



April 29, 2024

VIA ELECTRONIC FILING

Rosemary Chiavetta, Secretary
PA Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105

Re: Columbia Gas of Pennsylvania, Inc. Universal Service and Energy Conservation Plan for 2024 – 2028, Docket No. M-2023-3039487

Dear Secretary Chiavetta:

Attached for filing, please find the **Answer of the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania’s (CAUSE-PA) to the Columbia Gas of Pennsylvania, Inc. Petition for Reconsideration.** for the above referenced proceeding.

Copies were served electronically consistent with the attached certificate of service.

Respectfully submitted,



Elizabeth R. Marx, Esq.
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BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

Columbia Gas of Pennsylvania, Inc. :
Universal Service and Energy Conservation Plan : Docket No. M-2023-3039487
for 2024-2028 :

Certificate of Service

I hereby certify that I have, on this day, served copies of the **Answer of the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania’s (CAUSE-PA)** in the above captioned matter upon the following persons in accordance with the requirements of 52 Pa. Code § 1.54.

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April 29, 2024

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

Columbia Gas of Pennsylvania, Inc. :
Universal Service and Energy Conservation Plan : Docket No. M-2023-3039487
for 2024-2028 :

**ANSWER OF COALITION FOR AFFORDABLE UTILITY SERVICES AND ENERGY
EFFICIENCY IN PENNSYLVANIA TO THE PETITION FOR RECONSIDERATION
OF THE COLUMBIA GAS OF PENNSYLVANIA, INC. UNIVERSAL SERVICE AND
ENERGY CONSERVATION PLAN FOR 2024-2028**

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April 29, 2024

I. INTRODUCTION

Pursuant to the provisions of the Rules of Practice and Procedure of the Pennsylvania Public Utility Commission (Commission), 52 Pa. Code §§ 5.61(e), the Coalition for Affordable Utility Services and Energy Efficiency in PA (CAUSE-PA), through its counsel at the Pennsylvania Utility Law Project, respectfully submits this Answer to the Petition of Columbia Gas of Pennsylvania, Inc. (Columbia or the Company) for Reconsideration of the Commission's Order adjudicating its Universal Service and Energy Conservation Plan for 2024-2028 (2024 USECP), (Columbia Petition).

For the reasons explained more thoroughly below, CAUSE-PA recommends the Commission deny, in part, Columbia's first request for reconsideration. Columbia's request pertains to the Commission's directive that, absent informed consent, Columbia may not apply a security deposit refund to a customer's account balance. In issuing this directive, the Commission correctly analyzed section 1404(a.1) of the Public Utility Code and sections 56.32(e) and 56.53(f) of the Commission's regulations, and ordered Columbia to obtain informed consent prior to applying a previously collected security deposit to a low income customers' account balance. (April 4 Order at 30-31).¹ The law is clear on this point, and the Commission's order should not be disturbed.

Nevertheless, Columbia identifies issues of concern regarding its procedure for issuing direct security deposit refunds. Specifically, Columbia argues that providing CAP enrollees with the option of receiving a direct refund in compliance with the law will be costly and will cause substantial delay in CAP enrollment. (Columbia Petition at 4-5). Columbia seeks permission to instead apply security deposit refunds for CAP enrollees as an account credit applied to their

¹ 66 Pa. C.S. § 1404(a.1); 56 Pa. Code §§ 56.32(e), 55.53(f).

forward-going bill. (Id.)

While Columbia's assertions are not particularly novel, and should have been raised earlier in the proceeding, we believe it is necessary to address Columbia's concerns now to prevent harm to low income customers. As discussed more thoroughly below, CAUSE-PA submits that the Commission should further clarify its April 4 Order in a manner that preserves the Commission's sound legal conclusions and the corresponding right of low income customers to receive a refund of improperly held security deposits, addresses Columbia's procedural concerns, and protects low income customers from harm.

