COMMONWEALTH OF PENNSYLVANIA

June 16, 2015

E-FILED

Rosemary Chiavetta, Secretary
Pa. Public Utility Commission
Commonwealth Keystone Building
P.O. Box 3265
Harrisburg, PA 17105-3265

Re: Columbia Gas of Pennsylvania, Inc. (1307(f))
Docket No. R-2015-2469665

Dear Secretary Chiavetta:

Enclosed for filing is the Main Brief, on behalf of the Office of Small Business Advocate, in the above-captioned proceeding.

As evidenced by the enclosed Certificate of Service, all parties have been served as indicated. If you have any questions, please do not hesitate to contact me.

Sincerely,

Daniel G. Asmus
Assistant Small Business Advocate
Attorney ID No. 83789

Enclosures

cc: The Honorable Mark A. Hoyer
Robert D. Knecht
Parties of Record

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PENNSYLVANIA PUBLIC UTILITY COMMISSION	:	
	:	
	:	
v.	:	**DOCKET NO. R-2015-2469665**
	:	
COLUMBIA GAS OF PENNSYLVANIA, INC. 1307(f) Filing	:	

MAIN BRIEF
ON BEHALF OF THE
OFFICE OF SMALL BUSINESS ADVOCATE

Daniel G. Asmus
Assistant Small Business Advocate
Attorney ID# 83789

For:

John R. Evans
Small Business Advocate

Office of Small Business Advocate
300 North Second Street, Suite 202
Harrisburg, PA 17101
(717) 783.2525

Date: June 16, 2015

TABLE OF CONTENTS

I. INTRODUCTION AND PROCEDURAL HISTORY

On April 1, 2015, pursuant to Section 1307(f) of the Public Utility Code, 66 Pa. C.S. Section 1307(f), Columbia Gas of Pennsylvania, Inc. ("Columbia" or the "Company") submitted its annual Purchased Gas Cost ("PGC") Rate filing with the Pennsylvania Public Utility Commission ("Commission").

The OSBA filed a Complaint in this proceeding on April 8, 2015, as well as a Notice of Appearance and a Public Statement.

Administrative Law Judge ("ALJ") Mark A. Hoyer was assigned as the presiding officer for this proceeding. Other parties to this proceeding include the Office of Consumer Advocate ("OCA"), the Commission's Bureau of Investigation and Enforcement ("I&E"), the Natural Gas Supplier ("NGS") parties, and the Columbia Industrial Intervenors ("CII").

The Initial Prehearing Conference was held on April 7, 2015, at which time a procedural schedule was finalized. Extensive discovery was conducted. Parties submitted the testimony of their witnesses; specifically, the OSBA submitted the direct and surrebuttal testimony of its witness, Robert D. Knecht.

Settlement negotiations took place during the course of this proceeding, and the parties eventually came to a joint settlement of all but two issues: (1) a proposed modification to the allocation of Unified Sharing Mechanism credits between the Purchased Gas Commodity Charge ("PGCC") and the Purchased Gas Demand Charge ("PGDC"); and (2) the proposal by the NGS parties for a study regarding cost recovery of pipeline assets to serve the PGC.

A Hearing was held on June 3, 2015, where the parties stipulated to the testimony and the testimony was entered into the record by ALJ Hoyer. ALJ Hoyer was informed of the

settlement of most of the issues, and requested that the parties submit a common briefing outline for the two remaining issues that are the subject of this brief.

The OSBA files this Main Brief pursuant to the procedural schedule agreed to by the parties and the ALJ. The OSBA addresses only the issue of the allocation of Unified Sharing Mechanism credits. Because the OSBA has taken no position with the respect to the issue raised by the NGS parties, a proposal for a Study regarding cost recovery of pipeline assets to serve the PGC, the OSBA will not address that issue here.

II. LEGAL STANDARD/BURDEN OF PROOF

Section 332(a) of the Public Utility Code, 66 Pa. C.S. § 332(a), provides that the party seeking a rule or order from the Commission has the burden of proof in that proceeding. It is axiomatic that "[a] litigant's burden of proof before administrative tribunals as well as before most civil proceedings is satisfied by establishing a preponderance of evidence which is substantial and legally credible." *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990), *alloc. denied*, 529 Pa. 654, 602 A.2d 863 (1992). The term "preponderance of the evidence" means that one party has presented evidence that is more convincing, by even the smallest amount, than the evidence presented by the other party. *Se-ling Hosiery v. Margulies,* 364 Pa. 45. 70 A.2d 857 (1950). In this instance, Columbia has the burden of proof with the respect to the Joint Petition for Partial Settlement. Each party seeking Commission approval of its proposed modification to the allocation of Unified Sharing Mechanism credits has the burden of proof with respect to its own proposal.

