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File #: 193132

October 21, 2022

VIA ELECTRONIC FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor North
P.O. Box 3265
Harrisburg, PA 17105-3265

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

Dear Secretary Chiavetta:

Attached are the Replies to Exceptions on behalf of Columbia Gas of Pennsylvania, Inc. in the above-referenced proceeding. Copies will be provided per the attached Certificate of Service.

Respectfully submitted,

Lindsay A. Berkstresser

Lindsay A. Berkstresser
Principal

LAB/kls
Attachment

cc: Honorable Christopher P. Pell *(via email)*
Honorable John M. Coogan *(via email)*
Office of Special Assistants
Certificate of Service

CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the foregoing have been served upon the following persons, in the manner indicated, in accordance with the requirements of § 1.54 (relating to service by a participant).

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Date: October 21, 2022

Lindsay A. Berkstresser

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission	:	R-2022-3031211
Office of Small Business Advocate	:	C-2022-3031632
Office of Consumer Advocate	:	C-2022-3031767
Pennsylvania State University	:	C-2022-3031957
Columbia Industrial Intervenors	:	C-2022-3032178
Jose A. Serrano	:	C-2022-3031821
Constance Wile	:	C-2022-3031749
Richard C. Culbertson	:	C-2022-3032203
	:	
v.	:	
	:	
Columbia Gas of Pennsylvania, Inc	:	

REPLIES OF COLUMBIA GAS OF PENNSYLVANIA, INC.
TO THE EXCEPTIONS OF
THE OFFICE OF SMALL BUSINESS ADVOCATE
AND RICHARD C. CULBERTSON

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TABLE OF CONTENTS

I. INTRODUCTION

Columbia Gas of Pennsylvania, Inc. ("Columbia" or the "Company") hereby files these Replies to the Exceptions of the Office of Small Business Advocate ("OSBA") and Richard C. Culbertson to the Recommended Decision ("RD") issued by Deputy Chief Administrative Law Judge Christopher P. Pell and Administrative Law Judge John Coogan (the "ALJs"). On October 4, 2022, the ALJs issued the RD recommending that the Pennsylvania Public Utility Commission ("Commission") approve the Joint Petition for Partial Settlement and the Joint Petition for Nonunanimous Settlement in their entirety and without modification. (RD, p. 119.) On October 14, 2022, OSBA and Mr. Culbertson each filed Exceptions to the RD, none of which support overturning the ALJs' well-reasoned RD. For reasons explained below, and in Columbia's briefs and supporting statements to the settlements, the Commission should reject the Exceptions of OSBA and Mr. Culbertson and adopt in its entirety the RD's recommendation to approve the Joint Petition for Partial Settlement and the Joint Petition for Nonunanimous Settlement.

II. REPLIES TO EXCEPTIONS

A. REPLIES TO EXCEPTIONS OF OSBA

1. OSBA Exception No. 1 should be denied.

The OSBA excepts to the RD's recommendation that the Joint Petition for Nonunanimous Settlement be approved without modification based on OSBA's belief that substantial evidence does not exist to support the Nonunanimous Settlement. (OSBA Exec., p. 1.) Specifically, OSBA contends that the record evidence does not support the proposed revenue allocations to the SDS and LDS classes. (OSBA Exec., p. 2.) Contrary to OSBA's opinion, the RD correctly concluded that there is substantial record evidence to support the revenue allocation proposed in the

Nonunanimous Settlement, including the proposed allocations for the SDS and LDS classes. (RD, p. 104.)

OSBA takes issue with the fact that the Nonunanimous Settlement would allocate a higher percentage of the scaled back revenue requirement to the SDS class as compared to the LDS class. (OSBA Exec., pp. 2-3.) OSBA fails to acknowledge that the record evidence fully supports the proposed revenue allocations to the SDS and LDS classes, including OSBA's own evidence. The parties to the Nonunanimous Settlement agreed to a 15.39% rate increase for the SDS class. (RD, p. 97.) In litigation, the OSBA proposed a scaled back rate increase of 15.4% to the SDS class. (RD, p. 97.) The Nonunanimous Settlement's revenue allocation for the SDS class is essentially the same allocation that the OSBA proposed for the SDS class. Therefore, OSBA's own evidence supports the Nonunanimous Settlement's proposed revenue allocation for the SDS class. The OSBA now attempts to inappropriately criticize the settlement for adopting the OSBA's own proposal.

Not only does OSBA's own evidence support the Nonunanimous Settlement's revenue allocation proposal for the SDS class, the revenue allocation for the SDS and LDS classes agreed to in the Nonunanimous Settlement is fully supported by the various parties' evidence. As Columbia explained in its Main Brief and Statement in Support of the Nonunanimous Settlement, the revenue allocation proposed in the Nonunanimous Settlement falls within the range of the parties' positions, including those parties who based their revenue allocation proposals on the Peak and Average Cost of Service Study. (Columbia MB, p. 11.) With respect to the LDS class, the Commission's Bureau of Investigation and Enforcement ("I&E") recommended the largest increase of 21.98%. (RD, p. 97.) The Pennsylvania State University recommended the smallest increase to the LDS class of 4.15%. (RD, p. 97.) Columbia proposed an 11.91% of the increase

for the LDS class, while the Office of Consumer Advocate and OSBA proposed nearly identical increases of 15.38% and 15.39%, respectively. The Nonunanimous Settlement proposes an 11.71% increase for the LDS class. (RD, p. 97.) As explained in Columbia's briefs and its Statement in Support of the Nonunanimous Settlement, the Nonunanimous Settlement represents a reasonable compromise of the parties' positions and moves the classes closer to the cost of service while also recognizing the need for gradualism. (Columbia RB, p. 5.)

