

**BEFORE
THE PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition For Declaratory Order of the	:	
Retail Energy Supply Association	:	
Re Columbia Gas' Interim Purchase Gas Cost	:	P-2023-3039774
Adjustment Filings	:	

INITIAL DECISION

Before
Christopher P. Pell,
Deputy Chief Administrative Law Judge

And

Chad L. Allensworth,
Administrative Law Judge

INTRODUCTION

This Initial Decision finds that the Joint Petition for Approval of Settlement of the Retail Energy Supply Association and Columbia Gas of Pennsylvania, Inc. is in the public interest. It will be approved in its entirety without modification.

HISTORY OF THE PROCEEDING

On April 10, 2023, the Retail Energy Supply Association (“RESA”) filed a Petition for Declaratory Order (“petition”) with the Pennsylvania Public Utility Commission (“Commission”) in this matter seeking an order regarding the legality of supplemental tariff filings by Columbia Gas of Pennsylvania, Inc. (“Columbia Gas”) regarding purchased gas costs (“PGC”). Specifically, RESA requested the issuance of a Declaratory Order by the Commission declaring that two “interim” PGC filings, filed on February 27, 2023 and March 28, 2023, were

illegal, unwarranted, and contrary to Commission precedent that finds such adjustments to the PGC, which are then reflected in the price to compare (“PTC”), are anticompetitive. Because the tariff supplements have already been implemented, RESA requested a cease-and-desist order that prohibits Columbia from making any such future adjustments on an “interim” basis.

On May 1, 2023, Columbia Gas and the Office of Consumer Advocate (“OCA”) filed separate Answers to the petition.

On July 7, 2023, a Telephonic Prehearing Conference Notice was issued assigning Deputy Chief Administrative Law Judge (“DCALJ”) Christopher P. Pell and Administrative Law Judge (“ALJ”) Chad L. Allensworth as the presiding officers and scheduling a Prehearing Conference for August 8, 2023.

On July 12, 2023, DCALJ Pell and ALJ Allensworth issued a Prehearing Conference Order for this matter that included deadlines for the parties to file prehearing memoranda by August 4, 2023.

On August 4, 2023, RESA, Columbia Gas and OCA all filed Prehearing Memoranda in accordance with the July 12, 2023 Prehearing Conference Order. The parties indicated in their Prehearing Memoranda that RESA and Columbia Gas were attempting to settle this matter. Communications with the parties reflected that there was unanimous agreement to cancel the prehearing conference.

By Interim Order dated August 7, 2023, we cancelled the August 8, 2023 Prehearing Conference.

By email dated August 28, 2023, Todd Stewart, Esq., Counsel for RESA, informed us that Columbia Gas and RESA had reached a Settlement which OCA agreed not to oppose as long as Columbia Gas and RESA agree that the Settlement is non-precedential.

Following additional communications with the parties, we instructed the settling parties to file their joint petition for settlement, statements in support of the settlement, and a joint stipulation of facts in support of the settlement on or after Friday, November 3, 2023, but no later than Tuesday, November 7, 2023.

On November 7, 2023, RESA and Columbia Gas (collectively, Joint Petitioners) filed their Joint Petition for Approval of Settlement of the Retail Energy Supply Association and Columbia Gas of Pennsylvania, Inc. (Settlement) with associated documents, including their Joint Stipulation of Facts and respective statements in support of the Settlement. Although the OCA did not join in the Settlement, the Joint Petitioners represented that the OCA does not oppose the Settlement.

FINDINGS OF FACT¹

1. On or about February 28, 2023, Columbia submitted Tariff Supplement 356 to its Tariff Gas Pa. P.U.C. No. 9, to be effective March 1, 2023.

2. On April 10, 2023, RESA filed the above captioned Petition for Declaratory Order in which it averred that Columbia's interim adjustment, accomplished via Supplement No. 356, was contrary to the law and otherwise anticompetitive.

3. On May 1, 2023, Columbia filed an answer to RESA's Petition wherein it denied the material allegations of the Petition for Declaratory Order.

