement No. 4-SR.³ I&E, OSBA, the NGS Parties, Direct Energy, CAAP, CAUSE-PA, CII, PSU, and the Company also filed Surrebuttal Testimony. On July 23, 2018, Columbia filed a Rejoinder Outline.

The testimonies of OCA witnesses Mugrace, Griffing, Mierzwa, Colton, and Alexander, as identified above, were entered into the record by stipulation of the Parties at the hearing on July 26, 2018. Prior to the hearing, the Parties entered into a settlement in principle on all issues except for those related to the inclusion of non-commodity services on Columbia's bill that were raised by the NGS Parties. Cross-examination of all witnesses was waived by all Parties, and the outstanding non-commodity billing issue will be addressed in briefs.

Pursuant to the ALJ's Prehearing Order dated May 1, 2018 and the ALJ's directive at the July 26, 2018 hearing, the OCA provides this Main Brief.

C. Burden of Proof

In general, Columbia bears the burden of proof to establish the justness and reasonableness of every element of its requested rate increase. In this regard, Section 315(a) of the Public Utility Code, 66 Pa. C.S. § 315(a), provides as follows:

Reasonableness of rates – In any proceeding upon the motion of the Commission, involving any proposed or existing rate of any public utility, or in any proceedings upon the complaint involving any proposed increase in rates, the burden of proof to show that the rate involved is just and reasonable shall be upon the public utility.

³ The OCA separately filed the Surrebuttal Testimony of Roger D. Colton on July 19, 2018, pursuant to the procedural schedule as provided in the June 21, 2018 First Amended Prehearing Order.

66 Pa. C.S. § 315(a). The Commonwealth Court has interpreted this principle in stating that:

Section 315(a) of the Public Utility Code, 66 Pa. C.S. § 315(a), places the burden of proving the justness and reasonableness of a proposed rate hike squarely on the utility. It is well-established that the evidence adduced by a utility to meet this burden must be substantial.

Lower Frederick Twp. v. Pa. P.U.C., 226-27, 409 A.2d 505, 507 (1980) (citations omitted); see also Brockway Glass v. Pa. P.U.C., 437 A.2d 1067 (1981).

The Pennsylvania Supreme Court has stated that the party with the burden of proof has a formidable task to show that the Commission may lawfully adopt its position. Even where a party has established a prima facie case, the party with the burden must establish that “the elements of that cause of action are proven with substantial evidence which enables the party asserting the cause of action to prevail, precluding all reasonable inferences to the contrary.” Burleson v. Pa. P.U.C., 461 A.2d 1234, 1236 (Pa. 1983). Thus, a utility has an affirmative burden to establish the justness and reasonableness of every component of its rate request.

In the instant proceeding, the only remaining item at issue relates to Columbia’s current billing practices, and specifically the inclusion of charges for non-commodity products and services on the utility bill. The OCA submits that this relates to quality of service to its customers as it raises concerns about the format and charges on the bill provided to Columbia’s customers. The Commission has recognized that “quality of service issues are frequently raised in a base rate proceeding,” and that “our duties and powers under the Code to appropriately remedy a quality of service issue or an existing rate issue are not limited or diminished simply because such issues are raised in the context of a Section 1308(d) general base rate increase proceeding.” Pa. P.U.C. v. Philadelphia Gas Works, Docket No. R-2017-2586783, Opinion and Order (entered May 18, 2018), at 14-15. Pursuant to the Suspension Order in this proceeding, the reasonableness of

Columbia's existing rates, rules and regulations is properly considered in this case.⁴ Columbia maintains the burden of proof to show that its existing rates, rules and regulations, as well as its quality of service, are just and reasonable.

⁴ Order entered April 5, 2018.

II. SUMMARY OF THE ARGUMENT

The OCA submits that the NGS Parties' proposal to include additional NGS non-commodity charges on customer bills should not be adopted as a part of this base rate proceeding. While the NGS Parties have identified an issue of concern with Columbia's inclusion of third party non-commodity charges on the utility bill, the NGS Parties' proposal to simply include more third party charges on the utility bill is unreasonable and unsupported. Therefore, the OCA submits that the NGS Parties' proposal should be rejected.

