



Thomas J. Sniscak  
(717) 236-1300 x224  
[tjsniscak@hmslegal.com](mailto:tjsniscak@hmslegal.com)

Whitney E. Snyder  
(717) 236-1300 x260  
[wesnyder@hmslegal.com](mailto:wesnyder@hmslegal.com)

Phillip D. Demanchick  
(717) 236-1300 x225  
[pddemanchick@hmslegal.com](mailto:pddemanchick@hmslegal.com)

100 North Tenth Street, Harrisburg, PA 17101 Phone: 717.236.1300 Fax: 717.236.4841 [www.hmslegal.com](http://www.hmslegal.com)

September 2, 2022

***By Electronic Filing***

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street – Second Floor North  
Harrisburg, PA 17120

Re: Pennsylvania Public Utility Commission v. Columbia Gas of Pennsylvania, Inc.;  
Docket No. R-2022-3031211; C-2022-3031957; **THE PENNSYLVANIA  
STATE UNIVERSITY’S REPLY BRIEF IN SUPPORT OF THE JOINT  
PETITION FOR NON-UNANIMOUS SETTLEMENT REGARDING  
REVENUE ALLOCATION AND RATE DESIGN**

Dear Secretary Chiavetta:

Enclosed for filing with the Pennsylvania Public Utility Commission is The Pennsylvania State University’s Reply Brief in Support of the Joint Petition for Non-Unanimous Settlement Regarding Revenue Allocation and Rate Design in the above-captioned docket. Copies of this document have been served in accordance with the attached Certificate of Service.

If you have any questions with regard to this filing, please direct them to me. Thank you for your attention to this matter.

Very truly yours,

*/s/ Whitney E. Snyder*

Thomas J. Sniscak  
Whitney E. Snyder  
Phillip D. Demanchick Jr.

*Counsel for The Pennsylvania State University*

WES/das  
Enclosure

cc: ALJ Christopher P. Pell (via email, [cpell@pa.gov](mailto:cpell@pa.gov))  
ALJ John Coogan (via email [jcoogan@pa.gov](mailto:jcoogan@pa.gov))  
Per Certificate of Service

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	
	:	
v.	:	Docket No. R-2022-3031211
	:	
Columbia Gas of Pennsylvania, Inc.	:	

---

**REPLY BRIEF OF THE PENNSYLVANIA STATE UNIVERSITY  
IN SUPPORT OF THE JOINT PETITION FOR NON-UNANIMOUS SETTLEMENT  
REGARDING REVENUE ALLOCATION AND RATE DESIGN**

---

Thomas J. Sniscak, Attorney I.D. No. 33891  
Whitney E. Snyder, Attorney I.D. No. 316625  
Phillip D. Demanchick Jr., I.D. No. 324761  
Hawke McKeon & Sniscak LLP  
100 North Tenth Street  
Harrisburg, PA 17101  
Telephone: (717) 236-1300  
Facsimile: (717) 236-4841  
tjsniscak@hmslegal.com  
wesnyder@hmslegal.com  
pddemanchick@hmslegal.com

*Counsel for The Pennsylvania State University*

Dated: September 2, 2022

## TABLE OF CONTENTS

I.	INTRODUCTION .....	1
II.	SUMMARY OF REPLY ARGUMENT .....	1
IX.	REPLY ARGUMENT – RATE STRUCTURE, REVENUE ALLOCATION .....	5
	A. Cost of Service.....	6
	B. Revenue Allocation.....	11
	C. Tariff Structure/Rate Design.....	14
	D. Summary and Alternatives.....	14
X.	CONCLUSION.....	16

**TABLE OF AUTHORITIES**

**Cases**

*Baker v. U.S.*,  
338 F. Supp. 331 (Pa. E.D. 1972) ..... 6

*PECO Energy Co. v. Pa. Pub. Util. Comm’n*,  
791 A.2d 1155 (Pa. 2002) ..... 2, 6

**Regulations**

52 Pa. Code § 5.231(a)..... 3, 13

52 Pa. Code § 69.401 ..... 3

**Pennsylvania Public Utility Commission Decisions**

*Pa. Pub. Util. Comm’n, et al. v. City of Bethlehem – Water Dep’t*,  
Docket Nos. R-2020-3020256, *et al.*, 2021 WL 1534307 (Opinion and Order entered Apr. 15,  
2021)..... 10

*Pa. Pub. Util. Comm’n v. Columbia Gas of Pa., Inc.*,  
Docket No. R-2020-3018835 (Recommended Decision entered Dec. 4, 2020)..... 2, 7

*Pa. Pub. Util. Comm’n v. Columbia Gas of Pa., Inc.*,  
Docket No. R-2020-3018835, 2021 WL 757073 (Opinion and Order entered Feb. 19,  
2021).....5, 6, 12

*Pa. Pub. Util. Comm’n, et al. v. Columbia Gas of Pa., Inc.*,  
Docket Nos. R-2021-3024296, *et al.*, 2021 WL 5999408 (Opinion and Order entered Dec. 16,  
2021)..... 14

