


COMMONWEALTH OF PENNSYLVANIA



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July 6, 2020

Rosemary Chiavetta, Secretary
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

Dear Secretary Chiavetta:

Attached for electronic filing please find the Office of Consumer Advocate's Answer and Verification to Columbia Gas of Pennsylvania, Inc.'s Petition for Reconsideration of Staff Action in the above-referenced proceeding.

Copies have been served per the attached Certificate of Service.

Respectfully submitted,

/s/ Laura J. Antinucci
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Assistant Consumer Advocate
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Enclosures:

cc: The Honorable Katrina L. Dunderdale (**email only**)
Office of Special Assistants (**email only**)
Certificate of Service

*291549

CERTIFICATE OF SERVICE

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

I hereby certify that I have this day served a true copy of the following document, the Office of Consumer Advocate's Answer to Columbia Gas of Pennsylvania, Inc. Petition for Reconsideration of Staff Action, 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 6th day of July 2020.

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Dated: July 6, 2020
*291028

BEFORE THE PENNSYLVANIA
PUBLIC UTILITY COMMISSION

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

THE OFFICE OF CONSUMER ADVOCATE’S ANSWER TO
COLUMBIA GAS OF PENNSYLVANIA, INC.’S PETITION FOR
RECONSIDERATION OF STAFF ACTION

I. INTRODUCTION

In accordance with 52 Pa. Code Sections 1.31 and 5.61, the Office of Consumer Advocate (OCA) files the following Answer to Columbia Gas of Pennsylvania, Inc.’s (Columbia or Company) Petition for Reconsideration of Staff Action in the above-captioned proceeding. The OCA opposes Columbia’s request for reconsideration of the decision of Chief Administrative Law Judge Charles E. Rainey (Chief ALJ) issued on June 3, 2020 pursuant to the Pennsylvania Public Utility Commission’s (Commission) Emergency Order dated March 20, 2020.¹ As the Chief ALJ found in his Order, the Bureau of Investigation and Enforcement’s (I&E) Motion for a twelve (12) day extension of the statutory suspension period until February 4, 2021 was reasonable under the circumstances. The Chief ALJ reached his decision after consideration of the positions of all parties and the presiding Administrative Law Judge Katrina L. Dunderdale (presiding ALJ). Copies of the Chief ALJ’s Order and I&E’s Motion are attached as Appendices A and B to this

¹ Suspension of Regulatory and Statutory Deadlines; Modification to Filing and Service Requirements, Docket No. M-2020-3019262, Emergency Order (Mar. 20, 2020) (Emergency Order).

Answer. The OCA submits that nothing in Columbia’s Petition for Reconsideration of Staff Action justifies reconsideration of the Chief ALJ’s Order at this time.

II. BACKGROUND

On March 6, 2020, Governor Tom Wolf issued a Proclamation of Disaster Emergency in response to COVID-19. The Proclamation of Disaster Emergency recognized that the statutes and regulations that govern procedures for Commonwealth agency business may be suspended if strict compliance “would in any way prevent, hinder, or delay necessary action in coping with this emergency.”² On March 20, 2020, the Commission issued its Emergency Order, delegating the authority to suspend, extend, waive, or change any regulatory, statutory or procedural deadline for a maximum period of ninety (90) days.³ On April 24, 2020, Columbia filed Supplement No. 307 to Tariff Gas – Pa. P.U.C. No. 9 seeking an increase in annual distribution revenues of \$100.4 million.⁴ The Company proposed that new rates take effect on June 23, 2020, anticipating suspension by the Commission for up to an additional seven months, pursuant to 66 Pa. C.S. Section 1308(d).⁵ Under the Commission’s suspension order,⁶ new rates would have taken effect on January 23, 2021.

On March 15, 2020, Governor Wolf issued an Executive Order implementing telework protocol for state employees beginning March 16, 2020, and the closing of all state offices in

² Commonwealth of Pennsylvania, Office of the Governor, Proclamation of Disaster Emergency (Mar. 6, 2020), available at: <https://www.governor.pa.gov/wp-content/uploads/2020/03/20200306-COVID19-Digital-Proclamation.pdf> (Proclamation).

³ See Emergency Order.

⁴ See Columbia Supplement No. 307 to Tariff Gas Pa. P.U.C. No. 9 Filing Letter (April 24, 2020).

⁵ Id.

⁶ See Pa. PUC v. Columbia Gas of Pennsylvania, Inc., Order Suspending Proposed Supplement No. 307 to Tariff Gas– Pa. P.U.C. No. 9, Docket No. R-2020-3018835 (Order entered May 21, 2020).