The OSBA's argument that "there is no record evidence" to support the Nonunanimous Settlement's revenue allocations to the SDS and LDS classes is simply not an accurate characterization of the record evidence. While OSBA may disagree with the parties' reasoning in reaching the Nonunanimous Settlement, that does not mean that substantial evidence to support the Nonunanimous Settlement is lacking. *See Allied Mech. & Elec., Inc. v. Pa. Prevailing Wage Appeals Bd.*, 923 A.2d 1220, 1228 (Pa. Cmwlth. 2007) (citation omitted) (The "presence of conflicting evidence in the record does not mean that substantial evidence is lacking.") The RD's recommendation to approve the revenue allocations is fully supported by substantial record evidence, and the OSBA's exception should be denied.

2. OSBA Exception No. 2 should be denied.

The OSBA disagrees with the ALJs and the parties to the Nonunanimous Settlement that the revenue allocation proposed in the Nonunanimous Settlement falls within the range of likely litigation outcomes. (OSBA Exec., p. 4.) According to OSBA, none of the parties proposed a revenue allocation that supports the Nonunanimous Settlement's proposed increase to the SDS class as compared to the proposed increase for the LDS class. (OSBA Exec., p. 5.) However, OSBA fails to recognize that the Nonunanimous Settlement is not based on any one party's revenue allocation for all classes. Instead, the revenue allocation agreed to in the Nonunanimous Settlement considers *all* the parties' proposals for *all* rate classes in reaching a reasonable

compromise. Therefore, the fact that no single party proposed both an increase to the SDS class and an increase to the LDS class that matches the Nonunanimous Settlement's proposals for those classes does not make the Nonunanimous Settlement unreasonable.

OSBA criticizes the Nonunanimous Settlement for taking what OSBA describes as an "a la carte" approach to revenue allocation rather than considering relative rate increases among the various rate classes. (OSBA Exec., p. 6.) The basis of OSBA's argument is that nearly identical revenue allocation percentages should be assigned to the SDS and LDS classes. (OSBA Exec., p. 5.) As explained in Columbia's Main Brief, OSBA's revenue allocation proposal for the SDS and LDS classes would allocate an unreasonably large increase to the LDS class in violation of gradualism principles. (Columbia MB, p. 13.) Further, there is no evidence to support the OSBA's argument that the parties to the Nonunanimous Settlement considered only the increases to the individual classes in isolation. To the contrary, in evaluating the revenue allocation proposals and reaching the Nonunanimous Settlement, the parties considered many factors, including the rate of return relative to the other classes on the system, movement toward the cost of service, gradualism, rate stability, predictability, fairness, and affordability. *See* Columbia St. No. 1, pp. 16-18; I&E St. No. 3, pp. 14-15; OCA St. No. 3, p. 9; PSU St. No 1, pp. 8, 18; CII St. No. 1, pp. 5-6.

The OSBA claims that there is "zero chance" that the Commission would adopt the Nonunanimous Settlement's approach to revenue allocation if the issue was fully litigated. (OSBA Exec., p. 6.) However, the standard for approval of a settlement is not whether the Commission would have arrived at the same result in litigation. The standard for approval of a settlement is whether the settlement rates are just and reasonable, in the public interest, and supported by substantial evidence. *See* Columbia Main Brief, pp. 4-5. The RD correctly concluded that the Nonunanimous Settlement's revenue allocation meets this standard. (RD, p. 104.) Further, the

Nonunanimous Settlement's revenue allocation is within the range of class revenue allocations proposed by the parties in litigation, which the Commission has previously accepted as sufficient evidence to approve a settlement on revenue allocation. *See, e.g., Pa. PUC v. Columbia Gas of Pennsylvania, Inc.*, Docket Nos. R-2021-3024296 (Order entered December 16, 2022), p. 54.

Even under OSBA's unsupported theory that the Nonunanimous Settlement should not be approved unless the Commission would reach the same result in a fully litigated proceeding, the OSBA fails to recognize that the Commission could rely on the recommendations of multiple different parties in reaching an appropriate revenue allocation, and the Commission is not required to select a single party's proposal for all classes. Contrary to the OSBA's contention, the revenue allocation proposed in the Nonunanimous Settlement represents a reasonable compromise of all the revenue allocation proposals that were presented in this proceeding, and it is entirely possible that the Commission could adopt the revenue allocation that was agreed to in the Nonunanimous Settlement if the revenue allocation issues were fully litigated.

Finally, OSBA expresses its concern that the revenue allocation agreed to in the Nonunanimous Settlement is unfair to the "unrepresented" classes. (OSBA Exec., p. 6.) According to OSBA, only the SDS class is not "explicitly" represented. (OSBA Exec., p. 7.) However, there are no "unrepresented" classes in this proceeding as OSBA claims. I&E fully participated in this proceeding and represents the public interest as a whole, not just one particular class. (RD pp. 77-78.) As such, I&E evaluated the revenue allocation issues from multiple perspectives to determine an appropriate result for the Company and all customers. (RD pp. 77-78.) Columbia Industrial Intervenors ("CII") indicated that its member receives service from Columbia under numerous rate schedules, including SDS. (CII St. 1, p. 5.) The Pennsylvania State University ("PSU") also presented testimony regarding its position on revenue allocation to

the SDS class. (PSU St. No. 1-SR, p. 18.) Further, it is unclear why the OSBA views that SDS class as "mistreated" when the Nonunanimous Settlement adopts OSBA's litigation proposal for the SDS class. (OSBA Exec., p. 5.) The record evidence does not support OSBA's claim that there are unrepresented classes, and therefore, OSBA's contention that the Nonunanimous Settlement mistreats certain classes is baseless.

