


COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE

555 Walnut Street, 5th Floor, Forum Place
Harrisburg, Pennsylvania 17101-1923
(717) 783-5048
800-684-6560

 @pa_oca

 /pennoca

FAX (717) 783-7152
consumer@paoca.org

March 8, 2021

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:

Enclosed please find the Office of Consumer Advocate's Petition for Reconsideration in the above-referenced proceeding. The undersigned certifies that this filing contains no averments or denials of fact subject to verification and penalties under 52 Pa. Code Section 1.36.

Copies have been served per the attached Certificate of Service.

Respectfully submitted,

/s/ Laura J. Antinucci
Laura J. Antinucci
Assistant Consumer Advocate
PA Attorney I.D. # 327217
E-Mail: LAntinucci@paoca.org

Enclosures:

cc: The Honorable Katrina L. Dunderdale (**email only**)
Office of Special Assistants (**email only**: ra-OSA@pa.gov)
Certificate of Service

*304897

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 Petition for Reconsideration, 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 March 2021.

SERVICE BY E-MAIL ONLY

Erika L. McLain, Esquire
Bureau of Investigation & Enforcement
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

Steven C. Gray, Esquire
Office of Small Business Advocate
555 Walnut Street
1st Floor, Forum Place
Harrisburg, PA 17109-1923

Meagan B. Moore, Esquire
Columbia Gas of Pennsylvania, Inc.
121 Champion Way
Suite 100
Canonsburg, PA 15317

Amy E. Hirakis, Esquire
Columbia Gas of Pennsylvania, Inc.
800 North Third Street
Suite 204
Harrisburg, PA 17102

Michael W. Hassell, Esquire
Lindsay A. Berkstresser, Esquire
Post & Schell, P.C.
17 North Second Street, 12th Floor
Harrisburg, PA 17101-1601

Joseph L. Vullo, Esquire
Community Action Association of PA's
1460 Wyoming Avenue
Forty Fort, PA 18704

Elizabeth R. Marx, Esquire
Ria M. Pereira, Esquire
John W. Sweet, Esquire
Pennsylvania Utility Law Project
118 Locust Street
Harrisburg, PA 17101

Charis Mincavage, Esquire
Kenneth R. Stark, Esquire
McNees Wallace & Nurick LLC
100 Pine Street
P.O. Box 1166
Harrisburg, PA 17108-1166

Thomas J. Sniscak, Esquire
Whitney E. Snyder, Esquire
Hawke McKeon & Sniscak, LLP
100 North 10th Street
Harrisburg, PA 17101

Ionut R. Ilie
225 McBath Street
State College, PA 16801
Ionut.John.Ilie@gmail.com

Dr. Richard Collins
440 Monmouth Drive
Cranberry Township, PA 16066-5756
richardcollins@consolidated.net

/s/ Laura J. Antinucci

Laura J. Antinucci
Assistant Consumer Advocate
PA Attorney I.D. # 327217
E-Mail: LAntinucci@paoca.org

Christy M. Appleby
Assistant Consumer Advocate
PA Attorney I.D. # 85824
E-Mail: CAAppleby@paoca.org

Darryl A. Lawrence
Senior Assistant Consumer Advocate
PA Attorney I.D. # 93682
E-Mail: DLawrence@paoca.org

Barrett C. Sheridan
Assistant Consumer Advocate
PA Attorney I.D. # 61138
E-Mail: BSheridan@paoca.org

Counsel for:
Office of Consumer Advocate
555 Walnut Street
5th Floor, Forum Place
Harrisburg, PA 17101-1923
Phone: (717) 783-5048
Fax: (717) 783-7152
Dated: March 8, 2021
*304896

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission

v.

Columbia Gas of Pennsylvania, Inc.

:
:
:
:
:
:
:
:
:
:

Docket No. R-2020-3018835

**PETITION OF THE OFFICE OF CONSUMER ADVOCATE FOR
RECONSIDERATION**

TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

Pursuant to 52 Pa. Code Sections 5.41 and 5.572, the Office of Consumer Advocate (OCA) hereby submits this Petition for Reconsideration of the Opinion and Order entered by the Pennsylvania Public Utility Commission (the Commission) approving a \$63.5 million annual revenue increase for Columbia Gas of Pennsylvania, Inc. (Columbia Gas or the Company) on February 19, 2021 (Opinion and Order hereafter referred to as the Columbia Order).¹ The OCA respectfully requests that the Commission reconsider its decision to award such an increase as the Commission improperly relied upon prior settled base rate cases as a basis to approve the annual revenue increase for Columbia Gas.² The OCA submits that the use of settled cases as precedent and support for the Commission's decision is improper, and the provisions included in the settled base rate cases make them distinguishable from the fully litigated Columbia Gas proceeding. Further, the OCA submits that the Commission may have overlooked the unintended effect that citing to settled cases as precedent could have on the willingness of parties to engage in settlement

¹ 52 Pa. Code §§ 5.41 and 5.572.

