**BEFORE THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission : R-2022-3031211

Office of Small Business Advocate : C-2022-3031632

Office of Consumer Advocate : C-2022-3031767

Pennsylvania State University : C-2022-3031957

Columbia Industrial Intervenors : C-2022-3032178

Jose A. Serrano : C-2022-3031821

Constance Wile : C-2022-3031749

Richard C. Culbertson : C-2022-3032203

:

v. :

:

Columbia Gas of Pennsylvania, Inc :

**PREHEARING ORDER #6**

On March 18, 2022, Columbia Gas of Pennsylvania, Inc. (Columbia or Respondent), filed Supplement No. 337 to Tariff Gas Pa. P.U.C. No. 9 to become effective

May 17, 2022, containing proposed changes in rates, rules, and regulations calculated to produce $82.2 million in additional annualrevenues. Columbia’s filing is docketed at R-2022-3031211.

On March 22, 2022, Erika L. McLain, Esq., entered a Notice of Appearance at docket number R-2022-3031211 on behalf of the Commission’s Bureau of Investigation and Enforcement (I&E).

On March 28, 2022, the Office of Small Business Advocate (OSBA) filed a Verification, Public Statement, a Notice of Appearance on behalf of Steven C. Gray, Esq., and a formal Complaint to the proposed rate increase at docket number R-2022-3031211. The Complaint was docketed at C-2022-3031632.

On April 1, 2022, Jose A. Serrano filed a formal Complaint to the proposed rate increase at docket number R-2022-3031211. The Complaint was docketed at C-2022-3031821.

On April 4, 2022, Constance Wile filed a formal Complaint to the proposed rate increase at docket number R-2022-3031211. The Complaint was docketed at C-2022-3031749.

On April 5, 2022, the Office of Consumer Advocate (OCA) filed a Public Statement, a Notice of Appearance on behalf of Aron Beatty, Esq., Barrett C. Sheridan, Esq., Harrison W. Breitman, Esq., and Lauren E. Guerra, Esq., and a formal Complaint to the proposed rate increase at docket number R-2022-3031211. The Complaint was docketed at C-2022-3031767.

On April 8, 2022, the Pennsylvania Weatherization Providers Task Force, Inc. (Task Force) filed a Petition to Intervene at docket number R-2022-3031211.

On April 11, 2022, the Retail Energy Supply Association, Shipley Choice, LLC, and NRG Energy, Inc. (RESA/NGS Parties) filed a Petition to Intervene at docket number R-2022-3031211.

On April 12, 2022, the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA) filed a Petition to Intervene at docket number R-2022-3031211.

By Order entered on April 14, 2022, the Pennsylvania Public Utility Commission (Commission) instituted an investigation into the lawfulness, justness, and reasonableness of the proposed rate increase at docket number R-2022-3031211. Pursuant to Section 1308(d) of the Public Utility Code, 66 Pa. C.S.A. § 1308(d), Supplement No. 337 to Tariff Gas Pa. P.U.C. No. 9 was suspended by operation of law until December 17, 2022, unless permitted by Commission Order to become effective at an earlier date. In addition, the Commission ordered that the investigation include consideration of the lawfulness, justness, and reasonableness of Columbia’s existing rates, rules, and regulations. The matter was assigned to the Office of Administrative Law Judge for the prompt scheduling of hearings culminating in the issuance of a Recommended Decision.

In accordance with the Commission’s April 14, 2022 Order, the matter at docket number R-2022-3031211 was assigned to Deputy Chief Administrative Law Judge Christopher P. Pell.

On April 15, 2022, the Pennsylvania State University (PSU) filed a formal Complaint to the proposed rate increase at docket number R-2022-3031211. The Complaint was docketed at C-2022-3031957.

On April 26, 2022, Columbia filed Tariff Supplement No. 343 to Tariff Gas Pa PUC No. 9 (Green Path Rider Tariff Filing), which proposes to add the Green Path Rider to Columbia’s Tariff. That same day, Columbia filed its Motion to Consolidate Columbia Gas of Pennsylvania Inc.’s Proposed Tariff Modifications for Inclusion of the Green Path Rider with the Base Rate Case Filed Pursuant to 66 Pa.C.S. § 1308 at Docket No. R-2022-3031211 (Motion to Consolidate). Tariff Supplement No. 343 to Tariff Gas Pa PUC No. 9 was docketed at R-2022-3032167.