*Pa. Pub. Util. Comm’n, et al. v. UGI Utilities, Inc. – Electric Division*,  
Docket Nos. R-2021-3023618, *et al.*, 2021 WL 5051925 (Opinion and Order entered Oct. 28,  
2021)..... 13

*Pa. Pub. Util. Comm’n v. Pa. Power and Light Co.*,  
Docket No. R-842651, *et al.*, 1985 WL 1205434 (Opinion and Order entered Apr. 25, 1985) . 8

*Pa. Pub. Util. Comm’n, et al v. PECO Energy Co. – Gas Division*,  
Docket Nos. R-2020-3018929, *et al.*, 2021 WL 2645922 (Opinion and Order entered Jun. 22,  
2021)..... 3, 9

*Pa. Pub. Util. Comm’n, et al., v. Pennsylvania-American Water Co.*,  
Docket Nos. R-2020-3019369, *et al.*, 2021 WL 785069 (Opinion and Order entered Feb. 25,  
2021)..... 8

*Pub. Util. Comm’n v. Philadelphia Elec. Co.*,  
Rate Investigation Docket No. 438, 1978 WL 456992, 31 PUR 4th 15 (Order entered Dec. 28,  
1978)..... 8

*Pa. Pub. Util. Comm'n, et al. v. Pike County Light and Power Co. – Electric,*  
Docket Nos. R-2020-3022135, *et al.*, 2021 WL 3141257 (Opinion and Order entered Jul. 21,  
2021)..... 3, 10

## **I. INTRODUCTION**

The Pennsylvania State University (“Penn State” or “PSU”) submits this Reply Brief to support the Joint Petition for Non-Unanimous Settlement Regarding Revenue Allocation and Rate Design (“Rate Allocation/Design Settlement”) and to address the Main Brief of the Office of Small Business Advocate (“OSBA”) opposing the Rate Allocation/Design Settlement.

OSBA requests that the Pennsylvania Public Utility Commission (“Commission”) adopt the OSBA’s Peak and Average (“P&A”) Cost of Service Study (“COSS”) and allocate the annual revenue increase based upon a proportional scale back of OSBA’s preferred revenue allocation. OSBA M.B. at 16. The Commission should not adopt the OSBA’s position, which would result in an unfair and inequitable allocation of the revenue increase in this proceeding. Put simply, the Rate Allocation/Design Settlement results in a more equitable allocation of the revenue increase based upon a broad consensus of competing positions.<sup>1</sup> Approval of the Rate Allocation/Design Settlement is in the public interest, results in just and reasonable rates, and should be approved by the Commission without modification.

## **II. SUMMARY OF REPLY ARGUMENT**

The Commission should not adopt OSBA’s preferred cost of service study and revenue allocation. OSBA relies on the incorrect legal premise (offered in its witness’ testimony) that the Commission is bound by its previous decision in the 2020 base rate case of Columbia Gas where the Commission relied on the OCA’s P&A COSS *as a guide* for revenue allocation. Contrary to

---

<sup>1</sup> The Rate Allocation/Design Settlement is supported by Columbia Gas of Pa., Inc. (“Columbia Gas” or the “Company”), the Bureau of Investigation and Enforcement (“I&E”), the Office of Consumer Advocate (“OCA”), PSU, the Columbia Industrial Intervenors (“CII”), the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (“CAUSE-PA”), and the Pennsylvania Weatherization Providers Task Force (“PA Task Force”) (collectively, the “Rate Structure Petitioners”). The Retail Energy Supply Association, Shipley Choice, LLC, and NRC Energy, Inc. (collectively, “RESA/NGS Parties”) and Natural Resources Defense Council (“NRDC”) have indicated that they do not oppose the Rate Allocation/Design Settlement.

the OSBA's claims, it is well-settled that the Commission is not required by law to follow its decisions or "precedent" (a doctrine known as "stare decisis"). *PECO Energy Co. v. Pa. Pub. Util. Comm'n*, 791 A.2d 1155, 1166 (Pa. 2002) (*PECO*). Rather, the Commission need only explain why it rules differently in like circumstances. *PECO*, 791 A.2d at 1166.

As a start, there are not like circumstances here as explained below since the OSBA and its witness fundamentally misunderstand that the decision it cites as alleged precedent involved a situation where the ALJ found, and the Commission adopted as its decision, that the COSS method PSU and the Company favored or presented would have been adopted were it not for the alleged 'errors' in that method as argued by OCA. Those errors were corrected here in the present case—so there are not "like circumstances." Thus OSBA's precedent argument, presented by a non-lawyer in OSBA's testimony, that the Commission rigidly adopted the P&A method is simply and fundamentally wrong as a matter of both fact and law.<sup>2</sup> Thus, the settlement parties do not endorse any COSS method; rather, it is a compromise between the two methods without admission and consonant with the Commission's policy to encourage settlements including "black box" settlements as is the case here.

