PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17120

Public Meeting held December 8, 2022

Commissioners Present:

Gladys Brown Dutrieuille, Chairman
Stephen M. DeFrank, Vice Chairman
Ralph V. Yanora
Kathryn L. Zerfuss
John F. Coleman, Jr.

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.

OPINION AND ORDER

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BY THE COMMISSION:

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition are the following matters: (1) the Exceptions filed by the Office of Small Business Advocate (OSBA) and Richard C. Culbertson (Mr. Culbertson) on October 14, 2022, to the Recommended Decision of Administrative Law Judges (ALJs) Deputy Chief Christopher P. Pell and John Coogan served on October 4, 2022, in the above-captioned general rate increase proceeding; (2) the Joint Petition for Partial Settlement (Joint Petition or Partial Settlement), filed on September 2, 2022, by Columbia Gas of Pennsylvania, Inc. (Columbia or the Company), the Commission's Bureau of Investigation and Enforcement (I&E), the Office of Consumer Advocate (OCA), the OSBA, the Pennsylvania State University (PSU), Columbia Industrial Intervenors (CII), the Retail Energy Supply Association, Shipley Choice, LLC and NRG Energy, Inc. (collectively, RESA/NGS Parties), the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA), and the Pennsylvania Weatherization Providers Task Force (Task Force) (collectively, the Joint Petitioners); and (3) the Joint Petition for Non-Unanimous Settlement Regarding Revenue Allocation and Rate Design (Non-Unanimous Settlement or JPNUS), filed on September 2, 2022, by Columbia, I&E, the OCA, PSU, CII, CAUSE-PA, and Task Force (collectively, the JPNUS Joint Petitioners). On October 21, 2022, the following Parties filed Replies to Exceptions: Columbia, I&E, the OCA, and PSU.

For the reasons stated below, we shall deny the OSBA's and Mr. Culbertson's Exceptions, adopt the Recommended Decision, and approve the Joint Petition and the JPNUS, without modification, as set forth in detail in this Opinion and Order.

I. History of the Proceeding

On March 18, 2022, Columbia filed Supplement No. 337 to its Tariff Gas Pa. P.U.C. No. 9 to become effective for service rendered on or after May 17, 2022, containing proposed changes to Columbia's distribution base rates designed to produce an increase in annual revenues of approximately $82.2 million based on a Fully Projected Future Test Year (FPFTY) ending December 31, 2023.

On March 22, 2022, I&E filed a Notice of Appearance. On March 28, 2022, the OSBA filed a Notice of Appearance and a Formal Complaint and Public Statement. On April 5, 2022, the OCA filed a Notice of Appearance and a Formal Complaint and Public Statement.

The following Parties filed Formal Complaints to the proposed rate increase: Jose A. Serrano on April 1, 2022; Constance Wile on April 4, 2022; PSU on April 15, 2022; CII on April 27, 2022; and Mr. Culbertson on April 28, 2022.

Petitions to Intervene were filed as follows: by the Task Force on April 8, 2022; by the RESA/NGS Parties on April 11, 2022; by CAUSE-PA on April 12, 2022; and by the Natural Resources Defense Council (NRDC) on April 27, 2022.

By Order entered on April 14, 2022 (*April 2022 Order*), the Commission instituted an investigation into the lawfulness, justness, and reasonableness of the proposed rate increase at Docket No. R-2022-3031211. Pursuant to Section 1308(d) of the Public Utility Code (Code), 66 Pa. C.S. § 1308(d), Supplement No. 337 to Tariff Gas Pa. P.U.C. No. 9 was suspended by operation of law until December 17, 2022, unless permitted by Commission Order to become effective at an earlier date.

By Prehearing Order dated May 3, 2022, the ALJs granted the Petitions to Intervene of the Task Force, the RESA/NGS Parties, and CAUSE-PA.

On May 6, 2022, Columbia filed a Motion for Protective Order. By Prehearing Order dated May 11, 2022, the ALJs granted Columbia's Motion for Protective Order.

By Prehearing Order dated May 17, 2022, the ALJs granted NRDC's Petition to Intervene.

Telephonic public input hearings were held on May 31, 2022, and June 1, 2022.[1]

On June 6, 2022, the following Parties served Direct Testimony: the OCA, I&E, the OSBA, CAUSE-PA, PSU, the RESA/NGS Parties, and Task Force. On July 6, 2022, the following Parties served Rebuttal Testimony: Columbia, the OCA, I&E, the OSBA, CAUSE-PA, and PSU. On July 26, 2022, the following Parties served Surrebuttal Testimony: the OCA, I&E, the OSBA, CAUSE-PA, PSU, the RESA/NGS Parties, and CII. On August 1, 2022, Columbia served Rejoinder Testimonies.

An evidentiary hearing was held on August 3, 2022. During the hearing, Columbia made its witness Ms. Stacy Djukic available for cross-examination by the RESA/NGS Parties. All other Party witnesses were excused from appearing at the hearing since no Parties requested to cross-examine them, and the ALJs did not have questions for them. Columbia, I&E, the OCA, the OSBA, the RESA/NGS Parties, PSU, Task Force, CAUSE-PA, and CII each moved to have their witnesses' testimonies and

[1] For a discussion regarding the public input hearings and the testimony that David Surdyn and George Milligan presented during the June 1, 2022 public input hearing, *see* R.D. at 13-15.

exhibits entered into the record. As there were no objections, all Parties' testimony and/or exhibits were admitted into the record during the hearing. Additionally, by Order Admitting Late Identified Evidence of the RESA/NGS Parties dated August 4, the ALJs admitted into the record the RESA/NGS Parties' pre-served Exhibit DC-5.

On August 23, 2022, the following Parties filed Main Briefs: the OSBA, Mr. Culbertson, I&E, Columbia, and PSU. On September 2, 2022, the following Parties filed Reply Briefs: Columbia, I&E, the OSBA, PSU, and Mr. Culbertson.

As previously noted, the Partial Settlement and the Non-Unanimous Settlement were filed on September 2, 2022. On September 12, 2022, the OSBA filed an Objection to the Non-Unanimous Settlement, and Mr. Culbertson filed an Objection to both Settlements.

In the Recommended Decision, served on October 4, 2022, the ALJs approved the Partial Settlement and the Non-Unanimous Settlement, without modification, finding both Settlements were in the public interest, consistent with the Code, and supported by substantial evidence. The ALJs also denied Mr. Culbertson's Complaint.

As previously noted, the OSBA and Mr. Culbertson filed Exceptions on October 14, 2022. Columbia, I&E, the RESA/NGS Parties, CII, and PSU each filed letters indicating they would not be filing Exceptions.

On October 21, 2022, Columbia, I&E, the OCA, and PSU filed Replies to Exceptions. The RESA/NGS Parties and CII each filed letters indicating they would not be filing Replies to Exceptions.

On October 24, 2022, Mr. Culbertson filed a document titled "A Motion to the Commission to Expedite Determinations Regarding the Pipeline Safety Including the Regulatorily Required Installation, Maintenance, and Use of Utility-Owned Curb Valves as Connected to Service Lines" (Culbertson Motion). On November 11, 2022, Columbia filed an Answer to Richard C. Culbertson's Motion to Expedite as well as a Motion to Strike, arguing that the Culbertson Motion improperly re-argues issues that are the subject of the Exceptions and Replies to Exceptions pending in this proceeding and is an attempt to introduce material that is not part of the record. On November 17, 2022, Mr. Culbertson filed a Reply to Columbia's Answer.[2]

II. Background

Columbia is a public utility and natural gas distribution company which delivers natural gas service to approximately 440,000 residential, commercial and industrial customers in portions of twenty-six counties in Pennsylvania, primarily in the western half of the state and in parts of Northwest, Southern, and Central Pennsylvania. Columbia St. 1 at 3-4; Joint Petition at 2.

In its original filing, Columbia proposed rates designed to result in an increase in total annual operating revenues of approximately $82.2 million, or

[2] Upon review, we shall grant Columbia's Motion to Strike. Some of Mr. Culbertson's arguments in the Culbertson Motion are substantially similar to those he made in his Exceptions, and those arguments will be addressed herein, as appropriate. His filing also contains new arguments and factual averments that he did not previously raise and which may not be raised for the first time at this stage in the proceeding. *See, e.g., Hess v. Pa. PUC*, 107 A.3d 246, 265-2669 (Pa. Cmwlth. 2014); *Pa. PUC v. Uber Technologies, Inc*., Docket No. C-2014-2422723 (Order entered September 1, 2016); *Ruth Matieu-Alce v. Philadelphia Gas Works*, Docket No. F-2015-2473661 (Order entered April 7, 2016); *Petition of PPL Electric Utilities Corporation for Approval of a Distribution System Improvement Charge*, Docket Nos. P-2012-2325034, *et al.* (Order entered October 1, 2015).

approximately 10.1%, based on a FPFTY ending December 31, 2023.[3] Columbia Exh. 102, Sch. 3 at 3. If approved, the total average monthly bill of a residential customer using 70 therms of gas per month would have increased from $123.24 to $135.67; the total average monthly bill of a small commercial customer using 150 therms of gas per month would have increased from $205.73 to $223.51; and the total average monthly bill of a small industrial customer using 1,316 therms of gas per month would have increased from $1,476.21 to $1,586.33. Columbia Exh. 111, Sch. 6. Under the Partial Settlement, the proposed increase in Columbia's rates would result in additional annual operating revenues of approximately $44.5 million, or approximately 5.5%, an increase that is approximately 54% of Columbia's original request of $82.2 million.[4] If the Commission approves the Partial and Non-Unanimous Settlements without modification, the total average monthly bill of a residential customer using 70 therms of gas per month will increase from $123.24 to $128.96; the total average monthly bill of a small commercial customer using 150 therms of gas per month will increase from $205.73 to $217.33; and the total average monthly bill of a small industrial customer using 1,316 therms of gas per month will increase from $1,476.21 to $1,566.24. R.D. at 1.

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[3] Columbia's proposed increase of $82,151,953 in annual operating revenue is comprised of a $78,383,936 increase in base rate revenues; a $3,675,618 increase in revenue received through its Universal Service Program (USP) Rider, as a result of the reassignment of the revenue increment not assigned to Customer Assistance Program (CAP) customers, and a projected increase in revenue from late payment fees of $92,399. *See* Columbia Exh. 102, Sch. 3 at 3.

[4] The settlement increase of $44,500,000 in annual operating revenue is comprised of a $42,364,547 increase in base rate revenues, a $2,085,346 increase in revenue received through its USP Rider, and a projected increase in revenue from late payment fees of $50,107. *See* Appendix B to the JPNUS.

III. Discussion

As a preliminary matter, we note that the ALJs made eighteen Findings of Fact and reached sixteen Conclusions of Law. R.D. at 11-13, 116-119. We will adopt the Findings of Fact and Conclusions of Law unless they are overruled expressly or by necessary implication.

Additionally, as we proceed in our review of the various positions espoused in this proceeding, we are not required to consider expressly or at great length each and every contention raised by a party to our proceedings. *University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217, 1222 (Pa. Cmwlth. 1984). Any exception or argument that is not specifically addressed herein shall be deemed to have been duly considered and denied without further discussion.

A. Legal Standards

1. General Rate Increase Proceedings

In deciding this or any other general rate increase case brought under Section 1308(d) of the Code, 66 Pa. C.S. § 1308(d), certain general principles always apply. A public utility is entitled to an opportunity to earn a fair rate of return on the value of the property dedicated to public service. *Pa. PUC v. Pennsylvania Gas and Water Co.*, 341 A.2d 239, 251 (Pa. Cmwlth. 1975). In determining a fair rate of return, the Commission is guided by the criteria provided by the United States Supreme Court in the landmark cases of *Bluefield Water Works and Improvement Co. v. Public Service Comm'n of West Virginia*, 262 U.S. 679 (1923) *(Bluefield)* and *Federal Power Comm'n*

v. Hope Natural Gas Co., 320 U.S. 591 (1944) *(Hope Natural Gas)*. In *Bluefield*, the Court stated:

> A public utility is entitled to such rates as will permit it to earn a return on the value of the property which it employs for the convenience of the public equal to that generally being made at the same time and in the same general part of the country on investments in other business undertakings which are attended by corresponding risks and uncertainties; but it has no constitutional right to profits such as are realized or anticipated in highly profitable enterprises or speculative ventures. The return should be reasonably sufficient to assure confidence in the financial soundness of the utility and should be adequate, under efficient and economical management, to maintain and support its credit and enable it to raise the money necessary for the proper discharge of its public duties. A rate of return may be too high or too low by changes affecting opportunities for investment, the money market and business conditions generally.

