



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
COMMONWEALTH KEYSTONE BUILDING
400 NORTH STREET, HARRISBURG, PA 17120

BUREAU OF
INVESTIGATION
&
ENFORCEMENT

May 29, 2020

Via Electronic Filing

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

Re: Pennsylvania Public Utility Commission, v.
Columbia Gas of Pennsylvania, Inc.
Docket No: R-2020-3018835
I&E Motion to Extend

Dear Secretary Chiavetta:

Enclosed please find the **Expedited Motion of the Bureau of Investigation and Enforcement to Extend the Statutory Suspension Period During the Emergency Interruption of Normal Operations of the Pennsylvania Public Utility Commission** for the above-captioned proceeding.

Copies are being served on parties of record per the attached Certificate of Service. *Due to the temporary closing of the PUC's offices, I&E is only providing electronic Service.* Should you have any questions, please do not hesitate to contact me.

Sincerely,

Erika L. McLain
Prosecutor
Bureau of Investigation and Enforcement
PA Attorney ID No. 320526
(717) 783-6170
ermclain@pa.gov

ELM/ac
Enclosures

cc: Honorable Charles E. Rainey, Jr. (*Chief ALJ, PUC Harrisburg – via email only*)
Honorable Katrina L. Dunderdale (*ALJ, PUC Pittsburgh – via email only*)
Per Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	
	:	
v.	:	Docket No: R-2020-3018835
	:	
Columbia Gas of Pennsylvania, Inc.	:	

NOTICE TO PLEAD

*To: Michael W. Hassell, Esq. and Lindsay A. Berkstresser, Esq.
Counsel for Columbia Gas of Pennsylvania, Inc.*

You are hereby notified to file a written response to the attached Expedited Motion in the form and manner as directed by the presiding officer. If you do not file a written response to I&E's Expedited Motion, the presiding officer may rule in favor of I&E on the attached Motion without a hearing.

All pleadings, such as answers to motions, must be filed with the Secretary of the Pennsylvania Public Utility Commission:

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

You must also serve a copy of your response on the undersigned I&E prosecutor.



Erika L. McLain
Prosecutor
PA Attorney ID No. 320526

Bureau of Investigation and Enforcement
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, Pennsylvania 17120
(717) 783-6170

Dated: May 29, 2020

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission :
 :
 v. : Docket No: R-2020-3018835
 :
Columbia Gas of Pennsylvania, Inc. :

**EXPEDITED MOTION OF THE BUREAU OF INVESTIGATION AND
ENFORCEMENT TO EXTEND THE STATUTORY SUSPENSION PERIOD
DURING THE EMERGENCY INTERRUPTION OF NORMAL OPERATIONS
OF THE PENNSYLVANIA PUBLIC UTILITY COMMISSION**

I. INTRODUCTION

The Bureau of Investigation and Enforcement (“I&E”) of the Pennsylvania Public Utility Commission (“Commission”) respectfully request that Chief Administrative Law Judge Charles Rainey (“Chief ALJ Rainey”) and Administrative Law Judge Katrina L. Dunderdale (“ALJ Dunderdale”) issue an Order granting an extension of the statutory suspension period arising under 66 Pa. C.S. § 1308(d) until February 4, 2021, due to the disaster emergency interruption of the normal operations of the Commission as a result of the coronavirus pandemic.

As explained in more detail below, pursuant to the authority issued in both Governor Tom Wolf’s Proclamation of Disaster Emergency due to COVID-19 (“coronavirus”), and the Commission’s Emergency Order¹ dated March 20, 2020 related to suspension of statutory and regulatory deadlines, I&E’s request that the schedule for

¹ *Re: Suspension of Regulatory and Statutory Deadlines; Modification to Filing and Service Requirements, EMERGENCY ORDER, Docket No. M-2020-3019262 (dated March 20, 2020, ratified March 26, 2020).*

the above-referenced Columbia Gas of Pennsylvania, Inc. (“Columbia” or “Company”) base rate case be extended until February 4, 2021 is necessary and reasonable. Without the requested relief, severe and irreparable harm would occur to I&E, as well as potentially both Columbia and its ratepayers.