Additionally, there is considerable subjectivity in how cost-of-service studies are performed as they are far from being an exact art, but rather a useful tool for testing the reasonableness of the revenue requirement. Indeed, contrary to OSBA's argument, the Commission has adopted other COSS methodologies since the Commission's decision in the 2020

---

<sup>2</sup> *Pa. Pub. Util. Comm'n v. Columbia Gas of Pa., Inc*, Docket No. R-2020-3018835, Recommended Decision at 394 (entered Dec. 4, 2020) ("Columbia Gas' Customer Demand COSS *would be the preferred method*, but it contains serious flaws that skews its reliability and makes it unsuitable for use *at this time* and with this NGDC. The ALJ agrees with OCA that its Peak & Average COSS corrects the errors in Columbia Gas' COSS and provides a useful guide to allocate distribution mains costs, and to guide the distribution of a revenue increase, if approved.") (emphasis added) (*Columbia Gas 2020 R.D.*); *see also Pa. Pub. Util. Comm'n v. Columbia Gas of Pa., Inc*, Docket No. R-2020-3018835, 2021 WL 757073, at \*124 (Opinion and Order entered Feb. 19, 2021) ("Upon our review of the record in this proceeding and the Exceptions and Replies to Exceptions, we are not persuaded to reverse the ALJ's Recommended Decision that adopted the OCA's P&A ACCOSS and methodology in this proceeding.").

base rate case of Columbia Gas, such as the Average and Excess method. *Pa. Pub. Util. Comm'n, et al v. PECO Energy Co. – Gas Division*, Docket Nos. R-2020-3018929, *et al.*, 2021 WL 2645922, at \*129 (Opinion and Order entered Jun. 22, 2021) (*PECO Gas 2020*). Thus, there is nothing preventing the Commission from deciding the issue of cost of service and revenue allocation differently than it has in past Columbia Gas base rate cases.

Importantly, the Commission does encourage settlements and has previously adopted non-unanimous black box revenue allocation and rate design settlements. *See* 52 Pa. Code §§ 5.231(a), 69.401; *see also Pa. Pub. Util. Comm'n, et al. v. Pike County Light and Power Co. – Electric*, Docket Nos. R-2020-3022135, *et al.*, 2021 WL 3141257 \*22 (Opinion and Order entered Jul. 21, 2021) (*PCL&P - Electric*). More specifically, the Commission has found that there is substantial evidence and support for non-unanimous black box settlements of revenue allocation where the outcome is within the range of likely litigated outcomes supported by expert witness testimony. *PCL&P – Electric*, 2021 WL 3141257, at \*22.

For these reasons, the Rate Allocation/Design Settlement should be approved because it represents a compromise of competing positions amongst the parties that was developed after extensive and meaningful settlement negotiations. The Rate Allocation/Design Settlement provides for a rate allocation and rate design that is within the range of likely litigated outcomes and does not endorse one COSS over another, but rather equitably balances the views and opinions expressed by each parties' respective expert witness. Moreover, when compared to OSBA's litigation position, the Rate Allocation/Design Settlement better incorporates principles of gradualism by mitigating OSBA's litigation position in measurable ways.

Altogether, the terms and conditions set forth in the Rate Allocation/Design Settlement considers and incorporates the positions of all active parties that expressed a position on this issue



(including OSBA) together into a black box settlement that is just and reasonable and represents an amicable resolution of the issues in the case, which no litigated outcome will achieve. The Presiding Officers and the Commission should approve the Rate Allocation/Design Settlement, which is a mutually acceptable compromise of the Rate Structure Petitioners' positions resulting in just and reasonable rates that is in the public interest.

## **IX. REPLY ARGUMENT – RATE STRUCTURE, REVENUE ALLOCATION**

In its Main Brief, OSBA presents several arguments in favor of its position in this proceeding. Specifically, OSBA argues that the P&A cost of service methodology should be used in this proceeding to determine revenue allocation. OSBA M.B. at 7. OSBA argues that the Commission is required to use the P&A COSS because in the Commission’s Opinion and Order in *Pa. Pub. Util. Comm’n v. Columbia Gas of Pa., Inc.* at Docket No. R-2020-3018835, the Commission adopted the OCA’s P&A COSS as the guide for revenue allocation. OSBA M.B. at 4; *see also Pa. Pub. Util. Comm’n v. Columbia Gas of Pa., Inc.*, Docket No. R-2020-3018835, 2021 WL 757073, at \*128 (Opinion and Order entered Feb. 19, 2021) (*Columbia Gas 2020*). Given this position, OSBA put forth its own P&A COSS in this proceeding, which modifies the P&A COSS of Columbia Gas by revising, *inter alia*, the allocation of the design day demands. OSBA M.B. at 5-6. Lastly, OSBA recommends that the Commission adopt a proportional scale back of OSBA’s revenue allocation, which is based off OSBA’s P&A COSS. OSBA M.B. at 16.

PSU will respond to each of OSBA’s arguments in turn. As a general matter, the Presiding Officers and the Commission should not adopt the OSBA’s position. The parties have developed a Rate Allocation/Design Settlement that was the result of extensive and meaningful settlement discussions between the parties and provides an outcome that is within the range of the varying allocation proposals among the parties. Accordingly, the black box revenue allocation and rate design proposal has received support from a broad array of interests, does not endorse one cost of service methodology over another, achieves an equitable distribution of the revenue increase, and results in just and reasonable rates. The Presiding Officers and the Commission should approve the Rate Allocation/Design Settlement, without modification.