CAUSE-PA is not opposed to Columbia's second request for reconsideration, regarding the deadline for reporting data and information regarding Columbia's Health and Safety Pilot and Emergency Furnace Repair Program, but otherwise takes no position on the issue.

II. BACKGROUND

On April 5, 2023, Columbia filed its Proposed 2024 USECP.²

On June 15, 2023, the Commission issued an Order (June 15 Order),³ which directed Columbia to provide supplemental information to gather detailed explanation, clarification, and data related to provisions included in its 2024 USECP. The June 15 Order additionally invited Comments and Reply Comments from interested parties. On July 17, 2023, Columbia filed supplemental information in response to the June 15 Order.

On July 11, 2023, CAUSE-PA filed a Petition to Intervene in this proceeding.

On August 7, 2023, CAUSE-PA and the Office of Consumer Advocate (OCA) each filed initial Comments to the Commission's June 15 Order. On August 22, 2023, Columbia, OCA, and CAUSE-PA each filed Reply Comments.

² Columbia Universal Service and Energy Conservation Plan for 2024-2028 (2024 USECP), Docket No. M-2023-3039487, filed on April 5, 2023.

³ Proposed 2024 USECP, Order Requesting Information and Establishing a Comment Period, Docket No. M-2023-3039487, entered on June 15, 2023.

On April 4, 2024, the Commission issued an Order (April 4 Order) directing Columbia to make several amendments to its 2024 USECP and requiring Columbia to file a revised USECP in conformance with the provisions of its order.

On April 19, 2024, Columbia filed the instant Petition, requesting reconsideration of two provisions of the Commission's April 4 Order: (1) the Commission's directive that the Company permit low income customers to choose the method for issuing security deposits refunds (along with any accrued interest), and (2) the Commission's April 1 deadline for reporting annual data regarding Columbia's Health and Safety Pilot and Emergency Repair Program.

III. STANDARD FOR REVIEW

The Commission clearly articulated the standard for granting a Petition for Reconsideration in *Duick v. Pennsylvania Gas and Water Co. (Duick)*, concluding:

A Petition for Reconsideration, under the provisions of 66 Pa. C.S. § 703(g), may properly raise any matters designed to convince this 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, [the Commission] agree[s] with the Court in the *Pennsylvania Railroad Company* 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 decided against them. . . ." What [the Commission] expect[s] to see raised in such petitions are new and novel arguments, not previously heard, or considerations which appear to have been overlooked by the Commission.⁴

When granted, petitions for reconsideration can disrupt the balance struck in a final order of the Commission. Pennsylvania's appellate courts have thus found that such relief should be granted judiciously, and only under appropriate circumstances.⁵ Pennsylvania courts have consistently held that the Commission is not required to expressly address every contention or

⁴ *Duick v. Pennsylvania Gas and Water Co.*, Docket No. C-R0597001 *et al.*, 56 Pa. PUC 553, 559 (1982), quoting *Pa. Railroad Co. v. Pa. Public Service Commission*, 179 A. 850, 854 (Pa. Super. Ct. 1935) (emphasis added) (indicating that the standard set forth in *Duick* may be properly applied to petitions for clarification).

⁵ See *West Penn Power v. Pa. PUC*, 659 A.2d 1055 (Pa. Commw. Ct. 1995), *petitions for allowance of appeal denied*, 674 A.2d 1079 (Pa. 1996); *City of Pittsburgh v. PennDOT*, 416 A.2d 461 (Pa. 1980).

argument raised by an interested party.⁶ Even if the Commission does not expressly discuss and dispose of a particular issue raised by a party through the course of a proceeding, the Commission is considered to have implicitly addressed and disposed of the issue without discussion.⁷ Thus, to meet the *Duick* standard for reconsideration, a party must raise a “new and novel” argument, or face the likelihood that the petition will be denied absent compelling arguments to the contrary.⁸

IV. ANSWER

In its Petition, Columbia requests the Commission reconsider (1) the manner by which the Company must refund security deposits to customers who are income eligible for CAP and (2) the date by which reports are due for its Healthy and Safety Pilot and Emergency Repair Program. CAUSE-PA is not opposed to Columbia’s second request for reconsideration, and takes no further position on this issue.

