



December 21, 2018

VIA E-FILE

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

Re: Pa. PUC v. Columbia Gas of Pennsylvania, Docket No. R-2018-2647577

Dear Secretary Chiavetta,

Enclosed for filing, please find the **Petition for Reconsideration of CAUSE-PA** in the above noted proceeding. Copies have been served in accordance with the attached Certificate of Service.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Elizabeth R. Marx".

Elizabeth R. Marx
Counsel for CAUSE-PA

CC: Certificate of Service

Enclosures.

I. INTRODUCTION

Pursuant to the provisions of the Rules of Practice and Procedure of the Pennsylvania Public Utility Commission (Commission), 52 Pa. Code § 5.572, the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA), through its counsel at the Pennsylvania Utility Law Project (PULP), hereby petitions the Commission for limited reconsideration of its December 6, 2018 Opinion and Order in the above captioned proceeding.

Specifically, CAUSE-PA respectfully requests that the Commission reconsider its directive allowing Columbia Gas of Pennsylvania (Columbia or the Company) the option of offering non-commodity “on bill” billing services to all natural gas suppliers, as the directed remedy is not supported by substantial evidence in the record. To be clear, CAUSE-PA is not challenging the Commission’s determination that Columbia’s current practice is impermissible, but is simply seeking reconsideration of its decision to permit Columbia the ability to decide how to remedy the defect. In issuing this directive, the Commission has – without evidentiary basis – determined that permitting all natural gas suppliers to bill for non-commodity products and services directly on a utility bill is a just and reasonable practice. CAUSE-PA believes that the Commission may have too lightly regarded the burden of proof that the Natural Gas Supplier Parties (NGS Parties) bore to support its proposal to open Columbia’s billing for non-commodity products and services to all natural gas suppliers. As outlined below, the NGS Parties failed to provide a sufficient evidentiary basis for the Commission to reach the conclusion that the NGS Parties’ proposal is just and reasonable, consistent with the Public Utility Code and Commission regulations, and rooted in the public interest.

In addition to overlooking the lack of adequate record evidence to support the Commission’s ultimate directive, CAUSE-PA further asserts that the Commission overlooked the

far-ranging policy ramifications that its directive would have across the state. By allowing Columbia to choose its preferred course of action, the Commission has delegated a significant policy decision which is likely to have a substantial negative impact on consumers – particularly low income and other vulnerable customers that are more susceptible to the associated risks of “on bill” billing for non-commodity products and services. The Commission should not change course on a critical billing policy without substantial evidence of all of the implications – including the impact to consumers and all associated costs – and should not defer to Columbia to make such a consequential and far-ranging policy decision.

For these reasons, and as more fully described below, CAUSE-PA respectfully asserts that the Commission should reconsider its directive allowing Columbia the option of providing non-commodity billing services for all suppliers, and should instead require Columbia to cease its current “on-bill” billing practices. In support thereof, CAUSE-PA asserts as follows:

II. LEGAL STANDARD

1. In Duick et al. v. Pennsylvania Gas and Water Company, 56 Pa. P.U.C. 553 (1982), the Commission explained the basis for rescinding or amending a prior order:

A petition for reconsideration, under the provisions of 66 Pa. C.S. § 703(g), may properly raise any matters designed to convince the Commission that it should exercise its discretion under this code section to rescind or amend a prior order in whole or in part. . . . What we expect to see raised in such petitions are new and novel arguments, not previously heard, or considerations which appear to have been overlooked or not addressed by the Commission.

Id. at 559.

2. This Petition satisfies Duick in that it raises issues “which appear to have been overlooked or not addressed by the Commission.” Id. Specifically, CAUSE-PA is concerned that the Commission has overlooked substantial and unrefuted record evidence which demonstrates

that certain harm is likely to occur if Columbia's billing services were opened to all natural gas suppliers. As explained in greater detail below, the NGS Parties put forth insufficient record evidence to support a conclusion that the potential consumer benefits outweigh the risks.