² Pa. PUC v. Columbia Gas of Pennsylvania, Docket No. R-2020-3018835, Opinion and Order at 51-52 (Feb. 19, 2021) (Columbia Order).

negotiations in future proceedings if they could compromise a settling party's position in a later case. As relief, the OCA respectfully requests that the Commission reconsider the Columbia Order based on the evidence and legal arguments presented in Briefs, remove all reliance upon prior settled base rate case orders, and then, accordingly, deny a revenue increase for Columbia Gas.

II. BACKGROUND

1. Columbia Gas is a public utility and natural gas distribution company (NGDC) providing natural gas distribution, sales, transportation, and/or supplier of last resort services to approximately 433,000 retail customers in portions of twenty-six counties in western, northwestern, southern, and central Pennsylvania.

2. On April 24, 2020, the Company filed Supplement No. 307 to Tariff Gas – Pa. P.U.C. No. 9, which sought an increase in annual distribution operating revenues of \$100,437,420, based on a fully projected future test year (FPFTY) ending December 31, 2021.

3. On May 5, 2020, the OCA filed a Public Statement and Formal Complaint at Docket No. C-2020-3019714.

4. By Order entered May 21, 2020, the Commission suspended the implementation of Supplement No. 307 by operation of law, pursuant to 66 Pa. C.S. Section 1308(d), until January 23, 2021, unless permitted by Commission Order to become effective at an earlier date, and instituted an investigation into the lawfulness, justness, and reasonableness of the rates, rules, and regulations proposed. The Commission assigned the matter to the Office of Administrative Law Judge (OALJ) for hearings and the issuance of a Recommended Decision. The matter was further assigned to Administrative Law Judge Katrina L. Dunderdale (ALJ Dunderdale).

5. On June 3, 2020, ALJ Dunderdale conducted a prehearing conference in which various procedural matters were discussed and a litigation schedule was established. Columbia

Gas, the OCA, the OSBA, I&E, CII, CAAP, and CAUSE-PA were present and represented by counsel.

6. On October 8, 2020, the Commission approved a Joint Petition for Settlement in the UGI Gas 2020 Base Rate Case proceeding designed to produce an increase in annual revenues of \$20 million.³ The settlement included *inter alia*, a three-step, phased in method for implementing the rate increase, a COVID-19 Emergency Relief Plan, and modifications to universal service programs.⁴

7. On November 19, 2020, the Commission approved a Joint Petition for Partial Settlement in the Philadelphia Gas Works (PGW) 2020 Base Rate Case proceeding, which allowed for an overall distribution base rate increase of \$35 million over the course of three phases.⁵ The Partial Settlement included, *inter alia*, a COVID-19 Relief Plan (up to \$2 million or maximum 6,600 customers at up to \$300 per customer) to assist customers affected by the ongoing pandemic.⁶

8. On December 3, 2020, the Commission approved a Joint Petition for Settlement in the Pittsburgh Water and Sewer Authority (PWSA) 2020 Base Rate Case proceeding, which allowed for an overall distribution base rate increase of \$19 million.⁷ The Settlement provided, *inter alia*, for COVID-19 relief measures to operate as a source of relief.⁸

³ Pa. PUC v. UGI Utilities, Inc. - Gas Division, Docket No. R-2019-3015162, Order (Oct. 8, 2020) (UGI Gas Rate Order).

⁴ Id., Settlement ¶¶ 23 and 30-37.

⁵ Pa. PUC v. PGW, Docket No. R-2020-3017206, Order (Nov. 19, 2020) (PGW Rate Order).

⁶ Id., Partial Settlement ¶¶ 18-22.

⁷ Pa. PUC v. Pittsburgh Water and Sewer Authority, Docket Nos. R 2020-3017951, R-2020-3017970, Order (Dec. 3, 2020) (PWSA Rate Order).

⁸ Id., Settlement ¶ III.9.D.

9. ALJ Dunderdale issued a Recommended Decision on December 4, 2020 recommending that the Commission deny Columbia Gas' requested base rate increase in full.

10. On February 19, 2021, the Commission entered the Columbia Order approving a \$63.5 million annual revenue increase for Columbia Gas.⁹ Among the reasons¹⁰ provided by the Commission for the increase, the Commission cited to the settlements in the PGW Order, UGI Gas Order, and the PWSA Order (collectively, the Settled Base Rate Case Orders) as justification for increasing rates for Columbia Gas.¹¹ Specifically, the Columbia Order provided:

...taking the approach of denying any rate relief due to rising unemployment numbers among residential customers is inconsistent with our prior rate orders issued during this pandemic: specifically, the *PGW Rate Order*, the *UGI Gas Rate Order*, and the *PWSA Rate Order*, where we granted rate increases despite rising unemployment numbers across the Commonwealth due to the pandemic.

