



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

BUREAU OF  
INVESTIGATION  
&  
ENFORCEMENT

December 22, 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 Exceptions**

Dear Secretary Chiavetta:

Enclosed for filing, please find the Bureau of Investigation and Enforcement's (I&E) **Exceptions** for the above-captioned proceeding.

Copies are being served on parties of record as evidenced in 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,

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

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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.	:	

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**EXCEPTIONS  
OF THE  
BUREAU OF INVESTIGATION  
AND ENFORCEMENT**

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Dated: December 22, 2020

**TABLE OF CONTENTS**

**I. INTRODUCTION ..... 1**

    A. Procedural Background ..... 1

    B. Summary of I&E Exceptions..... 5

**II. EXCEPTIONS ..... 6**

    I&E EXCEPTION NO. 1 ..... 6

        The ALJ Erred by Denying Columbia a Revenue Increase as it is  
        Inconsistent with Traditional Ratemaking..... 6

**III. CONCLUSION ..... 11**

## TABLE OF CITATIONS

### CASES

<i>Bluefield Water Works &amp; Improvements Co. v. Public Service Comm. of West Virginia</i> , 292 U.S. 679, 692-93 (1923).....	9
<i>Federal Power Commission v. Hope Natural Gas Co.</i> , 320 U.S. 591, 603 (1944) .....	9, 10
<i>Pa. PUC v. Philadelphia Gas Works</i> , Docket No. R-2020-3017206 (Order entered November 19, 2020).....	8, 9
<i>Pa. PUC vs. Pittsburgh Water and Sewer Authority</i> , Docket Nos. R-2020-3017951, R-2020-3017970 (Order entered December 3, 2020).....	10
<i>Pa. PUC vs. UGI Utilities, Inc.- Gas Division</i> , Docket No. R-2019-3015162 (Order entered October 8, 2020).....	10

### REGULATIONS

49 CFR Part 192.1001-192.1015, Subpart P .....	7
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## **I. INTRODUCTION**

The Bureau of Investigation and Enforcement (“I&E”) respectfully submits these instant Exceptions to the Recommended Decision of Administrative Law Judge Katrina L. Dunderdale (“ALJ Dunderdale”) in this base rate proceeding. I&E respectfully requests that its Exceptions be granted and that the referenced portions of the Recommended Decision (“RD”) be reversed or modified consistent with these Exceptions.

### **A. Procedural Background**

On March 24, 2020, Columbia Gas of Pennsylvania, Inc. (“Columbia” or “Company”) 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. The Commission granted the Company’s request via Secretarial Letter issued on March 27, 2020.

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 \$100.3 million, to become effective June 23, 2020.

On April 27, 2020, the Bureau of Investigation and Enforcement (“I&E”) filed a Notice of Appearance. The Office of Consumer Advocate (“OCA”) filed a formal complaint on May 4, 2020, and the Office of Small Business Advocate (“OSBA”) filed a formal complaint on May 5, 2020. Petitions to Intervene were filed by Communication Action Association of Pennsylvania (“CAAP”), the Coalition for Affordable Utility

Services and Energy Efficiency in Pennsylvania (“CAUSE-PA”), the Columbia Industrial Intervenors (“CII”), and the Pennsylvania State University (“PSU”).

On May 21, 2020, the Commission issued an Order suspending Columbia’s filing by operation of law until January 23, 2021.

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

On May 29, 2020, I&E filed its Expedited Motion to Extend the Statutory Suspension Period During the Emergency Interruption of Normal Operations of the Pennsylvania Public Utility Commission (“Expedited Motion”). I&E filed its Expedited Motion in response to the ongoing Coronavirus Pandemic requesting a twelve-day extension of the suspension period from January 23, 2021 to February 4, 2021.

