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October 21, 2022

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; **PENNSYLVANIA STATE UNIVERSITY'S REPLY EXCEPTIONS OPPOSING THE EXCEPTIONS OF THE OFFICE OF SMALL BUSINESS ADVOCATE**

Dear Secretary Chiavetta:

Attached you will find The Pennsylvania State University's Reply Exceptions Opposing the Exceptions of the Office of Small Business Advocate in the above-captioned proceeding. Copies of this document have been served on the parties as indicated on the attached Certificate of Service.

If you have any questions regarding 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

cc: ALJ Christopher P. Pell (via email, cpell@pa.gov)
ALJ John Coogan (via email 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 EXCEPTIONS OF
THE PENNSYLVANIA STATE UNIVERSITY
OPPOSING THE EXCEPTIONS OF THE OFFICE OF SMALL BUSINESS ADVOCATE

Pursuant to 52 Pa. Code § 5.535(a), The Pennsylvania State University ("PSU") submits these Reply Exceptions in opposition to the Office of Small Business Advocate's ("OSBA") Exceptions to the September 30, 2022 Recommended Decision of Administrative Law Judges Christopher P. Pell ("Deputy Chief ALJ Pell") and John Coogan ("ALJ Coogan") (collectively, "ALJs" or "Presiding Officers") approving, without modification, the Joint Petition for Partial Settlement ("Partial Settlement"), which resolved, *inter alia*, issues related to revenue requirement, and the Joint Petition for Non-Unanimous Settlement ("Non-Unanimous Settlement), which resolved revenue allocation and rate design.

I. INTRODUCTION

Consistent with the "policy of the Commission to encourage settlements," 52 Pa. Code § 5.231(a), the Presiding Officers correctly decided to approve, without modification, the Settlements presented in this proceeding. The Commission should likewise adopt the September 30, 2022 Recommended Decision and approve, without modification, the Non-Unanimous Settlement because the Commission has historically supported the use of "black box" settlements as a means of promoting settlement among the parties in contentious base rate proceedings.

Moreover, settlements of rate cases save a significant amount of time and expense for customers, public utilities, and the Commission. Furthermore, settlements can produce "alternatives that may not have been realized during the litigation process," and be in the public interest.[1] Indeed, the Commission has found that "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."[2]

Accordingly, the Commission should reject OSBA's attempts to negate the Non-Unanimous Settlement, which was achieved after extensive scrutiny of Columbia Gas' filing, including the data in support thereof, and the significant testimony and varying positions concerning rate allocation and rate design, as well as the product of extensive negotiation representing give and take by the settling parties. Ultimately, OSBA's three exceptions overlook significant record evidence, misconstrue the law, and should be denied.

OSBA contends in Exception 1 that the Non-Unanimous Settlement's contemplated increase to the Rate SDS – Small Distribution Class ("SDS") class of 15.39% is not supported by the record when, in fact, OSBA's own litigation position and evidence recommended a 15.40% increase to the SDS class. OSBA Exc. at 1-4. In other words, OSBA is contending that an increase to the SDS class that is .01% less than OSBA's litigation position is not supported by evidence despite record evidence supporting more than OSBA's position. *See* OSBA Exc. at 2. Given OSBA's litigation position, there is undoubtedly record evidence for the Non-Unanimous Settlement's allocation to the SDS class, including, but not limited to, OSBA's own evidence. Thus, OSBA Exception 1 should be denied.

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1 *Pa. Pub. Util. Comm'n v. Peoples TWP, LLC*, Docket No. R-2013-2355886, 2013 WL 6835105, at *16 (Opinion and Order entered Dec. 19, 2013) (*Peoples TWP*).

2 52 Pa. Code § 69.401.