Dauphin County and the Capitol Complex.⁷ The Commission's offices and the OCA's office in Harrisburg remain closed and all employees are to work from home, with limited exception.

On May 29, 2020, I&E filed its Motion to Extend the Statutory Suspension Period During the Emergency Interruption of Normal Operations of the Pennsylvania Public Utility Commission (Motion to Extend the Statutory Suspension Period). Through its Motion to Extend the Statutory Suspension Period, I&E requested that the Chief ALJ and the presiding ALJ issue an Order granting an extension of the statutory suspension period, arising under 66 Pa C.S. Section 1308(d), in order for the Commission to decide this matter at its February 4, 2021 Public Meeting.⁸

On June 2, 2020, the OCA filed an Answer in support of I&E's Motion to Extend the Statutory Suspension Period. A prehearing conference was held before the Chief ALJ and the presiding ALJ on June 3, 2020. During the prehearing conference, the Chief ALJ requested that each party present their arguments either in support or in opposition of the extension of the statutory deadline. I&E, OCA, OSBA, and CAUSE-PA all presented arguments in support of extending the statutory deadline citing to the unforeseen hardships faced by the agencies that have resulted from the unprecedented coronavirus ("COVID-19") pandemic situation.⁹ Columbia, while not completely opposed to an extension of the statutory suspension date, did not agree to a 12-day extension if its proposed rates would not go into effect on the date of the original statutory suspension, January 23, 2021.¹⁰ The Chief ALJ granted I&E's Motion to Extend the Statutory

⁷ Gov. Wolf Puts Statewide COVID-19 Mitigation Efforts in Effect, Stresses Need for Every Pennsylvanian to Take Action to Stop the Spread, March 16, 2020, <https://www.governor.pa.gov/newsroom/gov-wolf-puts-statewide-covid-19-mitigation-efforts-in-effect-stresses-need-for-every-pennsylvanian-to-take-action-to-stop-the-spread>.

⁸ Id.

⁹ See June 3, 2020 Prehearing Conference Transcript at 19-61.

¹⁰ Id.

Suspension Period after considering all of the parties' arguments.¹¹ The Chief ALJ issued an Order Granting 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 (Order Granting Extension) on June 3, 2020.

The Company filed a Petition for Reconsideration of Staff Action on June 23, 2020. The OCA submits that the Chief ALJ fully considered the positions of all parties in making a determination on I&E's Motion to Extend the Statutory Suspension Period. The OCA now files this Answer to the Company's Petition for Reconsideration of Staff Action and, for the reasons set forth below, respectfully requests that the Company's Petition be denied.

III. ANSWER

The OCA commends the Commission on its rapid and important action of issuing the Emergency Order to address the modification of regulatory and statutory deadlines in light of the COVID-19 pandemic. As explained in further detail in this Answer, the Chief ALJ's Order Granting Extension was an appropriate and valid exercise of the Chief ALJ's authority granted to him through the Governor's Emergency Proclamation and the Commission's Emergency Order. At the June 3, 2020 prehearing conference, the Chief ALJ, after reviewing the pleadings, heard further from the parties on the bases for requesting the use of his authority to grant the extension and the arguments in opposition. The Chief ALJ determined that, under the circumstances, it was reasonable to grant the 12-day extension of the statutory suspension period without the conditions requested by Columbia. Columbia had completely opposed the extension of the statutory suspension period; however, Columbia opposed the extension if it meant that its proposed rates

¹¹ Id.

would not go into effect upon the deadline of the original statutory suspension period.¹² Columbia sought a condition that it could put a rate increase into effect on January 23, 2021 if it agreed to a Commission decision on February 4, 2021. The Emergency Order, however, did not require the Chief ALJ to make accommodations for any party in opposition to a reasonable deadline extension.

The result of the Chief ALJ's decision is an extension of the statutory deadline of Section 1308(d), governing the end of the suspension period. Under the Chief ALJ's decision, the end of the statutory suspension period is now February 4, 2021 rather than January 23, 2021.