III. NON-COMMODITY BILLING

Columbia currently allows Columbia Service Partners, Inc. (CSP) and Nicor Energy Services Company (Nicor) to include non-commodity charges on Columbia's customer bills. See Columbia St. No. 18-R at 3. CSP and Nicor are both former Columbia affiliates, but are no longer affiliated with Columbia. Neither are natural gas suppliers (NGSs). Id. at 3-4. These non-commodity charges are for items such as warranty services covering HVAC systems and gas, water, and/or sewer line protection services. See NGS Parties St. No. 2 at 2. Columbia does not currently allow any other entities to include non-commodity charges on its customer bills. Columbia St. No. 18-R at 4-5.

The NGS Parties initially raised the issue of non-commodity billing in their Direct Testimony. See NGS Parties St. No. 2. The NGS Parties' witness Anthony Cusati stated that Columbia's practice of allowing only CSP and Nicor to bill for non-commodity services on its utility bills is discriminatory to NGSs. Id. at 3. Mr. Cusati argues that this is discriminatory because NGSs are not permitted to include non-commodity charges on Columbia's utility bills, and NGSs "provide similar products/services, and yet [the NGS Parties] have unequal access to provide the convenience to the customer by having them billed by the utility." Id. at 3. Mr. Cusati recommended that:

The Commission should require Columbia to end the discriminatory practice of only allowing only [sic] its former affiliate to bill for non-commodity service on the distribution utility bill. Rather, if Columbia continues to allow its former affiliate to bill on the utility bill, the Commission should require that all NGSs be allowed to bill for non-commodity products on the utility bill as well.

Id. at 7.

In response to Mr. Cusati, OCA witness Barbara R. Alexander raised a variety of concerns, both about Columbia's current practice as well as Mr. Cusati's proposal to allow all NGSs to

include non-commodity products on Columbia's utility bill. See OCA St. No. 5-R. First, Ms. Alexander agreed that Mr. Cusati has raised a legitimate concern about Columbia's current practice, in which Columbia is "able to bill for unregulated and non-commodity services and products on its regulated bill for essential distribution and commodity services." OCA St. No. 5-R at 4. This arrangement "reflects prior affiliated relationships and this practice is not reflected in Columbia's tariff or any explicit Commission order." Id. (citations omitted). Ms. Alexander notes that neither the prices for these services nor their terms and conditions are regulated, although their inclusion on Columbia's bill may give rise to "a reasonable assumption by customers that such services are regulated or supervised by the Commission." Id. at 4-5. As such, Ms. Alexander raised significant concerns about Columbia's current non-commodity billing practices.

Ms. Alexander, however, disagrees with Mr. Cusati's proposal to address this problem by allowing NGSs to also include non-commodity products and services on Columbia's utility bill. Id. at 5. First, Ms. Alexander acknowledged that many entities offer these types of services, only some of which are NGSs, and that it "would be an unfair practice to require Columbia to bill for non-commodity services offered by NGSs and/or their previously affiliated companies, but deny such an option to other unregulated sellers of these same services," as Mr. Cusati proposes. Id. at 6. Including charges for non-commodity services in the total amount owed on a utility bill provides a significant competitive advantage, but "it is not proper for the utility bill to be used as a collection tool for all such unregulated products and services." Id. It also may be unclear to customers that, although non-commodity charges are included in the total amount due on their bill, payment for non-commodity services is not necessary to avoid termination of essential utility service. Id. at 6-7. Additionally, it is unclear from the record in this case exactly how the services are marketed

and sold to Columbia's customers, and it may not be clear to customers that these charges are not regulated by the Commission or that payment is not linked to retention of utility service. Id. at 7.