Further, I&E requests expedited resolution of this Motion.

In support of this Motion, I&E avers the following:

II. PROCEDURAL HISTORY

1. On March 24, 2020, Columbia filed for a waiver of 52 Pa. Code § 53.52(b)(2) and requested a 30 day extension granting authority to file data in support of a proposed increase in base rates based upon an historic test year ended November 30, 2019 on or before April 28, 2020.

2. The Commission granted the Company’s request via Secretarial Letter issued on March 27, 2020.

3. On April 24, 2020, Columbia Gas filed Supplement No. 307 to Columbia’s Gas Service Tariff – Pa. P.U.C. No. 9 (“Supplement No. 307”) in which, Columbia seeks an increase in annual distribution revenues of \$100.4 million, to become effective June 23, 2020.

4. On March 6, 2020, the Governor of the Commonwealth of Pennsylvania, Tom Wolf, (“Governor Wolf”) issued a Proclamation of Disaster Emergency² wherein it states: “WHEREAS, a novel coronavirus (now known as “COVID-19”) emerged in

² Proclamation of Disaster Emergency (March 6, 2020) <https://www.governor.pa.gov/wp-content/uploads/2020/03/20200306-COVID19-Digital-Proclamation.pdf>

Wuhan, China, began affecting humans in December 2019, and has since spread to 89 countries, including the United states” The Proclamation further states: “... NOW THEREFORE, pursuant to the provisions of Subsection 7301(c) of the Emergency Management Services Code, 35 Pa. C.S. § 7101, *et seq*, I do hereby proclaim the existence of a disaster emergency throughout the Commonwealth.” This Proclamation is in effect for up to ninety (90) days unless the governor acts to extend it further.

5. Additionally, the Proclamation states: “FURTHER, I hereby suspend the provisions of any regulatory statute prescribing the procedures for conduct of Commonwealth business, or the orders, rules or regulations of any Commonwealth agency, if strict compliance, with the provisions of any statute, order, rule or regulation would in any way prevent, hinder, or delay necessary action in coping with this emergency.”

6. On March 15, 2020, Governor Wolf, through the Deputy Secretary for Human Resources and Management, issued an Executive Order implementing telework protocol for at least 14 days beginning March 16, 2020, and the closing of all state offices in Dauphin County and the Capitol Complex. As a result, the Commission’s offices, including I&E’s offices were closed. The Executive Order instituted the state’s telework protocol for the foreseeable future. As of the filing of this Motion, the Commission is still working under a telework protocol.

7. Base rate cases generally operate on a nine-month statutory time frame under 66 Pa. C.S. §1308. If for some reason, the Commission were unable to render a decision within that time frame, Section 1308 provides that the rate increase would go

into effect at the end of the statutory period as the rates were filed, subject to refund plus interest for amounts that are later deemed not to be just and reasonable.

8. Your Honor has the authority pursuant to 66 Pa. C.S. § 331(d) regarding the authority of the presiding officer to: (d)(4) regulate the course of the hearing; (d)(7) dispose of procedural requests or similar matters; and (d)(9) take any other action authorized by commission rule. *See also* 52 Pa. Code § 5.483.

9. On March 20, 2020, the Commission issued an Emergency Order at Docket No. M-2020-3019262, that provided for the suspension, extension, or waiver of statutory or regulatory deadlines where necessary during the course of the Governor's Proclamation of Disaster Emergency.³ The Emergency Order states "...in pending rate case litigation, the Chief Administrative Law Judge is authorized to establish reasonable deadlines under the circumstances after consideration of the position of the parties and the presiding Administrative Law Judge."

10. On May 22, 2020, ALJ Dunderdale issued a Prehearing Conference Order scheduling a telephonic prehearing conference on June 3, 2020.

11. Based, on both the authority given to Your Honors by the Public Utility Code, and the guidance provided by the Commission's Emergency Order, I&E requests Your Honors extend the statutory suspension period in this proceeding from the January 14, 2021 public meeting date to the next public meeting date of February 4, 2021.

³ *See also*, 35 Pa. C.S. § 7301(f)(1).