3. OSBA's Exception No. 3 should be denied.

The OSBA claims that the RD erred by approving the Nonunanimous Settlement because, according to OSBA, the Nonunanimous Settlement violates Commission precedent and the Commonwealth Court's decision in *Lloyd v. Pa. P.U.C.*, 904 A.2d 1010, 1020 (Pa. Cmwlth. 2006) *appeal denied*, 591 Pa. 676, 916 A.2d 1104 (2007) ("*Llyod*"). (OSBA Exec, p. 7.) The OSBA argues that if the Commission approves the Nonunanimous Settlement, it will have effectively reversed its February 19, 2021 decision in Columbia's 2020 Base Rate Case at Docket No. R-2020-3018835 ("*2020 Base Rate Case Order*"), in which the Commission accepted the Peak and Average Cost of Service Study as the basis for allocating revenue. (OSBA Exec., p. 8.) The OSBA also claims that the RD will encourage parties to reject Commission precedent and "join together to try to overturn precedent through non-unanimous settlements." (OSBA Exec., pp. 7-8.) The OSBA's concerns lack factual and legal support and do not provide a basis for rejecting the RD's approval of the Nonunanimous Settlement.

Contrary to OSBA's allegations, the Nonunanimous Settlement is not inconsistent with the Commission's endorsement of the Peak and Average Study in the *2020 Base Rate Case Order*. The parties to the Nonunanimous Settlement did not specify a specific allocated cost of service study that was used to arrive at the agreed upon revenue allocation. Rather, the revenue allocation in the Nonunanimous Settlement was a result of compromise of the various parties' positions on revenue allocation. Accordingly, it is not necessary for the Commission to accept a particular cost

of service study in order to approve the Nonunanimous Settlement, and OSBA's claim that the Commission will have "effectively reversed" its position in the *2020 Base Rate Case Order* if the Commission approves the Nonunanimous Settlement is simply not accurate.

The Commission has explained that parties to settled cases are afforded flexibility in reaching amicable resolutions, so long as the settlement is in the public interest. *Pa. PUC v. MXenergy Electric Inc.*, Docket No. M-2012-2201861, 2013 Pa. PUC LEXIS 789 (Opinion and Order entered Dec. 5, 2013). The Commission has previously approved settlements that propose a "black box" revenue allocation without specifying a particular cost of service study. *See, e.g., Peoples Natural Gas Company v. Pa. PUC*, Docket Nos. R-2018-3006818, et al. (Order entered Oct. 3, 2019); *Pa. PUC v. Columbia Gas of Pennsylvania, Inc.,* Docket Nos. R-2021-3024296 (Order entered Dec. 16, 2022). Moreover, as explained in Columbia's Main Brief and Statement in Support of the Nonunanimous Settlement, the agreed upon revenue allocation is fully supported by the evidence of the parties who relied on the Peak and Average Study. (Columbia MB, p. 11; Columbia Statement in Support of Nonunanimous Settlement, p. 5.) As such, approval of the Nonunanimous Settlement's proposed allocation will not represent a stealth reversal of a prior Commission decision as OSBA contends.

OSBA's concern that approval of the Nonunanimous Settlement will encourage parties to use settlements as a way to overturn Commission precedent is unfounded. (OSBA Exec., p. 7.) The Commission has recognized that rate case settlements are the product of compromise and, as such, are not binding on anyone other than the parties to the settlement and should not be afforded precedential value. *Pa. PUC v. PECO Energy Company – Gas Division*, Docket Nos. R-2020-3018926, et al., 2021 Pa. PUC LEXIS 241, *44 (Order entered June 22, 2021) (rejecting assertion

that the terms of prior rate case settlements should be afforded precedential value). Moreover, the Nonunanimous Settlement expressly states as follows:

> This Non-Unanimous Settlement is being presented only in the context of these proceedings in an effort to resolve the proceedings in in a manner that is fair and reasonable. The Non-Unanimous Settlement is the product of compromise between and among the Non-Unanimous Joint Petitioners. This Non-Unanimous Settlement is presented without prejudice to any position that any of the Non-Unanimous Joint Petitioners may have advanced and without prejudice to the position any of the Non-Unanimous Joint Petitioners may advance in the future on the merits of the issues in future proceedings except to the extent necessary to effectuate the terms and conditions of this Non-Unanimous Settlement. This Non-Unanimous Settlement does not preclude the Non-Unanimous Joint Petitioners from taking other positions in proceedings involving other public utilities under Section 1308 of the Public Utility Code, 66 Pa.C.S. § 1308, or any other proceeding.

(Joint Petition for Nonunanimous Settlement ¶ 33.) Contrary to OSBA's assertion, the plain terms of the Nonunanimous Settlement make it clear that the parties do not intend to use the Nonunanimous Settlement as an indirect attempt to overturn Commission precedent.

