**BEFORE THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

*Via electronic service only due to Emergency Order at M-2020-3019262*

Pennsylvania Public Utility Commission : R-2020-3018835

Office of Consumer Advocate : C-2020-3019702

Office of Small Business Advocate : C-2020-3019714

Columbia Industrial Intervenors : C-2020-3020105

Richard Collins : C-2020-3020207

v. :

:

Columbia Gas of Pennsylvania, Inc. :

**PROTECTIVE ORDER**

On April 24, 2020, Columbia Gas of Pennsylvania, Inc. (Columbia) filed Supplement No. 307 to Tariff Gas Pa. P.U.C. No. 9 at Docket No. R-2020-3018835, with an effective date of January 23, 2021. Columbia proposed to increase overall rates by approximately $100.4 million per year, or 17.54% over present revenues. Columbia’s proposal, if granted, would increase the average residential customer bill from $87.57 to $103.19, or by approximately 17.84%. Columbia also proposed to increase the residential fixed monthly charge from $16.75 to $23.00.

On May 21, 2020, the Commission issued an Order pursuant to 66 Pa.C.S. § 1308(d), suspending the filing by operation of law until January 23, 2021 (Suspension Order).

On May 29, 2020, BIE filed a motion requesting the Commission extend the statutory suspension period. On June 2, 2020, Columbia and OCA filed Answers to BIE’s Motion.

On Wednesday, June 3, 2020, after accepting oral arguments from the parties at the start of the prehearing conference, Chief Administrative Law Judge Charles E. Rainey Jr. granted BIE’s request and extended the statutory suspension period to February 4, 2021.

The presiding officer conducted a call-in telephonic prehearing conference with the parties on June 3, 2020, in which various procedural matters were discussed and a litigation schedule was established. Present during the call-in telephonic prehearing conference were counsel representing the following: Columbia Gas; OCA; OSBA; BIE; CII; CAAP; and CAUSE-PA. The parties addressed various procedural matters including the litigation schedule but could not agree on a litigation schedule.

On Friday, June 5, 2020, the parties provided suggested dates for the litigation schedule. Thereafter, the presiding officer requested, and received, clarifying information about the technology and procedure to be used by witnesses and non-testifying participants at the telephonic public input hearings. Accordingly, on Friday, June 12, 2020, the presiding officer issued the Prehearing Order which memorialized the matters discussed by the parties during the prehearing conference on June 3, 2020, and which established the litigation schedule.

Also, on June 12, 2020, the Office of Administrative Law Judge issued the Telephonic Evidentiary Hearing Notice which scheduled the telephonic evidentiary hearings for Tuesday, September 22, 2020 through Thursday, September 24, 2020.

On June 15, 2020, the presiding officer issued the Prehearing Order which memorialized the discussions with the parties on June 3, 2020.

On June 18, 2020, Columbia filed a Motion for a Protective Order pursuant to 52 Pa.Code § 5.365(a). Columbia requests the presiding officer issue a Protective Order because Proprietary Information may be included in discovery and testimony in this proceeding and it is contrary to the public interest and the potential for economic and/or competitive harm from the unrestricted disclosure of this information.

Upon consideration of the Motion for a Protective Order that was filed by Columbia on June 18, 2020;

IT IS ORDERED THAT:

1. The Protective Order is hereby granted with respect to the material and information identified in Paragraphs 2 and 3 below, which have been or will be filed with the Commission, or otherwise presented during the above-captioned proceeding and all proceedings consolidated therewith. All persons previously or hereafter granted access to the materials and information identified in Ordering Paragraphs 2 and 3 of this Protective Order shall use and disclose such information only in accordance with this Protective Order.
2. The material or information subject to this Protective Order includes all correspondence, documents, data, information, studies, methodologies and other materials, furnished in discovery in this proceeding, as well as written and oral testimony, exhibits, examination and cross-examination questions, motions, briefs, oral argument, and other writings submitted by the parties to this proceeding, which are believed by the producing party to be of a proprietary or confidential nature and which are so designated by being stamped “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL.” Such materials will be referred to below as “Proprietary Information.” When a statement or exhibit is identified for the record, the portions thereof that constitute Proprietary Information shall be designated as such for the record.
3. A Party may designate as “Confidential” materials those materials which customarily are treated by that party as sensitive or proprietary, which are not available to the public, and which, if disclosed freely, would subject that party or its clients to risk of competitive disadvantage or other business injury; (B) the parties may designate as “HIGHLY CONFIDENTIAL” those materials that are of such a commercially sensitive nature among the parties or of such a private, personal nature that the producing party is able to justify a heightened level of confidential protection with respect to those materials. For example, but without limitation, “HIGHLY CONFIDENTIAL” information may include Proprietary Information that constitutes or describes: (a) customer names or customer prospects’ names, addresses, annual volumes of gas usage, or other customer-identifying information; (b) marketing plans; (c) competitive strategies or service alternatives; (d) market share projections; (e) competitive pricing or discounting information; and (f) marketing materials that have not yet been used. The parties shall endeavor to limit their designation of information as Highly confidential.
4. Proprietary Information shall be made available to counsel for the non-producing Party who has entered an appearance in this proceeding and does not have responsibilities constituting a Restricted Person, subject to the terms of this Protective Order. Such counsel shall use or disclose the “Confidential” and “Highly Confidential” information only for purposes of preparing or presenting evidence, cross examination or argument in this proceeding.
5. In addition, information deemed as “Confidential” material shall be made available to a “Reviewing Representative” who is a person who is:

(i) An expert or an employee of an expert retained by a Party for the purpose of advising, preparing for or testifying in this proceeding;

(ii) Employees or other representatives of a Party appearing in this proceeding with significant responsibility for this docket; or

(iii) A person mutually agreed to by the Parties.

The Information deemed as “Highly Confidential” material may be provided to a “Reviewing Representative” who is:

(i) An expert or an employee of an outside expert retained by a Party for the purposes of advising, preparing for or testifying in this proceeding; or

(ii) A person mutually agreed to by the Parties.

A qualified “Reviewing Representative” for “Highly Confidential” material may review and discuss “Highly Confidential” material with their client or with the entity with which they are employed or associated, to the extent that the client or entity is not a “Restricted Person”, but may not share with or permit the client or entity to review the “Highly Confidential” material. Such discussions must be general in nature and not disclose specific “Highly Confidential” information. However, counsel for BIE, OCA and OSBA may share Proprietary Information with the BIE Director, Consumer Advocate and Small Business Advocate, respectively, without obtaining a Non-Disclosure Certificate from these individuals, provided that these individuals otherwise abide by the terms of this Protective Order.

1. A Reviewing Representative or counsel entering an appearance may not be a “Restricted Person,” unless authorized to review material by agreement of the producing Party. “Restricted Person” shall mean: (i) an officer, director, stockholder, partner, or owner of any competitor of the parties or an employee of such an entity if the employee’s duties involve marketing or pricing of the competitor's products or services; (ii) an officer, director, stockholder, partner, or owner of any affiliate of a competitor of the parties (including any association of competitors of the parties) or an employee of such an entity if the employee’s duties involve marketing or pricing of the competitor's products or services; (iii) an officer, director, stockholder, owner or employee of a competitor of a customer of the parties if the Proprietary Information concerns a specific, identifiable customer of the parties; and (iv) an officer, director, stockholder, owner or employee of an affiliate of a competitor of a customer of the parties if the Proprietary Information concerns a specific, identifiable customer of the parties; provided, however, that no expert shall be disqualified on account of being a stockholder, partner, or owner unless that expert’s interest in the business would provide a significant motive for violation of the limitations of permissible use of the Proprietary Information. For purposes of this Protective Order, stocks, partnership or other ownership interests valued at more than $10,000 or constituting more than a 1% interest in a business establishes a significant motive for violation.
2. If an expert for a Party to this proceeding, another member of the expert’s firm or the expert’s firm also serves as an expert for, or as a consultant or advisor to, a Restricted Person, said expert must: (1) identify for the other Party to this proceeding, each Restricted Person and each expert or consultant; (2) make reasonable attempts to segregate those personnel assisting in the expert’s participation in this proceeding from those personnel working on behalf of a Restricted Person; and (3) if segregation of such personnel is impractical, the expert shall give to the producing Party written assurances that the lack of segregation will in no way jeopardize the interests of the producing Party or its customers. The Parties retain the right to challenge the adequacy of the written assurances that the Parties or their customers’ interests will not be jeopardized.
3. The Office of Small Business Advocate’s consultant, Mr. Robert D. Knecht, will not be considered to be a “Restricted Person’ and Paragraphs 6 and 7 will not apply to Mr. Knecht, provided that Mr. Knecht does not share, distribute, or discuss the Proprietary Information with any person except authorized OSBA representatives