Columbia forwards several arguments in support of its Petition. Columbia points out that it had already voluntarily postponed its base rate filing and the date of new rates should not be further delayed. The OCA acknowledges Columbia for postponing its rate base filing, however, that is not a basis for a reversal of the Chief ALJ's determination that strict compliance with the deadline of the statutory suspension period "would in any way prevent, hinder, or delay necessary action in coping with this emergency."¹³ While Columbia postponed its filing, the parties only received the filing on April 24, 2020 and would be burdened with the statutory suspension period under Section 1308(d) in their attempts to thoroughly investigate the filing. Simply put, the parties did not receive an extra thirty days to investigate the filing by Columbia's decision to delay the filing. Therefore, a procedural extension of the statutory suspension period was reasonable under the circumstances of COVID-19, even in light of Columbia's voluntary actions.

Columbia also argues that reconsideration should be granted and the Chief ALJ's decision should be reversed because it waives the provision of 1308(d), which would allow Columbia's

¹² Id.

¹³ Commonwealth of Pennsylvania, Office of the Governor, Proclamation of Disaster Emergency (Mar. 6, 2020), available at: <https://www.governor.pa.gov/wp-content/uploads/2020/03/20200306-COVID19-Digital-Proclamation.pdf> (Proclamation of Disaster Emergency).

proposed rate increase to go into effect on January 23, 2021,¹⁴ the deadline of the original statutory suspension period. Columbia argues that this is a substantive right, citing to two cases that were not determined in the context of the Proclamation of Disaster Emergency and the Commission's Emergency Order.¹⁵ The Governor's Proclamation, which has been upheld by the Pennsylvania Supreme Court, and the Commission's Emergency Order explicitly permit this statutory suspension.¹⁶ Here, under the authority granted to the Chief ALJ, the statutory suspension period was extended to February 4, 2021. If the Commission does not render a decision by February 4, 2021, then the relief afforded under Section 1308(d) would apply at that time.

Columbia further argues that the Chief ALJ did not take into consideration its proposal to extend the statutory suspension period if the rates were allowed to go into effect on January 23, 2021 rather than at the time of the Commission's decision and the new suspension period and I&E's agreement with the proposal. The OCA submits that the Emergency Order did not include any provisions about attaching conditions to an extension of a regulatory statute and, ultimately, I&E never withdrew its Motion to Extend the Statutory Suspension Period. The OCA would also note that the request was not a reasonable way to address the issues presented by COVID-19.

The OCA respectfully requests that the Commission deny the Company's Petition.

- A. The Order Granting Extension Was a Valid Exercise of the Chief ALJ's Authority Under The Governor's Emergency Proclamation and the Commission's Emergency Order.

¹⁴ See Emergency Order.

¹⁵ The Company cited to the following cases: Bell Tel. Co. v. Pa. P.U.C., 69 Pa. Commw. 554; 452 A.2d 86 (Cmwlth. Ct. 1982); Pa. PUC v. West Penn Power Company, et al., Docket Nos., R-2014-2428742, et al. (Order issued October 22, 2014).

¹⁶ See, Friends of DeVito v. Wolf, 2020 Pa. LEXIS 1987.

Columbia argues, in its Petition, that the Order Granting Extension “is contrary to statute, appellate case law, and the Commission’s own precedent” and that the Governor’s Emergency Proclamation and the Commission’s Emergency Order provide no basis for the extension of the statutory deadline.¹⁷

As an initial matter, Governor Wolf determined that due to the global pandemic’s impact upon operations, statutes and regulations that govern procedures for Commonwealth business may need to be altered or waived. The Commission subsequently issued its Emergency Order in light of the Disaster Proclamation. The Emergency Order discusses the procedure for extending statutory deadlines as follows:

All Bureau Directors are hereby delegated the authority to suspend, extend, waive or change a statutory or regulatory deadline which may hinder, rather than further, the mission of the Commission, after consultation with all interested parties, as deemed necessary and appropriate.

Suspension, extension, waiver or change of any regulatory, statutory or procedural deadlines shall not exceed ninety (90) days except upon expedited certification of the question by the Chief Administrative Law Judge or Bureau Director to the Commission.¹⁸

For example, in pending rate case litigation, the Chief Administrative Law Judge is authorized to establish reasonable deadlines under the circumstances after consideration of the positions of the parties and the presiding Administrative Law Judge. The Chief Administrative Law Judge’s decision would then be subject to review by the Commission.¹⁹

In recognition of the extraordinary circumstances which arose due to the COVID-19 pandemic, the Commission ordered as follows:

¹⁷ See Petition at 1-2.

¹⁸ Emergency Order at 4 (ordering paragraphs 4-5).

¹⁹ Id. at 2.