4. Also on May 1, 2023, the Office of Consumer Advocate submitted an answer to the Petition for Declaratory Order.

¹ The Joint Petitioners stipulated to the Findings of Fact presented here. The Joint Petitioners stipulated to these facts to provide a factual basis for the presiding Administrative Law Judges and the Commission to determine the justness and reasonableness of the Settlement. The Joint Petitioners advised that these stipulated facts are for this matter only, and only for the purposes stated herein. The Joint Petitioners further advised that this Stipulation does not constitute an admission by either party to the allegations raised by any other party.

5. By notice dated July 7, 2023, this matter was assigned to Deputy Chief Administrative Law Judge Christopher P. Pell and Administrative Law Judge Chad L. Allensworth and was set for a prehearing conference on August 8, 2023.

6. Prior to the Prehearing Conference, the parties engaged in settlement negotiations and reflected a potential for settlement in their respective prehearing conference memorandums.

7. The Prehearing Conference was cancelled, and the parties notified the ALJs on August 28, 2023, that a settlement had been achieved. By subsequent Order, the ALJs directed the parties to submit a Joint Petition for Settlement, a Joint Stipulation of Facts, and Statements in Support of the Settlement, on or before November 7, 2023.

8. Supplement 356 reduced Columbia's purchased gas cost ("PGC") rate by approximately 22%, effective March 1, 2023.

9. Columbia is a 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.

10. Columbia files its annual gas costs case pursuant to 66 Pa.C.S. § 1307(f) on or about April 1 of each year. Columbia makes its quarterly purchased gas cost filings on or about July 1, October 1, December 1, and April 1 of each year.

11. RESA is an association of diverse competitive energy suppliers for residential and business customers. Members of RESA include NGSs licensed by the Commission, pursuant to the Natural Gas Choice and Competition Act, to sell natural gas supply to retail customers throughout Pennsylvania and in Columbia's service territory.

12. NGSs sell natural gas to customers via natural supply contracts that are subject to, for residential and small commercial customers, the Commission's detailed regulations regarding language to be included in the contracts as 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.²

13. Changes to the gas cost rate impact the Price to Compare, which is the retail rate charged to customers who do not purchase natural gas from a competitive supplier and is the *de facto* comparison price for most retail customers.

14. Columbia submitted Supplement 356 to implement a reduced PGC rate to customers because the drop in market prices was significant in late 2022, and the Company had over-collected approximately \$18.7 million from PGC customers from January 1, 2023 to February 28, 2023.

15. Columbia estimated that without an interim adjustment effective March 1, 2023, the Company would have over-collected an estimated additional \$5.6 million from customers from March 1, 2023 to April 1, 2023.

16. Columbia determined that without an interim adjustment effective March 1, 2023, the Company projected a 33% reduction in rates beginning October 1, 2023, due to the return to customers of the overcollection plus interest included in the E-factor (reconciliation of over or under collections plus interest).

17. Columbia's PGC filing made on or about March 28, 2023, to be effective April 1, 2023, was pursuant to the Company's quarterly schedule.

18. RESA filed the instant Petition at the above docket in order to present its concern that interim adjustments may harm the market because changing the PTC more often than quarterly can cause shopping customers to cancel fixed rate contracts that may appear to be more costly than the PTC and, in some cases, might cause customers to incur early termination fees.

² See 52 Pa. Code §§ 62.71–62.81.

19. In the instant Petition, RESA also argued that making interim adjustments to the PGC to reflect the market more closely transforms default service into a competitive variable price product and that could create harmful volatility in the competitive market.

20. In its Answer, Columbia denied RESA's assertions in its Petition regarding any alleged market harm of its interim PGC adjustment.

LEGAL STANDARD

Section 331(f) of the Code, 66 Pa.C.S. § 331(f), and Commission regulations at 52 Pa. Code § 5.42, provide that the Commission may issue a Declaratory Order to terminate a controversy or to remove uncertainty. Section 331(f) of the Code states: "Declaratory Orders - The commission, with like effect as in the case of other orders, and in its sound discretion, may issue a declaratory order to terminate a controversy or remove uncertainty."³ Section 5.42 of the Commission's regulations⁴ states in part:

Petitions for declaratory orders.

- (a) Petitions for the issuance of a declaratory order to terminate a controversy or remove uncertainty must:
 - (1) State clearly and concisely the controversy or uncertainty which is the subject of the petition.
 - (2) Cite the statutory provision or other authority involved.
 - (3) Include a complete statement of the facts and grounds prompting the petition.
 - (4) Include a full disclosure of the interest of the petitioner.