...we are not persuaded by the argument that the final rates in the other cases were the results of settlement agreements, as that fact alone does not change the reality that such settlements would not be effective unless approved under our ratemaking authority, and we clearly acknowledged the need for revenue increases during this pandemic for these companies by approving the settled-upon rate increases after we found that such settlements were in the public interest and resulted in just and reasonable rates.¹²

The Columbia Order also provided that no party had offered a “rational basis” for the different treatment of Columbia Gas under the same set of circumstances.¹³

⁹ See Columbia Order at 270.

¹⁰ In addition to the Settled Base Rate Case Orders, the Columbia Order provided the following justification for the increase: (1) there was not substantial evidence that the harm of an increase on unemployed customers outweighs all other valid ratemaking concerns such as cost of service, (2) there was no evidence that the Company's projections were unreliable, (3) the return on equity percentage, if there was no rate increase, was not supported by any expert witness testimony on rate of return, and (4) the continued use of traditional ratemaking methodologies during the pandemic is consistent with the setting of just and reasonable rates and the constitutional standards established in Bluefield and Hope Natural Gas. *Id.* at 51-54.

¹¹ *Id.* at 51-52.

¹² *Id.* at 51-52.

¹³ *Id.*

III. LEGAL STANDARDS

11. Under the Pennsylvania Public Utility Code at 66 Pa. C.S. Section 703(g), a party has a right to seek relief from a Commission final decision.¹⁴ Such requests for relief must be consistent with the Commission's regulations at 52 Pa. Code Section 5.572.¹⁵

12. In Duick v. Pennsylvania Gas and Water Co., the Commission set forth the standards for granting a petition for reconsideration, as follows:

A petition for reconsideration, under the provisions of 66 Pa.C.S. § 703(g), may properly raise any matters designed to convince the Commission that it should exercise its discretion under this code section to rescind or amend a prior order in whole or in part. In this regard we agree with the Court in the Pennsylvania Railroad case, wherein it was stated that “[p]arties . . . cannot be permitted by a second motion to review and reconsider, to raise the same questions which were specifically considered and decided against them . . .” What we expect to see raised in such petitions are new and novel arguments, not previously heard, or considerations which appear to have been overlooked or not addressed by the Commission. Absent such matters being presented, we consider it unlikely that a party will succeed in persuading us that our initial decision on a matter or issue was either unwise or in error.¹⁶

13. The policy of the Commission is to encourage settlements, and the Commission has stated that settlement rates are often preferable to those achieved at the conclusion of a fully litigated proceeding.¹⁷

14. The Commission “vigorously, and without equivocation, reject[s] considering a settlement as precedent, as to any subsequent issue, in any proceeding.”¹⁸

¹⁴ 66 Pa. C.S. § 703(g) relating to rescission, clarification, and amendment of orders.

¹⁵ 52 Pa. Code § 5.572, relating to petitions for relief following the issuance of a final decision.

¹⁶ Duick v. Pennsylvania Gas and Water Co., Docket No. C-R0597001 et al., 1982 Pa. PUC LEXIS 4 at *12-13 (Pa. PUC Dec. 17, 1982) (quoting Pennsylvania R.R. Co. v. Pa. PUC, 179 A. 850 (Pa. Super 1935)) (Duick).

¹⁷ See 52 Pa. Code §§ 5.231, 69.401.

¹⁸ HIKO Energy, LLC v. Pa. PUC, 209 A.3d 246, 265 (quoting The Bell Tel. Co. of Pa., 1988 Pa. PUC LEXIS 572 at *19 (Bell)) (emphasis in original) (Hiko).

IV. RECONSIDERATION IS WARRANTED

A. Settled Cases Are Not To Be Used As Precedent.

15. The Columbia Order provided that the denial of a rate increase for Columbia Gas would be inconsistent with the Settled Base Rate Case Orders.¹⁹ The OCA submits that it is improper for settled cases to be used as precedent.²⁰

16. The settlements approved by the Commission in the Settled Base Rate Case Orders included standard language prohibiting the use of the settlements as precedent in future proceedings.²¹

17. The Commission failed to consider its own precedent of rejecting the use of settled cases as precedent and the provisions included in Settled Base Rate Case Orders settlements protecting the parties from the use of those settlements as precedent in future matters.