3. In addition to the Duick standard for reconsideration, the applicable burden of proof is also an important legal standard to review in this proceeding. In a rate proceeding, the public utility bears the burden of proof to establish that every element of its rates are just and reasonable, and do not result in "unreasonable rate discrimination." (RD at 92). However, as Administrative Law Judge Jeffrey A. Watson explained in his Recommended Decision, "a party that raises an issue that is not included in a public utility's general rate case filing bears the burden of proof." (RD at 93). ALJ Watson therefore concluded that the burden of proof with respect to the sole litigated issue in this proceeding "should be borne by parties proposing changes to billing for non-commodity products and services." (RD at 93). In other words, while Columbia had the burden of proof to show that its billing services were not unreasonably discriminatory¹, ***the NGS Parties bore the burden of proof to put forth substantial evidence demonstrating that its proposal to open Columbia's billing services to all suppliers offering non-commodity products and services is just, reasonable, and in the public interest.*** As explained below, the NGS Parties failed to meet this burden. As such, the only outcome which is supported by the record in this proceeding is for Columbia to cease its practice of billing for the non-commodity products and services of two former affiliates.

¹ RD at 92

III. REQUEST FOR RECONSIDERATION

4. The primary focus of the Commission's Opinion and Order, as well as ALJ Watson's Recommended Decision, was to determine whether Columbia's current billing practices for non-commodity products and services is unreasonably discriminatory towards natural gas suppliers that also offer non-commodity products and services. (See RD at 91; Opinion and Order at 34). But in its intense focus on this question, the Commission erroneously conflated the separate and distinct issue of whether the NGS Parties' proposal to open Columbia's billing system to all natural gas suppliers that offer non-commodity products and services is just, reasonable, and in the public interest. ALJ Watson never reached a decision on this specific question, as his initial finding that Columbia's practice was not unreasonably discriminatory mooted the issue. (RD at 117-118). In overturning ALJ Watson's decision that Columbia's *current* practice is not discriminatory, the Commission mistakenly overlooked the fact that the NGS Parties' proposal to open Columbia's "on-bill" billing for any and all non-commodity products and services was never adequately assessed in the RD or the Commission's Order. In fact, the record is void of evidence that this remedy is either just, reasonable, and in the public interest. We assert that the Commission's decision to treat the NGS Parties' proposal as a suggested remedy to Columbia's discriminatory billing practices was in error.

5. After finding that Columbia's current "on-bill" billing practice is unreasonably discriminatory, contrary to ALJ Watson's Recommended Decision, the Commission deferred to Columbia on the question of whether to accept the NGS Parties' proposal. (Opinion and Order at 50-51). This was improper and legally deficient. Before allowing Columbia to make such a choice, the Commission must first have found – *based on substantial evidence* - that the NGS Parties'

proposal to open its billing systems to non-commodity products and services is just, reasonable, consistent with applicable laws and policies, and squarely in the public interest. No such finding was made anywhere in the Commission’s Opinion and Order, or in the underlying Recommended Decision. Indeed, no such finding could be made, as the record is devoid of evidence to support such a conclusion.

6. The Commission itself recognized that the NGS Parties’ proposal is risky, and possibly replete with implementation issues. (Opinion and Order at 50). In fact, this was the reason the Commission required Columbia to report to the Commission’s Bureau of Technical Utility Services (TUS) on its “methodology for coming into compliance with Section 1502 of the Code.” (Id. at 51). Yet the Commission provided no analysis of the record evidence to establish whether the associated risks are – in balance – justified, reasonable, and in the public interest.
7. A close examination of the record reveals substantial and unrefuted evidence which demonstrates that the NGS Parties’ proposal is not justified, reasonable, or in the public interest.
 - a. First, the record shows that by including natural gas supplier’s non-commodity products and services on Columbia’s bills, consumers are likely to believe that Columbia is endorsing those products and services – and that the products and services offered through the bill would be subject to Commission oversight. (See CPA MB at 15-16). The Commission accepted this as fact, noting: “Columbia’s *implied endorsement* by its current ‘on bill’ billing policy *is, itself, a business benefit* Columbia presently bestows only to two former affiliates.” (Id. (emphasis added)). Ultimately, the Commission concluded that, because of this same fact, it could not *compel*

Columbia to associate itself with other suppliers' products and services, and therefore deferred to Columbia to choose whether it would open or close its billing to all non-commodity sales. (Id.). But the Commission's analysis of this fact should not have stopped there. Indeed, the question the Commission must ask is not only whether the "implied endorsement" presents a protected business interest for *suppliers* – or potential harm to *Columbia* as a result of compelled association. The Commission must also ask whether such an association would present a risk of harm to consumers, who may very well be lulled into a false sense of security – believing, erroneously, that Columbia associates with and in fact endorses that product or service. (See OCA St. 5-R at 5-9; OCA MB at 9; CAUSE-PA St. 1-R at 7-8). The Commission's failure to consider this risk before deferring to Columbia whether to approve the NGS Parties' proposal constitutes an abdication of the Commission's duty to act in the best interests of the public, and to protect consumers from the risk of financial harm.