Finally, OSBA is incorrect that approval of the Nonunanimous Settlement would violate the Commonwealth Court's decision in *Lloyd*. (OSBA Exec., p. 9.) According to OSBA, following the *Lloyd* decision in this case would require the LDS class to receive the largest rate increase because the class rate of return at present rates is the lowest for the LDS class using the Peak and Average Study. (OSBA Exec, p. 8.) OSBA's position is based on a misapplication of the *Llyod* decision as requiring cost of service to be the only factor the Commission considers when allocating revenue. While cost of service is certainly the primary consideration in allocating the revenue requirement, other important factors such as gradualism may be considered so long as the proposed revenue allocation moves rates closer to the cost of service. *Pa. Publ. Util. Comm'n, et al. v. PPL Electric Utilities Corporation*, Docket Nos. R-00049255, et al., 2007 Pa. PUC LEXIS

55 (Order on Remand entered July 25, 2007). As Columbia explained in its Main Brief, the OSBA's proposal to assign 8.3% of the revenue increase to the LDS class would result in the LDS class receiving an unreasonable increase of 2.0 times the system average in violation of gradualism principles. (Columbia MB, p. 13.) Unlike OSBA's proposed revenue allocation, the revenue allocation proposed in the Joint Petition for Non-Unanimous Settlement gradually moves distribution rates for each class closer to the full cost of providing service. For these reasons, and as explained in Columbia's Main Brief, Reply Brief, and Statement in Support of the Nonunanimous Settlement, the RD correctly approved the Nonunanimous Settlement as just, reasonable, and supported by substantial evidence. (RD, p. 106.)

B. REPLIES TO EXCEPTIONS OF RICHARD C. CULBERTSON

Mr. Culbertson presents fourteen Exceptions to the RD, many of which overlap and contain repetitive material and arguments. In the following paragraphs Columbia responds to each of Mr. Culbertson's separately numbered Exceptions. Columbia seeks to keep its Replies concise and avoid repetition by including cross references to arguments that have already been addressed in a prior Reply Exception. As explained herein, Mr. Culbertson's Exceptions do not support overturning the RD's recommended approval of the settlement petitions.

1. Mr. Culbertson's Exception No. 1 should be denied.

In Exception No. 1, Mr. Culbertson raises several different arguments as to why he believes that the RD erred in approving the settlement petitions. As explained herein, Mr. Culbertson's arguments lack legal and factual support and do not provide a basis for rejecting the well-reasoned RD.

Mr. Culbertson claims that an adequate investigation into Columbia's proposed rates did not occur as required by the Commission's April 14, 2022 Order suspending Columbia's requested rate increase. (Culbertson Exec., p. 7.) Aside from his personal opinions regarding how a rate

case should be conducted, Mr. Culbertson presented no evidence to support his allegations that the investigation of this base rate proceeding is inadequate. To the contrary, the record evidence demonstrates that a comprehensive investigation did occur.

The RD accurately summarized the investigation that occurred in this proceeding. (RD, pp. 114-115.) To start, Columbia's direct filing included thousands of pages of material supporting its claims in accordance with the Commission's regulations and filing requirements for a proposed general rate increase in excess of $1 million. 52 Pa. Code § 53.53. *See* Columbia Statement Nos. 1-16; Columbia Exhibit Nos. 1-17; 101-117 and 400-414; Columbia Standard Data Responses COS 1-21, ROR 1-23 and RR 1-55. The other active parties to the proceeding, including the three statutory advocates, conducted a thorough examination of Columbia's proposals. Columbia responded to hundreds of formal interrogatories from the various parties. Multiple expert witnesses acting on behalf of the other active parties to this case reviewed Columbia's filing information and the testimony of Columbia's witnesses and submitted their own testimony analyzing Columbia's case. The multiple rounds of testimony submitted by these parties and the hundreds of interrogatories exchanged is evidence that the active parties have, indeed, investigated Columbia's rate filing. In addition, a public input hearing was held to hear public opinion and to examine Columbia's case.

The parties engaged in settlement discussions that ultimately led to the Joint Petition for Partial Settlement and the Joint Petition for Nonunanimous Settlement. The RD's recommendation to approve the Joint Petition for Partial Settlement and the Joint Petition for Nonunanimous Settlement is based on an extensive evidentiary record, as well as the supporting statements from each of the settling parties. *See* September 2, 2022 Joint Petition for Partial Settlement, Appendices B-J, and September 2, 2022 Joint Petition for Nonunanimous Settlement,

Appendices C-H. Therefore, the RD correctly concluded that there is "no basis in Mr. Culbertson's claim that the investigation into this base rate proceeding has been deficient." (RD, p. 115.)

Throughout his Exceptions, Mr. Culbertson heavily criticizes the Commission. He claims that its operations are "fragmented, unaligned and appear uncoordinated." (Culbertson Exec., p. 11.) He claims that the Commission is not following required management directives for Commonwealth agencies and that the Commissioners are not adhering to their oath of office. (Culbertson Exec., p. 20.) There is no record evidence in this proceeding to support any of Mr. Culbertson's allegations against the Commission. Mr. Culbertson's personal opinions regarding the Commission do not constitute evidence. *See Cuthbert v. City of Philadelphia*, 417 Pa. 610, 209 A.2d 261 (1965); *B & K Inc. v. Commonwealth Dep't of Highways*, 398 Pa. 518, 159 A.2d 206 (1960) (testimony consisting of guesses, conjecture, or speculation cannot prove a party's claims). Moreover, Columbia has no control over the Commission's operations, and any issues that Mr. Culbertson may raise that would affect multiple stakeholders, such as proposed changes to the Commission's processes, should be dealt with in a generic proceeding, and not in a single utility's base rate case.