9. A qualified “Reviewing Representative” for “HIGHLY CONFIDENTIAL” material may review and discuss “HIGHLY CONFIDENTIAL” material with their client or with the entity with which they are employed or associated, to the extent that the client or entity is not a “Restricted Person”, but may not share with or permit the client or entity to review the “HIGHLY CONFIDENTIAL,” material provided however that counsel for I&E, the Office of Consumer Advocate, and Office of Small Business Advocate may share Proprietary Information with the I&E Director, Consumer Advocate, and Small Business Advocate, respectively, without obtaining a Non-Disclosure Certificate from these individuals, provided however, that these individuals otherwise abide by the terms of the Stipulated Protective Agreement.

10. Proprietary Information shall be treated by the Parties and by the Reviewing Representative in accordance with the certificate executed pursuant to Paragraph 12(a). Information deemed Proprietary Information shall not be used except as necessary for the conduct of this proceeding, nor shall it be disclosed in any manner to any person except a Reviewing Representative who is engaged in the conduct of this proceeding and who needs to know the information in order to carry out that person’s responsibilities in this proceeding.

11. During the effectiveness of the March 20, 2020 Emergency Order of the Pennsylvania Public Utility Commission at Docket No. M-2020-3019262, Reviewing Representatives of I&E may use personal electronic devices to view Proprietary Information provided that the Reviewing Representative agrees to treat the material in accordance with the terms of this agreement and not to download or save copies of Proprietary Information on any personal electronic device.

12. Reviewing Representatives may not use information contained in any Proprietary Information obtained through this proceeding to give any party or any competitor of any party a commercial advantage. In the event that a Party wishes to designate as a Reviewing Representative a person not described in Paragraphs 5(a) through 5(d) or 6(a) through (c) above, the party shall seek agreement from the party providing the Proprietary Information. If an agreement is reached, that person shall be a Reviewing Representative pursuant to Paragraph 6(d) above with respect to those materials. If no agreement is reached, the party shall submit the disputed designation to the presiding Administrative Law Judge for resolution.

13. (a) A Reviewing Representative shall not be permitted to inspect, participate in discussions regarding, or otherwise be permitted access to Proprietary Information pursuant to this Protective Order unless that Reviewing Representative has first executed a Non-Disclosure Certificate provided that if an attorney qualified as a Reviewing Representative has executed such a certificate, the paralegals, secretarial and clerical personnel under the attorney's instruction, supervision or control need not do so. A copy of each Non-Disclosure Certificate shall be provided to counsel for the party asserting confidentiality prior to disclosure of any Proprietary Information to that Reviewing Representative.

(b) Attorneys and outside experts qualified as Reviewing Representatives are responsible for ensuring that persons under their supervision or control comply with the Protective Order.

14. None of the Parties waive their right to pursue any other legal or equitable remedies that may be available in the event of actual or anticipated disclosure of Proprietary Information.

