BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

REPLY OF THE COALITION FOR AFFORDABLE UTILITY SERVICES AND ENERGY EFFICIENCY IN PENNSYLVANIA (CAUSE-PA) TO THE MOTION OF COLUMBIA GAS OF PENNSYLVANIA, INC. TO STRIKE CERTAIN PORTIONS OF CAUSE-PA STATEMENT 1-R, THE REBUTTAL TESTIMONY OF HARRY GELLER

TO ADMINISTRATIVE LAW JUDGE KATRINA L. DUNDERDALE:

The Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA) hereby files this Reply to the Motion of Columbia Gas of Pennsylvania, Inc. (Columbia or the Company) to strike certain portions of its rebuttal testimony, pursuant to the Pennsylvania Public Utility Commission's regulations at 52 Pa. Code § 5.103. CAUSE-PA responds as follows:

1. ADMITTED.

2. ADMITTED. By way of further response, CAUSE-PA filed a Petition to Intervene on April 12, 2016. On April 27, 2016, CAUSE-PA filed a Prehearing Memorandum, in which CAUSE-PA listed the issues it planned to review in this proceeding, including the impact of the proposed rate increase on low income households; the effect of the proposed rate increase on households enrolled in Columbia's Universal Service Programs; and the availability of universal service programs – including Columbia's Hardship Fund – that are designed to ensure

affordability of rates. (CAUSE-PA Prehearing Memo at 3). In addition, CAUSE-PA was explicit in stating that it "anticipates that additional issues may arise as a more comprehensive review of the Company's filing is undertaken, discovery is conducted, **and other parties present evidence and testimony**, and "reserve[d] the right to present evidence on any other issues contained in Columbia's filing but not specifically identified above, **as well as those issues raised by other parties**." (Id. at 3-4 (emphasis added)).

3. ADMITTED. By way of further response, no parties objected to CAUSE-PA's intervention at the prehearing conference, and Administrative Law Judge (ALJ) Katrina L. Dunderdale, granted CAUSE-PA's Petition to Intervene.

4. ADMITTED. By way of further response, CAUSE-PA filed a letter on June 16, 2016, which was served on all parties in this proceeding, and explicitly indicated that it would not be filing Direct Testimony, but that it "reserve[d] the right to submit Rebuttal Testimony in response to issues raised in other parties' Direct Testimony." (CAUSE-PA Letter to ALJ Dunderdale, June 16, 2016).

5. ADMITTED.

6. ADMITTED IN PART, DENIED IN PART. Columbia accurately summarizes the counter-proposal contained in Mr. Geller's rebuttal testimony. However, Columbia wrongly asserts that Mr. Geller's rebuttal testimony, and in particular his counter-proposal, "should have been presented in its case-in-chief." (Columbia Motion to Strike at ¶ 6). Indeed, Mr. Geller's counter-proposal was properly and timely presented in rebuttal testimony, as it was responsive to the information, data, analysis, and proposal set forth in OCA Witness Roger Colton's direct testimony. This information, data, analysis, and proposal was not presented in Columbia's case-in-chief, and therefore only came to the attention of Mr. Geller when reviewing the direct

testimony of Mr. Colton. Thus, it was wholly appropriate for Mr. Geller to respond to Mr. Colton's testimony and proposals by offering a counter-proposal to Mr. Colton's proposal in rebuttal.

In his direct testimony, Mr. Colton compiled data documenting "a number of trends representing an increasing harm to confirmed low-income customers." (OCA St. 4 at 22-24). These trends included a clear and significant decline in Columbia's CAP enrollment and a corresponding rise in both payment and non-payment related defaults. Mr. Colton showed these trends were linked to a larger trend in increased low income arrears, increased terminations, and decreased reconnections. (Id.). Mr. Colton explained that Columbia (in response to discovery, and not in direct testimony) attributed the trends to the fact that CAP customers most often choose the reconnection option with the lowest up-front payment requirement: a 1/24th payment agreement, which is added on top of their existing CAP bill and makes CAP bills unaffordable. (OCA St. 4 at 26 (quoting OCA-4-035; citing OCA-4-036)). Mr. Colton further explained that Columbia admitted in discovery that it had not engaged in any external or internal studies to identify the motivating factors for these trends. (OCA St. 4 at 27). Finally, Mr. Colton offered a proposed remedy, arguing at length for increased use of the third party notification system to help bolster CAP enrollment and stem the continued enrollment decline. (OCA St. 4 at 28-39).