## A. Cost of Service

OSBA asserts that the Commission should adopt and rely upon OSBA's proposed P&A COSS as a guide for revenue allocation in this proceeding. OSBA M.B. at 7. OSBA argues (in its witness's testimony) that because the Commission previously approved the use of a P&A COSS in *Columbia Gas 2020*, the P&A COSS must be relied upon in this proceeding. OSBA M.B. at 4. In other words, OSBA asserts that Commission precedent prohibits the use of any other type of COSS because the P&A method is the Commission's preferred method. *Id.* Thus, OSBA argues that the Commission should adopt OSBA's P&A COSS presented in this proceeding. OSBA M.B. at 7; *see also* OSBA Exh. IEC WPS3.<sup>3</sup>

OSBA's position should not be adopted by the Presiding Officers or the Commission. Contrary to OSBA's claims, the Commission is not required by law to follow its decisions or "precedent" (a doctrine known as 'stare decisis). *PECO*, 791 A.2d at 1166; *see also Baker v. U.S.*, 338 F. Supp. 331, 336 (Pa. E.D. 1972) ("[I]t is well settled that an administrative body is not bound by the rule of stare decisis, and inconsistency of its holding with prior holdings in and of itself does not make the decision capricious."). The Commission is only required to explain why a different result or conclusion is warranted where it rules differently in like circumstances. *PECO*, 791 A.2d at 1166. Thus, the Commission is not bound to rely upon the P&A COSS merely because it decided to in the *Columbia Gas 2020* base rate case. So long as the Commission is able to

---

<sup>3</sup> OSBA relies upon its own Peak and Average COSS because there is, *inter alia*, a disagreement between the Company and OSBA regarding the Company's method for determining the design day demand allocators among the customer classes. OSBA M.B. at 6. More specifically, OSBA argues that there is insufficient justification for the Company's material shift in design day demands away from the residential customer class to the small general service classes. *Id.* Accordingly, OSBA's P&A COSS seeks to address this issue by revising the Company's Revised P&A COSS. OSBA M.B. at 6. While PSU does not intend to specifically address this issue, it should be noted that the Company responded at length to OSBA's concerns regarding the determination of the design day demand allocators. *Columbia Gas St. 6* at 16:6-30:5.

explain why a different result is warranted based upon substantial evidence, the Commission's decision is not arbitrary or capricious.

Indeed, there are materially different circumstances between the evidentiary record in this proceeding and the record in *Columbia Gas 2020*. Contrary to the claims of the OSBA, in *Columbia Gas 2020* the ALJ found, which the Commission adopted, that the Customer-Demand method would be the preferred method if it were not for the alleged 'errors' contained in the Company's Customer-Demand COSS as identified by OCA:

Columbia Gas' Customer Demand COSS *would be the preferred method*, but it contains serious flaws that skews its reliability and makes it unsuitable for use *at this time* and with this NGDC. The ALJ agrees with OCA that its Peak & Average COSS corrects the errors in Columbia Gas' COSS and provides a useful guide to allocate distribution mains costs, and to guide the distribution of a revenue increase, if approved.

*Columbia Gas 2020 R.D.*, at 394. As the record reflects in this proceeding, those errors have since been removed from the Company's Customer-Demand COSS.<sup>4</sup> Moreover, PSU has presented novel evidence which demonstrates that the Company's process for determining new mains investment does not consider average annual demand, but is rather a function of the location and peak demand of the new customer.<sup>5</sup> The Company has likewise demonstrated that the P&A COSS over allocates mains investment to the Company's largest customers.<sup>6</sup> As the errors from the previous Customer-Demand study have since been corrected in the present case and with the addition of the new evidence before the Commission — these are not "like circumstances." Thus OSBA's argument, presented by OSBA's non-lawyer witness, that the Commission set a precedent in *Columbia Gas 2020* that rigidly adopts the P&A method for all natural gas cost-of-service

---

<sup>4</sup> PSU St. 1 at 12:11 – 13:26.

<sup>5</sup> PSU St. 1 at 14:15 – 18:12.

<sup>6</sup> Columbia Gas St. 6-R at 9:7-10:8.

studies is fundamentally wrong as a matter of both fact and law.<sup>7</sup> Here, the settlement parties do not endorse any COSS method, but rather reach a compromise between the two methods without admission or prejudice to any party's position. This is consonant with the Commission's policy to encourage settlements, including "black box" settlements, as is the case here. 52 Pa. Code § 5.231(a).