On April 27, 2022, the Columbia Industrial Intervenors (CII) filed a formal Complaint to the proposed rate increase at docket number R-2022-3031211. The Complaint was docketed at C-2022-3032178.

Also on April 27, 2022, The Natural Resources Defense Council (NRDC) filed a Petition to Intervene at docket number R-2022-3031211.

On April 28, 2022, Richard C. Culbertson filed a formal Complaint to the proposed rate increase at docket number R-2022-3031211. The Complaint was docketed at C-2022-3032203.

A Call-in Telephonic Prehearing Conference for the proceeding at docket number R-2022-3031211 was held on April 29, 2022. Counsel for Columbia, I&E, OCA, OSBA, PSU, the Pennsylvania Weatherization Provider’s Task Force, Inc., RESA/NGS Parties, CAUSE-PA, NRDC, CII, and Richard C. Culbertson participated.

On May 2, 2022, Administrative Law Judge John Coogan was assigned to co-preside at the proceeding docketed at R-2022-3031211.

On May 2, 2022, Richard C. Culbertson filed his Motion to Suspend Columbia Gas of Pennsylvania Rate Case Hearings, Docket No. R-2022-3031211, Until Ordered Investigations, and Pennsylvania Constitutionally Required and Pennsylvania Statutionally Required Financial and Performance Audits Have Been Diligently Planned, Performed and Completed by a Competent, Independent and Experienced Audit Firm that Can Provide the Status – Material Weaknesses, Significant Deficiencies and a Level of Assurance of Columbia’s Internal Controls in the Areas of - Effective and Efficient Operations – Safeguarding Assets, Reliable Reporting of Financials and Non-Financials and Compliance with Laws, Regulations, Standards, Tariff and Internal Policy (Motion to Suspend) at docket number R-2022-3031211.

On May 3, 2022, we issued Prehearing Order #1 for the proceeding at docket number R-2022-3031211, granting the Petitions to Intervene of the Pennsylvania Weatherization Task Force, Inc., the RESA/NGS Parties and CAUSE-PA; setting May 6, 2022 as the date by which Columbia must file its Answer to the Petition to Intervene of NRDC; and setting

May 9, 2022 as the date by which OCA and CAUSE-PA must file any objections to Columbia Gas’ Motion to Consolidate. Additionally, a schedule for the submission of pre-served testimony was set and evidentiary hearings were scheduled for August 2, 3, and 4, 2022.

On May 6, 2022, Columbia filed an Answer to the Petition to Intervene of NRDC at docket number R-2022-3031211, stating they did not oppose the intervention of NRDC.

On May 6, 2022, Columbia filed an Answer and New Matter to the Complaint of Richard C. Culbertson at docket number R-2022-3031211.

On May 6, 2022, Columbia filed a Motion for Protective Order at docket number R-2022-3031211.

On May 9, 2022, OCA filed both an Answer in Opposition to Columbia’s Motion to Consolidate and a Formal Complaint and Public Statement regarding Columbia’s Green Path Rider Tariff Filing. The Complaint was docketed at C-2022-3032404.

On May 11, 2022, we issued Prehearing Order #2 granting Columbia’s Motion for Protective Order at docket number R-2022-3031211.

By Order dated May 13, 2022, we denied Columbia’s Motion to Consolidate.

Also on May 13, 2022, Columbia filed its Answer of Columbia Gas of Pennsylvania, Inc. to Richard C. Culbertson’s Motion to Suspend Rate Case Hearings.

By Prehearing Order #3 dated May 16, 2022, we denied Mr. Culbertson’s Motion to Suspend.

By Prehearing Order #4 dated May 17, 2022, we granted NRDC’s Petition to Intervene.

On May 31, 2022, a telephonic Public Input Hearing was held at 6:00 p.m. One person was registered to provide testimony during that Public Input Hearing but that person failed to call in as scheduled.

On June 1, 2022, a second telephonic Public Input Hearing was held at 6:00 p.m. Two people registered to provide testimony during this Public Input Hearing. Both people called in and provided sworn testimony.

By Prehearing Order #5 dated June 8, 2022, we granted NRDC’s Motion for Admission Pro Hac Vice, admitting John A. Heer, Esq. to represent NRDC in this proceeding.

