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VIA ELECTRONIC FILING

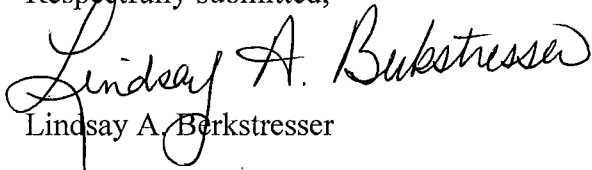
Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor North
P.O. Box 3265
Harrisburg, PA 17105-3265

**Re: Pennsylvania Public Utility Commission, et al. v. Columbia Gas of Pennsylvania, Inc.
Docket No. R-2016-2529660, etc.**

Dear Secretary Chiavetta:

Enclosed please find the Motion of Columbia Gas of Pennsylvania, Inc. to Strike Certain Portions of the Rebuttal Testimony of the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania in the above-referenced proceeding. Copies will be provided as indicated on the Certificate of Service.

Respectfully submitted,


Lindsay A. Berkstresser

LAB/skr
Enclosure

cc: Certificate of Service
Honorable Katrina L. Dunderdale

**CERTIFICATE OF SERVICE
(Docket No. R-2016-2529660)**

I hereby certify that a true and correct copy of the foregoing has been served upon the following persons, in the manner indicated, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

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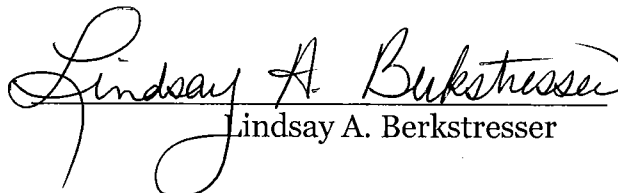
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Date: July 22, 2016


Lindsay A. Berkstresser

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	
	:	
v.	:	Docket No. R-2016-2529660
	:	
Columbia Gas of Pennsylvania, Inc.	:	

**MOTION OF COLUMBIA GAS OF PENNSYLVANIA, INC.
TO STRIKE CERTAIN PORTIONS OF THE REBUTTAL TESTIMONY OF
THE COALITION FOR AFFORDABLE UTILITY SERVICES AND ENERGY
EFFICIENCY IN PENNSYLVANIA**

TO ADMINISTRATIVE LAW JUDGE KATRINA L. DUNDERDALE:

Columbia Gas of Pennsylvania, Inc. (“Columbia” or the “Company”) hereby files, pursuant to the Pennsylvania Public Utility Commission’s (“Commission”) regulation at 52 Pa. Code § 5.103, this Motion to Strike certain portions of the Rebuttal Testimony of the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (“CAUSE-PA”). In support thereof, Columbia states as follows:

I. BACKGROUND

1. On March 18, 2016, Columbia filed with the Commission Supplement No. 241 to its Tariff Gas – Pa. P.U.C. No. 9 (“Supplement No. 241” or “base rate filing”) pursuant to 66 Pa.C.S. § 1308, along with all supporting exhibits, standard data responses and testimony required to be submitted in conjunction with a tariff change seeking a general rate increase. Supplement No. 241, which has been suspended until December 19, 2016, proposes an increase in revenues of approximately \$55.3 million

which represents an 11.23% increase in operating revenues based upon a pro forma fully forecasted future test year ending December 31, 2017.

2. Various parties filed complaints and petitions to intervene in response to Columbia's base rate filing.

3. A prehearing conference was held before Administrative Law Judge Katrina L. Dunderdale (the "ALJ") on April 28, 2016, at which time a litigation schedule was established.

4. On June 16, 2016, other parties served direct testimony. CAUSE-PA did not submit direct testimony in this proceeding.

5. On July 13, 2016, Columbia and other parties, including CAUSE-PA, served rebuttal testimony.

II. MOTION TO STRIKE

6. In CAUSE-PA's rebuttal testimony, CAUSE-PA Witness Harry Geller presented a new proposal that was not previously raised by CAUSE-PA, or any other party, in this proceeding. Although Witness Geller stated that the purpose of his rebuttal testimony is to "respond to the direct testimony of Rachel Mauer, witness for the Bureau of Investigation and Enforcement (I&E), and Roger Colton, witness for the Office of Consumer Advocate (OCA)", he also introduces a new proposal directed at Columbia. (CAUSE-PA St. 1-R, p. 4.) Specifically, Witness Geller requests that Columbia conduct a third-party study to assess the affordability of its CAP program. Witness Geller frames his proposal as responsive to OCA Witness Colton's testimony regarding Columbia's CAP program; however, Witness Colton does not suggest that Columbia undertake a study of its CAP program. The following portions of Witness Geller's rebuttal testimony address the new proposal:

As an initial step in addressing and moving toward a more direct remedy of the problem, Columbia's CAP rate should be closely examined to determine whether the program is producing affordable bills.

(CAUSE-PA St. 1-R, p. 12, ll. 1-3.)