Bluefield, 262 U.S. at 692-693.

Section 1301(a) of the Code mandates that "[e]very rate made, demanded, or received by any public utility ... shall be just and reasonable, and in conformity with [the] regulations or orders of the [C]ommission." 66 Pa. C.S. § 1301(a). Pursuant to the just and reasonable standard, a utility may obtain "a rate that allows it to recover those expenses that are reasonably necessary to provide service to its customers [,] as well as a reasonable rate of return on its investment." *City of Lancaster Sewer Fund v. Pa. PUC*, 793 A.2d 978, 982 (Pa. Cmwlth. 2002) (*City of Lancaster*). There is no single way to arrive at just and reasonable rates, and "[t]he [Commission] has broad discretion in determining whether rates are reasonable" and "is vested with discretion to decide what factors it will consider in setting or evaluating a utility's rates." *Popowsky v. Pa. PUC*, 683 A.2d 958, 961 (Pa. Cmwlth. 1996) (*Popowsky II*).

The burden of proof to establish the justness and reasonableness of every element of a public utility's rate increase request rests solely upon the public utility in all proceedings filed under Section 1308(d) of the Code. The standard to be met by the public utility is set forth in Section 315(a) of the Code, 66 Pa. C.S. § 315(a), as follows:

> **Reasonableness of rates.** – In any proceeding upon the motion of the commission, involving any proposed or existing rate of any public utility, or in any proceedings upon complaint involving any proposed increase in rates, the burden of proof to show that the rate involved is just and reasonable shall be upon the public utility.

In reviewing Section 315(a) of the Code, the Pennsylvania Commonwealth Court interpreted a public utility's burden of proof in a rate proceeding as follows:

> Section 315(a) of the Public Utility Code, 66 Pa. C.S. § 315(a), places the burden of proving the justness and reasonableness of a proposed rate hike squarely on the public utility. *It is well-established that the evidence adduced by a utility to meet this burden must be substantial*.

Lower Frederick Twp. Water Co. v. Pa. PUC, 409 A.2d 505, 507 (Pa. Cmwlth. 1980) (emphasis added). *See also*, *Brockway Glass Co. v. Pa. PUC*, 437 A.2d 1067 (Pa. Cmwlth. 1981).

In general rate increase proceedings, it is well established that the burden of proof does not shift to parties challenging a requested rate increase. Rather, the utility's burden of establishing the justness and reasonableness of every component of its rate request is an affirmative one, and that burden remains with the public utility throughout the course of the rate proceeding. There is no similar burden placed on parties to justify a proposed adjustment to the Company's filing. The Pennsylvania Supreme Court has held:

> [T]he appellants did not have the burden of proving that the plant additions were improper, unnecessary or too costly; on the contrary, that burden is, by statute, on the utility to demonstrate the reasonable necessity and cost of the installations, and that is the burden which the utility patently failed to carry.

Berner v. Pa. PUC, 116 A.2d 738, 744 (Pa. 1955).

This does not mean, however, that in proving that its proposed rates are just and reasonable, a public utility must affirmatively defend every claim it has made in its filing, even those which no other party has questioned. As the Pennsylvania Commonwealth Court has held:

> While it is axiomatic that a utility has the burden of proving the justness and reasonableness of its proposed rates, it cannot be called upon to account for every action absent prior notice that such action is to be challenged.

Allegheny Center Assocs. v. Pa. PUC, 570 A.2d 149, 153 (Pa. Cmwlth. 1990) (citation omitted). *See also, Pa. PUC v. Equitable Gas Co.*, 73 Pa. P.U.C. 310, 359-360 (1990).

Although the ultimate burden of proof does not shift from the utility seeking a rate increase, 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. *See, e.g., Pa. PUC v. PECO*, 1990 Pa. PUC LEXIS 155; *Pa. PUC v. Breezewood Tel. Co*., 1991 Pa. PUC LEXIS 45.

Further, a party that raises an issue that is not included in a public utility's general rate case filing bears the burden of proof. *Pa. PUC v. Metro. Edison Co*., Docket No. R-00061366 (Order entered January 11, 2007). The proponent of a rule or order bears the burden of proof pursuant to Section 332(a) of the Code, 66 Pa. C.S. § 332(a),

which provides that the party seeking a rule or order from the Commission has the burden of proof in that proceeding. It is axiomatic that "[a] litigant's burden of proof before administrative tribunals as well as before most civil proceedings is satisfied by establishing a preponderance of evidence which is substantial and legally credible." *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990). That is, the evidence presented must be more convincing, by even the smallest amount, than that presented by opposing parties. *Se-Ling Hosiery, Inc. v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950).

In analyzing a proposed general rate increase, the Commission determines a rate of return to be applied to a rate base measured by the aggregate value of all the utility's property used and useful in the public service. The Commission determines a proper rate of return by calculating the utility's capital structure and the cost of the different types of capital during the period in issue. The Commission is granted wide discretion, because of its administrative expertise, in determining the cost of capital. *Equitable Gas Co. v. Pa. PUC*, 405 A.2d 1055, 1059 (Pa. Cmwlth. 1979) (determination of cost of capital is basically a matter of judgment which should be left to the regulatory agency and not disturbed absent an abuse of discretion).

2. The Settlements

The long-standing policy of the Commission is to encourage settlements, and the Commission has stated that settlement rates are often preferable to those achieved at the conclusion of a fully litigated proceeding. 52 Pa. Code §§ 5.231, 69.401. The Commission's policy permits parties to enter "partial" or "non-unanimous" settlements. *See* 52 Pa. Code §§ 69.401, 69.406, and 5.232. A full settlement of all the issues in a proceeding eliminates the time, effort, and expense that otherwise would have been used in litigating the proceeding, while a partial settlement may significantly reduce the time,

effort, and expense of litigating a case.[5] Rate cases, in general, are expensive to litigate and the reasonable costs of such litigation is an operating expense recovered in the rates approved by the Commission. This means that a settlement, which allows the parties to avoid or minimize the substantial costs of litigation, may yield potential savings for the Company's customers. Thus, a settlement, whether full or partial, may directly benefit the named parties as well as indirectly benefit the customers of the public utility involved in the case. For this and other sound reasons, settlements are encouraged by long-standing Commission policy.

The Settlements in this proceeding are "black box" settlements. The Commission has permitted the use of "black box" settlements, which occur when the parties are not able to agree on every element of the revenue requirement calculation. 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.

[5] For example, full or partial settlements may allow the parties to avoid the substantial costs of preparing and serving testimony and the cross-examination of witnesses in lengthy hearings, the preparation and service of briefs, reply briefs, exceptions and replies to exceptions, together with the briefs and reply briefs necessitated by any appeal of the Commission's decision.

Pa. PUC v. Peoples TWP LLC, Docket No. R-2013-2355886 (Order entered December 19, 2013) (*Peoples TWP*), at 28 (citations omitted).

Despite the policy favoring settlements, the Commission does not simply rubber stamp settlements without further inquiry. In order to accept a settlement such as that proposed here, the Commission must determine that the proposed terms and conditions are in the public interest. *Pa. PUC v. York Water Co.*, Docket No. R-00049165 (Order entered October 4, 2004); *Pa. PUC v. C. S. Water and Sewer Assoc.*, 74 Pa. P.U.C. 767 (1991) (*CS Water and Sewer*). As with full settlements, partial settlements, whether involving a partial settlement of issues or a partial settlement of the parties involved (non-unanimous), must be reasonable and in the public interest. *See Pa. PUC v. City of Bethlehem – Water Dep't*, Docket No. R-2020- 3020256, 2021 Pa. PUC LEXIS 116 (Apr. 15, 2021) (*City of Bethlehem*). The focus of the inquiry for determining whether a proposed settlement should be approved by the Commission is whether the proposed terms and conditions foster, promote, and serve the public interest. *See Pa. PUC, et al. v. City of Lancaster – Bureau of Water*, Docket Nos. R-2010-2179103, *et al*. (Order entered July 14, 2011), citing *Warner v. GTE North, Inc*., Docket No. C-00902815 (Order entered April 1, 1996) and *CS Water and Sewer.* Moreover, Section 332(a) of the Code, 66 Pa. C.S. § 332(a), provides that the party seeking a rule or order from the Commission has the burden of proof in that proceeding. Consequently, in this proceeding, the Joint Petitioners have the burden of showing that the terms and conditions of the Settlements are in the public interest.

3. Substantial Evidence

Finally, a Commission decision must be supported by substantial evidence in the record. "Substantial evidence" is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk &*

Western Ry. Co. v. Pa. PUC, 489 Pa. 109, 413 A.2d 1037 (1980); *Erie Resistor Corp. v. Unemployment Comp. Bd. of Review*, 166 A.2d 96 (Pa. Super. 1961); *Murphy v. Comm. Dept. of Public Welfare, White Haven Center*, 480 A.2d 382 (Pa. Cmwlth. 1984).

B. Joint Petition for Partial Settlement

1. Terms and Conditions of the Partial Settlement

As previously indicated, the Partial Settlement is a "black box" agreement, which does not specifically identify the resolution of certain disputed issues. At the same time, the Partial Settlement does represent a full settlement of all issues and concerns raised by the Joint Petitioners in the above-captioned general base rate proceeding. The Partial Settlement provides for increases in rates designed to produce $44.5 million in additional annual base rate operating revenues, as set forth in the *pro forma* level of operations for the twelve-month period ending December 31, 2023. The new rates are scheduled to go into effect on December 17, 2022. The *pro forma* tariff supplement that incorporates the rate increases and the proposed tariff changes resulting from the Partial Settlement is attached to the Joint Petition as Appendix A. Appendices B through J represent the Statements in Support of Columbia, I&E, the OCA, the OSBA, PSU, CII, RESA/NGS Parties, Task Force, and CAUSE-PA, respectively.

The Joint Petitioners state that the Partial Settlement was achieved after conducting extensive discovery and engaging in numerous settlement discussions. Partial Settlement at ¶¶ 19, 53. They also state that the Partial Settlement terms and conditions constitute a reasonably negotiated compromise on the issues addressed therein. *Id.* at ¶ 23. The Joint Petitioners agree that the Partial Settlement is in the public interest since it reduced the administrative burden and cost of proceeding to uncertain litigation. *Id.* at ¶ 54. Furthermore, the Partial Settlement addresses several low-income customer issues and programs. *Id.* at ¶¶ 40-47; Statements in Support, Appendices B-J, generally.

The essential terms of the Partial Settlement are set forth in Section III of the Joint Petition, which is shown below in full as it appears in the Joint Petition:

> 23. The following terms of this Partial Settlement reflect a carefully balanced compromise of the interests of all the Joint Petitioners in this proceeding. The Joint Petitioners unanimously agree that the Partial Settlement is in the public interest. The Joint Petitioners respectfully request that the 2022 Base Rate Filing, including those tariff changes included in Supplement No. 337 and specifically identified in Appendix "A" attached hereto, be approved subject to the terms and conditions of this Partial Settlement specified below:
>
> **A. REVENUE REQUIREMENT**
>
> 24. Rates will be designed to produce an increase in operating revenues of $44.5 million over current base rates based upon the pro forma level of operations for the twelve months ended December 31, 2023.
>
> 25. The state income tax rate in this proceeding will be set at 8.99% and has been reflected in the settlement revenue requirement. The Company will reflect subsequent state tax adjustments to the state income tax rate for the post-2023 tax years through the Company's State Tax Adjustment Surcharge, currently Tariff Gas - Pa. P.U.C. No. 9, page 165, or future base rate proceedings.
>
> 26. As of the effective date of rates in this proceeding, Columbia will be eligible to include plant additions in the DSIC upon attaining total FPFTY plant in service of $4,061,081,498 as projected by Columbia at December 31, 2023 per Exhibit No. 108, Schedule 1. The foregoing provision is included solely for purposes of calculating the DSIC and is not determinative for future ratemaking purposes of the projected additions to be included in rate base in a FPFTY filing.
>
> 27. For purposes of calculating its DSIC, Columbia shall use the equity return rate for gas utilities contained in the Commission's most recent Quarterly Report on the

Earnings of Jurisdictional Utilities and shall update the equity return rate each quarter consistent with any changes to the equity return rate for gas utilities contained in the most recent Quarterly Earnings Report, consistent with 66 Pa. C.S. § 1357(b)(3), until such time as the DSIC is reset pursuant to the provisions of 66 Pa. C.S. § 1358(b)(1).