Mr. Geller's rebuttal testimony was limited in scope, and in pertinent part responded only to Mr. Colton's presentation of data, his reference to Columbia's explanation for the CAP enrollment decline, and his proposal that Columbia enhance its use of the third party notification system to counter its CAP enrollment decline. (CAUSE-PA St. 1-R at 11-12). Mr. Geller agreed that the trends set forth by Mr. Colton were troubling, but raised questions about Mr. Colton's proposal as it related to confidentiality, suggesting several necessary modifications to the

proposal to make it viable without running afoul of consumers' privacy rights. (CAUSE-PA St. 1-R at 11). He then explained that Mr. Colton's proposal, alone, was unlikely to be effective in stemming the problems Mr. Colton identified. Synthesizing Mr. Colton's testimony, Mr. Geller illuminated the inherent irony in the explanation offered by Columbia for its CAP decline, adding that Columbia's CAP structure adds $9 / month (approximately $132 annually) to CAP customer bills, "which increase an already unaffordable CAP energy burden." (CAUSE-PA 1-R at 12-13). Ultimately, Mr. Geller countered Mr. Colton's proposal, arguing that Columbia should instead contract with an impartial third party evaluator to investigate the reasons behind Columbia's CAP enrollment decline, and to ensure that Columbia's CAP is producing affordable bills. (CAUSE-PA 1-R at 12-13). This was not a new proposal, but rather a counter-proposal to address and remedy the issue properly raised and addressed by Mr. Colton in his testimony. Indeed, nothing therein was in response to testimony set forth by Columbia in its direct testimony. In the absence of Mr. Colton's testimony, which was not objected to by Columbia or any other party, Mr. Geller would not have presented this counter-proposal. Therefore, Mr. Geller's proposal is properly within the scope of the purpose of rebuttal testimony.

7. DENIED. As explained in paragraph 6 above, everything in Mr. Geller's rebuttal testimony was in response to the information, analysis, and proposals contained in Mr. Colton's direct testimony. As such, Mr. Geller's rebuttal testimony did not contradict the Commission's regulations or established Commission precedent.

Columbia points to Title 52, section 5.243(e) of the Pennsylvania Code as support for its Motion to Strike Mr. Geller's counter-proposal, asserting that "[i]t is contrary to Commission regulation to present new proposals or evidence in rebuttal testimony." (Columbia Motion to Strike at ¶ 7). But section 5.243(e) – which Columbia itself recites – 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.

52 Pa. Code § 5.243(e). Mr. Geller's rebuttal testimony was none of those things.

First, with regard to section 5.243(e)(1), Mr. Geller's testimony was not repetitive, as he did not submit his own direct testimony, nor did he simply rehash Mr. Colton's testimony. Rather, Mr. Geller succinctly summarized Mr. Colton's testimony for the purpose of offering his own analysis and input. (CAUSE-PA 1-R at 10-11).

Further, with regard to section 5.243(e)(2), Mr. Geller's testimony was not required to originate in CAUSE-PA's case-in-chief because it was responsive to data and analysis raised for the first time in OCA's direct testimony. In arguing that section 5.243(e)(2) required Mr. Geller to present his counter-proposal in direct testimony, Columbia asserts that the Commission previously held that a "party's proposals and supporting evidence must be presented in the party's case-in-chief." (Columbia Motion to Strike at ¶ 7 (quoting Pa. PUC v. Total Environmental Solutions, Inc. – Treasure Lake Water Division, Docket No. R-00072493, at 66 (May 23, 2008) (hereinafter TESI) (emphasis added))). Columbia's reliance on this case is misplaced. In TESI, a utility seeking a rate increase set forth incorrect wage and salary data in its case-in-chief, which it failed to correct until it circulated rebuttal and surrebuttal testimony. (TESI, at 65-66). The ALJ explained that "the data included in TESI's rebuttal and surrebuttal attachments should have been included in TESI's case in chief"; that "the burden was on TESI to provide the 'correct' data sooner than during the rebuttal phase"; and that "TESI failed to prove a legitimate reason for why it included incorrect data and why it took so long to provide that information to the parties." (TESI at 65-66). For these reasons, the ALJ concluded that the

parties "were ambushed by the new information contained in [TESI's rebuttal and surrebuttal testimony]." (TESI at 66).

Unlike TESI, here CAUSE-PA was not correcting its initial testimony (which it did not file), and was not setting forth evidence that was within its sole possession and control. Rather, CAUSE-PA witness Harry Geller was responding to the data, analysis, and proposals of Mr. Colton – expert witness for another non-utility party in this proceeding – which was set forth for the first time in Mr. Colton's direct testimony. Furthermore, the information and data presented by Mr. Colton was known to Columbia long before Mr. Colton filed direct testimony and Mr. Geller filed rebuttal testimony, and - thus - Columbia was not "ambushed by new information" like the parties in TESI. (TESI at 66).