While Columbia has the burden of proof with regard to the rates and modifications included in its filings, which includes its proposal for the allocation of Unified Sharing Mechanism credits, there is an additional contested issue raised by the NGS Parties that has not been included in the Company's filings or as part of the Joint Petition for Partial

Settlement. A party that offers a proposal not included in the original filings bears the burden of proof for such proposal. *Pa. P.U.C. v. Metropolitan Edison Co.*, Docket No. R-00061366 (Opinion and Order entered January 11, 2007) (*Met-Ed*) and *Joint Default Service Plan Citizens /Wellsboro,* Docket Nos. P-2009-2110780 *et al.* (Final Order entered February 26, 2010)).

III. SUMMARY OF ARGUMENT

The OSBA submits that the issue of how to allocate the ratepayer portion of the credits from Columbia's Unified Sharing Mechanism is a matter best served by a reasonable compromise, rather than by taking an extreme position. The positions taken by the I&E, the Company and the OSBA all attempt to (a) reflect the fact that these margins are related to both the availability of capacity assets and the gas purchase activities of the Company, (b) the technical problems associated with the existing mechanism, and (c) reflect the spirit of the settlement of the 2008 Section 1307(f) proceeding in the results. The OSBA's proposal avoids the need for the Commission to adjudicate whether the Company's mix of capacity release, off-system sales and asset management agreement ("AMA") transactions is appropriate, and it reflects the changes in shopping rates that have occurred since the 2003 settlement was entered into. However, the proposals offered by the Company and I&E are not outside the range of reasonableness. In this proceeding, the extreme positions have generally been adopted by the NGS Parties and the OCA.

IV. ARGUMENT

A. PROPOSED MODIFICATIONS TO THE UNIFIED SHARING MECHANISM

The issue addressed herein is how to allocate the ratepayer portion of the credits from Columbia's Unified Sharing Mechanism ("USM"). Mr. Knecht explained the process in his surrebuttal testimony in Columbia's 2014 Section 1307(f) proceeding, which was attached to his direct testimony in this proceeding as Exhibit IEc-2

> For purchased gas cost ("PGC") sales customers, the Company has an obligation to purchase natural gas supplies and to deliver those supplies to the city gate when they [are] needed. In addition, the Company provides load balancing services to retail "Choice" customers.[1] This means that Choice suppliers are obligated to deliver gas to Columbia on a levelized basis, and the Company has the obligation to deliver the gas to the city gate when it is required by the customers. For this load balancing service, Choice customers pay the demand portion of the PGC charge, termed the PGDC, net of the cost of long-haul transportation capacity at 100 percent load factor. PGC customers pay both the commodity ("PGCC") and PGDC portions of the PGC charge.
>
> To meet the requirements of these customers, the Company actively participates in commodity procurement markets, and it contracts for transportation and storage capacity necessary to meet the peak day and peak season requirements. Because it has this market expertise, and because it must necessarily retain more transportation and load balancing capacity than it needs on most days, the Company is able to earn additional margins by temporarily releasing the capacity to third-parties, or by engaging in other profitable natural gas sale and swap transactions with third-parties. Under long-standing Commission precedent, the margins earned from these transactions are combined into the USM, and are shared 75%/25% between PGC ratepayers and Columbia shareholders.
>
> The USM ratepayer credits are allocated between the PGCC and the PGDC. Those credits which are assigned to the PGCC benefit only PGC sales customers. Those credits which are assigned to the PGDC benefit both PGC sales and Choice customers, on an equal per-Dth basis. Prior to the Company's 2008 Section 1307(f) proceeding, these margins were split 82 percent to the PGCC, and 18 percent to the PGDC. In the settlement to the 2008 Section 1307(f) proceeding (at Docket No. R-2008-2028039), the

[1] PGC sales customers are customers who take gas sales service from the Company, either by affirmatively choosing the Company as the supplier or by not affirmatively choosing a competitive natural gas supplier ("NGS"). Choice customers are residential and smaller general customers who take gas supply service from an NGS under the Company's retail Choice program. Larger customers who choose to take sales service from an NGS tend to do so under the Company's transportation service option, called General Distribution Service or "GDS." These customers may purchase some load balancing from the Company under the Elective Balancing Service ("EBS") options. GDS customers are unaffected by the allocation of the USM credits.

parties agreed that this sharing would be modified to be 60 percent to the PGDC and 40 percent to the PGCC.