- b. The record also shows that Columbia's current non-commodity billing arrangement with two former affiliates complies with Commission regulations governing billing, collections, and terminations. (See RD at 100-101, 115; see also CPA St. 18-SR at 3-5). However, there is no evidence in the record to even suggest – much less assure – that Columbia will be capable of providing the same level of protections and safeguards if its billing system is opened to any and all natural gas suppliers to offer any range of products and services on its bills. In fact, the record shows the opposite: that opening Columbia's billing system to all suppliers offering non-commodity products and services would create substantial customer confusion and increased calls to Columbia's call centers that Columbia would be unable to adequately address or resolve. (See CPA

MB at 17-18). Unlike Columbia's current "on-bill" billing policy – which provides billing for products and services which are "contractually defined and not subject to change" to consumers with legacy contracts – the NGS Parties' proposal would open the door to potentially limitless products and services, each with unique terms and conditions. (Id. at 18). Such a result not only raises substantial questions about the ability of consumers to obtain appropriate information about their rights and obligations with respect to non-commodity products and services, it would also interfere with the ability of consumers to access relief or redress for their grievances. (See id.) Similarly, while the record shows that Columbia's current billing arrangement allows for proper consumer disclosures regarding its relationship to the two former affiliates, there is no such evidence to show that proper disclosures would be provided or that oversight of that disclosure process would be adequate to deter bad actors. This evidence raises substantial doubt about whether an expanded use of Columbia's billing system to charge for non-commodity products and services is, in fact, consistent with applicable laws and in the public interest. As such, CAUSE-PA again asserts that the NGS Parties have failed to sustain their burden of proof in support of its proposal.

- c. Not only does the record demonstrate potential risks to all consumers, it also highlights the specific risk to Columbia's low income customers. CAUSE-PA's expert witness Mitchell Miller, former Director of the Bureau of Consumers Services, explained the likely impact on low income consumers in testimony:

[A]n astounding number of Pennsylvanians struggle to keep up with the cost of basic utility service. Layering non-commodity products and services on a customer's bill will exacerbate payment issues, and could cause for higher uncollectible expenses. When a bill is unaffordable, consumers are less likely to pay. Even though the non-commodity products and services cannot be recovered as an uncollectible expense or directly cause for termination, the

addition of non-commodity products and services to a customer's basic utility bill will raise the total amount due on the customer's bill, causing more customers to fall behind on their basic service charges and, ultimately, face termination.

The need to protect affordability and access to basic services outweighs the added convenience of being billed for non-commodity products and services directly on a customer's natural gas bill. Indeed, added convenience is the only potential benefit for consumers that [the NGS Parties' witness] could identify.

- (CAUSE-PA St. 1-R at 7-8). As Mr. Miller explained, the only potential benefit to consumers is the potential added convenience of a single bill. But the perception of convenience, at the expense of bill clarity, protections from termination, customer confidentiality, costly system upgrades and other critical consumer protections (discussed more thoroughly below), is insufficient. As CAUSE-PA has repeatedly asserted, this amorphous and uncertain "benefit" is insufficient to satisfy the NGS Parties' burden of proof and fails to meet the substantial evidence standard upon which the Commission's decisions must be based.
- d. The record further shows that natural gas suppliers may use non-commodity billing to obfuscate the actual charges for non-commodity products and services by bundling or otherwise conflating charges for products and services with basic supply charges, making compliance with critical Commission regulations (such as the prohibition for termination for basic service charges) nearly impossible, and frustrating the ability of consumers to compare offers for basic service. (See CPA MB at 16; OCA St. No. 5-R at 8-9; NGS Parties St. No. 2 at 4). The NGS Parties asserted in response to this concern that the non-commodity charge would appear separately from the commodity charge on the bill. (NGS Parties St. 2-SR at 6). However, this assertion was thoroughly rebutted by witnesses for both the OCA and Columbia. (OCA St. 5-R at 8-9; Columbia MB at 16-17). In fact, the NGS Parties' own witness admitted that its efforts to open