Regarding Columbia’s first request for reconsideration, CAUSE-PA submits that the Commission should deny reconsideration of the legal aspects of the Commission’s April 4 Order. Nevertheless, we submit that further clarification of the Commission’s April 4 Order regarding the procedure for issuing security deposit refunds to low income customers appears to be warranted to prevent harm to low income households.

In its April 4 Order, the Commission correctly concluded, pursuant to statutory and regulatory law, that Columbia must refund security deposits collected from customers who are

⁶ See, e.g., PPL Electric Utilities Corporation Universal Service and Energy Conservation Plan for 2017-2019 Submitted in Compliance with 52 Pa Code § 54.74, Order, Docket No. M-2016-2554787, at 9 (order entered April 19, 2018) (hereinafter PPL Electric USECP for 2017-2019), citing Consolidated Rail Corp. v. Pa. PUC, 625 A.2d 741 (Pa. Commw. Ct. 1993); Univ. of Pa. v. Pa. PUC, 485 A.2d 1217 (Pa. Commw. Ct. 1984).

⁷ The Commission is not required to consider expressly or at length each contention or argument raised by the parties. Consolidated Rail Corp. v. Pa. Public Utility Commission, 625 A.2d 741 (Pa. Commw. 1993).

⁸ See Michael W. Chattin, et al. vs. Pennsylvania Electric Company, Metropolitan Edison Company and West Penn Power Company, Docket Nos. C-2017-263049 and C-2018-3001563 et al., Statement of Vice Chair Kimberly Barrow, Public Meeting held February 22, 2024.

later determined to be low income. (April 4 Order at 30-31)⁹. The Commission explained that its regulations “do not permit the utility to apply a deposit to a delinquent account balance” and, going forward, directed Columbia to obtain informed consent from customers before applying a security deposit refund to a customer’s account balance. (Id. at 31).

Columbia raises no new and novel or overlooked issues which warrant revisiting the Commission’s legal conclusion that Columbia may not apply a deposit to a prior account balance unless the customer provides informed consent. The legality of Columbia’s existing security deposit refund policy, as it pertains to CAP customers, was raised in the Commission’s June 15 Order, was addressed in Columbia’s Supplemental Information, was raised by both CAUSE-PA and OCA in our respective Comments, and was further discussed in Columbia’s Reply Comments. (Columbia Supp. Info. at 7; CAUSE-PA Cmts. at 15-17; OCA Cmts. at 21-23; Columbia Reply Cmts. at 7-8). Without reiterating the lengthy arguments contained in each of these prior filings, CAUSE-PA submits that the requirements of section 1404(a.1) of the Public Utility Code and sections 56.32(e) and 56.53(f) were thoroughly reviewed and should not be disturbed. As the Commission properly concluded, when a public utility is holding a security deposit that was previously collected from a customer later determined to be low income, the utility must refund the deposit to the customer – with interest – and may not apply the deposit to a prior account balance absent informed consent. This sound decision should be upheld.

Columbia asserts for the first time in its Petition for Reconsideration that the process of obtaining informed consent and issuing a refund via check, consistent with the Commission’s April 4 Order, would be “time consuming and expensive” and would substantially delay CAP enrollment until a refund check is both issued and cashed by the CAP-eligible customer. (Columbia Petition at 4-5). It proposes an alternative, seeking approval to apply security deposit

⁹ Citing 66 Pa. C.S. § 1404(a.1); 52 Pa. Code §§ 56.32(e), 56.53(f).

refunds to CAP enrollees as a forward-going bill credit – rather than its current practice of applying the refund to a CAP enrollees’ prior account balance.