The 60%-40% sharing of ratepayer credits remains the *status quo*. In last year's proceeding, the NGS parties contested that approach as being unduly weighted toward the PGCC, and the OCA submitted rebuttal testimony which concluded that the sharing was unduly weighted toward the PGDC. At that time the Commission deferred a decision on this issue until the current proceeding, and required the Company to respond to a set of questions regarding both the use of assets paid for by both sales and Choice customers in earning USM credits and the allocation of the costs of those assets. The Company's responses to those questions were provided in Exhibit 16 of its pre-filing materials.

The current model assigns fixed percentages of 40% of the USM credit to the PGDC and 60% to the PGCC. This means that 60 percent of the credit goes directly to PGC sales customers only, while 40 percent goes to both sales and Choice customers. As Mr. Knecht testified, this means that, at a shopping level of about 20 percent (which is near the current level), some 92 percent of the credit goes to sales customers and 8 percent goes to Choice customers. OSBA Statement No. 1 at Table IEc-1. The essence of this issue boils down to two inter-related questions, both raised by parties in last year's Section 1307(f).

The first question is conceptual: Is the Company's ability to earn USM credits related to (a) the availability of unused capacity which it must retain in order to meet the load balancing needs of both sales and Choice customers, (b) the knowledge and skills acquired by the Company in actively procuring gas for PGC sales customers, or (c) both? As Mr. Knecht explains, not surprisingly, both factors contribute to the Company's ability to earn these margins. Moreover, because these factors are inter-related, there is no obviously correct mechanism for

allocating the credits between the PGCC and the PGDC. OSBA Statement No. 1 at 2-5.

The second question, raised by the NGS Parties in last year's Section 1307(f) proceeding, is technical: Does the existing sharing mechanism reasonably recognize the implications of changes in the overall shopping rate? In that regard, Mr. Knecht's direct testimony demonstrates that the existing mechanism has a technical flaw, in that the share of credits going to the PGDC does not increase as shopping levels increase. At high levels of shopping, the existing mechanism will produce unreasonably high credits to PGC sales customers, which will provide an unreasonable competitive disadvantage to competitive NGSs. For example, at a shopping rate of 80 percent, the existing mechanism would produce a PGCC credit of 35.6 cents per Dth, compared to a 4.7 cent per Dth PGDC credit. It would be most difficult for NGSs to effectively compete with such a competitive disadvantage. OSBA Statement No. 1 at Table IEc-1.In this proceeding, the extreme positions have generally been adopted by the NGS Parties and the OCA.

The NGS Parties take the position that all of the USM credits should be assigned to the PGDC. In effect, the NGS Parties conclude that none of the USM credits are in any way related to activities undertaken by Columbia solely on behalf of sales customers. NGS Parties Statement No. 1 at 15. The OSBA respectfully submits that this proposal fails to recognize all of the inter-related effects which allow Columbia to earn the margins. The OSBA acknowledges that it is true that ". . . all or virtually all of the transactions in the USM make use of capacity assets which are generally paid for by both sales and Choice customers." OSBA Statement No. 1 at 2. However, it must also be recognized that Columbia is able to earn these margins as a result of its activities on behalf of PGC sales customers because it is active in the natural gas markets,

and that as shopping increases, the absolute level of the margins is likely to decline. OSBA Statement No. 1 at 5. As such, the OSBA submits that the NGS Parties' proposal is one-sided and unduly self-serving.

OCA, on the other hand, takes the position that there is nothing wrong with the existing sharing mechanism, except that it maybe should be modified to reduce the share of credits assigned to the PGDC to 20 percent from 40 percent. OCA Statement No. 1 at 15. Unfortunately, the OCA testimony offers no position on the technical problems associated with the existing mechanism. OCA does not acknowledge that the PGCC credit will increase as shopping increases, effectively serving as a damper on competition. In fact the OCA witness incorrectly asserted that the mechanisms designed to eliminate this problem would be anti-competitive. As Mr. Knecht explained, the OCA's argument is exactly backwards. Any mechanism which increases the credit to sales customers as shopping levels increase, as the current mechanism does, will obviously not be beneficial to competition. OSBA Statement No. 2 at 8-9.