In Exception 2, OSBA incorrectly contends that the Non-Unanimous Settlement is not within a range of reasonable outcomes and that, even if it were, a range of reasonable outcomes is not a standard by which to judge a revenue allocation settlement agreement. OSBA Exc. at 4-7. OSBA is wrong on both counts. The Non-Unanimous Settlement is clearly within the range of the positions of the parties and is a reasonable outcome in this proceeding. The fact that the Non-Unanimous Settlement contemplates allocating approximately $4.627 million to the SDS class, which is almost identical to what the SDS class would have received under OSBA's litigation position and significantly less than what the SDS class would have received under I&E's position, demonstrates this point. *See* OSBA Exc. at 2. In addition, contrary to OSBA's claims, the Commission has already dismissed similar arguments by OSBA finding that it is appropriate to reach a black box revenue allocation settlement that is "within the range of possible outcomes argued by the Parties and supported by their respective expert's testimony."[3] Remarkably, OSBA would have the Commission depart from this standard with no basis, but then in its very next Exception argue that Commission decisions are "precedent" and must be followed for the applicable cost-of-service study, which is a fact and evidence based determination that is dependent upon the unique record of each case. It cannot have it both ways. Rather, the Non-Unanimous Settlement achieves a reasonable resolution within the range of likely outcomes based on the many competing positions of the parties, each of which were supported by substantial evidence.

In Exception 3, OSBA argues that the Commission's decision in the 2020 Columbia Gas Base Rate Case is precedential and mandates the result that the Peak and Average ("P&A") Cost-

[3] *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*).

of-Service Study ("COSS") methodology must be used in this proceeding.[4] OSBA Exc. at 7-9. OSBA is wrong as a matter of law and fact. First, as explained below, the Commission's Order in the Columbia Gas Base Rate Case in proper context, which OSBA ignores, shows that the case OSBA claims is precedent does not support a conclusion that it is identical to the instant case or precedent. Second, the Commission is not bound to follow its previous decisions but must merely explain why it rules differently.

Accordingly, the Commission has rejected previous OSBA attempts to select a single cost-of-service study method to use in every natural gas base rate case.[5] Indeed, in this proceeding alone, PSU has provided ample reason and evidence demonstrating why the Commission is not bound by its ruling in Columbia Gas' 2020 Base Rate Case. Conversely, OSBA's position would simply have the Commission ignore future evidence as to why one COSS may be more appropriate than others in future proceedings or prejudge matters that are not currently before the Commission. Accordingly, OSBA's Exception 3 should be denied.

For all these reasons, the Commission should adopt the Recommended Decision of the Presiding Officers and approve, without modification, the Partial Settlement and Non-Unanimous Settlement.

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[4] *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) (*Columbia Gas 2020*)

[5] *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*) ("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.").

II. REPLIES TO OSBA EXCEPTIONS

A. Reply to OSBA Exception 1: Record Evidence Supports the Settlement Allocation; the Commission should deny OSBA Exception 1. (R.D. at 104, OSBA Exc. at 1-4)

The OSBA's first exception is without merit. OSBA argues that one specific allocation in the Non-Unanimous Settlement is not supported by substantial record evidence. OSBA Exc. at 2-3. Specifically, OSBA asserts that allocating a 15.39 percent increase to Rate SDS is unsupported by the cost allocation and revenue allocation evidence. OSBA Exc. at 4. However, OSBA fails to acknowledge that its own litigation position at settlement rates would result in an increase of 15.40 percent to the SDS class, which is 0.1 percent more than under the Non-Unanimous Settlement. Thus, OSBA's assertion that there is a lack of record evidence to support the Non-Unanimous Settlement allocation to Rate SDS is wrong and the record shows otherwise from OSBA's position.[6]

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[6] Below is a chart which compares the litigation positions of OSBA and PSU on revenue allocation at the as-filed rate increase of approximately $82.2 Million:

	OSBA		PSU	
Class	Increase (Millions)	Increase Percentage	Increase (Millions)	Increase Percentage
Residential	$48.86	12.98%	$62.523	16.61%
SGS1	$6.87	14.3%	$6.75	14.05%
SGS2	$10.99	21.9%	$8.1	16.20%
Med Gen'l (SDS/LGSS)	$8.53	28.4%	$2.932	9.76%
Lg Gen'l (LDS/LGSS)	$6.78	28.4%	$1.832	7.66%

See OSBA St. 1-SR, Table IEc-S3; *see also* PSU St. 1-SR, Exh. PSU-SR-1. To obtain the percentage increases, the allocated increase is divided by the current base revenue for each customer class as set forth in CPA Exh. 103, Sch. 8, Pg. 4, Ln. 20.