Columbia’s billing system was to enable suppliers “to offer even more sophisticated products and services including commodity bundled with energy efficiency products, smart thermostats, distributed solar generation, products bundled with loyalty rewards and products bundled with home protection, to name a few.” (NGS Parties’ St. 2 at 4). This was not a risk under Columbia’s current billing paradigm, as the third party sellers which currently bill for non-commodity products and services are not also natural gas suppliers. (CPA MB at 12). In balance, the record does not support a finding that this formidable risk to consumers is just, reasonable, and consistent with applicable laws and the public interest. Thus, as we have previously concluded, CAUSE-PA asserts that the NGS Parties have failed to sustain its burden of proof.

- e. Finally, the record shows that the NGS Parties’ proposal would be a costly endeavor, including necessary system upgrades and training, yet there is no financial analysis, actual estimated cost, or proposed cost recovery plan on the record in this proceeding to support such an endeavor. (CPA MB at 17-18). The only evidence the NGS Parties put forth regarding the cost of its proposal was a vague assertion that “[t]here may be minimal start-up costs associated with setting up an NGS on [Columbia’s] system” – though they did not come forward with any evidence to support its conclusions that the costs would somehow be “minimal.” (NGS Parties St. 2 at 6). The NGS Parties also made a vague offer to “pay reasonable costs to build out this functionality and certainly would pay fair compensation for the incremental billing costs.” (NGS Parties St. 2 at 6). However, they provided no further details for how this cost recovery would work, or any support in the record showing that Columbia could accurately estimate or delineate the increased costs to allow for proper attribution. The NGS Parties likewise

failed to produce any evidence that this service would be in sufficient demand by suppliers to justify the associated costs for necessary system upgrades. The NGS Parties' vague assertion that its proposal would incur "minimal costs", and undefined offer to cover associated costs, is simply insufficient to overcome Columbia's well-reasoned assessment of potential costs and associated risks, and therefore fails to meet the NGS Parties' burden of proof. CAUSE-PA notes that it would be particularly imprudent for the Commission – as part of this rate proceeding – to afford Columbia the option, in its sole discretion, to incur substantial costs for system upgrades in furtherance of the Commission's Opinion and Order without further investigation and assessment of all associated costs and an approved cost tracking and recovery plan.

8. CAUSE-PA recognizes that the Commission may intend for TUS to review some of these details in reviewing Columbia's "methodology for coming into compliance with Section 1502 of the Code." (Opinion and Order at 51). However, CAUSE-PA believes that process is insufficient, as it presumes that the Commission has already concluded that the NGS Parties' proposal to allow all suppliers to charge for non-commodity products and services directly on Columbia's bill is just and reasonable and in the public interest. In order for TUS to review Columbia's *methodology* for implementing the NGS Parties' proposal, the Commission must first determine here – in the litigated portion of this proceeding, and based on substantial record evidence – whether the NGS Parties met its burden of proof to demonstrate that its proposal is just and reasonable, cost-effective, consistent with applicable laws and policies, and in the public interest. CAUSE-PA asserts that given the record in this case, no such finding can be made because the NGS Parties have failed to meet that burden.

WHEREFORE, and for the reasons enumerated above, CAUSE-PA respectfully requests that the Commission reconsider its directive in this proceeding, and instead require Columbia to submit a detailed plan to *phase out* its current arrangement offering non-commodity billing services to two former affiliates.

Respectfully submitted,

PENNSYLVANIA UTILITY LAW PROJECT
On Behalf of CAUSE-PA



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December 21, 2018

Verification

I, Linda Bergman, on behalf of the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA), hereby state that the facts contained in the foregoing **Petition for Reconsideration of CAUSE-PA**, are true and correct to the best of my knowledge, information and belief, that I am duly authorized to make this Verification, and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 10 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).

On behalf of CAUSE-PA


Linda Bergman

CAUSE-PA Executive Committee Member

December 21, 2018

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

Certificate of Service

I hereby certify that I have this day served copies of the **Petition for Reconsideration of CAUSE-PA** upon the parties and interested stakeholders in the above captioned proceeding in accordance with the requirements of 52 Pa. Code § 1.54 in the manner and upon the persons listed below.

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