I recommend that Columbia tackle the root of the problem and examine whether CAP is producing bills that are affordable. As such, I recommend that Columbia be required to engage a third party evaluator to assess the affordability of CAP, and submit its findings to the Commission and other parties in this proceeding. Doing so would enable Columbia to make targeted, proactive reforms to stem its CAP enrollment decline, rather than relying only upon notification to a third party that a default is or has taken place.

(CAUSE-PA St. 1-R, p. 13, ll. 4-9.)

These portions of CAUSE-PA's rebuttal testimony should have been presented in its case-in-chief, and therefore, are improper and should be stricken.

7. The portions of Witness Geller's rebuttal testimony quoted in paragraph 6, above, constitute improper rebuttal testimony because they do not respond or relate to any argument raised by a party in direct testimony. Instead, these portions of Witness Geller's rebuttal testimony offer a specific CAP proposal for the first time on rebuttal. It is contrary to Commission regulation to present new proposals or evidence in rebuttal testimony. Title 52 of the Pennsylvania Code § 5.243(e) provides:

(e) A party will not be permitted to introduce evidence during a rebuttal phase which:

- (1) Is repetitive.
- (2) Should have been included in the party's case-in-chief.
- (3) Substantially varies from the party's case-in-chief.

A party's proposals and supporting evidence must be presented in the party's case-in-chief. See *Pa. P.U.C. v. Total Environmental Solutions, Inc.—Treasure Lake Water Division*, Docket No. R-00072493, 2008 Pa. PUC LEXIS 42, *116 (May 23, 2008) "The clear purpose of [52 Pa. Code § 5.243(e)] is to avoid trial by ambush and the

prevention of surprise can only be achieved if the parties are confined to the scope of their direct case.” *Id. citing Pa. P.U.C. v. UGI Utilities, Inc.*, Docket No. R-00932862, 1994 Pa. PUC LEXIS 138, *85 (May 23, 1994). Thus, the proper time for CAUSE-PA to have introduced a proposal to require Columbia to conduct a third-party evaluation of the affordability of its CAP program would have been in CAUSE-PA’s direct case. CAUSE-PA filed no direct testimony. Instead, CAUSE-PA waited until the rebuttal phase of testimony to claim that Columbia should undertake an entirely new study of its CAP program, complete with hiring a third-party evaluator, assessing CAP program affordability and presenting the results of the study to the Commission and other parties in this proceeding.¹ Such an extensive undertaking should have been presented well before the submission of rebuttal testimony for it to be considered in this case.

8. It would be unfair to allow parties to present entirely new proposals in the rebuttal stage of a proceeding because it deprives the opposing party of a sufficient opportunity to respond. Columbia is prejudiced by CAUSE-PA’s decision to withhold its proposal until the deadline for rebuttal testimony. CAUSE-PA’s proposal was not presented at the time established for submission of other parties’ direct testimony, and as a result, Columbia is deprived of an adequate opportunity to fully examine and respond to CAUSE-PA’s proposal and the arguments on which Witness Geller bases his proposal in the Company’s rebuttal testimony. Because Columbia was precluded from preparing a response to CAUSE-PA’s proposal in the 27 days the Company had to prepare rebuttal testimony, Columbia’s only opportunity to respond to CAUSE-PA’s proposal will be in the limited amount of time – 12 days – the Company has to prepare

¹ Columbia notes that CAUSE-PA’s argument that CAP bills may be unaffordable is based, in part, on the CAP Plus amount. However, CAUSE-PA previously challenged the “Plus” portion of the CAP program in Columbia’s 2011 rate case. The Commission rejected CAUSE-PA’s challenge and CAUSE-PA appealed. The Commission’s Order was upheld in the Commonwealth Court of Pennsylvania.

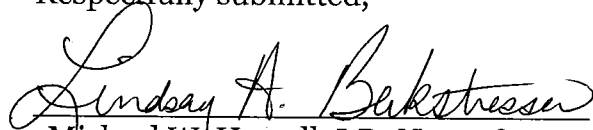
surrebuttal testimony. This short period for submitting surrebuttal testimony is intended to allow for limited testimony in response to the issues addressed by parties in rebuttal testimony and is inadequate for preparing a response to an entirely new argument. This is clearly the type of unfair “surprise” that Section 5.243(e) seeks to avoid. Accordingly, the provisions of CAUSE-PA’s rebuttal testimony quoted above in paragraph 6 should be stricken.

In addition, the rate case is not the appropriate proceeding to present proposals to examine the affordability of CAP bills.

III. CONCLUSION

WHEREFORE, Columbia respectfully requests that Administrative Law Judge Katrina L. Dunderdale strike the portions of CAUSE-PA Witness Geller's rebuttal testimony appearing on page 12, lines 1-3 and page 13, lines 4-9 of CAUSE-PA Statement No. 1-R, as quoted above in paragraph 6 of this Motion to Strike.

Respectfully submitted,



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Dated: July 22, 2016

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