28. Columbia will be permitted to continue to use normalization accounting with respect to the benefits of the tax repairs deduction.

29. Columbia also will be permitted to continue to use normalization accounting with respect to the tax treatment of Section 263A mixed service costs.

30. Columbia will be permitted to recover the amortization of costs related to the following:

(i) Blackhawk Storage - Continuation of the previously-approved 24.5-year amortization of the total amount of $398,865 to be included on books and in rate base as a regulatory asset to reflect the total original cost that began on October 28, 2008.

(ii) Corporate Services OPEB-Related Costs - Continuation of the previously-approved amortization of the regulatory asset of $903,131 associated with the transition of NiSource Corporate Services Company from a cash to accrual basis for Other Post-Employment Benefits ("OPEBs"), over a ten-year period that began July 1, 2013. As amortization is scheduled to end during the fully projected future test year, the Company will spread the remaining balance over the full 12-month period.

(iii) Pension Prepayment - Continuation of the previously-approved ten-year amortization of $8,449,772.00 that began December 16, 2018.

(iv) COVID-19 Related Uncollectible Accounts Expense - Total deferral of COVID-19 related Uncollectibles Account Expense has been revised to the amount of $3,948,212 comprised of

$5,164,212 representing deferrals through December 31, 2021, less a billing charge-off correction of $1,216,000. Amortization started January 1,2022, and $1,115,849 will have been expensed through December 31, 2022, leaving a balance of $2,832,363, which shall be amortized over a four-year period beginning January 1, 2023, or $708,091 annually. The Company agrees to cease the recording of any increases to the deferral and to provide an accounting of the yearly amortizations in its next base rate proceeding.

31. As established in the settlement of Columbia's base rate proceeding at R-2012- 2321748, Columbia will be permitted to continue to defer the difference between the annual OPEB expense calculated pursuant to FASB Accounting Standards Codification ("ASC") 715, "Compensation - Retirement Benefits (SFAS No. 106) and the annual OPEB expense allowance in rates of $0. Only those amounts attributable to operation and maintenance would be deferred and recognized as a regulatory asset or liability. To the extent the cumulative balance recorded reflects a regulatory asset, such amount will be collected from customers in the next base rate proceeding over a period to be determined in that rate proceeding. To the extent the cumulative balance recorded reflects a regulatory liability, there will be no amortization of the (non-cash) negative expense and the cumulative balance will continue to be maintained.

32. Commencing with the effective date of rates, Columbia will deposit amounts in the OPEB trusts when the cumulative gross annual accruals calculated by its actuary pursuant to ASC 715 are greater than $0. If annual amounts deposited into OPEB trusts, pursuant to this Partial Settlement, exceed allowable income tax deduction limits, any income taxes paid will be recorded as negative deferred income taxes, to be added to rate base in future proceedings.

33. On or before April 1, 2023, Columbia will provide the Commission's Bureau of Technical Utility Services ("TUS"), I&E, OCA and OSBA an update to Columbia Exhibit No. 108, Schedule 1, which will include

actual capital expenditures, plant additions, and retirements by month for the twelve months ending December 31,2022. On or before April 1,2024, Columbia will update Exhibit No. 108, Schedule 1 filed in this proceeding for the twelve months ending December 31, 2023. In Columbia's next base rate proceeding, the Company will prepare a comparison of its actual revenue, expenses and rate base additions for the twelve months ended December 31, 2023. However, it is recognized by the Joint Petitioners that this is a black box settlement that is a compromise of Joint Petitioners' positions on various issues.

34. Columbia will preserve and provide to I&E, OCA and OSBA as a part of its next base rate case the following: (1) all documentation supporting debt issued between this base rate case and the next base rate case; and (2) for each issuance the prevailing yield on U.S. utility bonds as reported by Bloomberg Finance L.P. for companies with a credit risk profile equivalent to that of NiSource Finance Corp.

35. Tariff rates will go into effect on December 17, 2022.

36. The Residential customer charge will not increase.

37. For informational purposes, the Company shall continue to maintain and provide to the OCA, I&E and OSBA by October 1 of each year all reports and records supporting the operation of its WNA for the preceding year, including the Company's monthly computation of the WNA and all data underlying the Company's monthly WNA computation.

38. Columbia will maintain its current method of collecting the full monthly customer charge from all customers in the months when service begins and service ends. Parties reserve the right to address this in future base rate cases.

39. Columbia's Revenue Normalization Adjustment ("RNA") proposal is withdrawn without prejudice.

B. ENERGY EFFICIENCY AND CONSERVATION (EE&C)

40. Columbia's proposed Residential Energy Efficiency ("EE") program is approved as a three-year pilot, with actual, incurred costs not to exceed $4,000,000 recovered through Rider EE. Columbia agrees to a collaborative with the parties to discuss the scope of the program. Columbia will leverage the Residential EE program to increase awareness of and participation in the Company's LIURP and Audits & Rebates programs. Specifically, the EE program staff will work with the Universal Service team to ensure that low-income customers are steered to the program that maximizes their benefit level.

41. Columbia will increase the annual budget for its Audits & Rebates program, from $750,000 to $1,000,000 and will increase the maximum benefit level per customer household from $1,800 to $3,600 for energy efficiency measures.

42. Columbia agrees to increase the annual budget for its Emergency Repair Program from $700,000 to $1,000,000 to be funded by Rider USP.

C. LOW INCOME USAGE REDUCTION PROGRAM (LIURP)

43. Columbia's proposal to spread any LIURP budget carryover from calendar year 2022 evenly over the next three calendar years, 2023 through 2025, is approved.

44. Columbia will increase its annual LIURP budget from $5,075,000 to $5,425,000 beginning in January 2024 or sooner if 2022 carryover results in a year's annual budget being less than $5,425,000. The LIURP budget will remain at $5,075,000 until the increase takes effect. Columbia will expend the 2022 LIURP budget carryover before adjusting the Rider USP for the increase.

D. HARDSHIP FUND

45. Columbia agrees to make a one-time donation of $75,000 to the Company's Hardship Fund.

E. CUSTOMER ASSISTANCE PROGRAM (CAP)

46. Columbia will conduct quarterly evaluations of CAP customer bills and will make adjustments to the customer's CAP payment plan to ensure that they are getting the lowest rate. By December 31,2023, Columbia will automate a process to conduct quarterly evaluations of CAP customer bills and will make adjustments to the customer's CAP payment plan to ensure that they are getting the lowest rate. Upon implementation of the automated process, Columbia will include all CAP customers in its quarterly CAP rate review. No other exclusions will be used unless explicitly approved by the Commission in a subsequent proceeding. IT costs related to the automation process will be recovered through Rider USP. By July 30, 2023, Columbia will file a progress report to the docket for this rate case (No. R-2022-3031211) explaining its progress toward implementing the automated process.

F. WEATHERIZATION PARTNERS

47. The Company agrees to continue to partner with CBOs [Community Based Organizations] including member agencies of CAAP [Community Action Association of Pennsylvania] and Pennsylvania Weatherization providers in the development, implementation and administration of its LIURP program.

G. LTIIP

48. Columbia's currently-effective Long Term Infrastructure Improvement Plan ("LTIIP") will expire on December 31, 2022. Prior to the expiration of its currently-effective LTIIP, Columbia will seek approval of a new LTIIP, with a proposed effective date of January 1, 2023. Prior to filing for such approval, Columbia will meet with the Commission's Gas Safety Division to preview the filing and

seek the Gas Safety Division's input and to discuss the issues raised in I&E witness [Tyler] Merritt's testimony in this base rate proceeding. All parties reserve the right to intervene and participate in that proceeding and any other proceeding. As part of that LTIIP filing, Columbia will provide an estimation of the rate impact of LTIIP-eligible investments over the approved LTIIP period.

H. NATURAL GAS SUPPLIER ISSUES

49. Effective upon approval of the Partial Settlement, the Company agrees to increase the number of rate ready billing codes from 50 to 125 per NGS, subject to the right of Columbia to seek recovery of potential implementation costs, including potential automation costs, in a future rate case. The Company will continue to manage new rate code requests under the Company's existing process which requires 45 days advance notice for requests of additional rate codes. The Company will process requests for as many as 10 rate codes per request. The Company will perform a review of active rate codes to assess whether there are existing rate codes that can be used before new rate codes and will work with NGSs to ensure they have sufficient rate codes to serve their current and future customers.

50. In its next base rate case, in anticipation of RESA/NGS Parties submitting a proposal for the implementation of Bill Ready Billing, Columbia's initial filing will include testimony regarding the costs to implement Bill Ready Billing and a timeline associated with such implementation. All parties reserve their rights to support or oppose Bill Ready Billing in that case.

51. The RESA/NGS Parties Proposal that the Company provide for confirmations on all five cycles is withdrawn.

IV. RESERVED ISSUES FOR LITIGATION

52. Simultaneous with the filing of this Partial Settlement, a separate Joint Petition for Non-Unanimous Settlement Regarding Revenue Allocation and Rate Design has been filed, with joinder or non-objection from all active

> parties other than OSBA and Mr. Culbertson. Issues regarding revenue allocation and rate design, other than the residential customer charge, are reserved for briefing. Also, Mr. Culbertson's right to submit briefs on issues he properly preserved, and other parties' right to respond, are retained.

Joint Petition at 5-12.

In addition to the specific terms to which the Joint Petitioners have agreed, the Partial Settlement contains other general terms and conditions typically found in settlements submitted to the Commission. Specifically, the Joint Petitioners agreed that the Partial Settlement is conditioned upon the Commission's approval of all the terms and conditions contained therein, without modification. Joint Petition at ¶ 56. The Joint Petition establishes the procedure by which any of the Joint Petitioners may withdraw from the Partial Settlement and proceed to litigate this case if the Commission should act to modify or reject the Partial Settlement, and, in such event, the Partial Settlement shall be null and void. *Id*.

In addition, the Joint Petitioners asserted that although the Partial Settlement is proffered to settle the instant case, it may not be cited as precedent in any future proceeding, except to the extent required to implement any term in the Partial Settlement. *Id.* at ¶ 58. The Joint Petitioners submitted that the Partial Settlement is the result of compromise and is presented without prejudice to any position which any of the Joint Petitioners might adopt in any subsequent litigation of this proceeding or in future proceedings. *Id.* at ¶¶ 60-61. Moreover, the Joint Petitioners waived their right to file Exceptions regarding the Partial Settlement issues if the ALJs recommended that the Commission adopt the Settlement without modification. *Id*. at ¶ 63. However, the Joint Petitioners expressly submitted that they retain their rights to file briefs, exceptions, and replies to exceptions with respect to any issues that are reserved for litigation. *Id.*

2. Statements in Support of the Partial Settlement

As previously mentioned, each of the nine Joint Petitioners filed individual Statements in Support of the Partial Settlement. The Joint Petitioners submitted that the Partial Settlement is in the best interest of the Company and its customers, that the Partial Settlement is in the public interest, and that the Settlement should be approved without modification.

In its Statement in Support, Columbia stated that an extensive investigation of its filing was conducted, which included, in addition to informal discovery, Columbia responding to over 760 formal discovery requests, submission of multiple rounds of testimony by the Parties and accompanying exhibits, and extensive negotiations among the Joint Petitioners. Columbia Statement in Support at 2. Columbia claimed that because the Partial Settlement was achieved among parties representing a wide array of stakeholder interests and having extensive experience in rate cases, the Settlement reflects a carefully balanced compromise of the interests of all the Joint Petitioners and, therefore, represents a reasonable resolution of all outstanding issues in this proceeding and is in the public interest. *Id*. at 2-3.

In its Statement in Support, I&E stated that the rate increase of $44.5 million allowed in the Settlement is $37.7 million less than the $82.2 million initially requested by Columbia, or about a 46% reduction. I&E only agreed to this amount after I&E conducted an extensive investigation of Columbia's filing and related information obtained through the formal and informal discovery process, including several public input hearings, and after I&E participated in numerous settlement conferences, to determine the amount of revenue Columbia needs to provide safe, effective, and reliable service to its customers. I&E Statement in Support at 1-2, 5-6.