In contrast, the OSBA, I&E, and the Company adopt conceptually similar positions in that they recognize that some sharing of the credits between the PGCC and the PGDC is reasonable to reflect the dual nature of causation, but that the existing mechanism has a technical flaw which needs be corrected. These three parties all recommend that the current fixed percentage mechanism be modified to an adjustable mechanism, in which there is both a fixed component of the credit assigned to the PGDC, and a variable component if the credit assigned to the PGDC which moves with the level of customer shopping. This fixed component represents the credits that are assigned to all customers regardless of the level of customer

shopping. . This fixed component represents the credits that are assigned to all customers, regardless of the level of shopping. As shown in Mr. Knecht's surrebuttal testimony, this fixed component would be 19.1 percent under the Company's proposal, 19.0 percent under I&E's proposal, and 30.0 percent under Mr. Knecht's proposal. OSBA Statement No. 2 at Table IEc-S1. There would then be a sliding scale for the remaining (and larger) portion of the share, based upon the levels of shopping, representing those costs that are incurred only by shopping customers. Each party (OSBA, I&E, the Company) has certain rationales for their proposals, but it is remarkable how similar these proposals are when 1the observer steps back to see the larger picture. (*see* OSBA Statement No. 1at 3-4).

In addition, at current shopping levels, these three mechanisms produce reasonably similar allocation results. The I&E and Company mechanisms would result in 42.5 percent and 41.2 percent, respectively, of the USM credit being assigned to the PGDC, while Mr. Knecht's approach would assign 51.0 percent to the PGDC. In effect, the I&E and Company mechanisms produce a sharing that is very similar to the existing mechanism (which is based on the settlement of the 2008 Section 1307(f) proceeding), while the OSBA method reflects that settlement as updated for changes in shopping rates since the settlement was agreed upon. OSBA Statement No. 1 at 7-8.

The differences between the Company, I&E and OSBA positions relate solely to how the "fixed" component of the allocation mechanism would be defined. The I&E and Company methods would set the "fixed" portion of the allocation mechanism on the basis of the share of USM credits that are related to capacity release activities. The OSBA proposal is that the "fixed" portion of the allocation mechanism be set based on judgment, in order to avoid the

possibility of skewing incentives for the Company to engage in one form of off-system transaction at the expense of another. OSBA Statement No. 1 at 7-8, OSBA Statement No. 2 at 13.

At the end of the day, the OSBA submits that this is a matter best served by a reasonable compromise, rather than by taking an extreme position. The positions taken by the I&E, the Company and the OSBA witnesses all attempt to (a) reflect the fact that these margins are related to both the availability of capacity assets and the gas purchase activities of the Company, (b) the technical problems associated with the existing mechanism, and (c) reflect the spirit of the settlement of the 2008 Section 1307(f) proceeding in the results. The OSBA respectfully submits that Mr. Knecht's proposal is modestly superior to the I&E and Company proposals, in that it avoids the need for the Commission to adjudicate whether the Company's mix of capacity release, off-system sales and AMA transactions is appropriate, and it reflects the changes in shopping rates that have occurred since the 2008 settlement was entered into. Nevertheless, the OSBA does not conclude that the proposals offered by the Company and I&E are outside the range of reasonableness.

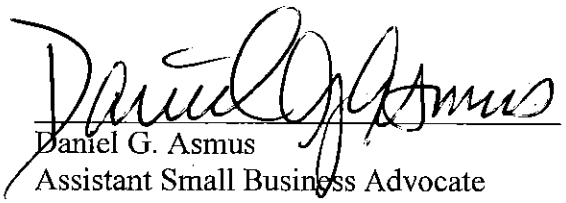
B. NGS PARTIES' PROPOSAL FOR A STUDY REGARDING COST RECOVERY OF PIPELINE ASSETS TO SERVE THE PGC

The OSBA did not take a position with respect to this proposal in its testimony, and therefore, will not be briefing this issue.