Mr. Culbertson criticizes the Commission's process in this rate case by characterizing it as "half-baked" and claims that ratemaking is a "closed" process. (Culbertson Exec., pp. 17-18.) The rate case is not a "closed" process. Interested members of the public can participate in various ways by filing a complaint, submitting testimony or comments, or testifying at a public input hearing. Many stakeholders representing various interests did in fact participate in Columbia's base rate proceeding. Moreover, all non-confidential evidence submitted for the record is available for review by the public.[1]

[1] The vast majority of evidence presented in this case is non-confidential.

Mr. Culbertson claims that the Commission should have conducted "financial, management, operational and special audits" as part of the rate case. (Culbertson Exec., p. 11.) Relatedly, Mr. Culbertson alleges that the ALJs and Commission failed by not following the internal controls set forth in the "GAO Green Book" and the auditing standards set forth in the "GAO Yellow Book." (Culbertson Exec., pp. 10, 12-17.) Mr. Culbertson failed to present any evidence in support of his claims regarding audits. As Columbia explained in its Reply Brief, the Company is subject to regular audits by the Commission, which are publicly available. *See, e.g.*, Management and Operations Audit of Columbia Gas of Pennsylvania, Inc., Docket No. D-2019-3011582 (Issued June 2020, available at https://www.puc.pa.gov/pcdocs/1670369.pdf). (Columbia Reply Brief, p. 13.) Columbia does not have control over the Commission's auditing process, and nothing in the Public Utility Code, Commission's regulations, or Commission's orders requires adherence to the "GAO Green Book" or the "GAO Yellow Book."

Although an audit is not required to meet Columbia's burden of proof in a rate proceeding, Columbia explained that the Company does undertake internal audits on a routine basis. (Columbia Exh. 13, Sch. 4.) Columbia also provided all material required to be submitted in support of a general base rate in accordance with the Commission's regulations at 52 Pa. Code § 53.53, which requires the submission of detailed materials covering all aspects of Columbia's operations. *See* 52 Pa. Code § 53.53. Mr. Culbertson did not present any evidence challenging the information provided by Columbia. Therefore, the RD correctly determined that Mr. Culbertson's claims regarding insufficient auditing are not supported by substantial evidence. (RD, p. 114.)

Mr. Culbertson cites material that is not part of the evidentiary record in this case, including a "Rate Comparison Report" that compares the rates of different gas utilities in Pennsylvania.

(Culbertson Exec., p. 7.) The rate comparison report was introduced by Mr. Culbertson for the first time in his Main Brief. (Columbia Reply Brief, p. 15.) It is well-established that parties cannot present new evidence in briefs or exceptions that is not part of the evidentiary record. *See, e.g., Myers v. PPL Electric Utilities Corporation,* Docket No. C-2017-2620710, 2019 Pa. PUC LEXIS 261 (Order entered Aug. 29, 2019) at *36. Therefore, the rate comparison report should not be considered by the Commission. In rejecting Mr. Culbertson's argument, the RD correctly concluded as follows:

> Mr. Culbertson also asserts that Columbia's rates are unreasonable because they are higher than the rates of other utilities in Pennsylvania as provided in the Commission's rate comparison report. We note that Mr. Culbertson submitted no record evidence in this proceeding to support his position. We agree with Columbia that the rate comparison report referenced by Mr. Culbertson is not part of the record, and should not be relied upon by us. Additionally, as we have stated above, the Joint Petitioners have presented substantial evidence that the settlements reflect rates that are just and reasonable. Mr. Culbertson has not presented sufficient evidence to rebut that finding. Although the utility seeking a rate increase has the ultimate burden of proof, a party proposing an adjustment to a ratemaking claim of a utility bears the burden of presenting some evidence or analysis tending to demonstrate the reasonableness of the adjustment.

(RD, p. 117.) (citations omitted)

Mr. Culbertson references an entirely separate complaint proceeding from 2016 involving Mr. Culbertson's service line. That complaint was fully litigated and decided in a separate proceeding initiated by Mr. Culbertson against Columbia. *See Culbertson v. Columbia Gas of Pennsylvania, Inc.*, Docket No. F-2017-2605797 (Order on Reconsideration entered Aug. 25, 2022). There is no evidence pertaining to Mr. Culbertson's service in the evidentiary record in this case. Moreover, Mr. Culbertson is barred from re-raising the same issues that were previously litigated in another case. *See Joint Application of EarthLink, Inc., et al.,* Docket Nos. A-2011-

2218791, *et al.* (Order entered April 20, 2011). Relatedly, Mr. Culbertson presents a photo of his meter. This photo was not introduced for the record in this case, and therefore, cannot be relied upon as evidence. It is well-established that such "extra-record" evidence is not permissible. *See Kyu Son Yi v. State Bd. of Veterinary Med.*, 960 A.2d 864, 873 (Pa. Cmwlth. 2008); *Umedman v. Unemployment Comp. Bd. of Review*, 52 A.3d 558, 564 (Pa. Cmwlth. 2012); *Wheeler v. Delbalso*, 2015 Pa. Commw. Unpub. LEXIS 809, at *21 (Pa. Cmwlth. 2015).

2. Mr. Culbertson's Exception No. 2 should be denied.

Mr. Culbertson claims that his Complaint against the rate proceeding was not "handled with due process." (Culbertson Exec., p. 23.) He also claims that his interrogatories were not answered and that he was deprived of discovery. (Culbertson Exec., p. 23.) Mr. Culbertson's claims are incorrect. Due process before administrative agencies requires notice and an opportunity to be heard. *Groch v. Unemployment Compensation Board of Review*, 472 A.2d 286, 287-88 (Pa. Cmwlth. 1984). Mr. Culbertson's due process rights were satisfied in this case.