Furthermore, OSBA's argument that no record evidence supports an increase to the SDS class that is 3.68 percent larger than the increase to Rate LDS – Large Distribution Service ("LDS") likewise fails because OSBA is merely parsing percentages to make comparisons to suit OSBA's position now that it is opposing the allocation in the Non-Unanimous Settlement. The Settlement Allocation rate increase to the SDS class is supported by OSBA's own evidence and litigation position. Indeed, OSBA recommended up to a 28.4 percent increase for both the SDS and LDS rate classes if the full rate increase were approved. OSBA St. 1-SR, Table IEc-S3. Additionally, both I&E and PSU recommended a larger allocation for the SDS class than the LDS class based on the evidence submitted in this proceeding. *See* I&E St. 3 at 26:13-18; *see also* I&E Exh. 3, Sch. 6, Pg. 2; PSU St. 1-SR, Exh. PSU-SR-1. Given the competing positions in this proceeding and the evidence submitted supporting each parties' position, the Non-Unanimous Settlement is a reasonable outcome supported by record evidence that substantially reduces the allocated increase to the SDS class. Ultimately, the Non-Unanimous Settlement allocates an increase that is 0.01% lower than OSBA's proposed allocation at settlement rates and is 1.85x the system average increase, meaning it is well within the Commission's guidance regarding gradualism for rate increases.[7] OSBA's arguments fail to show any reason the Commission should reject the Non-Unanimous Settlement. OSBA Exception 1 should be denied.

[7] *Pa. Pub. Util. Comm'n, et al. v. Columbia Gas of Pa., Inc.*, Docket Nos. R-2020-3018835, *et al*., 2021 WL 757073, at *138 (Opinion and Order entered Feb. 19, 2021) ("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.").

B. Reply to OSBA Exception 2: The Settlement Allocation is within a reasonable range of litigated outcomes and is thus supported by the record; the Commission should deny OSBA Exception 2. (R.D. at 104; OSBA Exc. at 4-7)

In its second exception, OSBA argues again that the SDS rate increase per the Non-Unanimous Settlement is not appropriate even though it is nearly the exact increase OSBA presented and supported with evidence for its litigation position. OSBA reasons here that the Commission should reject the Non-Unanimous Settlement because the allocation to the SDS class is not within a *reasonable* range of litigated outcomes, and even if the increase to the SDS class were within a reasonable range of litigated outcomes, that should not be a measure for the Commission to use when evaluating settlements. OSBA Exc. at 4-7. OSBA is wrong on both counts.

First, the chart OSBA presented in its Reply Exceptions shows that the allocation to every single class (not just SDS) is within a reasonable range of outcomes – for each class, some parties wanted less of a rate increase and other parties wanted more of a rate increase. *See* OSBA Exc. at 2. For example, when comparing the litigation position of each party at the agreed-upon revenue increase of $44.5 million, the Residential class would have received an increase anywhere between $23.2 million and $33.9 million, the SDS class would have received anywhere between $1.59 million and $6.76 million, and the LDS call would have received anywhere between $0.99 million and $5.25 million. *Id*. Comparatively, each allocation within the Non-Unanimous Settlement is a reasonable compromise and avoids the possibility of relatively high percentage increases for some rate classes.

Second, OSBA's argument that the Commission should not be approving revenue allocation settlements if it is merely within a reasonable range of litigation positions is incorrect for several reasons. Namely, OSBA's argument (1) ignores prior Commission decisions, (2) is based on the false premise that rate allocation is simply a predetermined equation that turns a

COSS into a specific rate increase to each class and revenue allocation must, therefore, align to a specific cost of service study, (3) incorrectly alleges that the Non-Unanimous Settlement merely reflects a "pick and choose" between rate classes, and (4) asserts, contrary to record evidence, that the allocation to the SDS class as proposed by the Non-Unanimous Settlement was agreed to because the SDS class was not represented in this proceeding. Each of these arguments should be rejected.