While OCA witness Alexander has significant concerns about Columbia's current non-commodity billing practices, she explained that the NGS Parties' proposal to allow NGSs to include non-commodity charges "raises additional and potentially complex consumer protection issues..." Id. at 8. Ms. Alexander summarized those concerns as follows:

For example, NGSs may seek to bundle their non-commodity or what he calls "value added" services to the natural gas supply service, thus eliminating the customer's ability to compare the NGS's natural gas supply price with the Price to Compare stated on the natural gas utility bill on an "apples to apples" basis. Another concern is whether NGS marketing practices in offering these non-commodity services will properly inform customers about the different collection policies governing non-commodity products and services compared to natural gas supply service that is purchased by the NGDC and for which the customer is liable for termination of service. Mr. Cusati's recommendation only exacerbates the concern I have raised about Columbia's current practice of including non-commodity services on their regulated distribution services bill and including such charges on the total amount owed. Finally, the overall purpose of the Natural Gas Competition Act is to allow customers to select an alternative supplier for natural gas supply service, a product that is explicitly required to be unbundled from the NGDC's previously bundled natural gas service.

Id. at 8-9. CAUSE-PA witness Mitchell Miller also raised similar concerns about both Columbia's current practice as well as the NGS Parties' proposal, which he opposed. CAUSE-PA St. 1-R at 7-9.

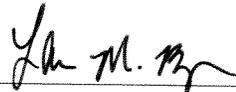
While OCA witness Alexander has significant concerns about Columbia's current non-commodity billing practices, she ultimately recommends that no changes be made at this time as part of this rate case. Ms. Alexander rejected Mr. Cusati's recommendations and instead recommended that the Commission "should not allow NGSs to include non-commodity and unregulated services on the regulated Columbia bill without a complete and more thorough

investigation of the costs and potential adverse impact on other competitive suppliers . . . as well as the potential for confusion and adverse consequences on residential consumers.” Id. at 9.

IV. CONCLUSION

For the reasons set forth in this Main Brief, the OCA respectfully submits that additional non-commodity charges should not be added to customer bills as a part of this base rate proceeding.

Respectfully Submitted,



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Dated: August 16, 2018

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission :
v. : Docket No. R-2018-2647577
Columbia Gas of Pennsylvania, Inc. :

OFFICE OF CONSUMER ADVOCATE
TESTIMONY, SCHEDULES, AND EXHIBITS

The following documents were admitted to the record in this proceeding on July 26, 2018:

Direct Testimony

- OCA Statement No. 1 Direct Testimony of Dante Mugrace
CONFIDENTIAL and Public Versions, including Schedules DM-1
through DM-35, Appendix A, Verification
- OCA Statement No. 2 Direct Testimony of Marlon F. Griffing
Including Exhibits MFG-1 through MFG-16, Verification
- OCA Statement No. 3 Direct Testimony of Jerome D. Mierzwa
Including Schedules JDM-1 through JDM-5, Verification
- OCA Statement No. 4 Direct Testimony of Roger D. Colton
Including Schedules RDC-1 through RDC-4, Appendix A,
Verification

Rebuttal Testimony

- OCA Statement No. 3-R Rebuttal Testimony of Jerome D. Mierzwa
Including Verification
- OCA Statement No. 5-R Rebuttal Testimony of Barbara R. Alexander
Including Verification and attached responses to the following
interrogatories:

- Columbia Gas Response to NGS Parties 1-014
- Columbia Gas Response to NGS Parties 1-018
- Columbia Gas Response to NGS Parties 3-002
- Columbia Gas Response to NGS Parties 3-003
- Columbia Gas Response to NGS Parties 3-004
- Columbia Gas Response to NGS Parties 5-001
- Columbia Gas Response to NGS Parties 5-002
- Columbia Gas Response to CAUSE-PA 5-008

Surrebuttal Testimony

- OCA Statement No. 1-SR Surrebuttal Testimony of Dante Mugrace
Including Schedules DM-Surr-1 through DM-Surr-35, Verification
- OCA Statement No. 2-SR Surrebuttal Testimony of Marlon F. Griffing
Including Exhibits MFG-17 through MFG-23, Verification
- OCA Statement No. 3-SR Surrebuttal Testimony of Jerome D. Mierzwa
Including Schedules JDM-4 Revised and JDM-5 Revised,
Verification
- OCA Statement No. 4-SR Surrebuttal Testimony of Roger D. Colton
Including Verification