On May 29, 2020, ALJ Dunderdale instructed the Parties via email to file answers to I&E’s Expedited Motion by 9 a.m. on June 2, 2020. On June 2, 2020, Columbia and the OCA filed Answers to I&E’s Expedited Motion. A telephonic prehearing conference was held on June 3, 2020 with ALJ Dunderdale presiding and Chief ALJ Rainey participating. During the prehearing conference, the Parties argued their respective positions on the extension proposed in I&E’s Expedited Motion. After deliberation between Chief ALJ Rainey and ALJ Dunderdale, Chief ALJ Rainey delivered his ruling granting I&E’s Expedited Motion and extended Columbia’s statutory suspension by twelve days or until February 4, 2021. On June 3, 2020, Chief ALJ Rainey issued the Order granting I&E’s Expedited Motion.

The Parties agreed upon a procedural schedule in this matter which was presented to ALJ Dunderdale for approval on June 5, 2020. On June 12, 2020, ALJ Dunderdale issued a Prehearing Order that memorialized the agreed upon procedural schedule.

On June 23, 2020, Columbia filed its Petition for Reconsideration of the Chief Administrative Law Judge's June 3, 2020 Order Extending the Statutory Suspension Period. I&E and the OCA filed Answers to Columbia's Petition for Reconsideration on July 6, 2020 and on July 10, 2020, the OSBA filed its Answer to Columbia's Petition for Reconsideration.

Two telephonic Public Input Hearings were scheduled to take place on July 8, 2020 at 1:00 p.m. and 6:00 p.m. At the 1:00 p.m. Public Input Hearing two Columbia customers testified and ALJ Dunderdale was informed by the OCA that no one had signed up to participate for the 6:00 p.m. Public Input Hearing. Due to the lack of participants expected at the 6:00 p.m. Public Input Hearing, ALJ Dunderdale cancelled the 6:00 Public Input Hearing.

At the August 6, 2020 Public Meeting, the Commission adopted an Order denying in part and granting in part Columbia's Petition for Reconsideration.<sup>1</sup> The Commissioners affirmed a motion sponsored by Vice Chairman David W. Sweet that denied the Petition for Reconsideration by affirming the decision of Chief ALJ Rainey granting the Petition for Extension on June 3, 2020. Columbia's Petition for Reconsideration was granted in that the Columbia's original effective suspension date

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<sup>1</sup> Columbia Gas of Pennsylvania, Inc.'s Petition for Reconsideration of Staff Action, Docket No. R-2020-3018835 (Order entered August 20, 2020).

remained January 23, 2021. Furthermore, the Order directed the Office of Administrative Law Judge to issue a recommended decision on or before November 20, 2020.

On August 7, 2020, ALJ Dunderdale issued the First Interim Order in which the Columbia procedural schedule was updated to reflect the recommended decision due date prescribed by the Commission's Order adopted on August 6, 2020. On August 12, 2020, in an effort to maintain the existing procedural schedule, Columbia voluntarily suspended its statutory suspension period from January 23, 2021 to February 25, 2021, with rates to go into effect January 23, 2021. ALJ Dunderdale issued the Second Interim Order on August 13, 2020 reinstating the parties' original procedural schedule.

Pursuant to the procedural schedule set forth by ALJ Dunderdale's Second Interim Order, the parties exchanged direct, rebuttal, surrebuttal, and written rejoinder testimony. I&E served the following statements of testimony and exhibits:

- I&E Statement No. 1, I&E Exhibit No. 1 (Proprietary), I&E Exhibit No. 1 (Non-Proprietary), I&E Statement No. 1-SR, the prepared direct and surrebuttal testimony and exhibits of I&E witness John Zalesky, who addressed the Company's operating and maintenance expenses, and overall revenue requirement;
- I&E Statement No. 2, I&E Exhibit No. 2, and I&E Statement No. 2-SR, the prepared direct and surrebuttal testimony and exhibit of I&E witness Christopher Keller, who addressed the Company's rate of return request;
- I&E Statement No. 3 and I&E Statement No. 3-SR the prepared direct and surrebuttal testimony of I&E witness Ethan H. Cline, who addressed the Company's rate base and rate structure requests;
- I&E Statement No. 4, I&E Exhibit No. 4, and I&E Statement No. 4-SR, the prepared direct and surrebuttal testimony and exhibit of I&E witness Lassine Niambele, who addressed the Company's pipeline safety issues;



- I&E Statement No. 5, I&E Exhibit No. 5, and I&E Statement No. 5-SR, the prepared direct and surrebuttal testimony and exhibit of I&E witness Kokou M. Apetoh, who addressed the Company's pipeline safety issues.