15. The Parties shall designate data or documents as constituting or containing Proprietary Information by stamping the documents “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL.” Where only part of data compilations or multi-page documents constitutes or contains Proprietary Information, the parties, insofar as reasonably practicable within discovery and other time constraints imposed in this proceeding, shall designate only the specific data or pages of documents which constitute or contain Proprietary Information. The Proprietary Information shall be served upon the parties hereto only in an envelope separate from the nonproprietary materials, and the envelope shall be conspicuously marked “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL.” During the effectiveness of the March 20, 2020 Emergency Order of the Pennsylvania Public Utility Commission at Docket No. M-2020-3019262, in lieu of hard copy delivery, parties shall establish means for electronic service of Proprietary Information to authorized Reviewing Representatives.

16. The Party will consider and treat the Proprietary Information as within the exemptions from disclosure provided in Section 335(d) of the Public Utility Code, 66 Pa.C.S. § 335(d), and the Pennsylvania Right-to-Know Act, Act of February 14, 2008, P.L. 6, 65 P.S. §§ 67.101 *et seq.*, until such time as the information is found to be non-proprietary.

17. Any public reference to Proprietary Information by a Party or its Reviewing Representatives shall be to the title or exhibit reference in sufficient detail to permit persons with access to the Proprietary Information to understand fully the reference and not more. The Proprietary Information shall remain a part of the record, to the extent admitted, for all purposes of administrative or judicial review.

18. Part of any record of this proceeding containing Proprietary Information, including but not limited to all exhibits, writings, testimony, cross examination, argument, and responses to discovery, and including reference thereto as mentioned in Paragraph 16 above, shall be sealed for all purposes, including administrative and judicial review, unless such Proprietary Information is released from the restrictions of this Protective Order, either through the agreement of the parties to this proceeding or pursuant to an order of the Commission.

19. The Parties shall retain the right to question or challenge the confidential or proprietary nature of Proprietary Information and to question or challenge the admissibility of Proprietary Information. If a Party challenges the designation of a document or information as proprietary, the Party providing the information retains the burden of demonstrating that the designation is appropriate.

20. The Parties shall retain the right to question or challenge the admissibility of Proprietary Information; to object to the production of Proprietary Information on any proper ground; and to refuse to produce Proprietary Information pending the adjudication of the objection.

21. Within 30 days after a Commission final order is entered in the above-captioned proceeding, or in the event of appeals, within thirty days after appeals are finally decided, the Party, upon request, shall either destroy or return to the Parties all copies of all documents and other materials not entered into the record, including notes, which contain any Proprietary Information. In the event that the Party elects to destroy all copies of documents and other materials containing Proprietary Information instead of returning the copies of documents and other materials containing Proprietary Information to the parties, the Party shall certify in writing to the other Party that the Proprietary Information has been destroyed.

Date: June 23, 2020 \_\_\_\_\_\_\_\_\_\_/s/\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Katrina L. Dunderdale

Administrative Law Judge

**APPENDIX A**

Pennsylvania Public Utility Commission : R-2018-3000253

Office of Consumer Advocate : C-2018-3000523

Office of Small Business Advocate : C-2018-3000951

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v. :

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Columbia Gas of Pennsylvania, Inc. 1307(f) :

Purchased Gas Cost Tariff Filing Effective :

October 1, 2018 :

**NON-DISCLOSURE CERTIFICATE**

TO WHOM IT MAY CONCERN:

The undersigned is a Reviewing Representative of the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a party to this proceeding (“Party”), and is not, or has no knowledge or basis for believing that he/she is a “Restricted Person” as that term is defined in Paragraph 5 of the Stipulated Protective Agreement executed on behalf of the Party with regard to the above-referenced proceeding or prohibited from being a “Reviewing Representative of Highly Confidential information” pursuant to Paragraph 7 of the Stipulated Protective Agreement. The undersigned has read and understands the Stipulated Protective Agreement in the above-referenced proceeding, which Stipulated Protective Agreement deals with the treatment of Proprietary Information. The undersigned agrees to be bound by, and comply with, the terms and conditions of said Stipulated Protective Agreement.

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Signature Employer

**R-2020-3018835 et al - PA PUBLIC UTILITY COMMISSION v. COLUMBIA GAS OF PENNSYLVANIA INC**

*Revised 6/2/20*

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*Complainant C-2020-3019702*

*Via email only due to Emergency Order at M-2020-3019262*

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