COMMONWEALTH OF PENNSYLVANIA

October 14, 2022

E-FILED

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

Re: Pennsylvania Public Utility Commission v. Columbia Gas of Pennsylvania, Inc.
2022 Base Rate Filing / Docket No. R-2022-3031211

Dear Secretary Chiavetta:

Enclosed please find the Exceptions to the Recommended Decision, on behalf of the Office of Small Business Advocate ("OSBA"), in the above-captioned proceeding.

Copies will be served on all known parties in this proceeding, as indicated on the attached Certificate of Service.

If you have any questions, please do not hesitate to contact me.

Sincerely,

/s/ Steven C. Gray

Steven C. Gray
Senior Supervising
Assistant Small Business Advocate
Attorney ID No. 77538

Enclosures
cc: Robert D. Knecht
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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

EXCEPTIONS TO THE RECOMMENDED DECISION
ON BEHALF OF THE
OFFICE OF SMALL BUSINESS ADVOCATE

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Date: October 14, 2022

I. Introduction

On October 4, 2022, Administrative Law Judge ("ALJ") Christopher P. Pell and ALJ John Coogan issued their Recommended Decision ("RD") in the above-captioned proceeding.

The ALJs recommend that the Commission adopt the Joint Petition for Non-Unanimous Settlement Regarding Revenue Allocation and Rate Design ("JPNUS"), to which all parties except OSBA and Mr. Culbertson are signatories.

The OSBA respectfully submits that the revenue allocation proposed by the JPNUS should be rejected.

The OSBA submits the following Exceptions in response to the RD.

II. Exceptions

Exception No. 1: The ALJs incorrectly state that substantial record evidence supported their approval of the revenue allocation proposed in the JPNUS. (RD, at 104)

The ALJ recommended, as follows, when addressing the Joint Petition for Non-Unanimous Settlement Regarding Revenue Allocation and Rate Design ("JPNUS") in their RD:

> We recommend that the Commission approve the JPNUS without modification because it reflects a "black box" settlement in the public interest ***supported by substantial evidence***.

RD, at 104 (emphasis added).

The ALJs correctly acknowledged the requirement for substantial record evidence as they specifically quoted the Commonwealth Court's requirement that "any finding of fact necessary to support an adjudication of the Commission must be based on substantial evidence." RD, at 20. However, the ALJs failed to recognize that ***no record evidence*** supports the revenue allocation proposed by the JPNUS.

Consider this table that is set forth on page 97 of the RD ("Table"):

Comparison of Scaled Back Litigation Positions vs. Settlement Revenue Allocation												
	CPA[1]		OCA[2]		OSBA[3]		I&E[4]		PSU[5]		Settlement	
	Allocation	**Increase**	**Allocation**	**Increase**	**Allocation**	**Increase**	**Allocation**	**Increase**	**Allocation**	**Increase**	**Allocation**	**Increase**
RS/RDS	$30,577,763	8.13%	$25,212,076	6.70%	$26,498,108	7.04%	$23,230,021	6.17%	$33,867,576	9.00%	$26,500,019	7.04%
SGSS1/SCD1/ SGDS1	$ 3,752,254	7.81%	$ 5,166,273	10.76%	$ 3,726,845	7.76%	$ 4,488,601	9.35%	$ 3,656,336	7.61%	$ 4,537,000	9.45%
SGSS2/SCD2/ SGDS2	$ 3,976,231	7.95%	$ 6,030,930	12.06%	$ 5,961,404	11.92%	$ 4,755,919	9.51%	$ 4,387,603	8.78%	$ 6,030,000	12.06%
SDS/LGS	$ 3,339,868	11.11%	$ 4,414,844	14.69%	$ 4,627,285	15.40%	$ 6,762,891	22.50%	$ 1,588,393	5.28%	$ 4,627,000	15.39%
LDS/LGS	$ 2,847,357	11.91%	$ 3,675,877	15.38%	$ 3,679,219	15.39%	$ 5,253,498	21.98%	$ 992,576	4.15%	$ 2,800,000	11.71%
MDS/NSS	$ 1	0%	$ -	0%	$ -	0%	$ 224	0.02%	$ 122	0.01%	$ -	0.00%
Flex/NCS	$ 6,526	0.21%	$ -	0%	$ 7,139	0.17%	$ 8,845	0.21%	$ 5,981	0.14%	$ 5,981	0.14%
Total	$44,500,000	8.33%	$44,500,000	8.33%	$44,500,000	8.33%	$44,500,000	8.33%	$44,500,000	8.33%	$44,500,000	8.33%