Moreover, the Commission has stated in the past that no single cost of service study methodology is perfect, and reasonable experts can present unique and defensible methodologies from a wide range of beliefs on cost-of-service study principles which can lead to varying cost of service study results. *See, e.g., Pa. Pub.Util.Comm'n v. Philadelphia Elec. Co.*, Rate Investigation Docket No. 438, 1978 WL 456992, 31 PUR 4th 15, 84 (Order entered Dec. 28, 1978). That is, "cost-of-service studies are far from being an exact art and are, essentially, a useful tool for testing the reasonableness of the revenue requirement. A considerable amount of judgement is inherent in the development of cost-of-service studies, appropriate rate changes, and the allocation of allowable revenues among the various classes of customers." *Pa. Pub. Util. Comm'n v. Pa. Power and Light Co.*, Docket No. R-842651, *et al.*, 1985 WL 1205434, at \*84 (Opinion and Order entered Apr. 25, 1985); *see also Pa. Pub. Util. Comm'n, et al., v. Pennsylvania-American Water Co.*, Docket Nos. R-2020-3019369, *et al.*, 2021 WL 785069, at \*48 (Opinion and Order entered Feb. 25, 2021) ("[I]n previous cases, we have held that cost of service and revenue allocation analyses must reflect the exercise of judgment and are as much a matter of art as of science. Accordingly, even if this determination was made outside the context of a Settlement, to declare that a single

---

<sup>7</sup> *See also Columbia Gas 2020*, 2021 WL 757073, at \*124 (Opinion and Order entered Feb. 19, 2021) ("Upon our review of the record in this proceeding and the Exceptions and Replies to Exceptions, we are not persuaded to reverse the ALJ's Recommended Decision that adopted the OCA's P&A ACCOSS and methodology *in this proceeding.*") (emphasis added).

methodology be used would be inconsistent with standard cost of service and revenue allocation practices.”) (citations omitted).

Indeed, the Commission has previously relied on other cost of service study methodologies. For instance, the Commission relied on the Average and Excess (“A&E”) method in another natural gas rate case as guide for revenue allocation and rejected the OCA’s Peak and Average COSS stating:

We agree with PAIEUG that the inherent distinctions between utilities and rate cases may result in different methodologies to be reasonable for different reasons. In other words, the best-suited ACCOSS may depend on the circumstances of the situation on a case-by-case basis.”

*PECO Gas 2020*, 2021 WL 2645922, at \*129. Importantly, this issue was decided after the conclusion of *Columbia Gas 2020*. Thus, as PSU witness Crist stated the Commission understands that different cost of service study methods exist and just because the Commission selected a particular method for one utility in one case does not cast in stone and mandate that methodology in all cases for all time. PSU St. 1-SR at 15:20-23. The Commission is free to decide based on the merits and evidence in this proceeding.<sup>8</sup>

In this regard, the black box Rate Allocation/Design Settlement represents a blend of the parties competing cost of service studies in this proceeding. In other words, the Rate Allocation/Design Settlement does not adopt one specific cost of service study model over another, but rather achieves a blended compromise resulting in an equitable result for all. OSBA, on the

---

<sup>8</sup> OSBA likewise notes its issues with the P&A COSS stating in its Main Brief that OSBA “would welcome a Commission decision which would allow gas distribution utilities to consider the results of a [Customer-Demand] COSS, as well as the P&A and [Average and Excess] methodologies. As Messrs. Ewen and Knecht explained, the CD method is more reflective of cost causation because it recognizes that mains are sized to meet peak demands and that there are scale economies to serving larger customers.” OSBA M.B. at 7, n. 12. This further demonstrates why a black box settlement, which does not endorse one COSS over another or require the Commission to decide this issue, benefits OSBA and its constituents. See pgs. 9-10, *infra*.

other hand, relies on the incorrect legal premise that the Commission must use the P&A COSS as the basis for its decision in this matter when, in fact, it does not. Rather, as in previous decisions, the Commission may adopt a revenue allocation that is based upon a compromise amongst the parties' competing interests that results in just and reasonable rates. As stated by the Commission:

We disagree with the OSBA's argument that the negotiated settlement achieved under the Rate Design Settlement is not supported by substantial evidence. We find the OSBA's position, that the ALJ was required to approve and rely upon a single COSS among those proffered by the Parties, in order to approve the “black box” [sic] compromise rate structure and rate design achieved under the Rate Design Settlement, to be without merit. To the contrary, we approve the Parties' efforts at reaching a reasonable and just resolution of the allocation of revenues based upon agreement within the range of possible outcomes argued by the Parties and supported by their respective expert's testimony.

*PCL&P - Electric*, 2021 WL 3141257 \*22 (approving a rate design settlement notwithstanding OSBA's opposition because the settlement fairly and equitably resolves the issues impacting residential consumers, business customers, and the public interest at large and represents a fair balance of the interests of Pike County Light and Power Co. and its customers); *see also Pa. Pub. Util. Comm'n, et al. v. City of Bethlehem – Water Dep't*, Docket Nos. R-2020-3020256, *et al.*, 2021 WL 1534307, at \*22 (Opinion and Order entered Apr. 15, 2021) (approving a non-unanimous black box revenue requirement and revenue allocation settlement).