Mr. Culbertson was provided with a full and fair opportunity to participate in every aspect of the base rate proceeding. Mr. Culbertson issued numerous interrogatories to which Columbia either responded or objected when appropriate. Pursuant to the Commission's regulations, Mr. Culbertson filed motions to compel discovery responses, which were ruled upon by the ALJs. Columbia complied with all of the ALJs' interim discovery orders. Simply because Mr. Culbertson was not permitted to ask discovery that is prohibited by the Commission's regulations does not mean that he was deprived his right to discovery. There is no right to discovery that is impermissible under the Commission's regulations. *See* 52 Pa. Code §§ 5.321, et seq.

Mr. Culbertson also submitted briefs concerning his issues and written objections to the settlement petitions. *See* ALJs' Sept. 2, 2022 Letter, Docket No. R-2022-3031211, and Culbertson's Objections to Settlements, Docket No. R-2022-3031211 (Sept. 12, 2022). Mr.

Culbertson could have submitted testimony and exhibits in accordance with the procedural schedule established for this case. The fact that Mr. Culbertson chose not to submit testimony or exhibits for the record does not mean that he was deprived of due process.

Mr. Culbertson also references testimony presented by a Columbia employee at one of the public input hearings in this proceeding, which he alleges should have been "exposed" and not "hidden." (Culbertson Exec., pp. 24-25.) Nothing about this testimony was "hidden." Mr. Culbertson fails to recognize that Columbia fully responded to the issues raised in the public input hearing testimony. *See* Columbia St. No. 1-R, pp. 18-19.

3. Mr. Culbertson's Exception No. 3 should be denied.

Mr. Culbertson questions I&E's and the Commission's role in this proceeding. He disagrees with the following finding of fact in the RD:

> I&E is responsible for protecting the public interest in proceedings before the Commission; this responsibility requires the balancing of the interests of ratepayers, the regulated utility, and the regulated community as a whole.

(Culbertson Exec., p. 25.) Mr. Culbertson claims that the Commission may have the responsibility of balancing interests, but I&E does not. (Culbertson Exec., p. 25.) Thus, Mr. Culbertson concludes that there is a "confusion about the duties" of the Commission and I&E. (Culbertson Exec., p. 25.)

The Commission has recognized that it, as the adjudicatory body, cannot undertake a prosecutory or investigative function, as this would violate due process. This is why the Commission has established separate entities, such as I&E, to undertake investigations. *See, e.g. Pa. Pub. Utility Comm'n. et al. v. Gary Polzot, t/a, Airport Exec. Car Service*, 2013 Pa. PUC LEXIS 876, *12-13, Docket No. C-2011-2271305 (Order entered Oct. 31, 2013) (explaining the need to ensure that there are appropriate "walls of division" between prosecutory and adjudicatory

functions and the Commission's prohibition on the commingling of those functions) citing 66 Pa. C.S. § 308.2(b); *Lyness v. State Bd. of Med.*, 529 Pa. 535, 605 A.2d 1204 (1992); *Delegation of Prosecutory Authority to Bureaus with Enforcement Responsibilities*, Docket No. M-0094053, 1994 Pa. PUC LEXIS 148 (September 2, 1994). Mr. Culbertson's criticisms of I&E's and the Commission's functions do not support rejecting the RD's finding of fact or the RD's recommendations in this case.

4. Mr. Culbertson's Exception No. 4 should be denied.

Mr. Culbertson claims that he was inappropriately excluded from settlement discussions, and therefore, the "credibility and fairness of the settlement" is impaired. (Culbertson Exec., p. 26.) That is not the case. Although Columbia and Mr. Culbertson were unable to resolve Mr. Culbertson's issues through settlement, Mr. Culbertson was provided with an opportunity to comment on or submit objections to the settlement petitions in accordance with 52 Pa. Code § 69.406, which he did. *See* ALJs' Sept. 2, 2022 Letter, Docket No. R-2022-3031211, and Culbertson's Objections to Settlements, Docket No. R-2022-3031211 (Sept. 12, 2022).

5. Mr. Culbertson's Exception No. 5 should be denied.

In Exception No. 5, Mr. Culbertson simply states that the revenue requirement agreed to in the Partial Settlement is "too good to be true!" (Culbertson Exec., p. 27.) Mr. Culbertson's characterization of the Partial Settlement is not evidence and cannot be used to support any factual finding that would justify rejecting the RD. *See Mid-Atlantic Power Supply Ass'n v. Pa. Pub. Util. Comm'n*, 746 A.2d 1196, 1200 (Pa. Cmwlth. 2000) (bald assertions, personal opinions, or perceptions do not constitute evidence sufficient to support a claim); *Cuthbert v. City of Philadelphia*, 417 Pa. 610, 209 A.2d 261 (1965); *B & K Inc. v. Commonwealth Dep't of Highways*, 398 Pa. 518, 159 A.2d 206 (1960) (testimony consisting of guesses, conjecture, or speculation cannot prove a party's claims).

He also claims that a "Truth In Negotiations" law is needed to protect ratepayers. (Culbertson Exec., p. 27.) However, a utility's rate case is not an appropriate place to advocate for the General Assembly to pass new legislation pertaining to public utilities.

