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April 10, 2023

VIA ELECTRONIC FILING

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

RE: Petition for Declaratory Order of the Retail Energy Supply Association; Docket No. P-2023-_____ ; **PETITION FOR DECLARATORY ORDER**

Dear Secretary Chiavetta:

Enclosed for filing with the Commission is the Petition for Declaratory Order of the Retail Energy Supply Association (“RESA”) in the above-captioned matter. Copies of the Petition have been served in accordance with the attached Certificate of Service.

Thank you for your attention to this matter. If you have any questions, please do not hesitate to contact me.

Very truly yours,

Todd S. Stewart
Counsel for The Retail Energy Supply Association

TSS/jld
Enclosure
cc: Per Certificate of Service

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the parties, listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party)

VIA ELECTRONIC MAIL ONLY

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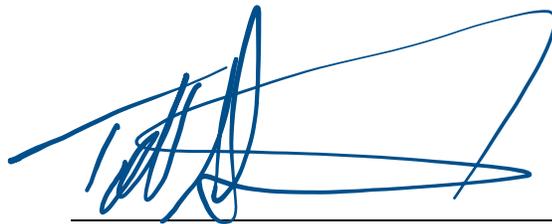
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Harrisburg, PA 17101



DATED: April 10, 2023

Todd S. Stewart

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition for Declaratory Order of the Retail :
Energy Supply Association : Docket No. P-2023-_____
:

**PETITION FOR DECLARATORY ORDER
OF THE RETAIL ENERGY SUPPLY ASSOCIATION**

Pursuant to Section 331(f) of the Public Utility Code¹ and Section 5.42 of the Pennsylvania Public Utility Commission's ("Commission" or "PUC") Regulations², the Retail Energy Supply Association ("RESA")³, by and through its Counsel, Hawke McKeon and Sniscak, LLP, file this Petition for Declaratory Order ("Petition") addressing Columbia Gas of Pennsylvania, Inc.'s ("Columbia") recent filing of two separate tariff supplements to make less than quarterly adjustments to its Purchased Gas Cost ("PGC") rate. Through this Petition, RESA respectfully request the issuance of a Declaratory Order by the Commission, Declaring that the two "interim" PGC filings – one filed February 27, 2023, and one filed March 28, 2023 -- are illegal, unwarranted and contrary to Commission precedent that finds that such adjustments to the PGC which are then reflected in the price to compare ("PTC") are anticompetitive. Because the tariff supplements

¹ 66 Pa. C.S. § 331(f).

² 52 Pa. Code § 5.42.

³ The views and positions expressed in this filing represent the views and positions of the Retail Energy Supply Association (RESA) as an organization but may not represent the views of any particular member of the Association. Founded in 1990, RESA is a broad and diverse group of retail energy suppliers dedicated to promoting efficient, sustainable and customer-oriented competitive retail energy markets. RESA members operate throughout the United States delivering value-added electricity and natural gas service at retail to residential, commercial and industrial energy customers. More information on RESA can be found at www.resausa.org.

already have been implemented, RESA requests as a remedy a cease-and-desist order that prohibits Columbia from making any such future adjustments on an "interim" basis.

I. INTRODUCTION AND BACKGROUND

1. By this Petition, RESA seeks to resolve a controversy that has arisen as a result of Columbia's recent adjustments of the PGC and in turn, the PTC. The controversy first arose when Columbia submitted Tariff Supplement 356 to its Tariff Gas Pa. P.U.C. No. 9 on February 28, 2023, a mere 38 days after it filed its prescribed quarterly adjustment. Columbia's supplement reduced default service rates an average of 22%, effective March 1, 2023. The Commission took no action on the filing apart from docketing it. On March 28, 2023, Columbia filed Supplement 360, which also decreased the PGC, effective April 1, 2023, even though its annual filing was also due to be filed April 1, 2023. The proposed reductions are premised on the recent drop in market prices for natural gas.

II. THE PARTIES

2. Columbia is a certificated public utility as defined in 66 Pa. C.S. § 102 and is a Natural Gas Distribution Company as defined in 66 Pa. C.S. §2202. Columbia is a 1307(f) utility and files its annual case under 66 Pa. C.S. § 1307(f) on or about April 1 or each year. It makes its quarterly filings on or about July 1, October 1, December 1 and April 1, of each year.