Accordingly, the Presiding Officers and the Commission should reject the OSBA's position that the P&A COSS must be used as a guide for revenue allocation in this proceeding. Rather, the Commission should adopt the revenue allocation set forth in the Rate Allocation/Design Settlement that represents a compromise among competing positions that was obtained after meaningful and extensive settlement negotiations, is supported by substantial evidence in this proceeding, results in rates that are just and reasonable, and is in the public interest.

**B. Revenue Allocation**

OSBA argues that the Commission should adopt its litigation position on revenue allocation, except that it be proportionally scaled back based upon the revenue increase as set forth in the Joint Petition for Partial Settlement, which resolves the revenue requirement and other related issues (“Revenue Requirement Settlement”). OSBA M.B. at 16. If approved, OSBA’s recommendation would result in the following approximate revenue allocation:

<b>Proportional Scale Back of OSBA’s Proposed Revenue Allocation<sup>9</sup></b>		
	<b>Increase (\$mm)</b>	<b>Increase %</b>
Residential	\$26.5	7.04%
SGS1	\$3.7	7.76%
SGS2	\$6.0	11.92%
Med Gen’1 (SDS/LGSS)	\$4.6	15.40%
Lg Gen’1 (LDS/LGSS)	\$3.7	15.39%
MDS	--	--
Flex	\$0.007	0.17%
<b>Total</b>	<b>\$44.5</b>	<b>8.33%</b>

The Commission, however, should not adopt OSBA’s position.

The Rate Allocation/Design Settlement allocates the agreed-upon revenue in a manner that is substantially similar to OSBA’s litigation position, but uses a more equitable approach with the support or non-opposition of all other active parties to the proceeding, except for OSBA and Mr. Culbertson. Indeed, when comparing OSBA’s proposal with the Rate Allocation/Design Settlement, the two proposals are almost identical, except for the SGS1 and LDS/LGSS classes:

---

<sup>9</sup> See OSBA M.B. at 12 (proportionally scaled back to accommodate the revenue increase set forth in the Revenue Requirement Settlement).



<b>Proportional Scale Back of OSBA’s Proposed Revenue Allocation<sup>10</sup></b>				
	<b>OSBA</b>		<b>Rate Allocation/Design Settlement</b>	
	<b>Increase (\$mm)</b>	<b>Increase %</b>	<b>Increase (\$mm)</b>	<b>Increase %</b>
Residential	\$26.5	7.04%	\$26.5	7.04%
SGS1	\$3.7	7.76%	\$4.5	9.45%
SGS2	\$6.0	11.92%	\$6.0	12.06%
Med Gen'l (SDS/LGSS)	\$4.6	15.40%	\$4.6	15.39%
Lg Gen'l (LDS/LGSS)	\$3.7	15.39%	\$2.8	11.71%
MDS	--	--	--	--
Flex	\$0.007	0.17%	\$0.006	0.14%
<b>Total</b>	<b>\$44.5</b>	<b>8.33%</b>	<b>\$44.5</b>	<b>8.33%</b>

As seen above, the Rate Allocation/Design Settlement better incorporates principles of gradualism. More specifically, the Rate Allocation/Design Settlement ensures that almost every class, with one exception, receives a rate increase that is less than 1.5 times the system average increase. *Columbia Gas 2020*, 2021 WL 757073, at \*138 (“The record indicates that although there are no definitive rules for determining what kind of rate increase would violate the principle of gradualism, limiting the maximum average rate increase for any particular class to 1.5 to 2.0 times the system average increase is one common metric that has been used by experts in the Commonwealth.”); *see also* PSU M.B. at 17. Comparatively, OSBA’s litigation position contemplated significant increases to the medium general (SDS/LGSS) and large general (LDS/LGSS) classes, recommending almost a 30% increase to both classes. OSBA St. 1-S at 6, Table IEc-S3. As a result, even after proportionally scaling back OSBA’s recommended revenue allocation, both the medium general and large general customer classes would receive significant increases that are more than double the residential customer class’s allocation. This is directly at odds with what the Commission sought to achieve in *Columbia Gas 2020*, where the Commission limited all customer class increases to 1.5 times the system average increase. *Columbia Gas 2020*,

<sup>10</sup> *See* Rate Allocation/Design Settlement, App. A; *see also* fn. 9, *supra*.

2021 WL 757073, at \*138 (adopting OCA’s recommended revenue allocation capping the largest customer class increases at 1.5 times the system average increase).

Moreover, the Rate Allocation/Design Settlement represents a compromise among the competing positions that is within the range of likely outcomes if this proceeding were to be litigated. For instance, while PSU disagrees with the P&A COSS’s put forth by the Company, the OCA, and OSBA, under their view of the case utilizing the P&A COSS, the Rate Allocation/Design Settlement makes progress toward cost-based rates by assigning the larger customer classes a larger percentage increase. *See, e.g.*, Columbia Gas St. 6 at 18:6-19:18; OCA St. 3 at 11, Table 3; OSBA St. 1 at 24:1-25:25. Conversely, the Rate Allocation/Design Settlement also recognizes the position of PSU, which was supported with evidence by PSU, Columbia Gas, and CII, that the P&A COSS is not based on cost causation principles and over allocates mains investment to the larger commercial and industrial classes. *See* PSU St. 1 at 14:3-18:7; Columbia Gas St. 6-R at 9:7-10:8; CII St. 1 at 7:14-8:20. Given that the Rate Allocation/Design Settlement fairly balances these competing views and results in less exaggerated increases than proposed by OSBA, the settlement allocation is supported by substantial evidence, is in the public interest, and will result in just and reasonable rates.