³ 66 Pa.C.S. § 331(f).

⁴ 52 Pa. Code § 5.42.

A declaratory judgment is a means to declare rights, status, and other legal relations⁵ and “is to be liberally applied to afford relief from uncertainty and insecurity.”⁶ But a “declaratory judgment must not be employed to determine rights in anticipation of events which may never occur or for consideration of moot cases or as a medium for the rendition of an advisory opinion which may prove to be purely academic.”⁷

RESA filed its Petition pursuant to 66 Pa.C.S. § 331(f) and 52 Pa. Code § 5.42. Under these provisions, the issuance of a declaratory order is subject to the Commission’s sound discretion and is employed to resolve actual controversies or remove uncertainty.⁸ Declaratory orders carry the same effect as other Commission Orders and are appealable to the Commonwealth Court as final adjudications.⁹

Section 332(a) of the Code provides that the party seeking relief from the Commission has the “burden of proof” which is a duty to establish a fact by a “preponderance of the evidence.”¹⁰ The term “preponderance of the evidence” means that one party has presented evidence which is more convincing, by even the smallest amount, than the evidence presented by the other party.¹¹

Commission policy promotes settlements.¹² Settlements lessen the time and expense the parties must expend litigating a case and at the same time conserve precious

⁵ See 42 Pa.C.S. §§ 7532, 7533.

⁶ *Twp. of Derry v. Pa. Dep’t of Lab. & Indus.*, 932 A.2d 56, 59 (Pa. 2007) (citing 42 Pa.C.S. § 7541(a)).

⁷ *Gulnac v. S. Butler Cnty. Sch. Dist.*, 587 A.2d 699, 701 (Pa. 1991).

⁸ *Application of the City of Chester*, Docket No. A-2012-2298192 (Opinion and Order entered Aug. 21, 2014).

⁹ *Prof’l Paramedical Servs., Inc. v. Pa. Pub. Util. Comm’n*, 525 A.2d 1274 (Pa. Cmwlth. 1987).

¹⁰ 66 Pa.C.S. § 332(a).

¹¹ *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950).

¹² 52 Pa. Code § 5.231.

administrative hearing resources. The Commission has indicated that settlement results are often preferable to those achieved at the conclusion of a fully litigated proceeding.¹³

In order to accept a settlement, the Commission must first determine that the proposed terms and conditions are in the public interest.¹⁴

TERMS OF THE SETTLEMENT

On behalf of the Joint Petitioners, RESA filed a Settlement on November 7, 2023. The Settlement is six pages in length, includes the terms of the Settlement and also includes three attachments attached as Appendix A through Appendix C. Appendix A is the Joint Stipulation of Facts of the Retail Energy Supply Association and Columbia Gas of Pennsylvania, Inc. Appendix B is RESA's Statement in Support of the Settlement. Appendix C is Columbia's Statement in Support of the Settlement.

The principal terms of the Settlement, contained in Section III of the Settlement (the original heading and numbering is maintained here for ease of reference), provide that:

III. SETTLEMENT

7. The terms of this Settlement are intended to create a process by which Columbia, and only Columbia, will proceed in any future circumstance in which it may seek an interim adjustment to its PGC that is not a regularly scheduled quarterly adjustment. The Settlement does not resolve RESA's arguments regarding the legality or propriety of an interim PGC adjustment by Columbia. Rather, it is a compromise that will allow the Joint Petitioners to move forward without litigating those issues and preserving the arguments made by the parties to this proceeding.

¹³ 52 Pa. Code § 69.401.

¹⁴ *Pa. Pub. Util. Comm'n v. York Water Co.*, Docket No. R-00049165, (Order entered Oct. 4, 2004); *Pa. Pub. Util. Comm'n v. C.S. Water and Sewer Assocs.*, 74 Pa.P.U.C. 767 (1991).

8. The terms of the Settlement are:
 - a. If in the future, Columbia desires to make an interim adjustment to the PGC, whether that adjustment be to increase or decrease the PGC, it will make a filing with the Commission seeking approval of such adjustment. Columbia reserves the right to make such filing on an expedited basis.
 - b. If Columbia seeks to adjust its PGC through a filing as described above, Columbia will provide notice to all suppliers ("NGSs") serving load on its system, by email, provided that it will only provide notice to NGSs that have a valid email address registered with Columbia for the receipt of notices.

