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March 11, 2021

VIA ELECTRONIC FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor North
P.O. Box 3265
Harrisburg, PA 17105-3265

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

Dear Secretary Chiavetta:

Attached for filing please find Columbia Gas of Pennsylvania, Inc.'s Answer to the Petition for Reconsideration filed by the Office of Consumer Advocate in the above-referenced proceeding. Copies will be provided per the attached Certificate of Service.

Very truly yours,



Lindsay A. Berkstresser

LAB/kl
Attachment

cc: Honorable Katrina L. Dunderdale (*via email; w/attachment*)
Office of Special Assistants (*via email; w/attachment*)
Certificate of Service

**CERTIFICATE OF SERVICE
(R-2020-3018835)**

I hereby certify that a true and correct copy of the foregoing has been served upon the following persons, in the manner indicated, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant.)

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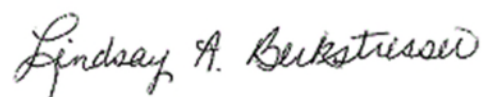
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Date: March 11, 2021

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	R-2020-3018835
Officer of Consumer Advocate	:	C-2020-3019702
Office of Small Business Advocate	:	C-2020-3019714
Columbia Industrial Intervenors	:	C-2020-3020105
Dr. Richard Collins	:	C-2020-3020207
Ionut R. Ilie	:	C-2020-3020498
Pennsylvania State University	:	C-2020-3020666
	:	
v.	:	
	:	
	:	
Columbia Gas of Pennsylvania, Inc.	:	

**ANSWER OF COLUMBIA GAS OF PENNSYLVANIA, INC. TO
THE PETITION FOR RECONSIDERATION OF THE OFFICE OF CONSUMER
ADVOCATE**

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I. INTRODUCTION

Columbia Gas of Pennsylvania, Inc. (“Columbia”) pursuant to 52 Pa. Code §§ 5.61 and 5.572, hereby respectfully submits this Answer to the Petition for Reconsideration (“Petition”) filed by the Office of Consumer Advocate (“OCA”) on March 8, 2021. In its Petition, OCA seeks reconsideration of the Opinion and Order of the Pennsylvania Public Utility Commission (“Commission”) entered in the above-captioned proceeding on February 19, 2021 (“*Order*”). Specifically, OCA requests that the Commission amend its *Order* to remove any reference to three base rate cases in which the Commission approved rate increases as provided for by the settlement agreements in those cases (“Settled Base Rate Cases”).¹ Petition ¶ 26. Each of the Settled Base Rate Cases resulted in Commission-approved rate increases during the COVID-19 pandemic. OCA also requested that the Commission reconsider its decision to grant Columbia any revenue increase. Petition ¶ 26.

As explained below, OCA’s Petition should be denied because it fails to meet the well-established standard for granting reconsideration set forth in Section 703(f) and (g) of the Public Utility Code, 66 Pa.C.S. § 703(f)-(g), and *Duick v. Pennsylvania Gas and Water Co.*, 56 Pa. P.U.C. 553, 559 (1982). The Petition simply re-raises arguments that were already considered and rejected by the Commission. In its *Order*, the Commission considered and rejected OCA’s arguments regarding the applicability of the Settled Base Rate Cases and the appropriateness of granting a utility rate increase during the COVID-19 pandemic. Beyond OCA’s failure to satisfy *Duick*, as support for its reconsideration request, OCA’s Petition incorrectly states that Columbia has not implemented any COVID-19 ratepayer relief. Petition ¶¶ 20-22. As explained herein and

¹ The three Settled Base Rate Cases are (1) *Pa. PUC v. UGI Utilities*, Docket No. R-2019-3015162 (Order entered October 8, 2020); (2) *Pa. PUC v. PGW*, Docket No. R-2020-3017206 (Order entered November 19, 2020); and (3) *Pa. PUC v. Pittsburgh Water and Sewer Authority*, Docket Nos. R-2020-3017970 (Order entered December 3, 2020).

in the Company's testimony and briefs in this proceeding, the Company has undertaken significant customer relief efforts in response to the COVID-19 pandemic. For these reasons, and as more fully explained below, Columbia respectfully requests that the Commission deny OCA's Petition for Reconsideration.

II. BACKGROUND

1. This proceeding was initiated on April 24, 2020, when Columbia filed Supplement No. 307 to Tariff Gas Pa. P.U.C. No. 9 at Docket No. R-2020-3018835, with an effective date, after suspension, of January 23, 2021. Columbia proposed to increase overall rates by approximately \$100.4 million per year, based upon data for a Fully Projected Future Test Year ending December 31, 2021.