V. CONCLUSION

The OSBA respectfully requests that the Commission adjudicate this proceeding consistent with the arguments contained herein, and issue an Order consistent with the fixed percentage/sliding scale models proposed by OSBA, I&E and Columbia.

Respectfully submitted,



Daniel G. Asmus
Assistant Small Business Advocate
Attorney ID No. 83789

For:

John R. Evans
Small Business Advocate

Office of Small Business Advocate
300 North Second Street, Suite 202
Harrisburg, PA 17101
(717) 783.2525

Dated: June 16, 2015

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission	:	
v.	:	**DOCKET NO. R-2015-2469665**
Columbia Gas of Pennsylvania, Inc. (1307(f))	:	

CERTIFICATE OF SERVICE

I certify that I am serving true and correct copies of the foregoing, on behalf of the Office of Small Business Advocate, by e-mail, and/or first-class mail (unless otherwise noted), upon the persons addressed below:

The Honorable Mark A. Hoyer
Administrative Law Judge
PA Public Utility Commission
301 5th Avenue – Suite 220
Pittsburgh, PA 15222
(412) 565-3550
(412) 565-5692 (fax)
mhoyer@pa.gov
(E-mail & First-Class Mail)

Elizabeth P. Trinkle, Esquire
Charis Mincavage, Esquire
McNees Wallace & Nurick, LLC
P.O. Box 1166
Harrisburg, PA 17108-1166
(717) 232-8000
(717) 237-5300
cmincavage@mwn.com
etrinkle@mwn.com
(E-mail & First-Class Mail)

Erin L. Gannon, Esquire
Hobart J. Webster, Esquire
Office of Consumer Advocate
555 Walnut Street – 5th Floor
Harrisburg, PA. 17101-1923
(717) 783-5048
(717) 783-7152 (fax)
egannon@paoca.org
hwebster@paoca.org
(E-mail and Hand Delivery)

Patrick M. Cicero, Esquire
Harry S. Geller, Esquire
Elizabeth R. Marx, Esquire
Pennsylvania, Utility Law Project
118 Locust Street
Harrisburg, PA 17101
(717) 236-9486
pulp@palegalaid.net
(E-mail & First-Class Mail)

Andrew S. Tubbs, Esquire
NiSource Corporate Services Company
800 North Third Street - #204
Harrisburg, PA 17102
(717) 238-0684
astubbs@nisource.com
(E-mail & First-Class Mail)

Theodore J. Gallagher, Esquire
Nancy Krajovic, Esquire
NiSource Corporate Services Company
121 Champion Way, Suite 100
Canonsburg, PA. 17120
tjgallagher@nisource.com
nkrajovic@nisource.com
(E-mail & First-Class Mail)

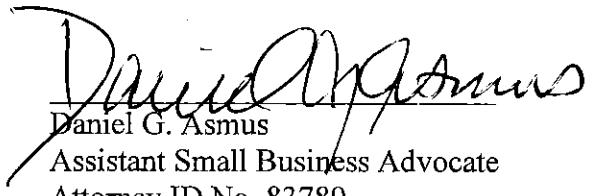
Scott B. Granger, Esquire
Bureau of Investigation and Enforcement
Pa. Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105
(717) 425-7593
(717) 77-2677 (fax)
sgranger@pa.gov
(E-mail and Hand Delivery)

Michael W. Hassell, Esquire
Lindsay A. Berkstresser, Esquire
Post & Schell, P.C.
17 North Second Street, 12th Floor
Harrisburg, PA 17101
(717) 731-1970
(717) 731-1985 (fax)
mhassell@postschell.com
lberkstresser@postschell.com
(E-mail & First-Class Mail)

Melissa Whitten
La Capra Associates, Inc.
One Washington Mall, 9th Floor
Boston, MA 02108
mwhitten@lacapra.com
(E-mail & First-Class Mail)

Todd S. Stewart, Esquire
Thomas J. Sniscak, Esquire
William E. Lehman, Esquire
Whitney E. Snyder, Esquire
Hawke McKeon & Sniscak, LLP
P.O. Box 1778
Harrisburg, PA 17105-1778
(717) 236-1300
tsstewart@hmslegal.com
tjsniscak@hmslegal.com
welehman@hmslegal.com
wesnyder@hmslegal.com
(E-mail & First-Class Mail)

Dated: June 16, 2015



Daniel G. Asmus
Assistant Small Business Advocate
Attorney ID No. 83789