In its Statement in Support, the OCA stressed the careful balance of the compromise the Joint Petitioners reached. Specifically, with regard to the Revenue Requirement, the OCA emphasized that the Settlement represents a "black box" approach to all individual revenue requirement issues. OCA Statement in Support at 6. The OCA asserted that "black box" settlements avoid protracted litigation over the merits of individual revenue adjustments and allow the various stakeholders with diverse interests to reach a consensus that otherwise would not be possible if each individual revenue adjustment had to be agreed upon separately by all the parties. *Id.* Additionally, based on the OCA's analysis of the Company's filing, the proposed revenue increase under the Partial Settlement represents an amount which, in the OCA's view, would be within the range of likely outcomes in the event of full litigation of the case. *Id.* at 4, 6. The OCA asserted that the rate increase is reasonable and yields a result that is in the public interest while providing adequate funding to allow Columbia to continue to provide safe, adequate, and reliable service. *Id.* at 4. Finally, the OCA noted that Columbia will discontinue the deferral of COVID-19 related Uncollectible Accounts Expense, which is in the public interest and further supports approval of the Settlement. *Id.* at 8.

In the Recommended Decision, the ALJs provided an extensive summary of the various positions of the Parties outlined in their Statements in Support and that discussion will not be repeated here. For a detailed summary of each Party's position on the settled issues, please refer to the ALJs' Recommended Decision at pages 28 through 61.

3. Mr. Culbertson's Objection

On September 12, 2022, Mr. Culbertson filed an Objection to the Partial Settlement and the JPNUS. Mr. Culbertson alleged the settlements do not comply with the Commission's *April 2022 Order*, whereby the Commission instituted an investigation into the lawfulness, justness, and reasonableness of the proposed rate increase.

Additionally, Mr. Culbertson claimed the proposed rates cannot be evaluated before the existing rates are investigated. Culbertson Objection at 6. Next, Mr. Culbertson asserted "black box" settlements fail to fulfill the Commission's functions identified in 66 Pa. C.S. § 308.2, and other applicable laws, regulations and standards. Culbertson Objection at 7-8. Lastly, Mr. Culbertson averred that he was denied due process during this base rate case proceeding. *Id*. at 9-10.

4. ALJs' Recommendation

The ALJs approved the Partial Settlement, finding that it is in the public interest, consistent with the Code, and is supported by substantial evidence. R.D. at 1, 66, 69. The ALJs stated that the downward adjustment to the proposed revenue requirement, leaving the residential customer charge unchanged, along with all of the other terms and conditions of the Partial Settlement together represent a fair and reasonable compromise. Furthermore, the ALJs observed that the Partial Settlement will provide aid to low-income households as well as provide consumers with mechanisms to reduce their consumption through provisions for Energy Efficiency and Conservation, LIURP, the Hardship Fund, and CAP. Regarding safety concerns raised by residential ratepayers at the public input hearing, the ALJs noted that the Partial Settlement addresses pipeline replacement and safety initiatives to be funded through increased revenue. *Id*. at 67.

The ALJs reasoned that the Joint Petitioners represent many interests, stating that I&E, the OCA, and the OSBA represent the public interest, the interests of residential customers, and the interests of small business customers, respectively. The ALJs added that the Joint Petitioners also include CAUSE-PA, Task Force, CII, PSU, and RESA/NGS. The ALJs ascertained that the Partial Settlement was a collaborative effort among the Joint Petitioners, reaching an agreement on many issues, demonstrating that the Partial Settlement is in the public interest. Lastly, the ALJs concluded that the Partial

Settlement benefits Columbia's customers and saves the Parties and the Commission the time and expense of fully litigating this matter. *Id*. at 67-68.

In addition to addressing the Partial Settlement, the ALJs also addressed Mr. Culbertson's Objection to the Partial Settlement. First, the ALJs stated that in his Objection, Mr. Culbertson alleged that the Partial Settlement reached in this matter is inappropriate because, contrary to the Commission's *April 2022 Order* instituting an investigation into Columbia's rate increase filing, there was not an investigation on the "lawfulness, justness, and reasonableness of the Columbia Gas of Pennsylvania, Inc.'s existing rates, rules, and regulations." R.D. at 61 (citing Culbertson Objection at 6). The ALJs noted that the record in this case demonstrates that in addition to the testimony and exhibits provided by Columbia in support of its filing, the filing was subjected to an extensive and detailed investigation by the other Parties in this proceeding. Therefore, the ALJs determined Mr. Culbertson is incorrect in his assertion that there has been no investigation of Columbia's proposed rate increase. The ALJs stated that "Columbia's filing has been subject to an extensive and detailed investigation by nine other active parties in this proceeding." R.D. at 62. Likewise, the ALJs observed that the Parties "engaged in extensive discovery with the Company, had their expert witnesses review Columbia's filing and testimony, submitted direct, rebuttal, and surrebuttal testimony analyzing Columbia's filing, were represented by counsel at the evidentiary hearing in this proceeding during which their testimony and exhibits were admitted into the record, and engaged in settlement discussions that resulted in this Partial Settlement." *Id*.

Second, the ALJs addressed Mr. Culbertson's argument that he was denied due process during this rate case proceeding. R.D. at 62 (citing Culbertson Objection at 9-10). The ALJs noted that:

> Mr. Culbertson was provided with a full opportunity to be heard on his claims and to fully participate in this proceeding. Mr. Culbertson participated in discovery, attended both public

> input hearings and questioned the witnesses who testified. Although he elected not to sponsor any written testimony, he had the opportunity to do so if he chose. Moreover, although Mr. Culbertson waived cross-examination of all witnesses in this proceeding, he was given the opportunity to do so if he chose. Lastly, in addition to his objections to the Joint Petition for Partial Settlement and Joint Petition for Non-Unanimous Settlement, Mr. Culbertson filed a Main Brief and a Reply Brief in this matter.

R.D. at 63-64. Accordingly, the ALJs denied Mr. Culbertson's argument that the investigation conducted in this base rate proceeding was improper or that he was denied due process in this matter. R.D. at 64.

Next, the ALJs addressed Mr. Culbertson's assertion that the ALJs superseded the Commission's *April 2022 Order* by encouraging a settlement in Paragraph 21 of their May 3, 2022, Prehearing Order #1. R.D. at 64. The ALJs noted that it is the policy of the Commission to encourage settlements and Prehearing Order #1 reminded the Parties of this policy.[6] *Id*. at 64. The ALJs advised that filing a Settlement does not mean that the Commission will automatically approve the Settlement and the Joint Petitioners have the burden of proving that the terms and conditions of the Partial Settlement are in the public interest. R.D. at 65 (citing Culbertson Objection at 7-8).

Lastly, the ALJs analyzed Mr. Culbertson's argument that "it is not in the public interest to conduct rate cases with 'black box' settlements devoid of compliance with the requirements placed upon the Commission in fulfilling its functions identified in 66 Pa. C.S. § 308.2 and other applicable laws, regulations and standards." R.D. at 65. The ALJs noted the Parties actively participated in this proceeding to ensure that any rate increase approved in this matter is proper and in the public interest. Furthermore, the

[6] *See* 52 Pa. Code § 5.231(a).

ALJs observed that the Commission has historically allowed "black box" settlements in base rate proceedings. R.D. at 65 (citing *Peoples TWP* at 28).

Accordingly, the ALJs determined that Mr. Culbertson did not present any evidence or raise any arguments to recommend partial or total rejection of the Partial Settlement. The ALJs also noted Mr. Culbertson's "Personal opinions, without more, do not constitute evidence and are insufficient to rebut the substantial evidence presented by Columbia, the Statutory Advocates, and the other active Parties to this proceeding." R.D. at 66 (citing *Mid-Atl. Power Supply Ass'n of Pa. v. Pa. PUC,* 746 A.2d 1196 (Pa. Cmwlth. 2000)).

5. Exceptions,[7] Replies, and Disposition

a. Culbertson Exceptions Nos. 9 and 11, Replies, and Disposition

(1) Culbertson Exceptions Nos. 9 and 11

In his Exception No. 9, Mr. Culbertson objects to "black box" settlements, arguing that they are illegal. Mr. Culbertson contends that "black box" settlements cannot result in reasonable rates because "reasonable ideas are transparent" and "there are no transparent trails to justify decisions" in "black box settlements." Culbertson Exc. at 30. Mr. Culbertson further avers that 66 Pa. C.S. § 323 prohibits "black box" settlements. Additionally, Mr. Culbertson states that "[a] 'black box' settlement is a shiny thing that distracts from the mission at hand and attempts to circumvent the Commission's orders to investigate proposed and existing rates." *Id*. at 31. Finally,

[7] Due to what appear to be numbering mistakes, Mr. Culbertson's Exceptions are off by two numbers. Accordingly, for clarity, we have used different numbering than those used in Mr. Culbertson's Exceptions and grouped the Exceptions according to the subject matters to which they seem to pertain in this Opinion and Order.

Mr. Culbertson argues that the Commission did not modify its *April 2022 Order*, to allow for a "black box" settlement. *Id*.

Mr. Culbertson, in his Exception No. 11, questions the agreed-upon revenue in a "black box" settlement, and he argues that I&E's support of the "black box" settlement is "a justification to defy the Commission's [*April 2022 Order*]." Culbertson Exc. at 32. Mr. Culbertson avers that the use of a "black box" settlement deceives customers. Mr. Culbertson states that the Commission has the power and funding to do this work right, and that "[g]ood management by now would have developed methods, processes, systems, and safeguards to fulfill these requirements of the Commissions[*sic*], but those abilities have never been developed or have atrophied." *Id*.

(2) Columbia's Reply

In reply to Mr. Culbertson's Exception No. 9, Columbia avers that the Commission has accepted "black box" settlements as satisfying the requirements of the Code and the Commission's Regulations and Orders. Columbia R. Exc. at 18 (citing *Pa. PUC v. Aqua Pennsylvania, Inc*., Docket Nos. R-2018-3003558 et al., (Order entered May 9, 2019) (*Aqua Pa*.); *Pa. PUC, et al. v. Pike County Light & Power Co. – Electric*, Docket Nos. R-2020-3022135, et al. (Order entered July 21, 2021) (*Pike County*)). Columbia contends that Mr. Culbertson's opposition to "black box" settlements is unfounded and does not support rejecting the ALJs' recommendation to approve the Settlements. *Id*. at 19.

In addition, Columbia argues that the ALJs' recommended approval of the Settlements does not violate 66 Pa. C.S. § 335(d), as Mr. Culbertson claims. Rather, Columbia maintains that 66 Pa. C.S. § 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, 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. Columbia contends that the entire record that the Recommended Decision relied upon is publicly available on the Commission's website and 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). *Id*. at 19-20 (citing *Prehearing Order #2*, Docket Nos. R-2022-3031211, et al. (May 11, 2022)).

In reply to Mr. Culbertson's Exception No. 11, Columbia restates its position on "black box" settlements. In addition, Columbia argues that "black box" settlements are not illegal and have been previously approved by the Commission, and that Mr. Culbertson's criticisms of the "black box" nature of the settlement petitions are unfounded. Columbia R. Exc. at 20.

Furthermore, Columbia contends that Mr. Culbertson misinterprets the Partial Settlement and reads terms into it that are not there regarding his claims that the Partial Settlement terms regarding normalization accounting are not understandable and that the Commission does not have the authority to change certain accounting requirements. To the contrary, Columbia states that the Parties, in the Partial Settlement, did not agree to change any requirements of the Federal Energy Regulatory Commission, the Internal Revenue Service, or any other federal agency or government accounting standards. *Id*. at 20-21.

(3) Disposition

Upon review, we shall deny Mr. Culbertson's Exception Nos. 9 and 11. The Partial Settlement here is a "black box" settlement, which means that the parties did

not agree to each and every element of the revenue requirement calculations. Moreover, settled rate cases are encouraged in Pennsylvania and "black box" settlements are legal. As such, the Commission has approved "black box" settlements in the past and has affirmed them as important tools in achieving consensus over the resolution of just and reasonable rates in rate cases. *See Aqua Pa.; Pike County*. Accordingly, 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.

Pa. PUC, et al. v. Columbia Gas of Pa., Inc., Docket No. R-2021-3024296, et al. (Order entered Dec. 16, 2021) (*Columbia December 2021 Order*) at 9 (citing *Peoples TWP* at 28).