OCA Hearing Exhibit No. 1

Includes responses to the following Interrogatories with signed Verifications attached:

- Columbia Gas Response to CAUSE-PA-5-007 (including CONFIDENTIAL Attachment A)
- Columbia Gas Response to CAUSE-PA-6-001 (CONFIDENTIAL)
- Columbia Gas Response to OCA-10-002
- Columbia Gas Response to OCA-10-004

Appendix B

PROPOSED FINDINGS OF FACT

1. Columbia currently allows Columbia Service Partners, Inc. (CSP) and Nicor Energy Services Company (Nicor) to include non-commodity charges on Columbia's customer bills. Columbia St. No. 18-R at 3.
2. CSP and Nicor are both former Columbia affiliates, but are no longer affiliated with Columbia. Columbia St. No. 18-R at 3.
3. Neither CSP nor Nicor are natural gas suppliers (NGSs). Columbia St. No. 18-R at 3-4.
4. The CSP and Nicor non-commodity charges that may currently be included on Columbia's bills are for items such as warranty services covering HVAC systems and gas, water, and/or sewer line protection services. NGS Parties St. No. 2 at 2.
5. Columbia does not currently allow any entities other than CSP and Nicor to include non-commodity charges on its customer bills. Columbia St. No. 18-R at 4-5.
6. Columbia's current practice allows the Company to bill for unregulated and non-commodity services and products on its regulated bill for essential distribution and commodity services. OCA St. No. 5-R at 4.
7. Columbia's current non-commodity billing practices are not reflected in Columbia's tariff or any explicit Commission Order. OCA St. No. 5-R at 4.
8. Neither the prices nor the terms and conditions for the non-commodity items currently allowed on Columbia's bills are regulated. OCA St. No. 5-R at 4.
9. The inclusion of non-commodity products or services on Columbia's bill may give rise to an assumption by customers that such services are regulated or supervised by the Commission. OCA St. No. 5-R at 4-5.
10. Many entities offer the types of services that CSP and Nicor offer, only some of which are NGSs. OCA St. No. 5-R at 6.
11. Including charges for non-commodity services in the total amount owed on a utility bill provides a significant competitive advantage. OCA St. No. 5-R at 6.

12. It is not proper for the utility bill to be used as a collection tool for all unregulated products and services. OCA St. No. 5-R at 6.
13. It may be unclear to customers that, although non-commodity charges are included in the total amount due on their bill, payment for non-commodity services is not necessary to avoid termination of essential utility service. OCA St. No. 5-R at 6-7.
14. It is unclear from the record in this case exactly how non-commodity products and services are marketed and sold to Columbia's customers. OCA St. No. 5-R at 7.
15. The NGS Parties' proposal to allow NGSs to include non-commodity charges on Columbia's utility bills raises complex consumer protection issues. OCA St. No. 5-R at 8.

PROPOSED CONCLUSIONS OF LAW

1. Columbia bears the burden of proof to establish the justness and reasonableness of every element of its requested rate increase. 66 Pa. C.S. § 315(a).
2. The issue of Columbia's non-commodity billing practice relates to the quality of service to its customers.
3. The Commission has recognized that "quality of service issues are frequently raised in a base rate proceeding," and that "our duties and powers under the Code to appropriately remedy a quality of service issue or an existing rate issue are not limited or diminished simply because such issues are raised in the context of a Section 1308(d) general base rate increase proceeding." Pa. P.U. C. v. Philadelphia Gas Works, Docket No. R-2017-2586783, Opinion and Order (entered May 18, 2018), at 14-15.
4. Pursuant to the Suspension Order in this proceeding, the reasonableness of Columbia's existing rates, rules and regulations is properly considered in this case.
5. Columbia maintains the burden of proof to show that its existing rates, rules and regulations, as well as its quality of service, are just and reasonable.

PROPOSED ORDERING PARAGRAPHS

It is hereby ORDERED THAT:

1. The NGS Parties' request that the Commission require Columbia to allow Natural Gas Suppliers to bill for non-commodity products and services on Columbia's customer bill is denied.

DATE: _____

Jeffrey A. Watson
Administrative Law Judge