Ultimately, it is the Commission’s policy to encourage settlements. 52 Pa. Code § 5.231(a). As the Commission has stated, Commission policy encourages settlements because “the results achieved from a negotiated settlement or stipulation, or both, in which the interested parties have had an opportunity to participate are often preferable to those achieved at the conclusion of a fully litigated proceeding.” *Pa. Pub. Util. Comm’n, et al. v. UGI Utilities, Inc. – Electric Division*, Docket Nos. R-2021-3023618, *et al.*, 2021 WL 5051925, at \*18 (Opinion and Order entered Oct. 28, 2021) (quoting 52 Pa. Code § 69.401) (*UGI Electric*). Moreover, black box” settlements can

serve an important purpose in reaching consensus in rate cases. Thus, “the Commission has historically permitted “black box” settlements as a way of promoting consensus among the parties in contentious rate proceedings, because reaching an agreement on each component of a rate increase can be difficult and impractical.” *Pa. Pub. Util. Comm’n, et al. v. Columbia Gas of Pa., Inc.*, Docket Nos. R-2021-3024296, *et al.*, 2021 WL 5999408, at \*25 (Opinion and Order entered Dec. 16, 2021) (citations omitted).

The Rate Allocation/Design Settlement represents a broad consensus among numerous parties having various and, in some cases, opposing goals. While OSBA may disagree with the outcome, the public interest is best served by adopting a proposal that best satisfies the competing interests of the parties that collectively represent the public interest, better incorporates principles of gradualism, and is within the range of likely outcomes based on substantial evidence regarding cost causation in this case.

#### **C. Tariff Structure/Rate Design**

As OSBA did not specifically address this issue, PSU does not address any additional issues in this section. PSU just briefly notes its support of the tariff structure and rate design terms set forth in the Rate Allocation/Design Settlement. *See* Rate Allocation/Design Settlement, App. B.

#### **D. Summary and Alternatives**

The Rate Allocation/Design Settlement is just, reasonable, in the public interest, balanced, and moderate. Notably, the Rate Allocation/Design Settlement is within the range of the litigation positions of the various parties. Moreover, there is quantitative proof that the judgment of each of the parties was considered (including OSBA) and melded together in a black box to come to a settlement that is just and reasonable and represents an amicable resolution of the issues in the case

incorporating the judgment of all the Rate Structure Petitioners to achieve a mutually acceptable compromise of positions that is in the public interest. The Rate Allocation/Design Settlement also means the Commission does not need to decide (and potentially err in deciding) hotly contested issues such as appropriate cost of service studies (which can vary depending on the evidence presented in each particular case for each particular utility) and applications of or adjustments thereto, while also keeping secondary considerations such as gradualism in mind. Instead, the Commission is presented with a settlement that incorporates the judgment of all parties and demonstrates gradualism, which no litigated outcome will achieve. The Commission should approve the Rate Allocation/Design Settlement as it is just, reasonable, and in the public interest.

**X. CONCLUSION**

WHEREFORE, for all these reasons, PSU respectfully submits that the Presiding Officers and the Commission approve, without modification, the Rate Allocation/Design Settlement as it is in the public interest and results in just and reasonable rates. The Presiding Officers and the Commission should also approve the Revenue Requirement Settlement, which equitably resolves the remaining issues in this proceeding. Taken together, both settlements benefit both Columbia Gas and its customers.

Respectfully submitted,

/s/ Whitney E. Snyder

Thomas J. Sniscak, Attorney I.D. No. 33891  
Whitney E. Snyder, Attorney I.D. No. 316625  
Phillip D. Demanchick Jr., I.D. No. 324761  
Hawke McKeon & Sniscak LLP  
100 North Tenth Street  
Harrisburg, PA 17101  
Telephone: (717) 236-1300  
Facsimile: (717) 236-4841  
tjsniscak@hmslegal.com  
wesnyder@hmslegal.com  
pddemanchick@hmslegal.com

*Counsel for The Pennsylvania State University*

Dated: September 2, 2022

## CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the parties, listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

### VIA ELECTRONIC MAIL ONLY

Michael W. Hassell, Esq.  
Lindsay A. Berkstresser, Esq.  
Post & Schell, P.C.  
17 North Second Street, 12<sup>th</sup> Floor  
Harrisburg, PA 17101  
[mhassell@postschell.com](mailto:mhassell@postschell.com)  
[lberkstresser@postschell.com](mailto:lberkstresser@postschell.com)

*Counsel for  
Columbia Gas of Pennsylvania, Inc.*

Theodore J. Gallagher, Esq.  
Nisource Corporate Services Co.  
121 Champion Way  
Suite 100  
Canonsburg, PA 15317  
[tjgallagher@nisource.com](mailto:tjgallagher@nisource.com)