At the outset, it is key to understand that 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.[8] The ALJs correctly applied this standard and, as explained above, the Non-Unanimous Settlement fulfills this standard. Moreover, OSBA's argument is contradictory and ironic in that it ignores prior Commission decisions, such as *PCL&P - Electric*, when arguing that the Commission should change the way it historically evaluates non-unanimous rate allocation settlements, yet incorrectly argues that PUC decisions are "precedential" and must be followed when discussing the 2020 Columbia Gas Base Rate Case. *Compare* OSBA Exc. at 5-6, 7-8. The OSBA cannot simply ignore Commission decisions when it suits its position.

Next, OSBA's notion that a specific COSS must support exactly each rate allocation totally misconstrues how rate allocation and COSS's work and is no reason to reject a settlement. As to the study, Mr. Crist presented substantial evidence that the Customer-Demand COSS should be used to determine revenue allocation. During the settlement process, as the evidence shows here,

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8 *PCL&P - Electric*, 2021 WL 3141257 *22.

including OSBA's evidence,[9] views of all parties were considered and the resultant revenue allocation represents a compromise of those positions. There is no doubt that rate allocation is often based on a variety of positions or methods to support whatever rate class a particular party is representing. This is why a range of *reasonable* outcomes is an appropriate way to evaluate the Non-Unanimous Settlement and determine whether it is just, reasonable, and in the public interest.

The OSBA also incorrectly alleges that the Non-Unanimous Settlement was merely a "pick and choose" between various parties and that the SDS class rate allocation occurred because no party represented that class. This is false on numerous grounds. Primarily, OSBA ignores that PSU represents the interests of not only the LDS class, but also the SDS class because it has customer accounts in both classes.[10] For that reason, PSU's expert witness, Mr. Crist, testified against the OCA and I&E's litigation positions on revenue allocation, both of which were seeking

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[9] In its Direct Testimony, OSBA's witnesses makes several adjustments to the Company's Peak and Average ("P&A") COSS, including modifying the design day demands utilized to determine the allocation factors to correct for what OSBA deemed was an "unusual" and "significant" shift in design day demands. OSBA St. 1 at 15:22-18:28.

[10] Likewise, Knouse Foods Cooperative ("Knouse"), a member of the Columbia Industrial Intervenors ("CII") for purposes of this proceeding, submitted testimony indicating that it receives service from Columbia Gas under rate schedules LDS, SDS, and Small General Distribution Service ("SGDS"). CII St. 1 at 5:3-6. Knouse would testify that the increases contemplated by not only Columbia Gas, but by OCA, OSBA, and I&E, would have a detrimental impact on its operations:

> Columbia's proposed 22% increase would already significantly impact Knouse, especially in light of the fact that natural gas costs are 50% of Knouse's energy budget. The OCA, OSBA, and I&E proposals would only exacerbate Columbia's proposal, resulting in a damaging impact on Knouse's energy costs. When an approximate 22%-28.4% increase is combined with the uncertainty that Knouse must confront due to the continuing challenges faced by large businesses, the results are especially alarming.

CII St. 1 at 8:3-9.

even larger increases for the SDS and LDS classes than initially proposed by Columbia Gas.[11] Paradoxically, PSU's recommended increase for the SDS class at the as-filed increase of $82.2 million was substantially lower than OSBA's, with PSU recommending an increase to the SDS class of no more than $2.932 million at the as-filed increase, whereas OSBA recommended that the SDS class receive an increase of no more than $8.53 million at the as-filed increase (3 times as much as PSU's position).[12] Moreover, the parties to the Non-Unanimous Settlement fully supported the Non-Unanimous Settlement, which was the result of technical, lengthy, and thorough negotiations. Finally, it is absurd that OSBA says the SDS class was unfairly treated when the SDS rate allocation at the settlement revenue increase is nearly identical to OSBA's litigation position. *See* OSBA Exc. at 5.