[1] The CPA allocation was derived by applying the Company's proposed allocation percentages for each class to the to the agreed-upon revenue increase. *See* CPA St. 6 at 20:7-11. Increase percentages were derived by dividing the allocation by the Company's current base revenue. *See* CPA Exh. 103, Sch. 8, Pg. 4, Ln. 20.

[2] The OCA allocation was derived by applying the OCA's proposed scale back methodology to OCA's litigation position on revenue allocation. *See* OCA St. 3-SR at 4, Table 1-SR; *see also* OCA St. 3 at 12:23-25. Increase percentages were derived by dividing the OCA allocation by the Company's current base revenue. *See* CPA Exh. 103, Sch. 8, Pg. 4, Ln. 20.

[3] The OSBA allocation was derived by proportionally scaling back OSBA's litigation position on revenue allocation. *See* OSBA St. 1-S at 6, Table IEc-S3. Increase percentages were derived by dividing the OSBA allocation by the Company's current base revenue. *See* CPA Exh. 103, Sch. 8, Pg. 4, Ln. 20.

[4] The I&E allocation was derived by applying I&E's scaleback methodology to the Company's as-filed revenue allocation. *See* I&E St. 3 at 26:13-18; *see also* I&E Exh. 3, Sch. 6, Pg. 2. Increase percentages were derived by dividing the I&E allocation by the Company's current base revenue. *See* CPA Exh. 103, Sch. 8, Pg. 4, Ln. 20.

[5] The PSU allocation was derived by proportionally scaling back PSU's alternative 3 revenue allocation. *See* PSU St. 1-SR, Exh. PSU-SR-1. Increase percentages were derived by dividing the PSU allocation by the Company's current base revenue. See CPA Exh. 103, Sch. 8, Pg. 4, Ln. 20.

The Table sets forth the revenue allocation litigation positions (*i.e.*, the record evidence) of the various parties in this proceeding. Specifically, each party's revenue allocation (at the scaled-back revenue number) is presented based upon that party's preferred cost of service study methodology (the I&E scaleback is based upon that office's unique scale-back proposal).

In the far-right column, the JPNUS revenue allocation is set forth.

The record evidence for the possible SDS/LGS ("SDS") and LDS/LGS ("LDS") revenue allocation increases are shown as percentages (%) in two rows in the above Table. The Commission will observe that for Columbia and the OCA, SDS gets a smaller percentage increase than LDS. For the OSBA, SDS and LDS get the same percentage increase. For I&E and PSU SDS gets a slightly larger increase than LDS. No party proposed an increase for the

SDS class that was more than 1.13 percentage points higher than the rate increase for LDS at the scaled back increase. However, the JPNUS would require SDS customers to face an increase that is 3.68 percentage points higher than that for the LDS class

Thus, the record evidence, set forth in the Table above, demonstrates that there is ***no record evidence*** to support the large difference in rate increases between SDS and LDS.

It is, of course, unsurprising that no party recommended a much larger rate increase for the SDS class than for the LDS class, because no allocated cost of service study ("ACOSS") on record supports such a finding. In this proceeding, consistent with past practice, Columbia submitted three ACOSS's, differing only in how mains costs are classified and allocated. These studies are denoted "Peak and Average," "Customer Demand," and "Average." The class rates of return at present rates from these three ACOSS simulations for Rates SDS and LDS are shown below:[1]

	SDS	LDS	System
Peak and Average	5.390%	1.677%	6.130%
Customer Demand	18.226%	18.664%	6.130%
Average	9.417%	5.543%	6.130%