Based upon our review of the record, we conclude that the "black box" settlement in this proceeding is in the public interest and results in just and reasonable rates. As we have concluded in other cases, although the settlement is described as a "black box", meaning that the Parties did not stipulate precisely to how each arrived at its conclusion, it "does not diminish the effectiveness of the examination conducted by numerous parties having various, and in some cases antithetical, goals. *Columbia December 2021 Order* at 43 (citing *Pa. PUC v. UGI Utilities, Inc. – Electric Division*, Docket No. R-2021-3023618 (Order entered Oct. 28, 2021) *(UGI Utilities – Electric*

at 41)). Various alternative paths can lead to a finding that a "black box" settlement produces just and reasonable rates that are in the public interest because, unless an issue is resolved in a manner specifically prescribed in a settlement, how each party gets to its resolution is of no matter to the ultimate conclusion if it is supported by the record. That is precisely the case here.

Moreover, a "black box" settlement is generally not dissimilar to settlements in general. A settlement reflects a carefully balanced compromise of each party's interest, and each party finds reasons to agree to a settled conclusion of its issues. Rejecting a settlement on the basis of a challenge to its descriptive name would cause settlements in general to become impractical because parties would not be able to agree on the specific path any settlement takes to achieve resolution. *See Columbia December 2021 Order* at 44; *Pa. PUC v. Wellsboro Electric Company*, Docket No. R-2010-2172662 (Order entered Jan. 13, 2011); *Pa. PUC v. Citizens' Electric Company of Lewisburg, PA*, Docket No. R-2010- 2172665 (Order entered Jan. 13, 2011).

Finally, Mr. Culbertson has not presented any evidence or raised any arguments in support of his objection to the "black box" settlement. His opinions, without more, are insufficient to overturn the findings and recommendation of the ALJs. Therefore, we find that the "black box" settlement in this proceeding, including the agreed-upon revenue, is in the public interest and results in just and reasonable rates. Accordingly, Mr. Culbertson's Exceptions Nos. 9 and 11 shall be denied.

b. Culbertson Exceptions Nos. 10, 13, and 14, Replies, and Disposition

(1) Culbertson Exceptions Nos. 10, 13, and 14

In his Exception No. 10, Mr. Culbertson contends that I&E did not conduct a proper investigation in this rate case, and he states that due professional care is required when dealing with a requested revenue increase of approximately $82 million, and that care should be based upon generally accepted audit standards (*i.e.* the GAO [Government Accountability Office] Yellow Book). Mr. Culbertson argues that there is no assurance that I&E's investigation of Columbia's rate filing here was performed extensively and competently in accordance with generally accepted audit standards, and that self-assertion by I&E that its investigation was extensive is not good enough. Mr. Culbertson contends that audits performed by I&E should have been made public, and he avers that I&E "acts more like an advocate of past practice than a prosecutor in a rate case." Culbertson Exc. at 31.

In his Exception No. 13, Mr. Culbertson disagrees with the ALJs' statement that it could be argued that the OCA, the OSBA, and I&E constitute representation of the entire public whose welfare is to be protected. Mr. Culbertson also disagrees with the ALJs' statement that these statutory parties actively participated in this proceeding and in the negotiation of the Partial Settlement. Mr. Culbertson argues that the Statutory Parties are directly influenced by the Commission and its ALJs. Mr. Culbertson asserts that based on his observations, the ALJs determine which interrogatories directed to the Company are answered and "shape the record to the benefit of the utility." Culbertson Exc. at 33. Mr. Culbertson questions the independence of the ALJs. *Id*. at 34.

Similarly, in his Exception No. 14, Mr. Culbertson contends that contrary to the statement in the Recommended Decision, the Statutory Advocates did not engage

in extensive discovery. Mr. Culbertson states that while there was a discovery period, whatever discovery was conducted in this case does not take the place of required audits that conform to the GAO Yellow Book. Culbertson Exc. at 34.

(2) Columbia's Replies

In reply to Culbertson Exception No. 10, Columbia argues that 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. Moreover, I&E avers that the Code and the Commission's Regulations do not require I&E to conduct an audit as part of the rate case, and that Mr. Culbertson has not presented any basis for challenging I&E's choices in litigating its case. Columbia R. Exc. at 20 (citing I&E Sts. 1-4).

In Reply to Culbertson Exception No. 13, Columbia avers that Mr. Culbertson's argument is inaccurate. Columbia states that as it indicated in its reply to Mr. Culbertson's Exception No. 1, the Company has responded to hundreds of interrogatories from various Parties and has complied with all of the ALJs' interim orders regarding discovery. Columbia R. Exc. at 21. Columbia also states that Mr. Culbertson's opinion that the Statutory Parties did not fulfill their duties is not supported by the record evidence, which includes a great deal of testimony from several witnesses on behalf of the Statutory Parties. *Id*. (citing I&E Sts. 1-4, 1-R, 3-R, 1-SR, and 4-SR; OCA Sts. 1-5, 1-SR, 5-SR; and OSBA Sts. 1 and 1-SR). Accordingly, Columbia submits that the ALJs correctly found that the Statutory Parties actively participated in this case. Columbia R. Exc. at 21 (citing R.D. at 63). In reply to Culbertson Exception No. 14, Columbia references its previous response to Mr. Culbertson's arguments regarding a lack of sufficient audits in this rate proceeding. Columbia R. Exc. at 21.

(3) Disposition

Upon review, we agree with the ALJs that this filing has been subject to an extensive and detailed investigation, which includes I&E's active participation in this proceeding. We agree with Columbia that 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. Additionally, neither the Code nor the Commission's Regulations require I&E, or any other Party, to conduct an audit as part of the rate case as Mr. Culbertson avers.

Additionally, we disagree with Mr. Culbertson's exception to the ALJs' statement that it could be argued that the OCA, the OSBA, and I&E constitute representation of the entire public whose welfare is to be protected. The ALJs' statement is a direct reflection of our discussion in recent rate proceedings in which we have indicated that the Statutory Advocates constitute representation of the public, as follows:

> In the context of a general rate increase case such as this one, the Commission is aided by the active participation of entities representing various subgroups of the entire public. A number of these active participants have a statutorily imposed obligation to provide this representation, while others are self-created entities choosing to represent a delineated subgroup. Taken as a whole, these active participants cover the entire spectrum of the public whose welfare is to be protected.
>
> The OCA is statutorily charged with the duty of representing "the interests of consumers", *i.e.*, individual ratepayers, "in any matter properly before the commission," such as the instant general rate increase case. 66 Pa. C.S. § 3206(a). The OSBA is statutorily charged with the duty of representing "the interests of small business consumers, in any matter properly before the commission," such as the instant general rate increase case. 66 Pa. C.S. § 3206(b).

> I&E is statutorily charged with taking "appropriate enforcement actions, including rate proceedings . . . to insure compliance with this title [Title 66, Pennsylvania Consolidated Statutes], commission regulations and orders." 66 Pa. C.S. § 308.2.(a)(11).
>
> One could argue that these three entities alone constitute representation of the entire public whose welfare is to be protected.

Columbia December 2021 Order at 28 (quoting *UGI Utilities – Electric* at 37-38). Accordingly, we find no error in the ALJs' discussion in this case. Moreover, concerning Mr. Culbertson's question of whether these Statutory Parties actively participated in this proceeding, engaged in extensive discovery, and negotiated the Partial Settlement and whether a proper investigation was conducted, we refer to our discussion herein addressing Mr. Culbertson's Exceptions Nos. 1 and 15.

We also find no merit in Mr. Culbertson's arguments that suggest the Statutory Parties were not properly fulfilling their duties or that the ALJs were not conducting the proceeding in an impartial manner.[8] There is nothing in the record to support Mr. Culbertson's assertions. As Columbia states, the Statutory Parties presented extensive testimony and exhibits from various witnesses. Additionally, Mr. Culbertson does not refer to any evidence of an actual or apparent impartiality or unprofessional conduct of the proceeding by the ALJs that would be contrary to the requirements in the Code or in our Regulations. It is standard procedure and well within the ALJs' authority

[8] The Code requires that Commissioners and ALJs alike avoid actual as well as the appearance of impropriety and that they carry out their duties in a professional, impartial, and diligent manner. 66 Pa. C.S. § 319(a)(1),(2). The statute also establishes standards governing conduct by Commissioners and ALJs regarding, among others, financial, extra-curricular, and political affairs. 66 Pa. C.S. § 319(a)(8)-(11). In concert with statutory obligations under Section 319 of the Code, our Regulations provide further direction regarding our ALJs, including their authority, restrictions on duties and activities, manner of conducting hearings, and disqualification. 52 Pa. Code §§ 5.481-5.486.

under Section 5.483 of our Regulations, 52 Pa. Code § 5.483, to make discovery rulings while regulating the course of a rate proceeding. For these reasons, we shall deny Mr. Culbertson's Exceptions Nos. 10, 13, and 14.

c. Culbertson Exception No. 12, Reply, and Disposition

(1) Culbertson Exception No. 12

In his Exception No. 12 (listed as Exception No. 11), Mr. Culbertson expresses concern over the Mixed Service Cost (MSC) normalization adjustment that was agreed to in the Partial Settlement and approved by the ALJs.[9] This Exception is directed to the continuation of the normalization accounting treatment for MSC. Mr. Culbertson, variously, alleges that the approval of the accounting treatment exceeded Commission authority and expertise as the Commission does not have the authority to change requirements over, *i.e.*, the Federal Energy Regulatory Commission (FERC), the Internal Revenue Service (IRS), or other federal agency or government accounting standards. Mr. Culbertson also infers that the Commission Orders approving such treatment are arbitrary and capricious and that excluding him from the accounting discussions resulting in the present, Partial Settlement, was harmful to the discussions and the outcome of this rate case. Culbertson Exc. at 32-33.

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[9] The relevant provision of the Partial Settlement provides as follows:

> 29. Columbia also will be permitted to continue to use normalization accounting with respect to the tax treatment of Section 263A mixed service costs.

Joint Petition at ¶ 29.

(2) Columbia Reply

In its Reply to Mr. Culbertson's concerns regarding the adoption of the Partial Settlement that proposes the continuation of the normalization accounting treatment for MSC, Columbia argues that Mr. Culbertson misinterprets the Partial Settlement. Columbia explains that Mr. Culbertson reads terms into the Settlement that are not there. Columbia responds that nowhere in the Partial Settlement do the Parties agree to change the requirements of FERC, the IRS, or any other federal agency or government accounting standards. Columbia R. Exc. at 20-21.

(3) Disposition

Upon review, we will deny Culbertson Exception No. 12. Initially, we note that the ALJs thoroughly addressed Mr. Culbertson's September 12, 2022, Objection to the Partial Settlement. *See* R.D. at 61-66. Contrary to the Mr. Culbertson's position, we agree with the ALJs that the Partial Settlement is in the public interest. We conclude that adoption of Paragraph 29 of the Joint Petition does not present any cognizable alteration of accounting provisions used by Columbia in the maintenance of its systems of accounts. *See, e.g.*, 52 Pa. Code § 59.42. "Systems of Accounts." Nor does our approval require treatment of an account that is contrary to any mandatory reporting or recording system under which Columbia is required to maintain accounts for financial reporting or, otherwise. The treatment of MSC is a continuation of a Commission-approved settlement reached between participating parties in a prior Columbia proceeding at Docket No. R-2012-2321748 (Final Order entered May 23, 2013).

6. Disposition of the Joint Petition

We find that the proposed Partial Settlement balances the concerns of all Parties involved, is in the public interest, and should be approved without modification.

In terms of the revenue requirement, the total increase in annual revenues of $44.5 million that the Joint Petitioners agreed to is $37.7 million less than Columbia's original request of $82.2 million, representing about a 46% reduction from the original requested amount. Joint Petition at ¶ 21; I&E Statement in Support at 6; OCA Statement in Support at 5. The Partial Settlement will reduce the impact of the rate increase on residential customers. The Joint Petitioners aver that while they were not able to agree on a specific cost of service study in the Settlement, they were able to agree to a revenue allocation that is within the range of reasonable revenue allocations proposed by the Joint Petitioners in this proceeding. Columbia Statement in Support at 12. Further, by using the structural rate design to limit the disproportionate burdens on low-income households and through enhancements to Columbia's universal service and CAP programs, the Partial Settlement takes rate affordability into account to better match households in need with available assistance. CAUSE-PA Statement in Support at 3.