On June 14, 2022, Richard C. Culbertson filed a motion he captioned as follows:

Motion to Initiate a Special Investigation of Columbia Gas of Pennsylvania Inc. Regarding the Content of Sworn Testimony of XXXXXXX, a Columbia Gas of Pennsylvania Inc. Employee. He Provided Sworn Public Testimony of Columbia’s Practices That May Be Illegal and are Relivant (sic) to this Rate Case. XXXXXXXX Was a Credible Witness Having Access to Columbia’s Operations Over Years. The Purpose of this Special Investigation is to Confirm and Quantify the Financial Imact (sic) on Columbia’s Rate Base as well as to Confirm the Quality of Work and Inspection of Work of Columbia’s Contractors. This Planned, Conducted, Completed and Reported Investigation Must Be Performed in Accordance with Generally Accepted Audit Standards as well as Investigative Standards. This Audit and Investigation Must be Performed Diligently by a Competent and Independent External Audit and Investigative Firm Having Full Access to Relevant Columbia’s and Parent’s Operations, Books and Records, and Employees.

(Motion to Initiate a Special Investigation or Motion). Although Mr. Culbertson did not endorse his Motion to Initiate a Special Investigation as is required by 52 Pa.Code § 5.103(b), we instructed the active parties that any response to Mr. Culbertson’s Motion was due by Tuesday, June 21, 2022.

On June 21, 2022, I&E and Columbia filed separate replies to Mr. Culbertson’s Motion to Initiate a Special Investigation.

For the reasons set forth below, Mr. Culbertson’s Motion to Initiate a Special Investigation is denied.

Mr. Culbertson’s Motion to Initiate a Special Investigation

In his Motion, Mr. Culbertson indicated that the second person to speak during the June 1, 2022 6:00 p.m. Public Input Hearing was “XXXXXXX, a long-term Columbia Gas of Pennsylvania employee who works as a XXXX. He testified against his own company. He had safety concerns. Prior attempts to address these concerns internally were not effective. He characterized himself as a ‘whistleblower’”.[[1]](#footnote-1)

Mr. Culbertson further argued in his Motion that “XXXXX had limited time to speak. The Public Input Hearing is not a good venue to address numerous complex compliance pipeline technical matters. XXXXX’s concerns, experiences, observations and testimony may come at great risk and perhaps his well-being.”[[2]](#footnote-2) Additionally, in support of his Motion, Mr. Culbertson referenced some of his own concerns with several utility companies. Therefore, Mr. Culbertson has requested that we order a special investigation of Columbia’s operations as referenced in the testimony provided during the June 1, 2022 Public Input Hearing.

Columbia responded that Mr. Culbertson’s request for a special investigation is unnecessary because the issues raised by the public input hearing witness are already being investigated in this base rate case.[[3]](#footnote-3) Columbia noted that the Commission initiated an investigation into Columbia’s proposed rate increase, which includes the issues identified in Mr. Culbertson’s Motion.[[4]](#footnote-4) Columbia further noted that, regarding the testimony of the public input hearing witness, his testimony is part of the record in this case, and Columbia intends to present evidence in response to the public input hearing testimony when it submits its rebuttal testimony.[[5]](#footnote-5) Additionally, Columbia noted that issues pertaining to gas safety have been the subject of discovery in this case and, therefore, Mr. Culbertson’s request for an investigation would be duplicative of the investigation of these issues that are occurring in this case.[[6]](#footnote-6)

Columbia further responded that Mr. Culbertson’s general complaints about the Commission do not provide support for his requested investigation of Columbia.[[7]](#footnote-7) Lastly, Columbia responded that Mr. Culbertson’s complaints about other utilities are beyond the scope of this base rate proceeding and do not provide support for his requested investigation of Columbia.[[8]](#footnote-8)

I&E responded that it takes no position regarding Mr. Culbertson’s Motion to Initiate a Special Investigation of Columbia Gas of Pennsylvania, Inc. No other party responded to Mr. Culbertson’s Motion.

Discussion

Regarding the powers of the Commission, the Public Utility Code provides in pertinent part that:

**The commission may, on its own motion and whenever it may be necessary in the performance of its duties, investigate and examine the condition and management of any public utility or any other person or corporation subject to this part**. In conducting the investigations the commission may proceed, either with or without a hearing, as it may deem best, but it shall make no order without affording the parties affected thereby a hearing. Any investigation, inquiry or hearing which the commission has power to undertake or hold shall be conducted pursuant to the provisions of this chapter.

66 Pa.C.S. § 331(a)(emphasis added). The Public Utility Code further provides, in pertinent part, that the Commission may authorize the chairman to:

1. **Designate the time and place for the conducting of investigations**, inquiries and hearings.
2. Assign cases to a commissioner or commissioners for hearing, investigation, inquiry, study or other similar purposes.
3. Assign cases to special agents or administrative law judges for the taking and receiving of evidence.