2. The procedural history in this case is lengthy and is fully set forth on pages 2-5 of Columbia's Main Brief. After multiple rounds of discovery, testimony and briefing, Administrative Law Judge Katrina L. Dunderdale ("ALJ") issued a Recommended Decision ("RD") on December 4, 2020. The RD recommended, inter alia, that Columbia's entire requested rate increase be denied. On December 22, 2020, Columbia, the Commission's Bureau of Investigation and Enforcement ("I&E"), OCA, Office of Small Business Advocate ("OSBA"), Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania ("CAUSE-PA"), and the Pennsylvania State University ("PSU") filed Exceptions. On December 30, 2020, Columbia, I&E, OCA, OSBA, CAUSE-PA, and PSU filed Reply Exceptions.

3. On February 19, 2021, the Commission issued its *Order*, which reversed the RD's recommendation to completely deny Columbia's requested rate relief due to the COVID-19 pandemic; granted, in part, and denied, in part, the Exceptions filed by Columbia and I&E; and denied the Exceptions filed by OCA, OSBA, CAUSE-PA, and the PSU. In its *Order*, the Commission approved an overall revenue increase of approximately \$63.5 million. *Order*, p. 2.

4. On March 8, 2021, the OCA filed a Petition for Reconsideration of the Commission's Order. For the reasons explained below, as well as those more fully explained in the Commission's *Order*, OCA's Petition for Reconsideration should be denied.

III. LEGAL STANDARDS

5. The Commission's standard for granting reconsideration following final orders is set forth in *Duick v. Pennsylvania Gas and Water Co.*, 56 Pa. P.U.C. 553, 559 (1982) (emphasis added):

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 Company case, wherein it was said 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.

Consequently, for a petition to warrant reconsideration by the Commission, it must demonstrate new and novel arguments that were raised by the petitioner, but not previously considered by the Commission. The Commission has cautioned that the last portion of the operative language of the *Duick* standard (*i.e.*, “by the Commission”) focuses on the deliberations of the Commission, not the arguments of the parties. *See Pa. PUC v. PPL Elec. Utils. Corp.*, Docket No. R-2012-2290597, p. 3 (Order entered May 22, 2014). Therefore, a petition for reconsideration cannot be used to raise new arguments or issues that should have been, but were not, previously raised.

6. A petition seeking relief under the *Duick* standard may properly raise any matter designed to convince the Commission that it should exercise its discretion to rescind or amend a

prior order in whole or part. Importantly, however, the *Duick* standard does not permit a petitioner to raise issues and arguments considered and decided below such that the petitioner obtains a second opportunity to argue properly resolved matters. *Id.* Further, as explained by the Pennsylvania Supreme Court, petitions for reconsideration of a final agency order may only be granted judiciously and under appropriate circumstances because such action results in the disturbance of final agency orders. *City of Pittsburgh v. Pa. Dep't of Transp.*, 490 Pa. 264, 416 A.2d 461 (1980).

7. As explained below, OCA's Petition clearly fails to satisfy the standards for granting reconsideration.

IV. ARGUMENT

A. OCA'S REQUEST FOR RECONSIDERATION SHOULD BE DENIED BECAUSE IT FAILS TO SATISFY THE *DUICK* STANDARD.

1. The Commission specifically considered and rejected the OCA's argument regarding the applicability of the Settled Base Rate Cases.

8. The arguments raised in OCA's Petition are not new and were previously considered and rejected by the Commission. In its Petition, OCA argues that the Commission improperly relied on the Settled Base Rate Cases as precedent for its decision. Petition, ¶¶ 15-17. However, the Commission specifically considered and rejected the OCA's argument concerning the applicability of the Settled Base Rate Cases. The relevant portion of the Commission's *Order* states:

First, with regard to the pandemic's impact on customers, the ALJ cited unemployment rates of 8.8% to 19.2% of the working population in Columbia's service area. R.D. at 48. While we acknowledge the gravity of these unemployment statistics, it has not been demonstrated in this case with substantial evidence or explanation that the impact of *any* rate increase on unemployed customers will lead to harm that outweighs all other valid ratemaking concerns "especially the polestar – cost of providing

service.” *Lloyd*, 904 A.2d at 1020. Furthermore, 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. No party in this proceeding has offered a rational basis to justify a different treatment under the circumstances here. **Indeed, 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. See *PGW Rate Order*, *UGI Gas Rate Order*, *PWSA Rate Order*.**

Order, pp. 51-52 (emphasis added).