CONDITIONS OF THE SETTLEMENT

The Joint Petitioners note that this Settlement is conditioned upon the Commission's approval of the terms and conditions contained herein without modification. If we or the Commission modify the Settlement, then either Joint Petitioner may elect to withdraw from this Settlement and proceed with litigation. In such event, this Settlement shall be void and of no effect. The Joint Petitioners indicate that such election to withdraw must be made in writing, filed with the Secretary of the Commission and served upon all Joint Petitioners within five business days after the entry of any recommendation or Order modifying the Settlement.

The Joint Petitioners further note that it is understood and agreed by the Parties, that the terms of this Settlement are unique to Columbia and to the facts of this matter and may not be cited as precedent in any future proceeding, except to the extent required to implement or enforce this Settlement. Moreover, the Joint Petitioners stress that the Commission's approval of the Settlement shall not be construed to represent approval of either Joint Petitioner's position on any issue raised in this proceeding, except to the extent required to effectuate the terms and agreements of the Settlement in these and future proceedings involving Columbia.

The Joint Petitioners agree that the Settlement is the result of compromise and does not necessarily represent the position(s) that would be advanced by either Joint Petitioner in

these proceedings, if they were fully litigated. The Joint Petitioners further agree that this Settlement is being presented only in the context of these proceedings to resolve the proceedings in a manner that is just and reasonable. The Settlement is the product of compromise between and among the Joint Petitioners. This Settlement is presented without prejudice to any position that any of the Joint Petitioners may have advanced and without prejudice to the position any of the Joint Petitioners may advance in the future on the merits of the issues in future proceedings except to the extent necessary to effectuate the terms and conditions of this Settlement. This Settlement does not preclude the Joint Petitioners from taking other positions in proceedings involving other public utilities under Section 1308 of the Public Utility Code,¹⁵ or any other proceeding.

Lastly, the Joint Petitioners advise that if we adopt the Settlement without modification, the Joint Petitioners waive their individual rights to file exceptions with regard to the Settlement.

DISCUSSION OF THE SETTLEMENT

A. RESA's Position

RESA avers that the Settlement creates a process by which Columbia will proceed, if in the future it desires to adjust its PGC on an interim basis, that is, not a regularly scheduled quarterly adjustment. According to RESA, the process is “simple” and applies whether the interim adjustment is an increase or decrease. Instead of simply submitting the tariff, Columbia will make a filing seeking Commission approval of the interim adjustment and will serve that filing on all licensed suppliers operating in the Columbia service territory for which Columbia has valid email addresses. Columbia reserves the right to make such a filing on an expedited basis.¹⁶

¹⁵ 66 Pa.C.S. § 1308

¹⁶ RESA Statement in Support at 2-3.

RESA notes that the Settlement is specific to Columbia and specific to non-scheduled interim adjustments. However, it will provide a critical opportunity for suppliers who may wish to challenge such an adjustment, with notice and an opportunity to be heard, before the Commission addresses any such interim adjustment. The Settlement also leaves the determination of whether any particular interim adjustment is just and reasonable to the circumstances of any such future interim adjustment. The Settlement does not address the interim adjustment that prompted the filing of the Petition, and instead is oriented to providing a clear process for the future.¹⁷

RESA maintains that the Settlement is just and reasonable because it resolves the dispute regarding the March interim adjustment, not by seeking to unwind it, with all the uncertainty that such a proceeding can involve, and instead provides a reasonable process to address any such filings in the future, in a manner that will provide concerned parties with notice and an opportunity to participate in the process before an adjustment becomes effective. Considering the infrequency of such filings, RESA believes that it is best to address each on its own merits, and this process will allow that to happen. The result produced by this settlement will provide notice to all suppliers on the Columbia system at the time the filing is made, which was not done in the case that sparked this filing. RESA maintains that all of these factors prove that the Settlement is just and reasonable and in the public interest and should be approved.¹⁸

Accordingly, RESA requests that we and the Commission approve the Settlement without modification.

B. Columbia's Position

Columbia submits that the proposed Settlement is in the public interest and should be approved by us and the Commission. Columbia asserts that the Settlement sets forth a process for Columbia to seek to implement an interim PGC rate, which process does not affect or

¹⁷ *Id.* at 3.