3. RESA is an association of diverse competitive energy suppliers devoted to promoting vibrant and sustainable competitive retail energy markets for residential and business customers. Members of RESA include NGSs licensed by the Commission, pursuant to the Natural Gas Choice and Competition Act ("Competition Act"),⁴ to sell natural gas supply to retail customers throughout Pennsylvania and in Columbia's service territory. NGSs accomplish these

⁴ 66 Pa. C.S. §§ 2201, *et seq.*

sales pursuant to natural gas supply contracts entered into with retail customers and, for residential and small business customers, and are subject to the Commission's detailed regulations regarding language to be included in the contracts and well as the timing and content of notices to be provided to customers upon pending expiration of the contract or notice of material changes including pricing changes.⁵

III. FACTS

4. As discussed above, Columbia made two adjustments to its GCR within the span of 30 days, and with neither having an effective date on the date assigned to Columbia for quarterly filings and both purporting to be effective on less than 30 days' notice, rather, on 3 days' notice.

5. Interim adjustments harm the market by altering what is considered by stakeholders to be the competitive benchmark price. In this case, the adjustment was not insignificant. This perceived "price reduction" has the effect of making customers who purchase supply from competitive suppliers believe that their contract price with a supplier is no longer competitive and will inevitably lead to customers desiring to exit contracts early or to not engage the competitive market and could unknowingly incur penalties such as early termination fees. Stated differently, Columbia's action turns Default Service into a competitive product intended to compete on price, which was never the intention for default service. While RESA/NGS Parties are sympathetic to customers who chose to remain on default service for whatever reason, and experienced high prices, but those customers are ultimately made whole through the reconciliation process and there was no immediate need to reduce the GCR on an interim basis.

⁵ 52 Pa. Code §§ 62.71, *et seq.*

6. Customers who sign contracts with NGSs often do so based upon the comparison of the proposed rate to other suppliers and also to the PTC. Some NGDCs actually place the PTC on the customer's bill to emphasize the notion that the PTC is a benchmark of what is a competitive price. When the PTC is uncharacteristically high, customers are incentivized to consider exercising the right to choose a supplier, even if they may not have shopped before. By reducing the PTC twice before the scheduled change dates, Columbia acted to impact the market and drive customers back to default service. These premature price changes also create uncertainty among customers which can have the same impact, and cause customers to leave NGS contracts early, often to the detriment of the supplier and the customer.

IV. LEGAL STANDARD FOR DECLARATORY ORDER

7. Section 331(f) of the Public Utility Code authorizes the Commission to "issue a declaratory order to terminate a controversy or remove uncertainty."

8. The Commission's regulations require petitions for the issuance of a declaratory order to terminate a controversy or remove uncertainty to state clearly and concisely the controversy or uncertainty which is the subject of the petition; cite the statutory provision or other authority involved; include a complete statement of the facts and grounds prompting the petition; and include a full disclosure of the interest of the petitioner.⁶

9. Declaratory orders carry the same effect as other Commission orders and are appealable to the Commonwealth Court as final adjudications.⁷

⁶ 52 Pa. Code § 5.42.

⁷ *Professional Paramedical Services, Inc. v. Pa. PUC*, 525 A.2d 1274 (Pa. Cmwlth. 1987).

V. CONTROVERSY TO BE DECIDED

10. The controversy that is raised for Commission decision here is whether the Commission should issue an Order prohibiting Columbia from filing tariff supplements adjusting its GCR and PTC on an interim basis, absent extraordinary circumstances and Commission approval. The fact that Columbia has recently made two such interim adjustments in consecutive months indicates that it believes it can do so with impunity.

11. RESA urges the Commission to issue a cease-and-desist order prohibiting Columbia from making such adjustments in the future.

VI. ARGUMENT

12. The Public Utility Code, 66 Pa. C.S. § 1307(f) allows for the *quarterly* adjustment of the gas cost rate to account for fluctuations of greater than 2% in the market price. That same section also allows “any party” the ability to notify the Commission if there is a significant difference in the costs of the natural gas costs to the utility and the costs reflected in the then-effective tariff. 66 Pa. C.S. § 1307(f)(1)(i). However, nothing in the noted section of the Public Utility Code or the Commission’s Regulations authorizes automatic interim adjustment of Gas Cost Rates. That is, the Code permits the Commission to consider adjustments to address significant cost increases or decreases relative to rates, but such changes are subject to the Commission “acting on such advice.” 66 Pa. C.S. § 1307(f)(1)(i). Moreover, any tariff making a GCR adjustment on a more frequent basis than quarterly must also provide for a “fixed rate option” that provides customers with the ability to pay for changes in gas costs over a one-year period, subject to reconciliation. Columbia filed an “interim adjustment” that to be effective must be approved by the Commission. To date the Commission has not acted.