All statutory and regulatory deadlines may be suspended, extended, waived or changed during the pendency of the Proclamation of Disaster Emergency.²⁰

At the prehearing conference held on June 3, 2020, the Chief ALJ carefully considered the positions of all parties and the presiding ALJ when determining whether to extend the statutory suspension period in accordance with the Emergency Order. The Chief ALJ discussed his delegated authority as follows in the Order:

[b]y Emergency Order dated March 20, 2020, in response to the COVID-19 pandemic, the Commission authorized the Chief ALJ in pending rate case litigation to establish reasonable deadlines under the circumstances after consideration of the positions of the parties and the presiding ALJ. *See, Emergency Order Re Suspension of Regulatory and Statutory Deadlines; Modification to Filing and Service Requirements*, M-2020-3019262, at 2.

The Chief ALJ then determined as follows:

In regard to the present pending rate case litigation, after consideration of the positions of the parties and ALJ Dunderdale, I find it reasonable under the circumstances to extend the statutory suspension period by twelve (12) days, or until February 4, 2021. Therefore, I grant I&E's Motion.²¹

The Emergency Order is broad in its discussion of statutory and regulatory deadlines. The Emergency Order stated as follows: “[a]ll statutory and regulatory deadlines may be suspended, extended, waived or changed during the pendency of the Proclamation of Disaster Emergency.”²² The Commission’s Emergency Order further states, “...in a 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.”²³ The Chief ALJ exercised his authority in a reasonable manner and his decision should be upheld.

²⁰ Emergency Order at 4 (ordering paragraph 2).

²¹ Order Granting Extension at 2.

²² Emergency Order at 4 (ordering paragraph 2).

²³ Id.

B. Columbia’s Assertion That The Chief ALJ’s Exercise Of Authority To Establish Reasonable Deadlines Under The Emergency Order Should Be “Reconsidered” Should Be Rejected.

Despite the Chief ALJ’s authority and the Commission’s Emergency Order, Columbia argues that Section 1308(d) involves substantive law and any change in the timing of the utility’s anticipated relief would be a change in substantive law. Columbia, in essence, argues that the end of the suspension period found in Section 1308(d) creates a substantive right and is not contemplated by the Governor’s Disaster Proclamation and the Commission’s Emergency Order. In support of its position, Columbia cites to a Bell Telephone Company case²⁴ and a West Penn Power, et al. case,²⁵ both of which occurred before the present pandemic and outside the context of the Governor’s Disaster Proclamation. In the latter case, the statutory period was extended by the parties voluntarily and the surcharge mechanism—which never went into effect—was agreed upon by the parties, a situation much different than what is presented here..

The OCA submits that Columbia’s reading of the Commission’s Emergency Order and the Governor’s Disaster Proclamation to apply only to procedural issues is too narrow.²⁶ The Disaster Proclamation, and the Commission’s Emergency Order clearly apply to regulatory statutes, not just procedural deadlines. The Commission Order even references rate cases and the deadlines associated with rate cases. Indeed, the statutory suspension period is the deadline that drives the rate case schedules.

²⁴ See, e.g., Bell Tel. Co. v. Pa. P.U.C., 452 A.2d 86 (Cmwlth. Ct. 1982) (Bell).

²⁵ Pa. PUC v. West Penn Power Company, et al., Second Prehearing Order and Final Order, Docket Nos., R-2014-2428742, et al. (Second Prehearing Order issued October 22, 2014 and Final Order issued April 4, 2015) (West Penn).

²⁶ In a recent appeal decision where the Supreme Court of Pennsylvania upheld the Governor’s emergency disaster Proclamation, the Supreme Court of Pennsylvania stated, “[t]he Emergency Code specifically recognizes that under its auspices, the Governor has the authority to issue executive orders and proclamations which shall have the full force of law. 35 Pa.C.S. § 7301(b).” Friends of DeVito v. Wolf, 2020 Pa. LEXIS 1987 *42 (Pa. Apr.13, 2020).

The cases cited by the Company in its Petition are equally unpersuasive. These cases were determined at times when the Commonwealth was not in the midst of a Proclamation of Disaster Emergency and an accompanying Emergency Order, which explicitly permits the Chief ALJ to establish reasonable deadlines in rate cases as a result of COVID-19.

In Bell, the Commonwealth Court disagreed with the Commission ordering Bell to file new revised compliance tariffs to become effective as of the date Bell filed its original compliance tariff, rather than on the date at the end of the suspension period.²⁷ In the instant case, there is no disagreement that the rates determined by the Commission will go into effect at the end of the suspension period established by the Chief ALJ. In addition, the Bell case did not involve a pandemic situation where the Commission was given the authority by the Governor to extend statutory deadlines, including pending base rate case litigation, to address a disaster emergency.