Finally, with respect to section 5.243(e)(3), Mr. Geller did not set forth any direct testimony from which he could "substantially var[y]," rendering subsection (e)(3) moot.

Again, section 5.243(e) does not apply in this case to warrant striking Mr. Geller's rebuttal testimony, in which he responded directly to data, analysis, and proposals raised by Mr. Colton for the first time in the proceeding.

8. DENIED. Columbia's assertions that it was in any way prejudiced by Mr. Geller's rebuttal testimony are belied by the fact that Columbia submitted a detailed response to Mr. Geller in its surrebuttal testimony. (Columbia St. 14-SR at 3). In fact, parties even agreed to postpone the due date for surrebuttal testimony by a full 24 hours, to which ALJ Dunderdale acquiesced, giving Columbia the benefit of an additional day on top of the 12 days it originally had to formulate and respond to Mr. Geller's rebuttal testimony (which in relevant part amounted to just four pages of testimony, one of which was to identify and summarize the points raised by Mr. Colton). Indeed, in the 13 days since Mr. Geller's testimony was circulated to the parties,

Columbia not only had sufficient time to prepare considerable surrebuttal testimony, it also found ample time to draft, file, and serve the pending Motion to Strike a full twelve days before hearings are scheduled to take place in this proceeding, and a full five days before its surrebuttal testimony was due. Thus, any assertion that Columbia was somehow harmed by Mr. Geller's appropriately submitted counter-proposal is not correct and should be disregarded.

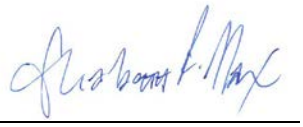
Columbia also makes passing note in its Motion to Strike that "the rate case is not the appropriate proceeding to present proposals to examine the affordability of CAP bills." (Motion to Strike at ¶ 8). Columbia is incorrect. A rate case – where the Commission is charged with determining the reasonableness and justness of rates – is precisely the forum in which this issue is properly addressed. In suspending Columbia's requested rate increase, the Commission was explicit that an investigation must take place "to determine the lawfulness, justness, and reasonableness of rates, rules, and regulations contained in the proposed [rate increase]." (Suspension and Investigation Order at 2 (emphasis added)). Likewise, the Commission ordered that the investigation also "include consideration of the lawfulness, justness, and reasonableness of [Columbia's] existing rates, rules, and regulations." (Id.). Indeed, the issues raised by Mr. Colton regarding Columbia's Universal Service programming and the impact of rates on Columbia's low income population, to which Mr. Geller responded, are fundamental to the Commission's assessment of whether Columbia's current rates and proposed rate increase are reasonable and just. As Mr. Colton explained at length in his direct testimony, data clearly points to "an increasing harm to confirmed low-income customers." (OCA St. 4 at 22-28). Raising rates further will exacerbate the already-high energy burden of vulnerable households, placing them at greater risk of financial and physical harm. In assessing whether to grant an increase in rates – including both the size of the increase and any associated terms – the

Commission must be sure that there are adequate safeguards in place so that economically vulnerable households can access utility service without sacrificing other basic life necessities. It is impossible to do so without examining Columbia's universal service programming to address widespread energy unaffordability. Thus, issues regarding Columbia's universal service programs are appropriate to be raised and rebutted in this proceeding.

WHEREFORE, for all of the foregoing reasons, CAUSE-PA submits that all of the issues contained in Mr. Geller's rebuttal testimony were properly and timely presented, and respectfully requests that Administrative Law Judge Katrina L. Dunderdale DENY Columbia's Motion to Strike.

Respectfully submitted,

PENNSYLVANIA UTILITY LAW PROJECT
Counsel for CAUSE-PA



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Date: July 27, 2016

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Certificate of Service

I hereby certify that I have this day served copies of the **Reply of the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA) to the Motion of Columbia Gas of Pennsylvania, Inc. to Strike Certain Portions of CAUSE-PA Statement 1-R, the Rebuttal Testimony of Harry Geller,** upon the parties of record in the above captioned proceeding in accordance with the requirements of 52 Pa. Code § 1.54 in the manner and upon the persons listed below.

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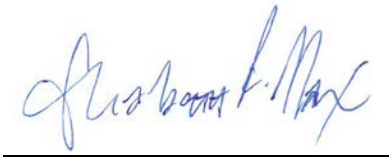

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July 27, 2016