Ultimately, the Commission supports the black box settlement method and recognizes that it "often results in alternatives that may not have been realized during the litigation process." As the Commission stated in *Peoples TWP*:

> We have historically permitted the use of "black box" settlements as a means of promoting settlement among the parties in contentious base rate proceedings." *See Pa. PUC v. Wellsboro Electric Co.*, Docket No. R-2010-2172662 (Final Order entered January 13, 2011); *Pa. PUC v. Citizens' Electric Co. of Lewisburg, PA*, Docket No. R-2010-2172665 (Final Order entered January 13, 2011)). Settlement of rate cases saves a significant amount of time and expense for customers, companies, and the Commission and often results in alternatives that may not have been realized during the

[11] As set forth in PSU's Formal Complaint, PSU takes natural gas service under the following tariff rate classifications: LDS (Large Distribution Service); SDS (Small Distribution Service); SGDS (Small General Distribution Service); and RSS (Residential Sales Service). PSU Complaint ¶ 6. Furthermore, in Mr. Crist's Rebuttal Testimony, Mr. Crist addressed the large increases proposed by OCA and I&E for the SDS and LGS classes. PSU St. 1-R at 3:22-4:4, 7:6-21. Ultimately, Mr. Crist found these litigation positions unconscionable and recommended that the Commission adopt the Company's Customer-Demand Study, which would result in significantly lower allocated increases to the SDS and LGS classes. *See* PSU St. 1-SR, Exh. PSU-1SR. Even lower than OSBA.

[12] *Compare* PSU St. 1-SR, Exh. PSU-1SR; OSBA St. 1-SR, Table IEc-S3.

> litigation process. Determining a company's revenue requirement is a calculation involving many complex and interrelated adjustments that affect expenses, depreciation, rate base, taxes and the company's cost of capital. Reaching an agreement between various parties on each component of a rate increase can be difficult and impractical in many cases. For these reasons, we support the use of a "black box" settlement in this proceeding and, accordingly, deny this Exception.[13]

For these reasons, OSBA Exception 2 should be denied.

C. Reply to OSBA Exception 3: Commission decisions are not "precedent" particularly where there are different circumstances or evidence supporting a different result; the Commission should deny OSBA Exception 3. (R.D. at 104, OSBA Exc. at 7-9)

OSBA argues that the Commission's decision in the 2020 Columbia Gas Base Rate Case is precedential and mandates the result that the Peak and Average COSS methodology must be used in this proceeding. OSBA is wrong as a matter of law and fact.

It is well-settled law that the Commission is not required to follow its decisions or "precedent" (a legal doctrine known as "*stare decisis*").[14] Rather, the Commission need only explain why it rules differently.[15] 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 P&A 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.[16]

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13 2013 WL 6835105, at *16

14 *PECO Energy Co. v. Pa. Pub. Util. Comm 'n*, 791 A.2d 1155, 1166 (Pa. 2002) (*PECO*).

15 *PECO*, 791 A.2d at 1166.

16 *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 must decide each case based on the merits, facts, and evidence in the particular proceeding.[17]

As to the facts, merits, and evidence here, PSU fully supports the Non-Unanimous Settlement, however, in response to OSBA's argument that the Commission must mandate use of the P&A COSS, it is necessary for the Commission to understand that the record does not support use of the P&A method based on the 2020 Columbia Gas Base Rate case because *circumstances have changed and different evidence is before the Commission in this proceeding*.

Specifically, 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

[17] 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.

> allocate distribution mains costs, and to guide the distribution of a revenue increase, if approved.[18]

As the record reflects in this proceeding, those errors have since been removed from the Company's Customer-Demand COSS.[19] 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.[20] The Company has likewise demonstrated that the P&A COSS over allocates mains investment to the Company's largest customers.[21] 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 studies is fundamentally wrong as a matter of both fact and law.[22] Here, the settlement parties do not endorse any COSS method, but rather reach a compromise between the two methods without admission or

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18 *Pa. Pub. Util. Comm'n v. Columbia Gas of Pa., Inc*, Docket No. R-2020-3018835, Recommended Decision at 394 (entered Dec. 4, 2020), *rev'd on other grounds*, 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.").

19 PSU St. 1 at 12:11 – 13:26.

20 PSU St. 1 at 14:15 – 18:12.

21 Columbia Gas St. 6-R at 9:7-10:8.

22 *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).