In addition to these provisions, there are other provisions within the Settlement that are beneficial to the Company's customers and the public. Among these provisions are the following: (1) the Company's agreement that the residential customer charge will not be increased and will remain at $16.75 per month, which will protect residential customers while still providing Columbia with adequate revenue (Joint Petition at ¶ 36; Columbia Statement in Support at 13); (2) Columbia's eligibility to include plant additions in the Distribution System Improvement Charge once eligible account balances exceed the levels projected by Columbia as of December 31, 2023 (Joint Petition at ¶ 26); and (3) numerous provisions and modifications concerning the Company's universal service and CAP programs, including increased funding for the Company's Emergency Repair Fund, which provides for the repair and replacement of faulty equipment for low-income households, and for its LIURP, and the Company's agreement to develop an outreach campaign to promote existing CAP programs (Joint Petition at ¶¶ 40-47).

Further, we find that the Settlement will result in significant savings of time and expenses for all Parties involved by avoiding the necessity of further administrative proceedings, as well as possible appellate court proceedings, thereby conserving administrative resources. The Settlement also benefits all Parties by providing regulatory certainty with respect to the disposition of the issues. For the reasons stated herein and in the Joint Petitioners' Statements in Support, we agree with the ALJ's conclusion that the Settlement is in the public interest and we shall approve it without modification.

C. Non-Unanimous Settlement

1. Background

This section of the Opinion and Order addresses the Non-Unanimous Settlement, containing the settlement provisions pertaining to revenue allocation and rate design. When a utility files for a rate increase and the proposed increase exceeds $1 million, the utility must include with its filing an allocated class cost-of-service study (ACCOSS) in which it assigns to each customer class a rate based upon operating costs that it incurred in providing that service. 52 Pa. Code § 53.53; *Lloyd v. Pa. PUC*, 904 A.2d 1010, 1015 (Pa. Cmwlth. 2006) (*Lloyd*). Public utility rates should enable the utility to recover its cost of service and should allocate this cost among its customers. These rates are required by statute to be just, reasonable, and non-discriminatory. 66 Pa. C.S. §§ 1301, 2804(10).

In this proceeding, there are seven different rate classes to which Columbia would assign costs:

- Residential Sales Service and Residential Distribution Service (RSS/RDS);
- Low-volume Small General Sales Service, Small

Commercial Distribution Service, Small General Distribution Service (SGSS1/SCD1/SGDS1);

- High-volume Small General Sales Service, Small Commercial Distribution Service, and Small General Distribution Service (SGSS2/SCD2/SGDS2);

- Small Distribution Service and low-volume Large General Sales Service (SDS/LGSS);

- Large Distribution Service and high-volume Large General Sales Service (LDS/LGSS);

- Main Line Sales Service and Main Line Distribution Service (MLS/MLDS);[10] and

- Flexible Rate Provisions and Negotiated Contract Service (Flex).

Once an ACCOSS has been deemed appropriate for adoption, the rate design process begins.[11] The first step is the determination of inter-class rates, which involves the assignment of the revenue requirement between the various customer classes. Once a class revenue allocation is determined, the second step allocates each class's rate increase (or decrease) among the various intra-class rate elements. This step examines the manner in which tariffed rates and rate elements will generate the allocated revenues for each class.

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[10] Rate classes MLS and MLDS were combined due to their unique characteristics of proximity to an interstate pipeline. Columbia St. 6 at 7.

[11] The Commission uses the results from cost-of-service studies as a guide in developing appropriate customer class rates. Nevertheless, as we have stated in past rate decisions, cost of service studies are tools to be used in the ultimate design of customer rates, but they are necessarily subject to the philosophies of the analysts preparing them. We, therefore, emphasize that appropriate judgment and discretion is required in analyzing the cost-of-service studies and using them to help set the final customer class rates based on the evidentiary record.

Revenue allocation and rate design was a highly contested issue in this proceeding, with a range of revenue allocation recommendations presented by the Parties, generated from the competing views on the appropriate ACCOSS to be utilized, the correct execution of the study, the implementation of the study, and appropriate adjustments to the study. *See* Columbia St. 6 at 20; OCA St. 3-SR at 4; OSBA St. 1-S at 6; I&E St. 3 at 26; PSU Exh. PSU-SR-1. Columbia, I&E, the OCA, PSU, CII, CAUSE-PA, and PA Task Force, or the JPNUS Joint Petitioners, were able to agree on a revenue allocation and rate design as set forth in the JPNUS, utilizing the $44.5 million in increased annual operating revenue agreed upon in the Partial Settlement.[12, 13] The Non-Unanimous Settlement, like the Partial Settlement, is a "black box" settlement. Under the Non-Unanimous Settlement, the JPNUS Joint Petitioners did not reach agreement on a particular ACCOSS methodology. According to the JPNUS Joint Petitioners, the resulting rate class allocation under the Non-Unanimous Settlement is a product of negotiation and settlement and achieves a result within the range of results argued by the respective Parties. Columbia SISNUS[14] at 4-5; I&E M.B. at 9; OCA SISNUS at 6; PSU SISNUS at 9-10, 12, 14; CII SISNUS at 5-6; CAUSE-PA SISNUS at 4.

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[12] *See* Partial Settlement at ¶ 24.

[13] As indicated, the RESA/NGS Parties, the NRDC, and the OSBA are not parties to the JPNUS. However, in contrast to the RESA/NGS Parties' and the NRDC's indication that neither oppose the Non-Unanimous Settlement on revenue allocation and rate design, the OSBA presented its objections through its briefs and comments to the JPNUS. Likewise, Mr. Culbertson, not a party to the JPNUS nor the Joint Petition, has filed briefs and comments in opposition, but has not submitted testimony on revenue allocation or rate design.

[14] For the purposes of this Opinion and Order, SISNUS stands for a Party's "Statement in Support of the Non-Unanimous Settlement."

2. Terms and Conditions of the Non-Unanimous Settlement

The JPNUS, filed on September 2, 2022, is fifteen pages in length and includes the terms of the Non-Unanimous Settlement and eight appendices attached as Appendices A through Appendix H. Appendix A sets forth the agreed upon revenue allocation of the classes. Appendix B sets forth the agreed upon rate design for the customer classes. Appendices C through and including Appendix H represent the Statements in Support of the Non-Unanimous Settlement filed by Columbia, the OCA, PSU, CII, PA Task Force, and CAUSE-PA, respectively.[15]

The Non-Unanimous Settlement includes the following terms and conditions:[16]

> **A. REVENUE ALLOCATION AND RATE DESIGN**
>
> 23. Class revenue allocation will be approximately as shown in Appendix "A". Rate design for all classes shall be as shown in Appendix "B". Revenue allocation and rate design reflect a compromise among the Non-Unanimous Joint Petitioners and do not endorse any particular cost of service study.
>
> 24. Nothing herein is intended to modify the settlement terms contained in the Partial Settlement.

JPNUS at 5. The JPNUS provides the Non-Unanimous Settlement is in the public interest and is supported by the JPNUS Joint Petitioners' Statements in Support. JPNUS at ¶¶ 25-26. The table below reflects the increase in annual operating revenues of $44.5

[15] The JPNUS indicated that I&E has not filed a Statement in Support of the Non-Unanimous Settlement as its Statement in Support was contained in its Main Brief filed on August 23, 2022. JPNUS at 6.

[16] The Non-Unanimous Settlement terms are stated verbatim and retain original numbering for ease of reference.

million, by rate class, over the Company's pro forma revenue at present rates, as agreed upon by the JPNUS Joint Petitioners:

Non-Unanimous Settlement Revenue Distribution

Class	Operating Revenue at Present Rates[1]	JPNUS Increase[2]	Increase Percent	Percentage of JPNUS Increase
(A)	(B)	(C)	(D)	(E)
RSS/RDS	$598,982,336	$26,500,019	4.4%	59.55%
SGSS1/SCD1/SGDS1	$73,587,830	$4,537,000	6.2%	10.20%
SGSS2/SCD2/SGDS2	$75,811,926	$6,030,000	8.0%	13.55%
SDS/LGSS	$35,667,652	$4,627,000	13.0%	10.40%
LDS/LGSS	$24,214,116	$2,800,000	11.6%	6.29%
MLS/MLDS	$1,970,857	$0	0.0%	0.00%
Flex	$4,270,723	$5,981	0.1%	0.01%
Total	**$814,505,439**	**$44,500,000**	**5.5%**	**100.0%**

[1] *See* Columbia Exh. 111, Sch. 2 at 2; Columbia Exh. 102, Sch. 3 at 3.

[2] *See* JPNUS, Appendix A.

The changes to the rate design for all customer classes, as set forth in Appendix B to the JPNUS, reflect an accord reached between the JPNUS Joint Petitioners as to the rate design to be used to recover each class's portion of the annual revenue increase.

In addition to the specific terms to which the JPNUS Joint Petitioners have agreed, the Non-Unanimous Settlement contains other general terms and conditions typically found in settlements submitted to the Commission. Specifically, the JPNUS Joint Petitioners agreed that the Non-Unanimous Settlement is conditioned upon the Commission's approval of all the terms and conditions contained therein without modification. JPNUS at ¶ 27. The JPNUS establishes the procedure by which any of the JPNUS Joint Petitioners may withdraw from the Non-Unanimous Settlement and proceed

to litigate this case if the Commission should act to modify or reject the Non-Unanimous Settlement, and, in such event, the Non-Unanimous Settlement shall be null and void. *Id*.

In addition, the JPNUS Joint Petitioners asserted that although the Non-Unanimous Settlement is proffered to resolve the revenue allocation and rate design issues raised by the JPNUS Joint Petitioners in the instant proceeding, it may not be cited as precedent in any future proceeding, except to the extent required to implement any term in the Non-Unanimous Settlement. *Id.* at ¶ 30. The JPNUS Joint Petitioners acknowledged and agreed that the Non-Unanimous Settlement is presented without prejudice to: (1) any position which any of the JPNUS Joint Petitioners may have advanced; and (2) the position any of the JPNUS Joint Petitioners may advance on the merits of the issues in future proceedings except to the extent necessary to effectuate the terms and conditions of the Non-Unanimous Settlement. *Id.* at ¶ 33.

The JPNUS concluded by requesting that the ALJs approve the Non-Unanimous Settlement, including all terms and conditions thereof, without modification; that the Commission's investigation at Docket No. R-2022-3031211, and the Complaints of the OCA (Docket No. C-2022-3031767), CII (Docket No. C-2022-3032178), PSU (Docket No. C-2022-3031957), Constance Wile (Docket No. C-2022-3031749), and Jose Serrano (Docket No. C-2022-3031821) be marked closed; and that the Commission enter an Order authorizing Columbia to file a tariff or tariff supplement in compliance with the Commission's Order, effective for service rendered on and after December 17, 2022, containing the rates set forth in Appendix B of the JPNUS. JPNUS at 9.

3. Positions of the Parties

The fundamental purpose of an ACCOSS is to aid in the accurate and reasonable design of rates by identifying all the capital and operating costs incurred by

the utility in serving its customers, and then directly assigning or allocating these costs to each individual rate class based on established principles of cost causation to calculate the rate of return provided by each class. Subsequently, each class's rate of return is compared to a system average rate of return to determine if each rate class is either under-paying or overpaying its allocated cost of service. This information, along with other factors, such as value of service and gradualism, are then used to determine how the proposed rate increase should be allocated among the rate classes with the goal of moving each rate class towards the system rate of return. This can be accomplished by assigning a greater than system average increase to classes paying less than their cost of service and assigning a less than average increase to classes paying more than the system average rate of return.

According to Columbia, although the Company presented three ACCOSSs in the current proceeding as providing a reasonable range of returns: (1) the Customer-Demand Study (Customer-Demand ACCOSS);[17] (2) the Peak and Average Study (P&A ACCOSS);[18] and (3) the Average Study (Average ACCOSS),[19] consistent with the methodology used in its 2021 base rate proceeding, it continued to utilize the P&A ACCOSS as the primary guide to allocate the requested revenue increase in this proceeding in recognition of the Commission's Order in *Pa. PUC v. Columbia Gas of Pennsylvania, Inc*., Docket No. R-2020-3018835 (Order entered February 19, 2021) (*Columbia February 2021 Order*). Columbia explained how the P&A ACCOSS was utilized in apportioning the requested increase among the classes with the intention of moving each rate class toward parity with the system average rate of return. Columbia St. 6 at 4, 17.

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17 *See* Columbia Exh. 111, Sch. 1.

18 *See* Columbia Exh. 111, Sch. 2.

19 *See* Columbia Exh. 111, Sch. 3.

