

COMMONWEALTH OF PENNSYLVANIA



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December 8, 2020

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

Re: Interstate Gas Supply, Inc., et al.
v.
Metropolitan Edison Company,
Pennsylvania Electric Company,
Pennsylvania Power Company and
West Penn Power Company
Docket Nos. C-2019-3013805
C-2019-3013806
C-2019-3013807
C-2019-3013808

Dear Secretary Chiavetta:

Attached for electronic filing please find the Office of Consumer Advocate's Exceptions in the above-referenced proceedings.

Copies have been served as indicated on the enclosed Certificate of Service.

Respectfully submitted,

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Enclosures:

cc: The Honorable Joel H. Cheskis (**email only**)
Office of Special Assistants (**email only**: ra-OSA@pa.gov)
Certificate of Service

*300390

CERTIFICATE OF SERVICE

Re: Interstate Gas Supply, Inc., *et al.* : Docket Nos. C-2019-3013805
v. : C-2019-3013806
Metropolitan Edison Company, : C-2019-3013807
Pennsylvania Electric Company, : C-2019-3013808
Pennsylvania Power Company and :
West Penn Power Company :

I hereby certify that I have this day served a true copy of the following document, the Office of Consumer Advocate's Exceptions, 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 8th day of December 2020.

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Dated: December 8, 2020
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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Interstate Gas Supply, Inc., <i>et al.</i>	:	
	:	
v.	:	C-2019-3013805
	:	C-2019-3013806
Metropolitan Edison Company,	:	C-2019-3013807
Pennsylvania Electric Company,	:	C-2019-3013808
Pennsylvania Power Company and	:	
West Penn Power Company	:	

EXCEPTIONS OF THE
OFFICE OF CONSUMER ADVOCATE

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I. INTRODUCTION.

On November 18, 2020, Deputy Administrative Law Judge ALJ Cheskis (ALJ or ALJ Cheskis) issued an Initial Decision (I.D.) in this matter which found that the EGSs satisfied their burden to demonstrate that the EDCs' "on-bill" billing practices are unreasonably discriminatory, and therefore, violate Sections 1502 and 2804(6) of the Public Utility Code. See I.D. at 11 and 23. As a result ALJ Cheskis sustained the EGSs' complaint and gave the EDCs 60 days from the date of a final order in this matter to report to TUS their methodology for coming into compliance with Sections 1502 and 2804(6) of the Code and Chapter 56 of the Commission's regulations. Id.

The OCA respectfully requests that the I.D. be modified to reject the ALJ's decision to give the EDCs 60 days from the date of a final order in this matter to report to TUS their methodology for coming into compliance with Sections 1502 and 2804(6) of the Code and Chapter 56. The OCA submits that the ALJ erred in partially granting the remedy requested by the EGSs when they did not satisfy their burden of demonstrating that their requested relief in this matter, to have their non-commodity products and services added to the EDCs' regulated utility bill, is a reasonable solution to the complaints. I.D. at 22. While the EDCs could determine to cease all "on-bill" billing, the possible alternative of having a wide-range of unregulated EGS non-commodity products and services placed on the EDCs bill without adequately addressing the significant consumer protection provisions raised by the OCA is unreasonable. Therefore, the OCA respectfully requests that the ALJ's solution, that the EDCs be given 60 days from the date of a final order in this matter to report to TUS their methodology for coming into compliance with Sections 1502 and 2804(6) of the Code and Chapter 56, be rejected as unreasonable.

II. EXCEPTION.

OCA Exception No. 1: The OCA Respectfully Disagrees With the ALJ’s Solution As It Only Addresses the Consumer Protections Concerns Found In Chapter 56 of the Commission’s Regulations and Not the Other Consumer Protection Concerns Raised By the OCA. (I.D. at 22; OCA Statement 1-R, *passim*; OCA M.B. at 10-14; and OCA R.B. at 6-10).