9. Clearly, the Commission considered OCA’s position that the Settled Base Rate Cases should not inform the Commission’s decision in this case. However, the Commission rejected that position on the basis that the rate increases in the Settled Base Rate Cases could only be approved pursuant to the Commission’s ratemaking authority. *Order*, pp. 51-52. In other words, had the Commission not reviewed and approved the rate increases provided for in the settlements as just and reasonable under the circumstances, those rate increases would not have gone into effect. The fact that the rate increases in the Settled Base Rate Cases were a result of settlements was not material to the Commission’s analysis.

10. By arguing that the Commission improperly relied on the Settled Base Rate Cases as precedent, OCA takes the Commission’s statements regarding the Settled Base Rate Cases out of context. The point that the Commission was making by referring to the Settled Base Rate Cases is that the Commission had previously granted rate increases despite the COVID-19 pandemic and resulting economic conditions. The Commission stated:

Furthermore, 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. No party in this proceeding has offered a rational basis to justify a different treatment under the circumstances here.

Order, p. 51. It is clear from the quoted portion of the Commission's Order that the Commission referred to the Settled Base Rate Cases in response to opposing parties' arguments and the RD's recommendation that no rate increase should be granted due to the economic circumstances resulting from the pandemic, including the rising unemployment levels. The Commission logically reasoned that if increased unemployment were to be the basis for an absolute ban on base rate increases, such a ban would have had to apply to other rate increase requests during the pandemic as well. However, the Commission correctly determined that increased unemployment can be addressed in ways other than a draconian, and likely unconstitutional, prohibition against rate increases that are otherwise justified by the substantial evidence of record. Through its Petition, OCA improperly attempts to re-litigate the same arguments that the Commission previously considered and rejected. Therefore, OCA fails to satisfy the *Duick* standard, and its Petition should be denied.

11. OCA's argument that the Commission's reference to the Settled Base Rate Cases in its *Order* would discourage future settlement negotiations is also without merit. Petition ¶ 24. The Commission did not rely on the resolution of any specific issue in a prior settlement as precedent but cited the result of the prior settled cases to point out that the Commission had previously approved rate increases during the COVID-19 pandemic. Indeed, the Commission considered and rejected the unprecedented contention that an otherwise justified rate increase could be denied due to economic conditions. Therefore, there is no basis to contend that reference

to the overall results of previously settled cases in the Commission's *Order* would undermine settlement negotiations in future cases.

2. The Commission specifically considered and rejected the OCA's argument that no rate increase should be granted due to the COVID-19 pandemic.

12. In its Petition, the OCA requests that the Commission "deny a revenue increase for Columbia Gas." Petition, p. 2. Through its Petition, OCA is attempting to re-litigate its position that no rate increase is appropriate during the current economic conditions resulting from the COVID-19 pandemic. OCA's requested relief should be denied because the Commission already conducted a comprehensive analysis of OCA's argument and rejected this argument in its *Order*. As a result of its analysis, the Commission concluded:

[W]e shall decline to adopt the ALJ's recommendation to completely deny Columbia's requested rate relief due to the pandemic, for the following two reasons: (1) in our opinion, the continued use of traditional ratemaking methodologies during this pandemic is consistent with the setting of just and reasonable rates and the constitutional standards established in *Bluefield* and *Hope Natural Gas*, and the pandemic does not change the continued application of these standards; and (2) there is a lack of substantial evidence in this record to support the ALJ's recommendation to completely deny the Company's requested rate increase due to the pandemic.

Order, p. 54 (emphasis added).

13. In its *Order*, the Commission concluded that traditional ratemaking methodologies allow the Commission to consider "important factors or principles in setting just and reasonable rates, such as quality of service, gradualism, and rate affordability, during this pandemic." *Order*, p. 47. The Commission then applied these factors when considering the elements of Columbia's requested rate increase. For example, the Commission granted a smaller overall rate increase than requested, selected a lower rate of return than originally proposed by Columbia, eliminated certain

projected expenses and capital spending from the Company's claim, accepted the RD's modification to the Company's proposed Residential rate design, and made various directives concerning low-income programs. *See Order*, pp. 61, 71-72, 82, 97, 141, 143, 144-77, 262-65. Indeed, it was this analysis of the Commission's authority under traditional ratemaking methodologies, much more than any consideration of the Settled Base Rate Cases, that underlies the Commission's decision to reject the recommendation to deny any rate increase to Columbia.

