



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

BUREAU OF
INVESTIGATION
&
ENFORCEMENT
BP8#3012079

August 28, 2023

Via Electronic Filing

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

Re: Commission's Order Approving the Revised Joint Petition for Settlement in Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement v. Columbia Gas of Pennsylvania, Inc.
Docket No. M-2022-3012079
I&E's Answer in Opposition to Richard C. Culbertson's Petition for Reconsideration

Dear Secretary Chiavetta:

Enclosed for electronic filing please find the **Bureau of Investigation and Enforcement's Answer in Opposition to Richard C. Culbertson's Petition for Reconsideration** in the above-referenced proceeding.

Copies have been served on the parties of record in accordance with the Certificate of Service. If you have any questions, please contact the undersigned.

Sincerely,

Grant Rosul
Prosecutor
Bureau of Investigation and Enforcement
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GR/ac
Enclosures

cc: As per Certificate of Service
Michael L. Swindler, Deputy Chief Prosecutor, I&E (*via email*)
Kimberly A. Hafner, Acting Director - Legal, OSA (*via email*)
E. Festus Odubo, Deputy Director - Technical, OSA (*via email*)
Office of Special Assistants (*via email* – ra-osa@pa.gov)

Revised Joint Petition for Settlement (“Settlement”) with the Commission for its approval.

On April 5, 2023, and again on April 13, 2023, Richard C. Culbertson filed Comments (“Culbertson Comments” or “April Comments”) with the Commission for its consideration.

In an Opinion and Order dated August 3, 2023, the Commission approved the Settlement between I&E and Columbia Gas.

On August 17, 2023, Richard C. Culbertson filed a Petition for Reconsideration (“Culbertson Petition”). On August 24, the Commission granted reconsideration pending review of, and consideration on, the merits of the petition.

Culbertson’s arguments are a restatement of his April Comments and consist of complaints about the Commission and Columbia Gas that are not relevant to the instant settlement and do not present “new or novel arguments, not previously heard, or considerations which appear to have been overlooked by the Commission.” *Duick v. Pennsylvania Gas and Water Company*, 56 Pa. P.U.C. 553, 559 (1982). Culbertson has not met the standards for reconsideration and his Petition should be denied.

Pursuant to 52 Pa. Code § 1.33 and to avoid repeating arguments, I&E hereby incorporates the Settlement and the Commission’s Opinion and Order Approving the Settlement.

II. LEGAL STANDARD

Section 5.572(c) of the Commission’s regulations permits a party to petition for reconsideration within fifteen (15) days after entry of a Commission order.¹ The standard found in *Duick v. Pennsylvania Gas and Water Company*, 56 Pa. P.U.C. 553, 559 (1982) requires that a reconsideration petition identify “new and novel arguments, not previously heard, or considerations which appear to have been overlooked or not addressed by the Commission,” and is not “a second motion to review and reconsider, to raise the same questions which were specifically considered and decided against them.”²

Absent a new and novel argument or consideration that appears to have been overlooked by the Commission, the Commission has stated that it is “unlikely that a party will succeed in persuading us that our initial decision on a matter or issue was either unwise or in error.”³ Indeed, the Commonwealth Court has affirmed the Commission’s decision to deny reconsideration requesting a second review of questions that were definitively decided against a party.⁴

Culbertson’s arguments in the instant Petition do not meet the Commission’s standards for granting relief in the form of reconsideration as they have either been raised by Culbertson’s Comments and considered by the Commission, consist of general complaints about the Commission and Columbia Gas, or are legal arguments for why the

¹ 52 Pa. Code § 5.572(c).

² *Duick v. Pennsylvania Gas and Water Company*, 56 Pa.P.U.C. 553, 559 (1982) (quoting *Pennsylvania Railroad Co. v. Pennsylvania Public Service Commission*, 179 A. 850, 854 (Pa. Super. 1935)).

³ *Duick v. Pennsylvania Gas and Water Company*, 56 Pa.P.U.C. 553, 559 (1982).

⁴ *Executive Transp. Co., Inc. v. Pa. Pub. Util. Comm’n*, 138 A.3d 145, (Pa. Cmwlth. 2016) (holding that the PUC did not err or abuse its discretion in denying a Petition for Reconsideration that reiterated the same arguments that had been previously advanced).

Commission has no authority to approve the Settlement. For the reasons fully explained below, I&E respectfully requests that the Commission deny Culbertson's Petition for Reconsideration and wholly affirm the August 3, 2023 Opinion and Order.