6. Mr. Culbertson's Exceptions No. 6 should be denied.

Mr. Culbertson argues that Columbia's investments in pipeline replacements are unnecessary. (Culbertson Exec., p. 28.) Mr. Culbertson's position is contrary to the evidence. The record evidence demonstrates that Columbia's accelerated pipeline replacement efforts are necessary to maintain a safe and reliable distribution system. Columbia witness Anstead testified that since the inception of Columbia's accelerated infrastructure replacement program, Columbia has significantly reduced its inventory of bare steel pipe and has seen a significant reduction in leaks as a result. (Columbia St. 14, pp. 32, 41.) Mr. Culbertson did not challenge Columbia's evidence or present any evidence in response. Mr. Culbertson's opinion is also contrary to the recommendations of I&E's pipeline safety witness, Mr. Merritt, who recommended that Columbia should increase its pipeline replacement efforts and focus on increasing its yearly replacement rate to reduce risks to the Company's systems. (I&E St. 4, p. 21.) The RD correctly rejected Mr. Culbertson's challenge to Columbia's pipeline replacement on the basis that it is not supported by substantial evidence. (RD, p. 116.)

7. Mr. Culbertson's Exception No. 7 should be denied.

Mr. Culbertson claims that he did not submit any written testimony or exhibits in this proceeding because certain of his interrogatories were not answered, and according to Mr. Culbertson, "this suppressed substantial evidence to be entered in the record of this rate case." (Culbertson Exec., pp. 28-29.) As explained in Columbia's Reply to Exception No. 2, Columbia answered numerous interrogatories and complied with all discovery orders in this proceeding. Mr. Culbertson's failure to ask appropriate discovery that complies with the Commission's regulations

does not excuse a complete lack of evidence to support Mr. Culbertson's claims. Mr. Culbertson could have submitted written testimony and exhibits pursuant to the procedural schedule in this proceeding but chose not to do so. Mr. Culbertson's own choice not to submit evidence does not provide a basis for rejecting the RD.

8. Mr. Culbertson's Exception No. 8 should be denied.

Mr. Culbertson claims that the Commission does not consider public comments and opposition when ruling on a utility's requested rate increase. (Culbertson Exec., p. 29.) Mr. Culbertson fails to recognize that the Commission may only consider sworn testimony in reaching its decision. *See* 52 Pa. Code § 1005.151. Participants were encouraged to provide sworn testimony at the public input held in this proceeding. Tr. at 61-63. There is no evidence to suggest that in reaching its decision the Commission ignores input from the public when members of the public provide sworn testimony or comments regarding a requested rate increase.

9. Mr. Culbertson's Exception No. 9 should be denied.

Mr. Culbertson claims that black box settlements are illegal. (Culbertson Exec., pp. 29-31.) However, the Commission has accepted black box settlements as satisfying the requirements of the Public Utility Code and the Commission's regulations and orders on numerous occasions. *See, e.g., Pa. PUC v. Aqua Pennsylvania, Inc*., Docket Nos. R-2018-3003558 et al., 2019 Pa. PUC LEXIS 170 (Order entered May 9, 2019) (denying exceptions to recommended decision and approving black box settlement without modification); *Pa. PUC, et al. v. Pike County Light & Power Company – Electric*, Docket Nos. R-2020-3022135, et al., 2021 Pa. PUC LESIX 299, *15 (Order entered July 21, 2021). In *Pike County Light & Power Company*, the Commission stated as follows:

> The Commission has recognized that "black box" settlements can serve an important purpose in reaching consensus in rate cases:

> We have historically permitted the use of "black box" settlements as a means of promoting settlement among the parties in contentious base rate proceedings. 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 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.

Pike County Power & Light, 2021 Pa. PUC LEXIS 299, *15 quoting *Pa. PUC v. Peoples TWP LLC*, Docket No. R-2013-2355886 (Order entered December 19, 2013). Mr. Culbertson's opposition to black box settlements is unfounded and does not support rejecting the RD's recommendation to approve the settlement petitions.

Mr. Culbertson also claims that the RD's approval of the black box settlements violates 66 Pa. C.S § 335. (Culbertson Exec., p. 30.) Section 335(d) of the Public Utility Code addresses the release of documents relied upon by the Commission when it issues a decision or takes official action. Specifically, Section 335(d) requires the Commission to make part of the public record and release publicly any document relied upon by the Commission in reaching its determination with certain exceptions. Section 335(d) specifically excludes certain types of material from public release, including documents protected by legal privilege, documents containing trade secrets or proprietary information, or information which, if disclosed publicly, could be used for criminal or terroristic purposes. 66 Pa. C.S § 335(d). The RD's recommended approval of the settlement petitions does not violate Section 335(d) because the entire record that the RD relied upon is publicly available on the Commission's website and for examination at the Commission's office, with the exception of a limited number of documents that contain proprietary information as governed by the Protective Order entered by the ALJs on May 11, 2022, and as specifically

excluded from the requirement of public disclosure pursuant to 66 Pa. § C.S. 335(d). *See Prehearing Order #2*, Docket Nos. R-2022-3031211, et al. (May 11, 2022).

10. Mr. Culbertson's Exception No. 10 should be denied.

Mr. Culbertson claims that, as a prosecutor in a rate case, I&E should have conducted an audit in accordance with the GAO Yellow Book and made the results of the audit public. (Culbertson Exec., p. 31.) Columbia responded to Mr. Culbertson's claims regarding audits and the GAO Yellow Book in its Reply to Exception No. 1. I&E thoroughly examined Columbia's filing, as evidenced by the testimony from I&E's witnesses regarding operating and maintenance expenses, energy efficiency, rate of return, cost of service, revenue allocation, and pipeline replacement. *See* I&E Statement Nos. 1 through 4. The Public Utility Code and the Commission's regulations do not require I&E to conduct an audit as part of the rate case, and Mr. Culbertson has presented no basis for challenging I&E's choices in litigating its case.