13. The Commission has previously issued cease and desist orders against Natural Gas Distribution Companies barring them from filing “interim filings” on the basis that such filings are harmful to competition and become effective long before the Commission has an opportunity to review them in the course of a PGC proceeding.⁸ It is clear that such adjustments are not favored by the Commission.

14. The NGS Parties contend that the filing of an interim adjustment, purporting to be effective on 3 days’ notice, without seeking permission of the Commission for an effective date of less than 60 days in the future, violates the Public Utility Code. Moreover, The NGS Parties aver that the harm of such an interim adjustment - that would be effective for a mere 30 days – in market disturbance and erosion of customer willingness to shop, far outweighs any benefit – benefit that customers would receive in any event, without the interim adjustment. It would appear that Columbia is attempting to turn default service into a variable rate product. There are products in the competitive market that provide a price that is indexed to the PTC and to the extent the PTC was unexpectedly and unnecessarily reduced outside of the normal quarterly cycle, harms the providers.

15. It has not escaped notice that in the second half of 2022, as energy prices were rising, yet Columbia made no effort to increase the GCR/PTC in step with those increases, even though doing so would have provided price signals to customers that would have encouraged them to conserve, so as to avoid the inevitable increased charges later on for the gas they were using while prices were increasing dramatically. Self-serving GCR adjustments when prices are falling help no one because they cause confusion as to the real price of gas and deprive customers of real information that could assist them in adjusting consumption in accordance with the price they will

⁸ *Pa. P.U.C. v. UGI Utilities, Inc.*, Docket No. R-00038411(Order Entered November 24, 2003, Slip Op. at 17-19); affirmed, *UGI Utilities Inc., v. Pa. P.U.C.*, 863 A.2d 144 (Pa. Cmwlth. 2004).

ultimately pay for the gas they use. This inconsistency speaks to Columbia's motive for making the adjustments.

16. Columbia's action is particularly disturbing in light of the fact that Commission has already examined the topic of interim adjustments in at least one prior similar case and has made it clear that such adjustments are anti-competitive.⁹ In that case, the Commission agreed with the ALJ's decision to issue a cease-and-desist order against UGI for any future adjustments.

17. Interim adjustments are anticompetitive because they distort the market by creating unusual intervals in which the PGC and therefore the default service rate commonly known as the Price to Compare ("PTC"), will change. This makes it impossible for suppliers to reliably price their products to address the *de facto* price benchmark that is the PTC. It also distorts the market because the adjustments tend to distort the actual price of natural gas because they are even less centered on the actual market price of natural gas. The Commission has approved no adjustment interval other than the quarterly interval that all 1307(f) utilities use and yet in the span of 30 days, Columbia has made two unsanctioned "interim" adjustments.

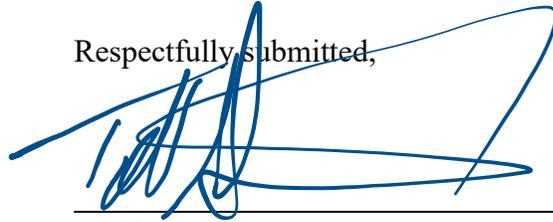
18. The Commission and Commonwealth Court's decisions in the *UGI* cases highlights the anti-competitive nature of interim adjustments, seeking to compete with offers being made by NGSs by modifying the GCR and ultimately the PTC in an effort to match market movement.

⁹ *Pa. P.U.C., et al v. UGI Utilities, Inc. - Gas Division*; Docket No. R-00038411, et seq., 2003 WL 23475437, (Opinion and Order entered November 24, 2003, slip op. p. 9). The Commonwealth Court affirmed the Commission's decision at *UGI Utilities, Inc. - Gas Division v. Pa. P.U.C.*; 863 A.2d 144 (Pa. Cmwlth. 2004) ("*UGI*").

VII. CONCLUSION

WHEREFORE, based on the forgoing RESA respectfully requests that the Commission issue an Order declaring that Columbia's interim adjustments to the GCR and the PTC are anti-competitive and illegal and barring Columbia from filing any adjustments in the future absent extraordinary circumstances and Commission approval.

Respectfully submitted,



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DATED: April 10, 2023