Thus, the Peak and Average and the Average ACOSS methods indicate that cost recovery at present rates is much better from the SDS class than it is from the LDS class, whereas the Customer Demand ACOSS indicates that cost recovery from those two classes is essentially identical. Moreover, in its February 2021 order at Docket No. R-2020-3018835 ("*February*

[1] Columbia Gas Exhibit 111, Schedules 2, 1, and 3. The ACOSS models presented by OSBA witnesses Ewen and Knecht show class rates of return at present rates that are very similar to those for the Company's Peak and Average method for these classes (5.848% and 1.670% respectively). *See* workpapers submitted with OSBA Statement No. 1-S, at IEc WPS3.

2021 Order"), the Commission explicitly rejected the use of the Customer Demand and Average methods for this utility, as discussed further below.

Thus, neither the revenue allocation evidence nor the cost allocation evidence supports the ALJs' conclusion that the JPNUS is supported by substantial record evidence. The record shows that the revenue allocation proposed by the JPNUS has no evidentiary basis that would allow it to be approved. No party in this proceeding proffered a revenue allocation that would allocate significantly larger revenue increases to SDS when compared to LDS.

Exception No. 2: The ALJs were incorrect that the revenue allocation proposed in the JPNUS was within a reasonable range of litigated outcomes. (RD, at 104)

The ALJs stated, as follows:

> The parties to the JPNUS have demonstrated that the revenue allocation agreed to in the JPNUS falls within the range of the possible outcomes had revenue allocation been fully litigated.

RD, at 105 (citation omitted).

This conclusion by the ALJs is incorrect. To demonstrate this inaccuracy, the OSBA again refers the Commission to the Table on page 97 of the RD ("Table"):

Comparison of Scaled Back Litigation Positions vs. Settlement Revenue Allocation												
	CPA[1]		OCA[2]		OSBA[3]		I&E[4]		PSU[5]		Settlement	
	Allocation	Increase	Allocation	Increase	Allocation	Increase	Allocation	Increase	Allocation	Increase	Allocation	Increase
RS/RDS	$30,577,763	8.13%	$25,212,076	6.70%	$26,498,108	7.04%	$23,230,021	6.17%	$33,867,576	9.00%	$26,500,019	7.04%
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Total	$44,500,000	8.33%	$44,500,000	8.33%	$44,500,000	8.33%	$44,500,000	8.33%	$44,500,000	8.33%	$44,500,000	8.33%

[1] The CPA allocation was derived by applying the Company's proposed allocation percentages for each class to the to the agreed-upon revenue increase. *See* CPA St. 6 at 20:7-11. Increase percentages were derived by dividing the allocation by the Company's current base revenue. *See* CPA Exh. 103, Sch. 8, Pg. 4, Ln. 20.

[2] The OCA allocation was derived by applying the OCA's proposed scale back methodology to OCA's litigation position on revenue allocation. *See* OCA St. 3-SR at 4, Table 1-SR; *see also* OCA St. 3 at 12:23-25. Increase percentages were derived by dividing the OCA allocation by the Company's current base revenue. *See* CPA Exh. 103, Sch. 8, Pg. 4, Ln. 20.

[3] The OSBA allocation was derived by proportionally scaling back OSBA's litigation position on revenue allocation. *See* OSBA St. 1-S at 6, Table IEc-S3. Increase percentages were derived by dividing the OSBA allocation by the Company's current base revenue. *See* CPA Exh. 103, Sch. 8, Pg. 4, Ln. 20.

[4] The I&E allocation was derived by applying I&E's scaleback methodology to the Company's as-filed revenue allocation. *See* I&E St. 3 at 26:13-18; *see also* I&E Exh. 3, Sch. 6, Pg. 2. Increase percentages were derived by dividing the I&E allocation by the Company's current base revenue. *See* CPA Exh. 103, Sch. 8, Pg. 4, Ln. 20.