B. The Settlements Used As Precedent In The Columbia Gas Decision Included Robust COVID-19 Relief Programs That Were Carefully Balanced Against the Parties' Decisions To Agree To A Rate Increase.

18. While the Commission is correct, in the Columbia Order, that it could have rejected the settlements in the Settled Base Rate Case Orders if it did not find that the settlements were in the public interest and resulted in just and reasonable rates,²² the Commission failed to take into consideration that the settlements involved, among other provisions, robust COVID-19

¹⁹ Columbia Gas at 51.

²⁰ Hiko, 209 A.3d 265 (citing Bell).

²¹ See e.g. Pa. PUC v. PGW, Docket No. R-2020-3017206, Settlement ¶ 49 (Joint Petition for Partial Settlement filed on August 26, 2020, approved via Order entered Nov. 19, 2020) (“The Commission’s approval of the Settlement shall not be construed as approval of any Joint Petitioner’s position on any issue, except to the extent required to effectuate the terms and agreements of the Settlement. This Settlement may not be cited as precedent in any future proceeding, except to the extent required to implement the Settlement.”)

²² Columbia Gas at 51-52.

relief plans and other beneficial-to-ratepayer measures to offset the burden of increased rates in the midst of the pandemic.²³

19. The OCA submits that it was improper for the Commission to compare the settlements in the Settled Base Rate Case Orders to the Columbia Gas proceeding because the settled cases included rate relief programs and other measures to alleviate the burden of a rate increase. The settlement measures designed to protect customers in the midst of the COVID-19 Pandemic were carefully balanced against the utilities' rate increases so that the settlements, when taken as a whole, would be in the public interest and result in just and reasonable rates.

20. The Columbia Gas filing did not include a COVID-19 relief plan to buffer the impact of its proposed increase on ratepayers who have experienced, and continue to experience, unemployment and reduced income due to the extraordinary pandemic situation. Therefore, the Commission's determination in this proceeding to increase rates for Columbia Gas is inconsistent with the Commission's approval of the settlements providing for COVID-19 relief in the Settled Base Rate Case Orders.

21. The Commission failed to consider the important ratepayer COVID-19 protections included in the Settled Base Rate Case Orders, along with the other important provisions of those settlements, when it determined that the base rate increases in those cases supported an increase for Columbia Gas.

22. The OCA submits that, because the Commission overlooked the lack of important ratepayer COVID-19 protections in the Columbia Order, the Commission should reconsider the remaining evidence as to its decision to grant Columbia Gas a revenue increase and the amount of such increase.

²³ See, e.g., PGW Order at 23-28, 65 and 69.

C. Parties May Be Reluctant To Engage In Good Faith Settlement Negotiations If Their Positions In Settlement Would Be Detrimental To Them In Future Proceedings.

23. The Commission's citation in the Columbia Order to the settled rate increases it previously approved of in the Settled Base Rate Case Orders effectively compromises the Commission's own policy of encouraging settlements.²⁴

24. In future proceedings, parties could rightfully be concerned about engaging in good faith settlement negotiations if their positions in settlement would be detrimental to them in future proceedings. Proceeding in this matter could decidedly cast a long shadow over all future settlement discussions among the utility bar.

25. The Commission failed to consider the negative effect that citing to settlements as precedent could have on the behaviors of parties in future proceedings and settlement negotiations.

V. REQUESTED RELIEF

26. The OCA requests that the Commission reconsider and amend the Columbia Order to remove any reference to or reliance on the settlements approved in the Settled Base Rate Case Orders. Further, the OCA requests that the Commission reconsider the remaining evidence as to its decision to grant Columbia a revenue increase.

²⁴ See 52 Pa. Code §§ 5.231, 69.401.

VI. CONCLUSION

27. The OCA respectfully requests that the Commission grant this Petition for Reconsideration.

Respectfully submitted,

/s/ Darryl Lawrence

Darryl Lawrence
Senior Assistant Consumer Advocate
PA Attorney I.D. # 93682
E-Mail: DLawrence@paoca.org

Laura J. Antinucci
Assistant Consumer Advocate
PA Attorney I.D. # 327217
E-Mail: LAntinucci@paoca.org

Barrett C. Sheridan
Assistant Consumer Advocate
PA Attorney I.D. # 61138
E-Mail: BSheridan@paoca.org

Christy M. Appleby
Assistant Consumer Advocate
PA Attorney I.D. # 85824
E-Mail: CAappleby@paoca.org

Counsel for:
Tanya J. McCloskey
Acting Consumer Advocate

Office of Consumer Advocate
555 Walnut Street
5th Floor, Forum Place
Harrisburg, PA 17101-1923
Phone: (717) 783-5048
Fax: (717) 783-7152
Dated: March 8, 2021
*304610