11. Mr. Culbertson's Exception No. 11 should be denied.

In Exception No. 11, Mr. Culbertson again claims that black box settlements are illegal and do not serve a legitimate purpose. (Culbertson Exec., pp. 31-32.) Columbia responded to Mr. Culbertson's position on black box settlements in its Reply to Exception No. 9. As Columbia explained in its Reply to Exception No. 9, black box settlements are not illegal and have been previously approved by the Commission. Mr. Culbertson's criticisms of the black box nature of the settlement petitions are unfounded.

Mr. Culbertson also claims that the Partial Settlement terms regarding normalization accounting are not understandable and that the Commission "does not have the authority to change requirements over FERC, GAAP, Government Accounting (CAS and Cost Principles) IRS, and Recovery." (Culbertson Exec., p. 32.) Mr. Culbertson misinterprets the Partial Settlement and reads terms into the Partial Settlement that are not there. Nowhere in the Partial Settlement do the

parties agree to change the requirements of the Federal Energy Regulatory Commission, the Internal Revenue Service, or any other federal agency or government accounting standards.

12. Mr. Culbertson's Exception No. 12 should be denied.

Mr. Culbertson claims that the statutory parties could not possibly have represented the public in the case based on his personal observations and his experience with the discovery process. (Culbertson Exec., 33.) As support for his argument, Mr. Culbertson claims that "only about 10-15 percent [of interrogatories] get answered." (Culbertson Exec., p. 33.) This statement is inaccurate. As previously explained in Columbia's Reply to Exception No. 1, the Company responded to hundreds of interrogatories from the various parties in this case and has complied with all of the ALJs' interim orders regarding discovery. Mr. Culbertson's view that the statutory parties did not carry out their duties is not supported by the record evidence, which includes multiple pieces of testimony from several witnesses on behalf of the statutory parties. *See* I&E Statement Nos. 1 through 4; I&E Statement Nos. 1-R and 3-R; I&E St. Nos. 1-SR through 4-SR; OCA Statement Nos. 1 through 5; OCA Statement Nos. 1-SR through 5-SR; OSBA St. 1; OSBA St. No. 1-SR. The RD correctly concluded that "the Statutory Parties actively participated in this proceeding." (RD, p. 63.)

Mr. Culbertson alleges that "whatever was done is not sufficient for rate decision-making purposes" because it was not in accordance with the GAO Yellow Book auditing standards. (Culbertson Exec., p. 34.) Columbia previously addressed Mr. Culbertson's claims regarding GAO Yellow Book Audits in its Reply to Exception No. 1. Mr. Culbertson's claims regarding government audits are not supported by substantial evidence and do not provide a basis for overturning the RD's recommendations.

13. Mr. Culbertson's Exception No. 13 should be denied.

Mr. Culbertson alleges that Columbia is not subject to regular "quality" audits. (Culbertson Exec., p. 35.) As Columbia previously explained in its Reply to Exception No. 1, Mr. Culbertson's claims regarding audits are incorrect and are not supported by substantial evidence.

Mr. Culbertson also references a news article from 2009 regarding Columbia's purchased gas costs. (Culbertson Exec., p. 35.) This material is not part of the record and should not be considered. *See Kyu Son Yi.*, 960 A.2d 864, 873; *Umedman*, 52 A.3d 558, 564; *Wheeler*, 2015 Pa. Commw. Unpub. LEXIS 809, at *21. Moreover, the issues in this case pertain to Columbia's base rates and no party, including Mr. Culbertson, raised issues concerning Columbia's purchased gas cost rates, which are determined in a separate proceeding pursuant to Section 1307(f) of the Public Utility Code. *See* 66 Pa. C.S. § 1307(f).

14. Mr. Culbertson's Exception No. 14 should be denied.

Mr. Culbertson claims that the RD erred by rejecting his safety concerns regarding the installation of curb valves. (Culbertson Exec., pp. 36-37.) However, Mr. Culbertson did not present any evidence regarding curb valves or safety issues. To the contrary, Columbia witness Kempic explained that Columbia's safety standards require that each service line have a shut off valve outside the home, and the safety standards specify when a curb valve should be used. (Columbia St. No. 1-R, p. 18.) Mr. Kempic also explained that a meter valve enables quicker shutoff during priority situations since it is located above ground and next to the meter, which makes it easy to locate for a quick resolution. A curb valve, on the other hand, is not in plain sight or near the meter, and often requires personnel to be called out to locate it. (Columbia St. No. 1-R, pp. 18-19.) I&E witness Merritt agreed with Columbia witness Kempic. (I&E St. 4-SR, pp. 10-11.) Mr. Culbertson did not present any evidence in response to the evidence of Columbia and

I&E on this issue. Therefore, the RD correctly rejected Mr. Culbertson's safety claims as unsubstantiated and insufficient to satisfy his burden of proof. (RD, p. 116.)

Mr. Culbertson also cites to a news article pertaining to a union strike. This article is not part of the record and should not be considered. *See Kyu Son Yi,* 960 A.2d 864, 873; *Umedman*, 52 A.3d 558, 564; *Wheeler*, 2015 Pa. Commw. Unpub. LEXIS 809, at *21.

III. CONCLUSION

For all the foregoing reasons, Columbia Gas of Pennsylvania, Inc. respectfully requests that the Pennsylvania Public Utility Commission deny the Exceptions of the Office of Small Business Advocate and Richard C. Culbertson and adopt the RD in its entirety without modification.

Respectfully submitted,

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