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.[23]

Finally, OSBA asserts chaos will result in the future if the Commission does not mandate the P&A COSS be used in all future Columbia Gas base rate cases. This exaggerated slippery slope argument ignores due process and the process that the Public Utility Code mandates. It also ignores that facts and circumstances can and often do change. Thus, the Commission cannot declare a particular COSS be used in future proceedings through this adjudication because this adjudication can only consider the facts and circumstances here, not base a decision on unknown future evidence. Moreover, the Commission cannot ignore or preclude evidence in a future proceeding[24] and default to what amounts to an irrebuttable presumption from facts in a prior case. That backward looking view is the antithesis of ratemaking. The Commission explained the concept that due process requires adjudicating proceedings on a case-by-case basis when rejecting a *motion in limine* by PPL that sought to exclude evidence from a future proceeding:

> The nature of the relief sought by PPL, which amounts to the exclusion of evidence in advance or an advance determination of the relevance and materiality of evidence for any purpose whatsoever, is overly broad. Also, we agree with those Parties who reply that such a determination would be violative of the due process rights of participants in a future proceeding. We find PPL's apprehension concerning the issues settled in this proceeding to have some basis, but to be inherently premature. Without a proceeding or matter before this Commission concerning PPL, we find it unwise to issue a pronouncement or foreclose participants to future proceedings involving PPL to the extent requested.
>
> As a general rule, each Commission proceeding must result in an adjudication on its own merits. *See* 52 Pa. Code §5.401 -

[23] 52 Pa. Code § 5.231(a).

[24] *City of Pittsburgh v. Pa. Pub. Util. Comm'n*, 90 A.2d 607, 618 (Pa. Super. 1952) ("The Commission may not ignore recent information and evidence which substantially affect the problem before it.").

> Admissibility of evidence; and 52 Pa. Code § 5.407 - Records of other proceedings. We cannot, under the circumstances presented in this case, preempt the ability of parties, i.e., the OCA and the OTS to argue, as a matter of policy, that similar circumstances should be addressed in a similar manner from a policy perspective. However, concerning the admissibility of evidence, we emphasize that each utility has a right to have a record developed based upon the facts adduced and admitted in the case sub judice. Approval of the instant Settlement does not change the Commission's administrative and legal responsibilities in this regard. These adjudicatory responsibilities are consistent with and promote the policy objectives of encouraging settlements.[25]

OSBA's argument also fails to recognize that a black-box settlement by its nature, and as specifically stated in the Non-Unanimous Settlement, does not adopt any specific COSS or allocation methodology and thus has no impact on future proceedings.[26] While the OSBA may not wish to have to litigate allocation of rate increases, determination of allocation is not a matter of law – it is a fact based analysis that must be based on evidence and thus is simply one issue among many in rate cases that must be adjudicated based on the facts and evidence in each case or a settlement supported by record evidence.

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[25] *Application of PECO Energy Company Pursuant to Chapters 11, 19, 21, 22 and 28 of the Public Utility Code for Approval of (1) a Plan of Corporate Restructuring, Including the Creation of a Holding Company and (2) the Merger of the Newly Formed Holding Company and Unicom Corporation*, Docket No. A-00110550F0147, 2000 WL 33963140 (Opinion and Order entered Jun. 22, 2000).

[26] Non-Unanimous Settlement at ¶ 23 ("Revenue allocation and rate design reflect a compromise among the Non-Unanimous Joint Petitioners and do not endorse any particular cost of service study."); *see also* Non-Unanimous Settlement at ¶ 30 ("This Non-Unanimous Settlement and its terms and conditions may not be cited as precedent in any future proceeding, except to the extent required to implement this Non- Unanimous Settlement.").

III. CONCLUSION

WHEREFORE, The Pennsylvania State University respectfully request the Commission (1) approve the Partial Settlement and Non-Unanimous Settlement without modification because it is in the public interest, results in just and reasonable rates, and promotes the Commission's policy to promote settlements, and (2) deny the Exceptions of the Office of Small Business Advocate for the reasons stated above.

Respectfully submitted,

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Counsel for The Pennsylvania State University

Dated: October 21, 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

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