In West Penn, the parties agreed to an extension of the statutory suspension period on the condition that West Penn Power et al. be permitted to recoup any lost revenue from the date of the original expiration of the suspension period through the date the Commission made the new rates effective by approving the compliance filing.²⁸ The case was settled prior to the end of the original expiration of the statutory suspension period and the surcharge mechanism did not take effect.²⁹

The OCA submits the above cases cited by Columbia do not involve a pandemic situation where the Commission was given the authority from the Governor to suspend statutory, regulatory and procedural deadlines to cope with a disaster emergency. Neither case provides support for the Company's argument that it is entitled to have its proposed rate increase become effective upon

²⁷ See Bell at *88.

²⁸ West Penn (Second Prehearing Order) at 5.

²⁹ Id. (Final Order).

the original suspension period end date. The Chief ALJ's extension of the statutory suspension period was appropriate in this proceeding and Columbia's proposed rates should not go into effect prior to the newly established February 4, 2021 expiration.

C. The Chief ALJ Properly Concluded That An Extension of the Statutory Suspension Period Was Necessary For Full Consideration Of This Case.

Columbia also argues that the statutory suspension period established in 1308(d) would not 'prevent, hinder or delay necessary action in coping with [the COVID-19] emergency' since the Commission could still issue a determination after the statutory suspension period expires.³⁰ As stated in I&E's Motion to Extend the Statutory Suspension Period,³¹ the OCA's Answer to I&E's Motion to Extend³², and in the oral arguments during the prehearing conference³³, the parties in support of the extension are facing limitations brought on by COVID-19 and supported the extension as a means to prevent a limited investigation of the rate increase filing. For example, in the OCA's Answer in Support of I&E's Motion to Extend, the OCA noted that OCA's office personnel are working remotely and the OCA does not have its usual access to physical files, photocopying, U.S. mail, and support staff, among other services.³⁴ Procedurally, Section 1308(d) established a 7-month suspension period to allow a thorough investigation of the rate increase filing. The list of challenges created by COVID-19 "will prevent, hinder or delay" the necessary action of thoroughly investigating the rate increase filing and having a decision before the

³⁰ Petition at 11-12 (citing Emergency Order).

³¹ See Motion to Extend the Statutory Suspension Period.

³² See OCA Motion in Support of I&E's Motion at 6.

³³ See Prehearing Conference Transcript at 19-25, 56-57, and 58-61.

³⁴ OCA Motion in Support of I&E's Motion at 6.

expiration of the suspension period. Columbia's argument that the investigation into the rate increase filing would not be prevented, hindered, or delayed should be rejected.

D. Under the Emergency Order, the Chief ALJ May Extend Procedural Deadlines In a Rate Case if Reasonable Under the Circumstances of COVID-19 Without Any Additional Conditions.

The Commission's Emergency Order correctly addressed the Governor's Proclamation of Disaster Emergency and provided specific time-frames and procedures to extend statutory deadlines due to extraordinary circumstances and permitted extensions of up to ninety (90) days.³⁵ Thus, limitations on the extension of statutory deadlines have been addressed by the Commission. I&E did not request an unlimited extension, or even a ninety (90) day extension, to the statutory suspension period, but instead requested a twelve (12) day extension. The OCA submits that the Chief ALJ complied with the Commission's Emergency Order in determining that a twelve day extension to the statutory suspension period was appropriate for the instant proceeding.

Columbia further avers that its alternative proposal, to allow the 12-day extension on the condition that it's proposed rates to go into effect on the date of the deadline of the original statutory suspension period subject to refund, was not addressed in the suspension order.³⁶ The OCA submits that the Columbia's proposal was rightfully not a factor in the Chief ALJ's decision because his decision was whether or not the parties requesting or in support of the extension of the statutory suspension period presented a basis for exercising his authority granted to him through the Governor's Emergency Proclamation and the Commission's Emergency Order. The Chief ALJ determined that I&E, OCA, CAUSE-PA and OSBA did in fact provide a basis for concluding that, under the circumstances surrounding COVID-19, it was reasonable to extend the deadline of

³⁵ Emergency Order at 2.

³⁶ Id.

the statutory suspension period by 12-days. The Emergency Order, while it does require the Chief ALJ to hear the positions of the party before making such a determination, is silent as to whether accommodations must be made to offset repercussions of a change in a deadline. During the prehearing conference, the Chief ALJ heard Columbia's position and did not adopt that position. The Chief ALJ was under no mandate by the Emergency Order to adopt Columbia's proposal or to make accommodations for Columbia in extending the statutory suspension period.