III. GROUNDS FOR RELIEF

A. Reason for the Requested February 4, 2020 Extension

12. By Order entered May 21, 2020, the Commission suspended the Company's filing until January 23, 2021, placing it on the January 14, 2021 Public Meeting. In this Motion, I&E respectfully requests that the suspension be extended to February 4, 2021, which is less than two weeks or twelve days from the original suspension period.

13. The requested twelve-day extension is reasonable because Commission employees are currently in the eleventh week of teleworking and it is currently unknown how long Commission offices will remain closed. Moreover, even if given a date certain of reopening, there may be a gradual return to work rather than all employees returning at the same time. Accordingly, Commission employees may be out of the office for longer than anticipated or may be working from the Commission's offices on some type of reduced schedule once returning to work is possible.

14. I&E's request to extend the suspension to February 4, 2021, is appropriate as that is the first Public Meeting date scheduled after January 14, 2021. Aligning the extension with the Public Meeting schedule is critical to ensure that the extension can be fully utilized by the parties, the ALJs and the Commission.

B. Impact of the Closure on I&E's Operations

15. The closing of Commission offices has rendered it difficult for I&E, as a statutory party in this base rate proceeding, to investigate and analyze the requested base rate increase within the statutory nine-month time period.

16. In the March 20 Emergency Order issued by the Commission, the Commission correctly noted that the closure of Commission offices presents “many challenges for the Commission, the regulated community, and the public.” The Emergency Order further explained that while the Commission and the regulated community “operate under reasonable statutory and regulatory deadlines necessary to ensure timely administration of the Public Utility Code,” the Commission is cognizant that some deadlines may, at this juncture, hinder the public service mission of the Commission and its stakeholders.

17. Therefore, while the Emergency Order encourages parties before the Commission to cooperate regarding the suspension, extension, waiver, or change or regulatory, statutory or procedural deadlines, it also, however, noted that all statutory, regulatory or procedural deadlines prescribed by the Public Utility Code or applicable law may be extended, waived or changed as a result of the Governor’s Proclamation of Disaster Emergency.

18. Importantly, no stakeholders have filed a Petition for Reconsideration, or Clarification challenging the Commission’s authority to alter statutory and regulatory deadlines in this manner.

19. There are “telework” and work from home provisions in place for Commission employees, and I&E employees are willing and able to review and analyze the Company’s rate increase data from home. However, certain aspects of I&E’s review of this filing have been impacted due to these new and unprecedented working conditions.

An example is that I&E designates rate case teams where in-person meetings with technical supervisors, attorneys and all expert witnesses are routinely held and informal discussions with team members occur often. Given the current pandemic, those in-person meetings and informal discussions among team members about various issues can no longer occur. To be clear, I&E teams have been actively communicating via email and conference calls during this period of teleworking; however, the new process has impacted the flow of information among members of the rate case team.

20. Lastly, three base rate case procedural schedules have been impacted as a result of the coronavirus emergency. Specifically, the UGI Utilities Inc. – Gas Division (“UGI”) base rate case⁴, Pittsburgh Water and Sewer Authority (“PWSA”) base rate case⁵ and Philadelphia Gas Works (“PGW”) base rate case⁶ procedural schedules have been extended due to the ongoing pandemic. Due to these extensions, Columbia’s statutory suspension is now in line with these earlier filed base rate cases and slated to be on a similar procedural schedule.

As I&E works exclusively with its internal technical witnesses, some witness overlap is to be expected as there are currently five current pending base rate cases including the instant Columbia base rate case and newly filed Pennsylvania American Water Company (“PAWC”) base rate case. The requested twelve-day extension ensures the same witness will not be expected to prepare for multiple hearings on different cases in a short period of time. In order to ensure all cases receive proper I&E review, it is

⁴ Docket No. R-2019-3015162.

⁵ Docket No. R-2020-3017951.

⁶ Docket No. R-2020-3017206.

important that this case receive the requested extension so that the procedural schedules will not overlap and each rate case receive the examination it's entitled.

More importantly, as "telework" continues, I&E seeks to avoid placing an overwhelming burden on its support staff. It is an undertaking to process all documents associated with a rate case under normal circumstances at I&E's physical location let alone under these emergency conditions. I&E requests this extension to avoid the potential of coinciding due dates with the existing four base rate cases to alleviate the administrative burden given the circumstances of this emergency situation.