*Id*. at § 331(b)(emphasis added).

Regarding the authority of presiding officers, the Public Utility Code provides in pertinent part that:

Officers presiding at hearings shall have authority subject to the published rules of the commission and within its powers, to:

1. Administer oaths and affirmations.
2. Issue subpoenas authorized by law.
3. Rule upon offers of proof and receive relevant evidence, take or cause depositions to be taken whenever the ends of justice would be served thereby.
4. Regulate the course of the hearing.
5. Require persons requesting to make a statement at a public input hearing to state their name, occupation and place of employment for the record.
6. Hold conferences for settlement or simplification of the issues by consent of the parties.
7. Dispose of procedural requests or similar matters.
8. Make decisions or recommend decisions in conformity within this part.
9. Take any other action authorized by commission rule.

*Id*. at § 331(d).

Mr. Culbertson has requested that we order a special investigation of Columbia’s operations as referenced in the testimony provided during the June 1, 2022 Public Input Hearing. However, a review of the Public Utility Code reveals that we do not have the authority to order such an investigation. That authority rests squarely with the Commission, and not with us. Since we do not have the authority to order the requested investigation, we must deny the Motion.

We note that, as Columbia indicated in its Answer, the concerns raised by the public input hearing witness will be considered during this proceeding. We further note that after this proceeding concludes, the Commission will have been notified of the public input hearing witness’ concerns at least two times. Specifically, the witness testified under oath at the June 1, 2022 public input hearing, and therefore his testimony and any responsive testimony thereto will be part of the record in this proceeding for the Commission to consider. Additionally, we note that the witness indicated that, separate from the Public Input Hearing, he already reported his safety concerns to the Commission.[[9]](#footnote-9) Moreover, when questioned by Counsel for I&E as to whom he reported his concerns, the witness provided the names of the Commission employees.[[10]](#footnote-10) While the witness did not specify when he reported these concerns, he clearly made the Commission aware. Accordingly, if the Commission decides that a separate investigation is warranted, the Commission will order one.

Regarding Mr. Culbertson’s assertion that this witness had limited time to testify during the Public Input Hearing, we note that this witness was given a full and uninterrupted opportunity to state on the record what he wanted regarding his safety concerns as well as the pending rate increase. The witness concluded his remarks as follows: “[t]hank you for your time, and that concludes my testimony for today.”

Accordingly, Mr. Culbertson’s Motion to Initiate a Special Investigation is denied.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Motion to Initiate a Special Investigation of Columbia Gas of Pennsylvania Inc. Regarding the Content of Sworn Testimony of XXXXXXX, a Columbia Gas of Pennsylvania Inc. Employee. He Provided Sworn Public Testimony of Columbia’s Practices That May Be Illegal and are Relivant (sic) to this Rate Case. XXXXXXXX Was a Credible Witness Having Access to Columbia’s Operations Over Years. The Purpose of this Special Investigation is to Confirm and Quantify the Financial Imact (sic) on Columbia’s Rate Base as well as to Confirm the Quality of Work and Inspection of Work of Columbia’s Contractors. This Planned, Conducted, Completed and Reported Investigation Must Be Performed in Accordance with Generally Accepted Audit Standards as well as Investigative Standards. This Audit and Investigation Must be Performed Diligently by a Competent and Independent External Audit and Investigative Firm Having Full Access to Relevant Columbia’s and Parent’s Operations, Books and Records, and Employees filed by Richard C. Culbertson at docket number R-2022-3031211 is denied.

Date: June 24, 2022 /s/

Christopher P. Pell

Deputy Chief Administrative Law Judge

/s/

John Coogan

Administrative Law Judge

Pennsylvania Public Utility Commission v. Columbia Gas of Pennsylvania, Inc.

Docket Number R-2022-3031211

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1. Motion at 5. [↑](#footnote-ref-1)
2. *Id*. [↑](#footnote-ref-2)
3. Columbia Answer at 2. [↑](#footnote-ref-3)
4. *Id*. [↑](#footnote-ref-4)
5. *Id* at 2-3. [↑](#footnote-ref-5)
6. *Id*. at 3. [↑](#footnote-ref-6)
7. Columbia Answer at 3. [↑](#footnote-ref-7)
8. Columbia Answer at 3-4. [↑](#footnote-ref-8)
9. Tr. at 88. [↑](#footnote-ref-9)
10. *Id*. at 89. [↑](#footnote-ref-10)