[5] The PSU allocation was derived by proportionally scaling back PSU's alternative 3 revenue allocation. *See* PSU St. 1-SR, Exh. PSU-SR-1. Increase percentages were derived by dividing the PSU allocation by the Company's current base revenue. See CPA Exh. 103, Sch. 8, Pg. 4, Ln. 20.

Examining this Table, the Commission can consider what possible litigation outcomes would occur, whether it be the Columbia, OCA, OSBA, I&E, or PSU revenue allocation proposals. ***None*** of the various parties' revenue allocation proposals assigns a much larger increase to SDS compared to LDS.

Furthermore, the OSBA respectfully submits that a just and reasonable revenue allocation involves much more than simply determining whether the rate increase for any particular class lies within the range of rate increases proposed by all of the parties. Revenue allocation is a zero-sum game, and it is an exercise in assigning *relative* increases among the various rate classes, based on ACOSS results, competitive considerations, rate gradualism, and other factors.

Specifically, evaluating the reasonableness of a revenue allocation proposal must necessarily involve considering the *relative* rate increases among the various rate classes, in the context of the revenue allocation criteria. In this case, however, the JPNUS simply takes an à la carte approach, in which a very large rate increase is assigned to the SDS class based on the positions of OCA and OSBA, while the LDS class is assigned a rate increase that is much lower than SDS and is even lower than SGS2 based on the position of Penn State. The OSBA respectfully submits that such an approach produces an illogical and unreasonable revenue allocation scheme.

Moreover, such an approach will almost certainly result in unfair treatment of classes without representation in the proceeding. As illustrated by the JPNUS, this approach just (1) looks at all the various revenue allocations, (2) cherry-picks whatever result looks best for the various represented classes, and (3) leaves the balance for the unrepresented classes.

The OSBA respectfully submits that there is zero chance that the Commission would take the JPNUS "pick and choose" approach to revenue allocation in a fully litigated proceeding. In fact, the ALJs correctly observed that the Commonwealth Court has ruled that cost of service is the "polestar" of utility rates. RD, at 72 (citing *Lloyd*). The OSBA therefore concludes that in a fully litigated revenue allocation proceeding, the Commission would begin with its evaluation of the cost allocation methodology (as it indeed did in its *February 2021 Order*). The Commission would then adjudicate the revenue allocation issues based on cost of service and other revenue allocation criteria, and it would approve a logical and internally consistent revenue allocation across rate classes. The OSBA sees no way in which the revenue allocation pattern of the JPNUS could arise in a litigated proceeding.

From that perspective, it becomes obvious that the JPNUS in this proceeding produces the biased and distorted approach one expects from a non-unanimous settlement, namely that the unrepresented classes are mistreated. In this proceeding, the residential class is represented by OCA, the SGS classes by OSBA, and the LDS class by Penn State and CII.[2] Only the SDS class is not explicitly represented. And even if OSBA is deemed to have some obligation to represent the SDS class, it is not a party to the JPNUS. Not surprisingly, the JPNUS maltreats the SDS class which is not represented by any of the settling parties.

Exception No. 3: The ALJs committed legal error by rejecting Commission precedent. (RD, at 104)

In their RD, the ALJs appear to conclude that non-unanimous settlements can be approved even if they are inconsistent with Commission precedent:

> We disagree with the OSBA that the Commission's *Columbia Gas February 2021 Order* necessitates rejection of the JPNUS because it does not appropriately reflect use of the P&A methodology. The Commission's *Columbia Gas February 2021 Order* was in the context of full litigation of issues related to rate allocation and rate design. Therefore, the *Columbia GasFebruary 2021 Order* is not fully instructive on what must be done in the context of a non-unanimous settlement on revenue allocation and rate design.

RD, at 104.

The OSBA respectfully submits that this legal conclusion will lead to chaos and should be rejected by the Commission.

Parsing the phrases, starting with "not fully instructive." That phrase will encourage parties to reject Commission precedent to litigate and re-litigate every issue before the Commission.

[2] The Flex customers are arguably represented by Columbia Gas, which has an interest in ensuring that the rates for that class do not create an economic incentive for those customers to bypass.