C. Potential Impact on Customers

21. Governor Wolf's determination that all non-essential business in the Commonwealth be temporarily suspended has presented other issues that must be reviewed carefully in the context of this base rate proceeding.

22. For one, it is unclear whether the parties would be able to timely schedule public input hearings in this proceeding while this Emergency Closure continues. As a utility rate increase such as this involves a substantial property right,⁷ the public's right to due process is paramount. Public input hearings are a vital part of the rate case process and effort must be taken to ensure that the public has its chance to be heard.

In the 2018 Proceeding a public input hearing was held in Columbia's service territory. It is important for customers to be given the opportunity to voice their concerns about this rate increase especially now considering the impact coronavirus has had on the

⁷ *Joseph Horne Co. v. Pa. PUC*, 467 A.2d 1212, 78 Pa. Commw. 566, Commw. 1983, 485 A.2d 1105, 506 Pa. 475.

economy and employment. I&E is concerned that without the extension, customers will be unable to have an opportunity to provide meaningful public input testimony under the current emergency situation.

23. Another pressing matter is the Governor’s Emergency Order requiring that all non-life sustaining business close.⁸ As a result of this Emergency Order, construction work has largely ceased in the Commonwealth. While I&E believes that Columbia has the ability to respond to emergency situations such as explosions and major gas leaks, it is likely that the Governor’s Emergency Order has slowed down Columbia’s non-emergency infrastructure improvements such as the replacement of cast iron mains and the like. Careful consideration must be given to how this may impact the revenue requirement requested by Columbia as the parties will have to re-evaluate Columbia’s ability to complete any construction projects in the future included as part of this filing within the fully projected future test year (“FPFTY”).

24. Additional consideration must be given to the economic impact of this crisis as it relates to Columbia’s filing as well. Specifically, low and moderate income customers who may already be struggling to afford their utility bills may be hit particularly hard as non-essential business remains largely halted. These already struggling customers are likely facing substantial loss of income. In turn, the loss of income by these customers may serve to drive up Columbia’s uncollectible expense. It will also require reexamination of Columbia’s low-income programs. At this juncture, it

⁸ Order of the Governor of the Commonwealth of Pennsylvania Regarding the Closure of All Businesses that are Not Life Sustaining (March 19, 2020) <https://www.governor.pa.gov/wp-content/uploads/2020/03/20200319-TWW-COVID-19-business-closure-order.pdf>

is impossible to determine how many more customers in this service territory will be in need of rate assistance. Therefore, more time is necessary to assess the impact of the current crisis on Columbia's low and moderate income customers.

25. These are circumstances that could not have been taken into consideration or planned for as of the filing of Columbia's base rate case. As these circumstances have changed, not just in the minor way change always occurs during the pendency of a base rate case, but in a major, jarring way the parties to this proceeding must be afforded the opportunity to examine the impact these changes will have on Columbia's filing and requested revenue requirement.

D. Potential Impact on Columbia

26. To be clear, I&E's duty to represent the public interest involves a duty not only to Columbia's customers, but also to Columbia. I&E's request for more time in this proceeding will also allow I&E to evaluate the appropriate level of cash and other financial metrics to ensure that Columbia is able to pay its bills and access capital at rates that are reasonable.

I&E remains mindful that Columbia has already postponed its filing and, as such, consideration needs to be given to that, which is why I&E is proposing the extension to February 4, 2020 rather than some later date. To be clear, I&E's request for extra time is not designed to frustrate its attempt to increase rates, but the extra time is necessary to I&E to fully explore, not only the needs of Columbia's customers, but the needs of Columbia itself as a result of this pandemic.

27. The global financial situation is markedly different than it was when Columbia filed its base rate case. It is imperative that Columbia have access to capital at reasonable rates. It is imperative that Columbia meet its debt service coverage obligations. It is important that Columbia have enough cash on hand to support its operations. All of these factors are potentially impacted by the current disruption of day-to-day business in the Commonwealth. It is important that Columbia continue to be able to operate safely and reliably. The extra time requested by I&E will allow for sufficient review of what level of revenue Columbia needs to continue safe and reliable operations.