All cross-examination was waived by the parties and the scheduled telephonic evidentiary hearings on September 22, 2020 and September 23, 2020 were cancelled. On September 24, 2020, the parties attended the telephonic evidentiary hearing to enter evidence into the record.

I&E filed its Main Brief on October 16, 2020. Main Briefs were also filed by Columbia, OCA, OSBA, CAUSE-PA, CAAP, CII and PSU. I&E filed its Reply Brief on October 30, 2020, on the same date Reply Briefs were also filed by Columbia, OCA, OSBA, CAUSE-PA, CII and PSU.

The ALJ issued an RD dated December 4, 2020. In that RD, the ALJ recommended that the Company should not receive a revenue increase. The ALJ also presented alternative recommendations on all issues presenting by the Parties to this matter if the Commission were to grant Columbia a revenue increase. I&E now files the following Exceptions opposing the ALJ's initial recommendation of disallowing the Company any revenue increase. I&E asks that the Commission grant the following Exceptions and reject the recommendation made by the ALJ denying Columbia a revenue increase.

#### **B. Summary of I&E Exceptions**

I&E thoroughly scrutinized Columbia's rate filing and made certain recommendations related to this analysis resulting in I&E's recommended \$75.9 million revenue increase. I&E maintains that its position is in the public interest. I&E's

recommended revenue increase results in rates that are just and reasonable based upon traditional ratemaking analyses. Therefore, I&E excepts to the ALJ's RD as it denies the Company a revenue increase entirely. For the reasons explained fully below, I&E respectfully requests the Commission grant Columbia an appropriate revenue increase.

## II. EXCEPTIONS

### I&E EXCEPTION NO. 1

#### **The ALJ Erred by Denying Columbia a Revenue Increase as it is Inconsistent with Traditional Ratemaking.**

I&E conducted a traditional ratemaking analysis of Columbia's base rate filing and concluded that a \$75.9 million increase was just and reasonable. I&E's recommendation is based upon its adjustments to expenses, rate base, taxes, pipeline replacement and rate of return. By using similar traditional ratemaking principles, the OCA determined Columbia's revenue increase should not exceed \$31 million.<sup>2</sup> However, in the RD, the ALJ discussed the impact of COVID on the Company's customers and denied Columbia's request to increase rates because it cannot prove the accuracy of future projections using historic data that predates this pandemic.<sup>3</sup> I&E appreciates the ALJ's RD as it takes into account the current financial climate surrounding the ongoing pandemic. However, until directed otherwise by the Commission, I&E has continued to employ its traditional ratemaking analysis in rate cases, which resulted in its recommended \$75.9 million increase in this proceeding.

I&E's recommendation is based upon its charge to represent the public interest,

<sup>2</sup> OCA Main Brief, p. 20; it should be noted that the OCA's primary recommendation sought to deny Columbia a rate increase due to the unprecedented and ongoing COVID-19 pandemic.

<sup>3</sup> RD at 46-52.

which includes balancing the interests of ratepayers, the regulated utility, and the regulated community as a whole to ensure that the rates charged are just, reasonable, non-discriminatory and are at a level that affords the utility the opportunity to provide safe and reliable service. Here, it is I&E's position that it is within the public interest to award Columbia a revenue increase in order for the Company to fulfill its obligation to provide customers with safe and reliable service.