Moreover, in the context of a *non-unanimous* settlement, this policy will encourage parties who disagree with Commission precedent to join together to try to overturn precedent through non-unanimous settlements. The OSBA respectfully submits that such behavior should not be tolerated by the Commission.

Of course, the Commission retains its ability to defend its own precedent by rejecting such a settlement. However, if the Commission does not defend its own precedent and it approves the JPNUS, it must recognize that it has effectively reversed its position. In this proceeding, the policy issue at question is the ACOSS methodology. The Commission explicitly approved the Peak and Average approach to mains cost allocation, and it rejected the Customer Demand and Average methods. The Peak and Average methodology produces a class rate of return at present rates for the LDS class that is the lowest of that for any of the regular rate classes at 1.677 percent (Columbia Exhibit 111 Schedule 2).[3] By Commission policy and the requirements of *Lloyd*, the LDS class should be assigned the largest rate increase. And yet the JPNUS assigns higher increases to both the SGS2 and SDS classes than assigned to the LDS rate class. A lower increase for the LDS class can only be justified on a cost basis by relying, at least in part, on the CD cost allocation methodology (as indeed Penn State does). The OSBA therefore respectfully submits that adopting the JPNUS revenue allocation must reasonably be deemed to be a rejection of the Commission's *February 2021 Order* on mains cost allocation. The OSBA expects parties would take notice, both substantively and procedurally.

[3] Columbia Gas separately allocates costs to a "Flex" rate class, where rates are set based on market conditions for bypass or alternative fuel costs. These rates are not cost-based.

Next, "in the context of a non-unanimous settlement." Of course, if it applies in a non-unanimous settlement, it will certainly apply to a full settlement. This will be a death sentence for any customer class that is not represented by counsel for the Commission.

Finally, restricting the issues to "revenue allocation and rate design." There is nothing special about those two issues, and any attorney worth their hourly fee will apply this standard to any issue before the Commission.

Regardless, there is one legal requirement that no party, ALJ, or Commission can ignore: the Commonwealth Court has ruled that cost of service is the "polestar" of utility rates. RD, at 72 (citing *Lloyd*). Thus, whether it is a litigated outcome, a full settlement, or a non-unanimous settlement, utility rates must be based upon a cost of service. The ALJs may believe that they can ignore Commission precedent, but they cannot ignore the Commonwealth Court ruling in *Lloyd*.

III. Conclusion

The OSBA considers this proceeding to be one of the more important cases to come before the Commission in decades with respect to issues of substantial evidence, revenue allocation, and how to deal with non-unanimous settlements.

The OSBA finds any approval of a non-unanimous settlement for revenue allocation that mistreats an unrepresented rate class and involves *relative* rate increases that are not based upon any cost allocation or revenue allocation record evidence to be extremely problematic. This issue is sufficiently important to the OSBA that this office is waiving its claim in its filed "Objections" that the Commission must choose between the OSBA's proposed revenue allocation and the revenue allocation proposed in the JPNUS. The OSBA will accept ***any*** revenue allocation proffered by any party in this proceeding.

The issue of a "range of litigated outcomes" is not relevant for the JPNUS, as there is no litigated position that massively increases the revenue allocation to SDS in favor of a much lower revenue allocation to LDS.

The issue of the ALJs ignoring Commission precedent to approve the JPNUS seems absurd to the OSBA. The OSBA recommends that the Commission quash that legal conclusion with prejudice. However, if the Commission accepts the JPNUS, the OSBA must interpret such approval as at least a partial reversal of its *February 2021 Order* on cost allocation.

Finally, OSBA respectfully requests that the Commission adopt OSBA Exception No. 1, 2, and 3 as set forth above, and revise the Recommended Decision accordingly.

Respectfully submitted,

/s/ Steven C. Gray

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Dated: October 14, 2022

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the foregoing have been served via email (*unless other noted below*) upon the following persons, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

The Honorable Christopher P. Pell
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PA PUC Commissioner Ralph V. Yanora
ryanora@pa.gov

/s/ Steven C. Gray

DATE: October 14, 2022

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