IV. CONCLUSION

28. I&E's requested extension of the suspension period to February 4, 2021 is designed to provide sufficient time to fully and completely review the Company's rate request and thus fulfill I&E's mission to represent the public interest in rate proceedings.

29. I&E's ability to fully and completely investigate the Company's requested base rate increase is necessary to establish a full and complete record before the ALJs and for the Commission.

30. Therefore, the suspension of the procedural schedule is reasonable and necessary and the suspension order must also stay the mandates regarding Commission action in 66 Pa. C.S. § 1308(d).

WHEREFORE, the Bureau of Investigation and Enforcement respectfully requests that Chief Administrative Law Judge Charles Rainey and Administrative Law Judge Katrina L. Dunderdale issue an Order extending the statutory deadline for this proceeding

until February 4, 2021 and to order the parties to establish a procedural schedule taking into account the extension of the statutory deadlines.

Respectfully Submitted,

A handwritten signature in cursive script that reads "Erika L. McLain".

Erika L. McLain
Prosecutor
PA Attorney ID No. 320526

Bureau of Investigation and Enforcement
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, Pennsylvania 17120
(717) 783-6170

Dated: May 29, 2020

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	
	:	
v.	:	Docket No: R-2020-3018835
	:	
Columbia Gas of Pennsylvania, Inc.	:	

VERIFICATION

I, Erika L. McLain, Prosecutor for the Pennsylvania Public Utility Commission’s Bureau of Investigation and Enforcement, herby stat that the facts set forth above are true and correct to the best of my knowledge, information and belief 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 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities.



Erika L. McLain
Prosecutor
PA Attorney ID No. 320526

Bureau of Investigation & Enforcement
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, Pennsylvania 17120
(717) 783-6170

Dated: May 29, 2020

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission :
 :
v. : Docket No: R-2020-3018835
 :
Columbia Gas of Pennsylvania, Inc. :

CERTIFICATE OF SERVICE

I hereby certify that I am serving the foregoing **Motion to Extend** dated May 29, 2020, in the manner and upon the persons listed below:

Served via Electronic Mail Only

Michael W. Hassell, Esq.
Lindsay A. Berkstresser, Esq.
Post & Schell PC
17 North Second Street, 12th Floor
Harrisburg, PA 17101
mhassell@postschell.com
lberkstresser@postschell.com
Counsel for
Columbia Gas of Pennsylvania, Inc.

Daniel G. Asmus, Esq.
Steven C. Gray, Esq.
Office of Small Business Advocate
300 North Second Street
Suite 202
Harrisburg, PA 17101
dasmus@pa.gov
sgray@pa.gov

Laura J. Antinucci, Esq.
Barrett C. Sheridan, Esq.
Darryl A. Lawrence, Esq.
Office of Consumer Advocate
555 Walnut Street
Forum Place, 5th Floor
Harrisburg, PA 17101
OCACGPA2020@paoca.org

Amy E. Hirakis, Esq.
Columbia Gas of PA, Inc.
800 North Third Street, Suite 204
Harrisburg, PA 17102
ahirakis@nisource.com
Counsel for
Columbia Gas of Pennsylvania, Inc.

Joseph L. Vullo, Esq.
Burke Vullo Reilly Roberts
1460 Wyoming Avenue
Forty Fort, PA 18704
jlvullo@bvrrlaw.com
Counsel for CAAP

Meagan Bielanin Moore, Esq.
Columbia Gas of PA, Inc.
Southpointe Industrial Park
121 Champion Way, Suite 100
Canonsburg, PA 15317
mbmoore@nisource.com
Counsel for
Columbia Gas of Pennsylvania, Inc.

Elizabeth R. Marx, Esq.
Ria M. Pereira, Esq.
John W. Sweet, Esq.
Pennsylvania Utility Law Project
118 Locust Street
Harrisburg, PA 17101
pulp@palegalaid.net
Counsel for CAUSE-PA



Erika L. McLain
Prosecutor
Bureau of Investigation and Enforcement
PA Attorney ID No. 320526