III. SUMMARY OF ARGUMENT

Culbertson's Petition could be denied on one of four separate grounds. First, Culbertson is not a "party" that is permitted to file a Petition for Reconsideration under the Commission's regulations. Second, Culbertson's Petition for Reconsideration is not in the proper form. Third, the arguments presented in Culbertson's Petition have been considered and rejected by the Commission to the extent that they repeat and reargue the positions presented in Culbertson's Comments, and therefore do not comport with rule articulated in *Duick*. Fourth, Culbertson's Petition should be denied because the Settlement is in the public interest, as articulated by I&E and Columbia Gas in the Settlement and in the Commission's August 3, 2023 Order.

IV. ARGUMENT

A. Culbertson is not a "party" that may file a Petition for Reconsideration

The instant matter arose as an enforcement action by I&E against Columbia Gas resulting from Columbia Gas's operation of its pipelines. The issue that gave rise to the enforcement action did not occur on Culbertson's property or anywhere near it. It did not impact his gas service.

A party is "[a] person who appears in a proceeding before the Commission." I&E and Columbia Gas "appear[ed] in a proceeding before the Commission" when we jointly

filed the Settlement with the Commission for its approval. Culbertson, as a citizen with a general interest in public utility matters, filed his April Comments.

The mere filing of comments by a citizen on a matter before the Commission does not transform him into a party. Were it to be held otherwise, anyone could make themselves a party to any action before the Commission by simply filing comments. This would render moot the Commission's rules regarding intervention. Specifically, a person who wishes to intervene must file a petition to intervene with the Commission. 52 Pa. Code § 5.71. They must either "claim[] a right to intervene" or have "an interest of such nature that intervention is necessary or appropriate to the administration of the statute under which the proceeding is brought." 52 Pa. Code § 5.72.

The overpressurization event that gave rise to I&E's initial investigation of Columbia Gas did not occur on Culbertson's property, affect his gas supply, impinge on any right, affect his interest as a beneficiary of any contract, or otherwise tangentially graze anything having to do with him. His sole interest appears to be that of a concerned citizen. Were any concerned citizen granted the ability to make themselves a party to any proceeding by simply filing a comment, the rules of procedure would be upended and the administration of the Commission's business, including its ability to consider prosecutory actions by I&E, would be hampered. Accordingly, the Petition for Reconsideration should be denied because Culbertson is not a party entitled to file such a petition.

B. Culbertson's Petition for Reconsideration is not in the proper form

Section 5.572 of the Commission's Rules of Procedure specify that any petition for reconsideration must "specify, in numbered paragraphs, the findings or orders

involved, and the points relied upon by petitioner, with appropriate record references and specific requests for the findings or orders desired.” 52 Pa. Code § 5.572.

Culbertson’s Petition for Reconsideration does not have numbered paragraphs for several pages. It does not specify the findings in the August 3, 2023 Order that his Petition for Reconsideration is disputing. And it does not contain “appropriate record references” that his arguments are directed toward. Instead, it seems to be a collection of complaints about the Commission and Columbia Gas that are unrelated to the overpressurization event. Accordingly, Culbertson’s Petition for Reconsideration should be denied because it is not in the form required by the Commission’s rules.

C. Culbertson raises no new or novel arguments and restates his April Comments

As noted, the Petition for Reconsideration is an avenue to provide “new and novel arguments, not previously heard, or considerations which appear to have been overlooked or not addressed by the Commission,” and is not “a second motion to review and reconsider, to raise the same questions which were specifically considered and decided against them.”⁵

Culbertson’s Petition avers that the Commission has no authority to conduct an informal investigation⁶; that the Commission must order Columbia Gas to conduct a “root cause analysis”⁷; discusses issues Culbertson has with Columbia Gas’s service to

⁵ *Supra* n. 2.

⁶ Culbertson Petition at 5.

⁷ *Id.* at 6.

his property⁸; discusses an incident involving Columbia Gas in Massachusetts⁹; questions Columbia Gas’s propriety in firing one of its employees¹⁰; laments that his concerns were not addressed in previous rate cases involving Columbia Gas¹¹; and objects to the settlement because it will not prevent future violations.¹²

Culbertson’s petition also appears to make a legal argument that the Commission has no authority to approve the Settlement because there was no hearing and invokes the federal sentencing guidelines.