Columbia's P&A ACCOSS shows certain customer classes (RSS/RDS, SGSS/DS-1, SGSS/DS-2, MLS/DS) are paying more than the cost of providing service to those customers within the class (as reflected by an index above 1.0), while other classes (SDS/LGSS, LDS/LGSS) are paying less than the full cost of providing service to customers under those rate schedules (as reflected by an index that is less than 1.0). The following table illustrates Columbia's efforts to correct some of these discrepancies through its proposed revenue allocation at its full revenue requirement request:

Summary of Columbia Revenue Allocation at As-Filed Rates

Class	Columbia As-Filed Increase	Percent Increase	Relative Rate of Return	
			Present Rates	Proposed Rates
RSS/RDS	$56,453,526	9.4%	1.30	1.27
SGSS1/SCD1/SGDS1	$6,927,768	9.4%	1.09	1.06
SGSS2/SCD2/SGDS2	$7,340,348	9.7%	1.09	1.05
SDS/LGSS	$6,162,892	17.3%	0.88	0.94
LDS/LGSS	$5,253,499	21.7%	0.27	0.40
MLS/MLDS	$225	0.0%	29.29	22.23
Flex	$13,651	0.3%	(0.69)	(0.52)
Total	**$82,151,909**	**10.1%**	**1.00**	**1.00**

See Columbia Exh. 111, Sch. 2 at 1-2.

Although I&E and the OCA supported Columbia's use of the P&A ACCOSS as the primary basis for revenue allocation, both Parties recommended an alternate revenue distribution at the Company's full revenue requirement request that each felt more accurately reflected cost of service. I&E St. 3 at 12, 16-17; OCA St. 3 at 8, 11; OCA St. 3-SR at 4. While the OSBA noted its disagreement with the P&A ACCOSS methodology, it accepted the P&A ACCOSS "for reasons of Commission precedent," and likewise proffered its own revenue allocation recommendation at the

Company's full revenue requirement request.[20, 21] OSBA St. 1 at 15; OSBA St. 1-S at 6. PSU rejected the Company's P&A ACCOSS, arguing that it contradicts cost causation principles by shifting cost recovery to the large commercial and industrial customer classes (SDS/LGSS and LDS/LGSS); and, therefore, PSU's revenue allocation and scale back proposal is premised on the use of the Customer-Demand ACCOSS methodology.[22] PSU St. 1 at 18. Below is a comparison of the various allocation proposals at the Company's full requested increase.

[20] In its direct testimony, the OSBA's witness makes several adjustments to the Company's P&A ACCOSS, including modifying the design day demands utilized to determine the allocation factors to correct for what the OSBA deemed was an "unusual" and "significant" shift in design day demands. OSBA St. 1 at 15-18.

[21] Arguing that the "indexed rate of return" is not a reliable metric, the OSBA used the Revenue-Cost (R-C) ratio, and each customer class's revenue increase relative to the system average increase, as the metric for determining progress towards cost of service. OSBA St. 1 at 23-24.

[22] Although CII did not specifically address the appropriate ACCOSS to be used in this proceeding nor offer a specific revenue allocation proposal, it supported PSU's argument that the revenue allocation proposals presented by Columbia, the OCA, the OSBA, and I&E would result in rate shock to the LDS/LGSS rate class. CII St. 1 at 7-9. CAUSE-PA and PA Task Force did not take a position on revenue allocation, except to oppose Columbia's proposed rate increase to the residential class and its vulnerable low-income households, and only addressed rate design as it related to the fixed monthly residential customer charge and the Company's proposed Revenue Normalization Adjustment. CAUSE-PA St. 1 at 11-17; PA Task Force St. 1 at 3-6.

Recommended Revenue Distributions at Columbia's Requested Increase

Class	Columbia As-Filed Increase[1]		OCA Recommended Allocation[2]		OSBA Recommended Allocation[3]		I&E Recommended Allocation[4]		PSU Recommended Allocation[5]	
(A)	(B)		(C)		(D)		(E)		(F)	
RSS/RDS	$56,453,526	9.4%	$46,536,908	7.8%	$48,914,738	8.2%	$55,853,526	9.3%	$62,523,281	10.4%
SGSS/DS-1	$6,927,768	9.4%	$9,536,000	13.0%	$6,877,696	9.3%	$6,927,767	9.4%	$6,750,000	9.2%
SGSS/DS-2	$7,340,348	9.7%	$11,132,000	14.7%	$11,002,312	14.5%	$7,340,349	9.7%	$8,100,000	10.7%
SDS/LGSS	$6,162,892	17.3%	$8,149,000	22.8%	$8,539,556	23.9%	$6,762,891	19.0%	$2,932,348	8.2%
LDS/LGSS	$5,253,499	21.7%	$6,785,000	28.0%	$6,787,595	28.0%	$5,253,498	21.7%	$1,832,404	7.6%
MLS/MLDS	$225	0.01%	$0	0.0%	$0	0.0%	$224	0.0%	$225	0.01%
Flex	$13,651	0.3%	$13,000	0.3%	$10,012	0.2%	$13,651	0.3%	$13,651	0.3%
Total	**$82,151,909**	**10.1%**	**$82,151,908**	**10.1%**	**$82,151,909**	**10.1%**	**$82,151,906**	**10.1%**	**$82,151,909**	**10.1%**

[1] *See* Columbia Exh. 111, Sch. 2 at 1-2.

[2] *See* OCA St. 3SR at 4.

[3] *See* OSBA St. 1-S at 6 (Includes adjustment for Forfeited Discount Revenue).

[4] *See* I&E Exh. 3, Sch. 6 at 2.

[5] *See* PSU Exh. PSU-SR-1.

Ultimately, the JPNUS Joint Petitioners settled on a revenue allocation based upon the compromise of the Parties' respective positions in this proceeding. Accordingly, the JPNUS Joint Petitioners opine that the revenue allocation set forth in the JPNUS is in the public interest because it is within the range of revenue allocations and scale back recommendations proposed by the Parties. Furthermore, although the Non-Unanimous Settlement does not adopt one specific cost of service study model over another, but rather, according to the JPNUS Joint Petitioners, achieves a blended and equitable compromise, the recognition of the influence of the P&A ACCOSS methodology has also been noted.

4. Statements in Support of the Non-Unanimous Settlement

a. Columbia

Columbia submitted a Statement in Support, Main Brief, and Reply Brief in support of the Non-Unanimous Settlement, requesting that the Commission approve the JPNUS, including the terms and conditions thereof, without modification. Columbia M.B. at 1; Columbia R.B. at 1. Columbia argued that: (1) the Non-Unanimous Settlement should be approved because it represents a compromise of the various litigation positions argued by the Parties, including the OSBA; (2) the revenue allocation set forth in the JPNUS is within the range of the various cost studies presented by the Parties in this proceeding, as scaled back to the revenue increase of $44.5 million, which demonstrates its reasonableness; (3) the revenue allocation and rate design agreed to in the JPNUS is in the best interests of Columbia, its customers, and the JPNUS Joint Petitioners; and (4) the proposed rate design is designed to recover the costs allocated to the various customer classes and reflects a balanced approach of recovering the increased revenue requirement through both customer charges and commodity distribution charges. Columbia M.B. at 2, 7, 9; Columbia SISNUS at 4-5.

Columbia noted that, contrary to the OSBA's arguments, the Commission has repeatedly recognized that no single ACCOSS methodology is perfect, and that many factors may be considered in the rate setting process. Columbia further noted that because of the disagreement among the Parties over cost allocation studies and the "black box" nature of the Partial Settlement, it is not possible to precisely calculate the extent to which the revenue allocation agreed to in the Non-Unanimous Settlement moves rates closer to cost of service for all JPNUS Joint Petitioners. Nonetheless, Columbia stated that the revenue allocation proposed in the JPNUS appropriately moves classes towards the cost of service, while recognizing secondary considerations such as gradualism and

value of service. Columbia M.B. at 9-10, 13-14; Columbia R.B. at 4-5; Columbia SISNUS at 5-7.

Columbia explained that the Non-Unanimous Settlement proposes to essentially adopt the revenue allocations proposed by the OSBA for rate classes RS/RDS and SDS/LGSS as a reasonable compromise, and also proposes to allocate a slightly higher increase to the SGSS/DS-1 rate class and a slightly lower percentage to the LDS/LGSS rate class than what was proposed by the OSBA. Columbia averred that the SGSS/DS-2 rate class would also be allocated an increase comparable to that proposed by the OSBA, as scaled back to the $44.5 million settlement increase. Columbia M.B. at 6. Regarding the proposed changes to the rate design for all customer classes, as set forth in Appendix B to the JPNUS, Columbia submitted that this provision, reflecting an accord reached between the JPNUS Joint Petitioners as to the rate design to be used to recover the rate increase allocated under the Partial Settlement, reflects an acceptable compromise of litigation positions relative to rate design, is supported by the record, and should be approved. Columbia SISNUS at 8.

b. I&E

I&E submitted a Main Brief and Reply Brief in support of the Non-Unanimous Settlement. I&E asserted the Non-Unanimous Settlement fairly and reasonably allocates the increase in natural gas revenues among Columbia's customer rate classes. I&E noted that it is charged with representing the public interest in rate proceedings before the Commission. As a result, I&E stated that it must scrutinize the filing from multiple perspectives to determine what the appropriate result would be for the Company, as well as the customers, while also considering what is appropriate for utility regulation as a whole in the Commonwealth. I&E requested approval of the JPNUS based on I&E's determination that the Non-Unanimous Settlement is in the

public interest and meets all the legal and regulatory standards necessary for approval. I&E M.B. at 4-5.

I&E asserted the revenue allocation set forth in the JPNUS not only reflects a compromise of the JPNUS Joint Petitioners but also recognizes the influence of the P&A ACCOSS methodology. I&E also stated that the agreed upon revenue allocation is within the range of reasonableness with respect to the residential class allocation and scale back that I&E recommended in direct testimony. I&E M.B. at 8 (citing I&E St. 3 at 13, 26). Additionally, I&E argued that the revenue allocation set forth in the JPNUS not only reflects a compromise of the JPNUS Joint Petitioners, but it also produces an allocation that moves each class closer to its actual cost of service, consistent with the principles of *Lloyd*. Accordingly, I&E submitted that this revenue allocation is in the public interest because it is designed to limit customer class subsidies and to place costs upon the classes responsible for causing those costs. I&E M.B. at 8-9.

I&E noted that in its Main Brief, the OSBA requested the Commission adopt the OSBA's version of the Company's P&A ACCOSS as it corrects significant errors made by Columbia.[23] *See* OSBA M.B. at 7. However, I&E asserted the errors the OSBA addresses are moot as the JPNUS Joint Petitioners agreed to a revenue allocation and rate design as a compromise to their litigated positions. Additionally, I&E stated that the Non-Unanimous Settlement recognizes the influence of the P&A ACCOSS methodology that the OSBA agreed should be used in this proceeding. I&E R.B. at 1-3.

[23] In rebuttal testimony, Columbia witness, Mr. Kevin Johnson, acknowledged the technical errors, which were identified during the course of discovery, and also prepared a revised P&A ACCOSS that corrected theses errors. However, as Mr. Johnson explained, these technical errors were immaterial and did not change Columbia's originally proposed revenue allocation. Columbia R.B. at 3 (citing Columbia St. 6-R at 14-15).

c. OCA

The OCA filed a Statement in Support of the JPNUS. It is the OCA's position that the revenue allocation put forth in the JPNUS is consistent with precedent and principles of cost causation and is within the range of expected outcomes if this case were fully litigated. The OCA explained that all the Parties in this proceeding who addressed allocation had different recommendations as to how to close these gaps and whether the Company's P&A ACCOSS was the appropriate measure of cost of service. Rather than litigate the merits of each of these proposals in this proceeding, the JPNUS Joint Petitioners have all agreed that the proposed allocation reasonably allocates the agreed upon revenue increase among customer classes and designs rates to recover the amounts allocated to the customer classes. OCA SISNUS at 2-3, 5.