*Counsel for  
Columbia Gas of Pennsylvania, Inc.*

John W. Sweet, Esq.  
Ria M. Pereira, Esq.  
Lauren N. Berman, Esq.  
Elizabeth R. Marx, Esq.  
Pennsylvania Utility Law Project  
118 Locust Street  
Harrisburg, PA 17101  
[pulp@putilitylawproject.org](mailto:pulp@putilitylawproject.org)

Amy E. Hirakis, Esq.  
Candis A. Tunilo, Esq.  
NiSource Corporate Services Co.  
800 North Third Street, Suite 204  
Harrisburg, PA 17102  
[ahirakis@nisource.com](mailto:ahirakis@nisource.com)  
[ctunilo@nisource.com](mailto:ctunilo@nisource.com)

*Counsel for  
Columbia Gas of Pennsylvania, Inc.*

Lauren E. Guerra, Esq.  
Harrison W. Breitman, Esq.  
Barrett C. Sheridan, Esq.  
Aron J. Beatty, Esq.  
Office of Consumer Advocate  
555 Walnut Street  
Forum Place, 5<sup>th</sup> Floor  
Harrisburg, PA 17101-1923  
[OCAColumbiaGas2022@paoca.org](mailto:OCAColumbiaGas2022@paoca.org)

Steven C. Gray, Esq.  
Office of Small Business Advocate  
555 Walnut Street  
Forum Place, 1<sup>st</sup> Floor  
Harrisburg, PA 17101  
[sgray@pa.gov](mailto:sgray@pa.gov)

Erika L. McLain, Esq.  
Bureau of Investigation & Enforcement  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2<sup>nd</sup> Floor  
Harrisburg, PA 17120  
[ermclain@pa.gov](mailto:ermclain@pa.gov)

Joseph L. Vullo, Esq.  
1460 Wyoming Avenue  
Forty Fort, PA 18704  
[jlvullo@bvrrlaw.com](mailto:jlvullo@bvrrlaw.com)

*Counsel for  
Weatherization Providers Task Force, Inc.*

Constance Wile  
922 Bebout Road  
Venetia, PA 15367  
[cjazdrmr@yahoo.com](mailto:cjazdrmr@yahoo.com)

Mark C. Szybist, Esq.  
Natural Resources Defense Council  
1152 15<sup>th</sup> Street NW, Suite 300  
Washington, DC 20005  
[mszybist@nrdc.org](mailto:mszybist@nrdc.org)

Jennifer E. Clark, Esq.  
Fair Shake Environmental Legal Services  
100 S. Juniper Street, 3<sup>rd</sup> Floor  
Philadelphia, PA 19107  
[jclark@fairshake-els.org](mailto:jclark@fairshake-els.org)

*Counsel for Natural Resources Defense  
Council*

Todd S. Stewart, Esq.  
Hawke McKeon & Sniscak LLP  
100 N. Tenth Street  
Harrisburg, PA 17101  
[tsstewart@hmslegal.com](mailto:tsstewart@hmslegal.com)

*Counsel for  
The Retail Energy Supply Association,  
Shipley Choice, LLC, and  
NRG Energy, Inc.*

Charis Mincavage, Esq.  
Kenneth Stark, Esq.  
McNees Wallace & Nurick LLC  
100 Pine Street  
Harrisburg, PA 17101  
[cmincavage@mcneeslaw.com](mailto:cmincavage@mcneeslaw.com)  
[kstark@mcneeslaw.com](mailto:kstark@mcneeslaw.com)

Jose A. Serrano  
2667 Chadbourne Drive  
York, PA 17404  
[ja5673@hotmail.com](mailto:ja5673@hotmail.com)

Andrew J. Karas, Esq.  
John A. Heer, Esq.  
Fair Shake Environmental Legal Services  
600 Superior Avenue East  
Cleveland, OH 44114  
[akaras@fairshake-els.org](mailto:akaras@fairshake-els.org)  
[jheer@fairshake-els.org](mailto:jheer@fairshake-els.org)

Richard C. Culbertson  
1430 Bower Hill Road  
Pittsburgh, PA 15243  
[Richard.c.culbertson@gmail.com](mailto:Richard.c.culbertson@gmail.com)

Robert D. Knecht  
Industrial Economics, Inc.  
5 Plymouth Road  
Lexington, MA 02421  
[rdk@indecon.com](mailto:rdk@indecon.com)

Mark Ewen  
Industrial Economics, Inc.  
2067 Massachusetts Avenue  
Cambridge, MA 02140  
[mewen@indecon.com](mailto:mewen@indecon.com)

Jerome D. Mierzwa  
Exeter Associates, Inc.  
10480 Little Patuxent Parkway  
Suite No. 300  
Columbia, MD 21044  
[jmierzwa@exeterassociates.com](mailto:jmierzwa@exeterassociates.com)

/s/ Whitney E. Snyder  
Thomas J. Sniscak  
Whitney E. Snyder  
Phillip D. Demanchick Jr.

Dated this 2<sup>nd</sup> day of September, 2022