Addressing his legal argument first, Culbertson fails to realize that there was no hearing because the parties settled the matter and avoided a hearing. The cited statute, 66 Pa. C.S. § 331, does not preclude settlements between I&E and any entity under its jurisdiction that is investigated for violations of the Code or Commission regulations. In fact, as Culbertson recognizes, it is the policy of the Commission to encourage settlements.¹³

Section 331 of the Code only disallows a Commission order without first “*affording* the parties affected thereby a hearing.” 66 Pa. C.S. § 331(a) (emphasis added). This simply ensures that if a party so desires, a hearing before an Administrative Law Judge will be held before the Commission will impose an order. Here, neither party wanted a hearing because both parties chose to settle the matter.

⁸ *Id.* at 7.

⁹ *Id.* at 8-11.

¹⁰ *Id.* at 12.

¹¹ *Id.* at 12-13.

¹² *Id.* at 6.

¹³ 52 Pa. Code § 5.231(a).

Further, the federal sentencing guidelines are inapposite because we are not before a federal court, I&E is not empowered to bring federal criminal charges against any party, and Columbia Gas has not been convicted of a federal crime.

Addressing the pablum of commentary offered by Culbertson, none of it raises new or novel arguments or presents newly discovered information regarding the matter resolved by the instant Settlement for the Commission to consider. For instance, it is unclear how Columbia Gas's requiring Culbertson to replace his service line, locking him out of his service line, and failing to install a valve raises new facts for the Commission to consider in the instant case.

Additionally, Culbertson's restatement of federal pipeline regulations followed by conclusory statements that Columbia Gas is not following such regulations should be accorded no weight. Even if they were somehow cogent arguments, they would still fall outside the *Dulick* requirement to raise "new or novel" arguments. The arguments raised by Culbertson in his Petition are substantially the same as those that were raised in his April Comments and the Commission was aware of them at the time of its August 3, 2023 Order.

Here, as in the April Comments, Culbertson's "comments are quite broad and do not appear to be focused on the overpressurization events on the Rimersburg and Fayetteville systems."¹⁴ Additionally, his argument that the Commission does not have the authority to approve a settlement is baseless and was already raised in the April

¹⁴ August 3, 2023 Order at 18.

Comments. Because he presents no new or novel argument or provides any newly-discovered fact pertaining to the underlying event giving rise to the investigation and eventual settlement in this case, Culbertson fails to provide a basis on which the requested relief can be granted on a Petition for Reconsideration.

D. The Commission is correct that the Settlement is in the public interest

As discussed in detail in the August 3, 2023 Order, the Settlement is in the public interest. The Commission went through the 10 *Rosi* factors, how they are applicable to the overpressurization event at issue and the Settlement agreement, including the \$535,000 civil penalty and the corrective measures implemented or to be implemented by Columbia Gas. The civil penalty was commensurate with that in other overpressurization cases, Columbia Gas was cooperative with I&E’s investigation, and Columbia Gas implemented a number of corrective actions of its own accord as well as agreeing to other corrective measures specified in the Settlement. As the Commission recognized, “the corrective actions will provide a public benefit to all of Columbia Gas’ customers.”¹⁵

V. CONCLUSION

The Commission’s ruling that the Settlement is in the public interest is as correct today as it was three weeks ago when the Commission issued its Opinion and Order. Culbertson’s Petition will further delay the ability to move on from this matter, finalize remedial measures and address other important safety matters. Culbertson fails to recognize and appreciate the hundreds of hours and resources expended by I&E —

¹⁵ August 3, 2023 Order at 28.

including both legal enforcement prosecutors and safety division engineers — to work with Columbia Gas to reach an amicable settlement that brings safety to the forefront and is clearly in the public interest.

I&E respectfully requests, for the reasons discussed above, that Culbertson's Petition for Reconsideration be denied.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "G. Rosul", written in a cursive style.

Grant Rosul
Prosecutor
PA Attorney ID No. 318204

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Dated: August 28, 2023

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Commission’s Order Approving the :
Revised Joint Petition for Settlement :
in Pennsylvania Public Utility : Docket No. M-2022-3012079
Commission, Bureau of Investigation :
and Enforcement v. Columbia Gas of :
Pennsylvania, Inc. :

CERTIFICATE OF SERVICE

I hereby certify that I have this day, August 28, 2023, served a true copy of the foregoing **Bureau of Investigation and Enforcement’s Answer in Opposition to Richard C. Culbertson’s Petition for Reconsideration**, upon the parties listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

Service by Electronic Mail:

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