14. For OCA to meet the *Duick* standard for granting reconsideration, it cannot simply re-raise the same arguments that were considered and rejected by the Commission. As explained herein, the Commission previously considered and rejected OCA's request that no rate increase be granted during the pandemic. Thus, OCA's Petition should be denied in its entirety.

B. OCA'S PETITION RELIES ON AN INCORRECT CHARACTERIZATION OF COLUMBIA'S COVID-19 CUSTOMER RELIEF EFFORTS.

15. In its Petition, OCA attempts to distinguish the case at hand from settled base rate cases in 2020 by incorrectly stating that "the Columbia Gas filing did not include a COVID-19 relief plan" and that there is a "lack of important ratepayer COVID-19 protections." Petition ¶¶ 20, 22. Based on these incorrect statements, OCA argues that the Commission should reconsider its *Order* because, unlike Columbia's case, the Settled Base Rate Cases included COVID-19 ratepayer protections. Petition ¶¶ 21-22. OCA's characterization of Columbia's COVID-19 relief efforts is wrong and provides no support for its Petition.

16. First, in response to the onset of the pandemic, the Company voluntarily delayed its rate filing by five weeks, resulting in the permanent loss of \$16.1 million of the full amount of the proposed rate increase. Columbia St. No. 1-R, p. 11. In addition to voluntarily postponing its rate case filing, the Company has undertaken extensive COVID-19 relief efforts to assist customers

who have been impacted by the pandemic. Columbia explained these efforts in its testimony and briefs in this case.

17. Columbia developed an enhanced education and outreach program, which includes Columbia call center representatives making outbound calls to customers who may be eligible for assistance based on Company records. Columbia temporarily ceased performing customer shut offs for all customers prior to the Commission’s directives in the March 26, 2020 Emergency Order. See *Public Utility Service Termination Moratorium Proclamation of Disaster Emergency – COVID-19*, Docket No. M-2020-3-19244 (*Emergency Order*) entered on March 13, 2020; ratified on March 26, 2020. In addition to the Company’s normal payment plan offerings, the Company began to offer two new 6-month payment plan options. Columbia also made several changes to its Customer Assistance Program (“CAP”), including not removing customers from CAP, not requiring proof of income for CAP customers who are unable to verify income, and not including any “stimulus” income or additional unemployment compensation as income for purposes of determining CAP eligibility. The Company also modified its existing Hardship Fund by waiving the requirement of a demonstrated good-faith payment effort in order to be eligible for the Hardship Fund and allowing all low-income customers in arrears to be eligible for the Hardship Fund regardless of CAP status. Finally, Columbia waived all late payment and reconnect fees. See Columbia MB, pp. 25-30. OCA’s Petition ignores these efforts.

18. In addition to these efforts, on October 26, 2020, Columbia requested that the Commission temporarily amend the Company’s Universal Service and Energy Conservation Plan to increase the number of customers who qualify for Hardship Fund assistance by increasing the income limit from 200% of the Federal Poverty Income Guidelines (“FPIG”) to 300% of the FPIG through September 31, 2021. Columbia’s purpose in requesting the change was to assist customers

who have been impacted financially by the COVID-19 pandemic, but who do not qualify for other assistance. To support the additional customers eligible for the Hardship Fund, Columbia secured a voluntary \$400,000 shareholder contribution. The OCA and CAUSE-PA did not oppose the request. On November 17, 2020, the Commission issued a Secretarial Letter approving Columbia's request. *See Petition of Columbia Gas of Pennsylvania to Temporarily Amend its Current 2019 Universal Service and Energy Conservation Plan*, Docket No. M-2018-2645401 (Secretarial Letter dated November 17, 2020).

19. OCA's Petition raises no "new" argument by incorrectly claiming that Columbia has not undertaken COVID-19 relief efforts and ignoring the substantial evidence to the contrary. OCA's argument is based on factually incorrect statements and fails to satisfy *Duick*. Therefore, the Petition should be denied.

V. CONCLUSION

WHEREFORE, for all the foregoing reasons, Columbia Gas of Pennsylvania, Inc. respectfully requests that the Pennsylvania Public Utility Commission deny the Petition for Reconsideration filed by the Office of Consumer Advocate in its entirety.

Respectfully submitted,



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