While Columbia did not previously assert arguments regarding the cost of issuing direct security deposit refunds (via check) or the likelihood of CAP processing delays, we note that it had the opportunity to do so at each stage throughout the proceeding. Unfortunately, the current established procedure for review of USECPs limits the ability to fully investigate practical implementation issues which may stem from policy recommendations. Had this proceeding been referred to the Office of Administrative Law Judge to oversee the creation of a formal record, it is more likely that potential procedural issues associated with various policy proposals would have been more fully explored prior to the issuance of a final order.

Nevertheless, we believe the issues raised by Columbia warrant clarification of the Commission’s Order regarding the process for issuing security deposit refunds to prevent potential harm to low income customers seeking to enroll in CAP. (Columbia Petition at 4-5, para. 8). When a low income customer applies for CAP, it is often because they have been unable to keep up with full tariff rates and are at risk of termination. Delays in processing CAP applications for low income customers can serve to compound payment trouble, exacerbate arrears, and increase the risk of involuntary termination. It is therefore critical that the process of refunding a security deposit to low income households not delay enrollment in CAP.

Notably, Columbia’s proposed alternative does not appear to be in direct conflict with the Commission’s legal conclusion addressed above that a utility must obtain informed consent to apply a security deposit to a *prior account balance*. Indeed, as Columbia appears to recognize in its Petition, there is a distinct difference between applying a refund to a prior balance that is otherwise eligible for deferral and forgiveness through enrollment in CAP and applying a refund as a credit to reduce a household’s monthly payment on a forward going basis. (See Columbia

Petition at 5, para. 11). However, Columbia's proposed alternative still falls short of fulfilling the requirements of the law; namely, that low income customers have the option of receiving a direct refund of previously collected security deposit funds.

Based on the facts alleged in Columbia's Petition, CAUSE-PA submits that the following clarifications of the Commission's April 4 Order will prevent unnecessary delays in processing CAP applications consistent with Columbia's proposal, while preserving the right of low income customers to receive a full refund of an improperly held security deposit consistent with the Commission's sound legal conclusions discussed above. Specifically, CAUSE-PA recommends that the Commission clarify its April 4 Order as follows:

- (1) Affirm the Commission's legal decision that, absent prior informed consent, Columbia may not apply a security deposit refund pursuant to section 56.53(f) to a CAP applicant's prior account balance. (April 4 Order at 30-31).
- (2) Clarify that Columbia may issue a security deposit refund pursuant to section 56.53(f) as an account credit, to be applied to a CAP participant's future CAP rate bills (otherwise known as the CAP "asked-to-pay" amount);
- (3) Require Columbia to provide subsequent written notice to CAP participants, following application of a refund to the participant's asked-to-pay amount, informing them of the option to request a direct refund (via check) of any remaining credit balance; and
- (4) Prohibit Columbia from delaying CAP enrollment or otherwise interrupting program benefits for households that subsequently request a direct refund, via check.

CAUSE-PA submits that these additional clarifications would address Columbia's process concerns without disrupting the sound legal conclusion in the Commission's April 4 Order that Columbia may not apply a security deposit refund to a customer's delinquent account balance absent informed consent. (April 4 Order at 31). Indeed, the clarifications outlined above are consistent with the Commission's prior directive, as they address a slightly different scenario, wherein Columbia will apply a refunded deposit to the customer's forward-going bill (in other words, their asked-to-pay amount) – not a delinquent account balance.

By permitting Columbia to initially apply a refunded deposit as an account credit, followed by notice to the CAP participant of the option to request a direct refund, the Commission would avoid potential processing delays identified in Columbia’s Petition. As Columbia explained, Columbia “can post the amounts slated for refund as a credit to a customer’s account relatively easily and quickly ...[and] without having to first apply the refund amounts to a past due balance.” (Columbia Petition at 5). At the same time, the Commission would preserve the customer's rights to receive a direct security deposit refund consistent with the statutory prohibition on low income security deposits in section 1404(a.1) and the regulatory requirements regarding the refund of improperly held deposits in section 56.53(f).