As demonstrated by I&E's pipeline safety testimony provided in this case, Columbia, a natural gas distribution company, is mandated to adhere to its Distribution Integrity Management Program ("DIMP") under the Code of Federal Regulations.<sup>4</sup> Columbia's DIMP together with its Commission approved Long Term Infrastructure Improvement Plan ("LTIIP") provide the framework for pipeline replacement. In order to maintain the safety and integrity of the system, it is likely that Columbia will need an increase in revenues to stay on track for its pipeline replacement efforts outlined in its Commission approved LTIIP. Specifically, I&E's Pipeline Safety testimony emphasized the concern regarding Columbia's pipeline replacement efforts and recommended that Columbia increase its pipeline replacement efforts to meet the 2029 LTIIP goal.<sup>5</sup> By denying the Company a revenue increase, Columbia's pipeline replacement efforts may be diminished which has potential to greatly impact the safety and reliability of the system and is directly at odds with the recommendations made in I&E testimony.

The issue of increasing rates during the global pandemic was reviewed by the Commission in Philadelphia Gas Work's ("PGW") most recent base rate case. In that

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<sup>4</sup> 49 Part 192.1001-192.1015, Subpart P; I&E Statement No. 4, p. 3.

<sup>5</sup> I&E Statement No. 4, p. 12.

proceeding, a partial settlement was reached in which the Company would, in lieu of its requested \$70 million base rate increase, be permitted to increase rates by \$35 million in a three (3) step process. Pursuant to the settlement, PGW agreed to implement a \$10 million increase on January 1, 2021, another \$10 million increase on July 1, 2021, and the final \$15 million increase on January 1, 2022.

The ALJs in that proceeding issued a Recommended Decision substantially altering the revenue requirement contained in the settlement as it recommended pushing the three step increase out an additional six months. Specifically, the ALJs recommended that the Commission issue an order in which PGW would recover \$35 million; however, the first step would not be implemented until July 2021, rather than January 2021 as agreed by the Joint Petitioners in the settlement.<sup>6</sup> The ALJs further recommend that the other two steps of the rate increase be deferred for six months and be implemented on January 1, 2022 and July 1, 2022 respectively.<sup>7</sup>

The Commission issued its Order on November 19, 2020, declining to adopt the ALJs suggested modification to the revenue increase.<sup>8</sup> The Commission determined that any delay in a base rate increase phase-in would significantly reduce the additional revenue permitted under the partial settlement and would have severe negative impacts on the PGW's financial metrics and its levels of cash available to pay its bills.<sup>9</sup> Although the Commission acknowledged the ALJs well-meaning suggested modifications, it ultimately determined that the negative effects of the suggested modifications had been

<sup>6</sup> PGW Recommended Decision at Docket No. R-2020-3017206, p. 77.

<sup>7</sup> PGW Recommended Decision at Docket No. R-2020-3017206, pp. 77, 100.

<sup>8</sup> *Pa. PUC v. Philadelphia Gas Works*, Docket No. R-2020-3017206 (Order entered November 19, 2020).

<sup>9</sup> *Pa. PUC v. Philadelphia Gas Works*, Docket No. R-2020-3017206, p. 69 (Order entered November 19, 2020).

soundly demonstrated.<sup>10</sup> The Commission noted that “...it is in the public interest to provide a public utility with the financial ability to proffer safe, efficient, and adequate service to its customers.”<sup>11</sup>

The Commission’s determination in the PGW base rate proceeding is in keeping with *Bluefield Water Works & Improvements Co. v. Public Service Comm. of West Virginia*, 292 U.S. 679, 692-93 (1923) (“*Bluefield*”) and *Federal Power Commission v. Hope Natural Gas Co.*, 320 U.S. 591, 603 (1944) (“*Hope Natural Gas*”), which are the seminal cases that present the legal standards regarding the appropriate level of revenue for a public utility. In *Bluefield*, the Supreme Court stated:

A public utility is entitled to such rates as will permit it to earn a return on the value of the property which it employs for the convenience of the public equal to that generally being made at the same time and in the same general part of the country on investments in other business undertakings which are attended by corresponding risks and uncertainties; but it has no constitutional right to profits such as are realized or anticipated in highly profitable enterprises or speculative ventures. The return should be reasonably sufficient to assure confidence in the financial soundness of the utility and should be adequate, under efficient and economical management, to maintain and support its credit and enable it to raise the money necessary for the proper discharge of its public duties. A rate of return may be too high or too low by changes affecting opportunities for investment, the money market and business conditions generally.<sup>12</sup>

Twenty years later, in *Hope Natural Gas*, the Supreme Court reiterated:

From the investor or company point of view it is important that there be enough revenue not only for operating expenses but also for the capital costs of the business. These include

<sup>10</sup> *Pa. PUC v. Philadelphia Gas Works*, Docket No. R-2020-3017206, p. 71 (Order entered November 19, 2020).

<sup>11</sup> *Pa. PUC v. Philadelphia Gas Works*, Docket No. R-2020-3017206, p. 64 (Order entered November 19, 2020).

<sup>12</sup> *Bluefield*, 262 U.S. at 692-93.

service on the debt and dividends on the stock. By that standard the return to equity owner should be commensurate with returns on investments in other enterprises having corresponding risks. That return, moreover, should be sufficient to assure confidence in the financial integrity of the enterprise, so as to maintain its credit and to attract capital.<sup>13</sup>

The Coronavirus pandemic has not changed the aforementioned standards. In fact, just the opposite is true as the Commission has approved several rate increase requests based on traditional ratemaking principles during this pandemic. For example, in addition to approving the PGW rate increase discussed above, the Commission also recently approved rate increases for UGI Utilities, Inc.- Gas Division<sup>14</sup> and Pittsburgh Water and Sewer Authority.<sup>15</sup> Therefore, in I&E's view, public utilities continue to be entitled to revenue increases provided that the utility shows its expenses were reasonably and prudently incurred and the rate increase results in just and reasonable rates. It is clear that Columbia's operations and capital expenditures will not stop during this pandemic and, as a result, a revenue stream that allows for the provision of safe and reliable service to all customers continues to be necessary.

Here, the ALJ's suggested recommendation to deny Columbia a revenue increase echoes the well-meaning suggested modifications to the PGW Partial Settlement as both RDs take into account the economic impact of the ongoing pandemic. However, in PGW, the ALJs proposed only to delay a phase-in of a rate increase while here, the ALJ denied Columbia a revenue increase entirely. While I&E understands and appreciates the

<sup>13</sup> *Hope Natural Gas*, 320 U.S. at 603.

<sup>14</sup> *Pa. PUC vs. UGI Utilities, Inc.- Gas Division*, Docket No. R-2019-3015162 (Order entered October 8, 2020).

<sup>15</sup> *Pittsburgh Water and Sewer Authority*, Docket Nos. R-2020-3017951, R-2020-3017970 (Order entered December 3, 2020).

factors considered by the ALJ in the Columbia RD, the denial of a rate increase is significant. Columbia is tasked to provide safe and reliable service to its customers and denying a revenue increase may jeopardize its efforts. Under traditional ratemaking principles, I&E recommended a \$75.9 million increase and, under those same ratemaking principles, OCA's analysis produced a \$31 million increase. Accordingly, I&E believes that it is within the public interest for Columbia to receive a revenue increase.

### **III. CONCLUSION**

For the reasons set forth herein, the Bureau of Investigation and Enforcement respectfully requests that the Pennsylvania Public Utility Commission grant I&E's Exceptions to the Recommended Decision and incorporate the results in its final Order granting permit Columbia a revenue increase.

Respectfully submitted,



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PA Attorney ID No. 320526

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Dated: December 22, 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 **Exceptions** dated December 22, 2020, in the manner and upon the persons listed below:

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