IV. CONCLUSION

For the reasons set forth above, the OCA respectfully requests that the Commission deny Columbia's Petition. The extension of the statutory suspension period by the Chief ALJ was proper pursuant to the Commission's Emergency Order and the Governor's Proclamation and is necessary to meet the mounting challenges resulting from the COVID-19 pandemic.

Respectfully submitted,

/s/ Laura J. Antinucci

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Dated: July 6, 2020
*291076-1

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

VERIFICATION

I, Laura J. Antinucci, Assistant Consumer Advocate of the Office of Consumer Advocate, hereby state that the facts above 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).

DATED: July 6, 2020
*291548

Signature: /s/ Laura J. Antinucci
Laura J. Antinucci
Assistant Consumer Advocate
PA Attorney I.D. # 327217
Office of Consumer Advocate
555 Walnut Street
5th Floor, Forum Place
Harrisburg, PA 17101

Appendix A

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	R-2020-3018835
Office of Small Business Advocate	:	C-2020-3019702
Office of Consumer Advocate	:	C-2020-3019714
	:	
v.	:	
	:	
Columbia Gas of Pennsylvania, Inc.	:	

**ORDER GRANTING 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**

On April 24, 2020, Columbia Gas of Pennsylvania, Inc. (Columbia) filed with the Pennsylvania Public Utility Commission (Commission) a tariff supplement proposing to increase annual revenues by \$100.4 million effective on or after June 23, 2020. By Order entered May 21, 2020, the Commission suspended for investigation Columbia’s tariff supplement for seven (7) months or until January 23, 2021, pursuant to Section 1308(d) of the Public Utility Code, 66 Pa.C.S. § 1308(d).

On May 29, 2020, the Bureau of Investigation and Enforcement (I&E) filed an “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” (Motion). In its Motion, I&E requested that an order be issued granting an extension of the statutory suspension period until February 4, 2021, “due to the disaster emergency interruption of the normal operations of the Commission as a result of the coronavirus pandemic.” Motion at 1.

The presiding officer assigned to this case, Administrative Law Judge (ALJ) Katrina Dunderdale, convened a prehearing conference on June 3, 2020, in which I participated.

During the prehearing conference the parties engaged in oral argument regarding I&E's Motion, and the positions of the various parties were placed on the record. During deliberation, the ALJ informed me of her position regarding I&E's Motion.

By Emergency Order dated March 20, 2020, in response to the COVID-19 pandemic, the Commission authorized the Chief ALJ in pending rate case litigation to establish reasonable deadlines under the circumstances after consideration of the positions of the parties and the presiding ALJ. *See, Emergency Order Re Suspension of Regulatory and Statutory Deadlines; Modification to Filing and Service Requirements*, M-2020-3019262, at 2.

In regard to the present pending rate case litigation, after consideration of the positions of the parties and ALJ Dunderdale, I find it reasonable under the circumstances to extend the statutory suspension period by twelve (12) days, or until February 4, 2021. Therefore, I grant I&E's Motion. Further, I placed my ruling on this matter on the record during the prehearing conference.

Any party dissatisfied with my resolution of this matter may, as set forth in 52 Pa. Code §§ 1.31 and 5.44, file a Petition for Reconsideration from Staff Action with the Commission within twenty (20) days from the date of service of this Order. The Petition shall be sent via email or e-filing only. The email should be addressed to: rchiavetta@pa.gov. If no timely request is made, this Order will be deemed a final action of the Commission.

ORDER

THEREFORE,

IT IS ORDERED:

1. That 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, in *Pennsylvania Public*

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

2. That the suspension period for resolution of this case is extended by twelve (12) days from January 23, 2021 to February 4, 2021.

3. That any party dissatisfied with my resolution of this case may, as set forth in 52 Pa. Code §§ 1.31 and 5.44, file a Petition for Reconsideration from Staff Action with the Commission within twenty (20) days from the date of service of this Order. The Petition shall be sent via email or e-filing only. The email should be addressed to: rchiavetta@pa.gov. If no timely request is made, this Order will be deemed a final action of the Commission.

Date: June 3, 2020

/s/
Charles E. Rainey Jr.
Chief Administrative Law Judge

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

Revised 6/2/20

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Appendix B



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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. :
 :
Columbia Gas of Pennsylvania, Inc. :
 :

Docket No: R-2020-3018835

**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, hereby state 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

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