In line with the Commission’s decision in Columbia¹, the ALJ agreed with the OCA’s consumer protection arguments that adding the EGSs’ non-commodity products and services to the EDCs’ bills was not a reasonable solution, but found that it did not warrant denying the EGSs’ complaints. I.D. at 21-22. The ALJ continued:

Instead, to the extent that the EDCs wish to continue to provide the on-bill billing services to themselves or their affiliates for non-basic, non-commodity products and services, the issues raised by the OCA must be addressed to ensure that the EDCs’ action both 1) comply with Sections 1502 and 2804(6) of the Public Utility Code and, at the same time, 2) comply with the Commission’s consumer protection regulations in Chapter 56.

Id. The OCA respectfully disagrees with the ALJ’s solution as it only addresses the consumer protections concerns found in Chapter 56 of the Commission’s regulations and not the other consumer protection concerns raised by the OCA in Rebuttal Testimony, Main Brief, and Reply Brief. See OCA St. 1-R, *passim*; OCA M.B. at 10-14; and OCA R.B. at 6-10. As complainants, the EGSs were tasked with demonstrating that their requested remedy was a reasonable solution under the circumstances.² The ALJ acknowledged that the EGSs’ requested remedy was not reasonable in light of the consumer protection concerns raised by the OCA, but the solution creates the possibility of such an unreasonable remedy to occur without the OCA’s consumer protection concerns being fully addressed. Therefore, the OCA respectfully requests that ALJ’s solution to

¹ See Pa. PUC et al v. Columbia Gas of Pennsylvania, Inc., Docket No. R-2018-2647577, et seq., (Opinion and Order entered December 6, 2018) Order at 50 (Columbia).

² Id. at 50.

have the EDCs report to TUS their methodology for coming into compliance with Sections 1502 and 2804(6) of the Code and Chapter 56 sixty (60) days from the date of the final action on this proceeding be rejected as unreasonable and the Commission also reject the EGSs' requested remedy for failing to meet their burden of demonstrating that adding their non-commodity products and services to the EDCs' bill would be a reasonable solution under the circumstances. As recommended by the OCA's witness Barbara Alexander, all non-basic, non-commodity products and services should be billed separately to prevent customer confusion and other customer protection issues from arising.³ OCA St. 1-R at 3; OCA M.B. at 9-10.

The Commission's regulations under Chapter 56 were not formulated with the understanding that EGSs' would be placing a wide-range of unregulated non-commodity products and services on the bills of electric and natural gas distribution companies. Rather, the Chapter 56 regulations regarding billing for non-commodity services were enacted at a time when the products and services were offered by regulated public utilities, and in many instances were considered subject to the reasonableness and quality of service requirements of Section 1501 of the Public Utility Code.⁴ In the Commission's rulemaking order at Docket No. L-2015-2508421, which updated the Chapter 56 regulations to comply with the enactment of Act 155 and resulting amendments to Chapter 14 of the Pennsylvania Public Utility Code (the Code), the Commission declined to adopt new provisions concerning supplier consolidated billing and made no mention

³ In addition, the ALJ's solution does not address the anti-competitive advantage of permitting the EGSs to bill for their non-basic products and services on the EDCs' bill while non-supplier companies selling the same services cannot. See OCA St. 1-R at 3-4; see also, OCA M.B. at 9; and OCA R.B. at 5.

⁴ The OCA would also note that under the recent Commonwealth Court decision in Blue Pilot Energy, LLC v. Pa. PUC, 2020 Pa. Commw. LEXIS 720, (Pa. Commw. Ct. 2020) *34-35, the Commission would be without authority to remedy any overcharges related to these non-commodity charges appearing on the utility bill.

of provisions concerning supplier on-bill billing.⁵ The OCA further submits that the supplier's non-commodity products and services would raise questions as to the Commission's jurisdiction if it had decided to formulate regulations addressing on-bill billing.⁶ As stated in the OCA's Main Brief, no directives or consumer protections policies currently exist to address the inclusion of supplier non-commodity products and services on the regulated utility bill.⁷ OCA St. 1-R at 5; OCA M.B. at 14.