Chapter 14 prohibits public utilities from collecting security deposits from households that are income-eligible for CAP. When a utility learns that a deposit was erroneously collected from a low income customer, the law is clear that it must be refunded to that customer. Indeed, these funds belong to the customer – not the utility – and are not properly leveraged as a cost control measure. (CAUSE-PA Cmts at 18-19). Low income families struggle profoundly to afford their basic needs – often foregoing one life necessity in order to afford another.¹⁰ The direct refund of an improperly held security deposit may very well mean the difference between a customer affording food, medicine, rent or medical care. CAUSE-PA submits that customers should always have the ultimate say in whether an improperly held security deposit is released directly to them or applied on a forward-going basis to the customers’ asked-to-pay amount. The

¹⁰ The Energy Information Administration (EIA) Residential Energy Consumption Survey (RECS) released in 2022 illustrates the profound impact of energy insecurity on low income families, with 19.9% of households reporting that they reduce or forgo food or medicine to pay for energy costs; and while 10% report leaving their homes at unhealthy temperatures because they could not afford to pay for energy. US EIA, 2020 Residential Energy Consumption Survey, Table HC11.1 Household energy insecurity, 2020 available at: <https://www.eia.gov/consumption/residential/data/2020/hc/pdf/HC%2011.1.pdf>. Importantly, energy insecurity is more pronounced for low income Black families. EIA’s RECS data revealed that 52% of Black and African American households experience energy insecurity, compared to 23.2% of white households; and nearly 40.2% of Black and African American households report foregoing food or medicine to pay energy costs, compared to 16.8% of white households. *Id.*

clarification recommended above would ensure that the customer – not the utility – remains in control of how their security deposit funds are applied, while leaving room to address the procedural constraints raised by Columbia in its Petition for Reconsideration.

CAUSE-PA further notes that the above clarifications are also consistent with Commission-approved settlement terms in Columbia’s 2021 base rate proceeding, which required Columbia to:

- Update tariff language to indicate that all confirmed low-income customers with income at or below 150% of the federal poverty level, as reported to the Commission as part of Columbia’s annual universal service and collections data, will not be charged a security deposit.
- Refund all security deposits being held for confirmed low-income customers within 60 days.
- Review currently held security deposits on a semi-annual basis and issue a bill credit or refund for any deposit previously collected from a confirmed low-income customer.¹¹

In short, the terms required Columbia to issue a bill credit or refund for any deposit previously collected and held from a confirmed low-income customer. This is consistent with the Commission’s April 4 Order and the above recommendations for clarification.

For these reasons, and as explained more thoroughly in our prior Comments and Reply Comments in this matter, we urge the Commission to affirm its April 4 Order and issue further clarifying instructions consistent with our recommendations above.

V. CONCLUSION

For all the foregoing reasons, CAUSE-PA requests that the Commission deny Columbia’s request for reconsideration with regard to the legal aspects of the Commission’s April 4 Order; namely, that Columbia may not apply a security deposit collected from a low income household to a prior account balance without first obtaining informed consent. Nevertheless, we recommend the Commission further clarify its April 4 Order in the manner described above to

¹¹ June 2023 Order at 8, 21-22; see also Pa. PUC v. Columbia Gas of Pa., Inc., Opinion and Order, Docket R-2021-3024296, at 18, 53 (order entered Dec. 16, 2021) (approving the terms of the Settlement without modification).

protect Columbia's CAP applicants from undue delay in processing their CAP enrollment. We are not opposed to Columbia's second request for reconsideration, though we take no further position on the issue.

Respectfully submitted,



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April 29, 2024

Verification

I, **Elizabeth R. Marx**, legal counsel for *Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA)*, on behalf of CAUSE-PA, hereby states that the facts contained in the foregoing pleadings are true and correct to the best of my knowledge, information, and belief, that I am duly authorized to make this Verification, and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).

A handwritten signature in blue ink that reads "Elizabeth R. Marx". The signature is cursive and includes a small mark at the end.

Elizabeth R. Marx, Esq.
*On behalf of the Coalition for Affordable Utility
Services and Energy Efficiency in Pennsylvania*