¹⁸ *Id.*

alter Columbia's regularly scheduled quarterly PGC rate filings. The aforementioned process provides for notice to interested stakeholders, such as NGSs, prior to the implementation of an interim PGC rate. Columbia notes that the last time the Company sought to implement an interim PGC rate, Columbia utilized the aforementioned process.¹⁹

Additionally, Columbia avers that approval of the Settlement will avoid the substantial time, effort and costs associated with litigation of RESA's Petition. Moreover, the Settlement has no precedential value to any other public utility seeking to implement an interim PGC rate.²⁰

C. Disposition

The provisions of the Settlement will adequately address the concerns raised by RESA in the Petition for Declaratory Order it filed regarding Columbia's interim PGC filings and are therefore in the public interest. The Settlement provides a process for Columbia to follow in the future if it wishes to make an interim adjustment to the PGC. That process requires Columbia to make a filing with the Commission seeking approval of the adjustment, and also requires Columbia to provide notice to all NGSs serving its system. As noted by RESA, this will allow suppliers who may oppose the adjustment an opportunity to challenge the adjustment. Allowing suppliers an opportunity to weigh in on any future adjustments will ensure that any Commission decision on a proposed adjustment to the PGC is just, reasonable, and in the public interest.

Moreover, approving and adopting the Joint Petition for Approval of Settlement is in the public interest because accepting the Settlement will avoid the substantial time and expense involved in litigating the proceeding. Accepting the Settlement will negate the need to examine or cross-examine witnesses, prepare main briefs, reply briefs, exceptions and reply

¹⁹ See *Columbia Gas of Pennsylvania, Inc. Petition Concerning a Change in Purchased Gas Costs*, P-00062200 (Order entered Jan. 27, 2006); Columbia Statement in Support at 3.

²⁰ Columbia Statement in Support at 3-4.

exceptions and possibly file appeals. Avoiding these expenses serves the interests of RESA, Columbia, and the OCA, as well as the general public.

Accordingly, we find that granting the Joint Petition for Approval of Settlement of the Retail Energy Supply Association and Columbia Gas of Pennsylvania, Inc. is in the public interest.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction to decide the instant Petition for Declaratory Order. 66 Pa.C.S. §§ 701, 331(f).

2. Commission policy promotes settlements. 52 Pa. Code § 5.231.

3. The Commission has indicated that settlement results are often preferable to those achieved at the conclusion of a fully litigated proceeding. 52 Pa. Code § 69.401.

4. In order to accept a settlement, the Commission must first determine that the proposed terms and conditions are in the public interest. *Pa. Pub. Util. Comm'n v. York Water Co.*, Docket No. R-00049165, (Order entered Oct. 4, 2004); *Pa. Pub. Util. Comm'n v. C.S. Water and Sewer Assocs.*, 74 Pa.P.U.C. 767 (1991).

5. The Joint Petition for Approval of Settlement and its proposed terms and conclusions are in the public interest. *Pa. Pub. Util. Comm'n v. York Water Co.*, Docket No. R-00049165, (Order entered Oct. 4, 2004); *Pa. Pub. Util. Comm'n v. C.S. Water and Sewer Assoc.*, 74 Pa.P.U.C. 767 (1991).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Joint Petition for Approval of Settlement of the Retail Energy Supply Association and Columbia Gas of Pennsylvania, Inc. filed November 7, 2023, is admitted into the record of this proceeding.

2. That the Joint Petition for Approval of Settlement of the Retail Energy Supply Association and Columbia Gas of Pennsylvania, Inc. filed November 7, 2023, is approved in its entirety without modification.

3. That if Columbia desires to make an interim adjustment to the Purchased Gas Cost in the future, whether that adjustment be to increase or decrease the Purchased Gas Cost, Columbia must make a filing with the Commission seeking approval of such adjustment.

4. That if Columbia seeks to adjust its Purchased Gas Cost through the aforementioned filing, Columbia must provide notice to all natural gas suppliers serving load on its system, by email, provided that it must only provide notice to natural gas suppliers that have a valid email address registered with Columbia for the receipt of notices.

5. That the Secretary mark the docket at P-2023-3039774 closed.

Date: November 28, 2023

/s/
Christopher P. Pell
Deputy Chief Administrative Law Judge

/s/
Chad Allensworth
Administrative Law Judge