Simply ordering the EDCs to comply with Chapter 56 if it chooses to bill for the EGSs' non-commodity products and services risks the following consumer protection concerns of the OCA to go unaddressed:

- The placement of non-basic charges included in the "Total Charges" and "Amount Due" owed by the customer on the bill without any explanation to the customer that non-basic charges are not subject to termination or that the charges are not regulated by the Commission. OCA St. 1-R at 7.
- While the EDCs do not allow CAP customers or those who do not possess the requisite credit rating to purchase the non-commodity products and services sold by its affiliates, the EGSs stated their intention to market non-commodity products and services to CAP customers. OCA St. 1-R at 7 and 15; Joint Complainant's Statement 1-SR at 4-5. The ALJ's order does not address how the EGSs will prevent non-commodity products and services that would increase the total utility

⁵ See Re: Rulemaking to Amend the Provisions of 52 Pa. Code, Chapter 56 to Comply with the Amended Provisions of 66 Pa. C.S. Chapter 14, Docket No. L-2015-2508421 (Final Rulemaking Order entered February 28, 2019) Attachment One at 6-11. The Commission declined to adopt supplier consolidated billing regulations because of a pending en banc hearing on supplier consolidated billing implementation at Docket No. M-2018-2645254.

⁶ See Popowsky v. Pennsylvania Pub. Util. Comm'n, 653 A.2d 1385, 1390-1391 (Pa. Commw. 1995) (Electric utilities' conditioned power service program designed to improve the quality and delivery of electricity to customers constituted "service" under 66 Pa. C.S. § 102 and therefore fell under the Commission's jurisdiction to ensure quality of service provided by utilities under 66 Pa. C.S. § 1501. Specifically, the Court rejected the argument that services which are also provided by competitors, optional and nonessential are beyond the Commission's jurisdiction).

⁷ Chapter 56 includes: 52 Pa. Code Section 56.13 which requires non-commodity charges be displayed on the bill after basic charges and "appear distinctly separate," 52 Pa. Code Section 56.23 which instructs utilities to prioritize partial payments towards basic services, and 52 Pa. Code Section 56.323(3) which disallows termination of service for the non-payment of non-commodity products and service. See 52 Pa. Code §§ 56.13, 56.23 and 56.323(3). However, the OCA submits that these provisions are insufficient to address the significant consumer protection concerns that would arise from the addition of multiple suppliers placing a limitless range of non-commodity products and services on the EDCs' bill.

bill from being added to the utility bills of the EDCs' CAP customers in compliance with 52 Pa. Code Section 69.265(3)(ii).⁸ OCA St. 1-R at 7 and 15.

- There is no requirement for specific or additional customer authorizations or disclosures to the consumer concerning the billing and collection of these non-commodity services for a customer who enrolls for generation supply service and agree to add non-commodity services to their Supplier agreements. OCA St. 1-R at 9-10.
- The volume of the potential programs and separate charges, many unrelated to electricity, that the EGSs seek to include in the EDC bill raises significant concerns about the potential complexity of the bill which may increase customer confusion, as well as the potential costs to redesign utility bills. OCA St. 1-R at 10-11 and 14.

As stated in the OCA's Main Brief, these issues not only affect the customers in the EDCs' territories, but also carry implications for other Pennsylvania utilities, gas and electric. OCA St. 1-R at p. 5; OCA M.B. at 10. The OCA submits that the EGSs have failed to demonstrate that these significant consumer protection concerns will be addressed if the EDCs add the EGSs' non-commodity products and services to the EDCs' bill. Therefore, the remedy to this Complaint is unreasonable in light of the unaddressed significant consumer protections concerns and should be rejected.

III. CONCLUSION.

For the reasons set forth above, and for the reasons set forth in the OCA's Briefs, the OCA respectfully submits that the ALJ erred in his initial decision to sustain the EGSs' complaints and to have the EDCs report to TUS their methodology for coming into compliance with Sections 1502 and 2804(6) of the Code and Chapter 56 sixty (60) days from the date of the final action on this proceeding. Specifically, the OCA submits that the EGSs did not meet their burden of demonstrating that adding their non-commodity products and services to the EDCs' utility bill is a reasonable solution under the circumstances and, therefore, the Commission should fully reject

⁸ 52 Pa. Code § 69.265(3)(iii).

the EGSs' proposed remedy. The OCA requests that the Commission grant this Exception and adopt the modification and recommendations herein and in the OCA's Main Brief and Reply Brief.

Respectfully Submitted,

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