The OCA provided the following table, illustrating the Parties' scaled back revenue allocation positions, in support of its argument that the revenue allocation outlined in the JPNUS is consistent with the range of outcomes that were likely to result from litigation of the issue based on the Parties' positions, as well as continuing to recognize the principles of gradualism:

Percent of Overall Increase Assigned to Particular Customer Class					
	RS/RDS	**SGSS1/SCD1/SGDS1**	**SGSS2/SCD2/SGDS2**	**SDS/LGSS**	**LDS/LGSS**
Columbia[1]	68.71%	8.43%	8.94%	7.51%	6.40%
I&E[2]	52.20%	10.09%	10.69%	15.20%	11.81%
OCA[3]	56.66%	11.61%	13.55%	9.92%	8.26%
OSBA[4]	59.55%	8.37%	13.40%	10.40%	8.27%
PSU[5]	76.11%	8.22%	9.86%	3.57%	2.23%
Settlement[6]	59.55%	10.20%	13.55%	10.40%	6.29%

[1] Columbia St. 6 at 20.

[2] I&E St. 3 at 26. I&E's allocaiton percentages are derived after applying I&E's proposed scale back methodology to the agreed-upon revenue increase.

[3] OCA St. 3SR at 4, Table 1-SR.

[4] OSBA St. 1-S at 6, Table IEc-S3.

[5] PSU St. 1-SR, Exh. PSU-SR-1.

[6] JPNUS Appendix A.

See OCA SISNUS at 5-6.

The OCA submitted that the settled revenue allocation reflected in the JPNUS is also approximately consistent with Company's initial filing. That is, the amount of increase given to residential customers would be approximately the increase initially proposed by the Company (scaled down to the $44.5 million increase). As a result, the increase would be in line with the amounts proposed by the Company and contained in the public notices that went to consumers. OCA SISNUS at 7.

d. PSU

PSU submitted a Statement in Support, Main Brief, and Reply Brief in support of the Non-Unanimous Settlement. PSU asserted the JPNUS justly and reasonably allocates the agreed upon revenue requirement of $44.5 million, is in the public interest, is a fair and balanced "black box" approach, and should be approved.

PSU M.B. at 1; PSU R.B. at 1; PSU SISNUS at 2. PSU also noted it is the policy of the Commission to encourage settlements. PSU M.B. at 1; PSU R.B. at 13.

PSU stated that the record in this proceeding demonstrates a collection of wide-ranging, including subjective, judgments, with Parties disagreeing over: (1) the cost-of-service study to be utilized; (2) the correct execution of the study: (3) the implementation of the study; and (4) the appropriate adjustments to the study results for allocation. PSU SISNUS at 7; PSU M.B at 9. As such, PSU asserted that the various litigation positions and outcomes in this proceeding show why the JPNUS is just, reasonable, in the public interest, balanced, and moderate. Specifically, PSU stated that the Non-Unanimous Settlement is within the range of these litigation positions, thereby proving that each Party's judgment was considered (including the OSBA) and combined in a "black box", resulting in a settlement that is just, reasonable, and represents an amicable resolution of the issues incorporating the JPNUS Joint Petitioners' judgment to achieve a mutually acceptable compromise of positions that is in the public interest. Additionally, PSU asserted the JPNUS also means the Commission does not need to decide (and potentially err in deciding) contested issues such as appropriate cost of service studies (which can vary based on the evidence presented in each particular case for each particular utility) and applications of or adjustments thereto, while also considering, *inter alia*, gradualism. Instead, the Commission is presented with a settlement that incorporates the judgment of all the parties and demonstrates gradualism, which no litigated outcome will achieve. PSU M.B. at 9-10.

More specifically, PSU averred that allocating the increase in the manner set forth in the JPNUS ensures that no single party receives an increase greater than two times the system average increase:

Non-Unanimous Settlement Base Revenue Distribution

Class	Current Base Revenue[1]	Allocation of JPNUS Increase[2]	Percentage Increase	Increase Relative to the System Average Increase[3]
RSS/RDS	$376,337,071	$26,470,181	7.0%	0.85
SGSS1/SCD1/SGDS1	$48,026,277	$4,531,891	9.4%	1.13
SGSS2/SCD2/SGDS2	$49,996,372	$6,023,210	12.0%	1.45
SDS/LGSS	$30,056,285	$4,621,790	15.4%	1.85
LDS/LGSS	$23,906,690	$2,796,847	11.7%	1.41
MLS/MLDS	$1,445,860	$0	0.0%	0.00
Flex	$4,265,890	$5,974	0.1%	0.02
Total:	**$534,034,445**	**$44,449,893**	**8.3%**	**1.0**

[1] *See* Columbia Exh. 103, Sch. 8 at 4; JPNUS, Appendix B.

[2] *See* JPNUS, Appendix B. Correction made to table in PSU SISNUS at 11 to remove $50,107 in forfeited discount revenue.

[3] Class Percentage Increase / Total Percentage Increase = Increase Relative to System Average Increase.

See PSU SISNUS at 11.

Furthermore, PSU opined that the Commission should reject the OSBA's position that the P&A ACCOSS must be used as a guide for revenue allocation in this proceeding, as the OSBA's precedent argument is simply and fundamentally wrong as a matter of both fact and law. PSU R.B. at 7-8, 10. PSU asserted the OSBA relies on the incorrect legal premise (offered in its witnesses' testimony) that the Commission is bound by its previous decision in its *Columbia February 2021 Order* where the Commission relied on the OCA's P&A ACCOSS *as a guide* for revenue allocation. PSU R.B. at 1, 6-7 (emphasis in original). PSU concludes that nothing is preventing the Commission from deciding the issue of cost of service and revenue allocation differently than it has in past Columbia base rate cases. PSU R.B. at 3, 9. PSU noted that the Commission encourages settlements and has previously adopted non-unanimous "black box" revenue allocation and rate design settlements. Specifically, PSU referenced prior Commission

decisions, in which 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. PSU R.B. at 3, 10 (citing *Pike County; City of Bethlehem*).

PSU also asserted that, when compared to the OSBA's litigation position, the JPNUS works for all rate classes, better incorporates principles of gradualism by mitigating the OSBA's litigation position in measurable ways and is consistent with the record evidence. PSU R.B. at 3, 12, 18. PSU noted that although the SDS/LGSS and LDS/LGSS rate classes fare no better under the OSBA's position scaled back to the agreed-upon revenue increase, the OSBA's litigation position contemplates allocating significant increases to the SDS/LGSS and LDS/LSGSS rate classes which are not in the public interest, and do not result in just and reasonable rates. PSU M.B. at 18-19.

e. CII

CII submitted a Statement in Support of the Non-Unanimous Settlement. CII stated that it supports the Non-Unanimous Settlement as a reflection of compromise of the various litigation positions put forth throughout this proceeding, while also recognizing the public interest. CII SISNUS at 4. CII submitted that the rate allocation and rate design in the Non-Unanimous Settlement should be approved without modification because it is consistent with the record evidence, is a result of compromise on varying positions, and represents the public interest. CII SISNUS at 6.

While CII did not specifically address the appropriate ACCOSS to be used in this proceeding, CII's testimony did note that the unending and considerable rate increases applied to rate class LDS/LGSS create innumerable challenges for energy-intensive businesses to weather, including CII's one member, Knouse Foods Cooperative, Inc. (Knouse), which cannot automatically flow these costs through to its customers.

CII SISNUS at 5 (citing CII St. 1 at 8-9). CII contended that the revenue allocation and rate design in the JPNUS considered all the Parties' positions and melded them together to come to an amicable resolution of the issues and resulted in a revenue allocation that is within the range of the litigated positions of the Parties. CII argued that while an 11.71% increase will still significantly impact Knouse's energy expenses, this increase is at least less than that initially proposed by Columbia, while also providing rate class LDS/LGSS some relief via a scale back that is being applied to the other customer classes. CII SISNUS at 5-6.

f. CAUSE-PA

CAUSE-PA submitted a Statement in Support of the Non-Unanimous Settlement. CAUSE-PA noted that the Non-Unanimous Settlement attempts to resolve the issues of revenue allocation and rate design and will limit the amount of the agreed upon increase that will be allocated to the residential class, which will, in turn, lessen the amount of the rate increase that will be shouldered by low-income customers. CAUSE-PA SISNUS at 2. CAUSE-PA noted that although its litigation positions were not fully adopted, the Non-Unanimous Settlement was arrived at through good faith negotiation by all Parties. CAUSE-PA stated that the JPNUS is in the public interest in that it: (1) addresses low-income customers' ability to access safe and affordable natural gas service; (2) balances the interests of the Parties; and (3) fairly resolves several important issues raised by CAUSE-PA and other Parties. CAUSE-PA further noted that if the Non-Unanimous Settlement is approved, the Parties will also avoid the considerable cost of further litigation and/or appeals. CAUSE-PA SISNUS at 2.

CAUSE-PA opposed the proposed rate increase, submitting that the Non-Unanimous Settlement will limit the amount of the agreed upon rate increase allocated to the residential class, which will help limit the increased bills for low-income residential customers who already struggle to afford service. In turn, limiting the

residential rate increase will help limit increased terminations and uncollectible expenses resulting from the rate increase. CAUSE-PA SISNUS at 3.

g. PA Task Force

PA Task Force submitted a Statement in Support of the Non-Unanimous Settlement. PA Task Force SISNUS at 1. PA Task Force supported the JPNUS as it believes it appropriately allocates the rate increase, that it complies with the applicable laws and regulations and serves the public interest. *Id*. at 2. PA Task Force noted that although it joined in the settlement of all issues set forth in the JPNUS, its testimony did not address revenue allocation and only addressed rate design as it related to the fixed monthly residential customer charge. PA Task Force also noted that the Parties have agreed in the Partial Settlement filed in this case that the fixed monthly residential customer charge would not be increased. *Id.* at 1.

5. Objections to the Non-Unanimous Settlement

a. OSBA

In its Objection to the Non-Unanimous Settlement, the OSBA is of the general opinion that the revenue allocation proffered in the Non-Unanimous Settlement should be rejected because it is not based on substantial record evidence, in accordance with Commission and Commonwealth Court precedent. OSBA Objection at 2, 18. The OSBA contended that since the OCA, CII, CAUSE-PA, the RESA/NGS Parties, the PA Task Force, and the NRDC did not file Main Briefs supporting their respective positions on the proper cost of service study and chose to support the Non-Unanimous Settlement on revenue allocation, they have abandoned their respective positions on this issue. *Id.* Thus, the OSBA submitted that the only remaining and reasonable revenue allocation before the Commission is that of the OSBA. *Id.*

In support of its position on revenue allocation, the OSBA first submitted that the revenue allocation in the Non-Unanimous Settlement is not consistent with the Commission's cost standard established in the *Columbia February 2021 Order* in which the Commission determined that the appropriate method for allocating distribution mains costs required the use of a P&A costing approach. In this proceeding, the OSBA noted that while different ACCOSSs were based on the P&A methodology, none of the Parties presented record evidence to support the revenue allocation set forth in the Non-Unanimous Settlement. Furthermore, the OSBA contended that despite the fact that the Commission-approved costing methodology shows that the LDS/LGSS class exhibits the lowest class rate of return at present rates, the rate increase for the LDS/LGSS class is well below the increase for the SDS/LGSS class and is even modestly below the rate increase for the SGS2 rate class.

The OSBA next submitted that even if the Commission determines it is reasonable for the Non-Unanimous Settlement to rely, in part, on cost allocation evidence that conflicts with the Commission's *Columbia February 2021 Order*, the Non-Unanimous Settlement's allocation of the rate increase among the various rate classes is "unduly discriminatory," especially since the proposed increase to the SDS/LGSS rate class, which is 1.85 times the system average, is far higher than any other rate class and is not supported by any record evidence in this proceeding. OSBA Objection at 2-3. Although the OSBA agreed with the Non-Unanimous Settlement's proposed rate design for the SGSS/DS rate classes, it averred that the Parties to the Non-Unanimous Settlement assigned an unduly large rate increase to the SDS/LGSS rate class which was without legal representation in this proceeding. OSBA Objection at 3.

The OSBA argued that the Commission should adopt its litigation position on revenue allocation, except that it be proportionally scaled back based upon the revenue increase set forth in the Partial Settlement, which resolves the revenue requirement and

other related issues. OSBA M.B. at 16. If approved, the OSBA's recommendation would result in the following approximate revenue allocation:

Proportional Scale Back of OSBA's Proposed Revenue Allocation		
	Increase ($mm)	**Increase %**
Residential	$26.5	7.04%
SGS1	$3.7	7.76%
SGS2	$6.0	11.92%
Med Gen'l (SDS/LGSS)	$4.6	15.40%
Lg Gen'l (LDS/LGSS)	$3.7	15.39%
MDS	--	--
Flex	$0.007	0.17%
Total	**$44.5**	**8.33%**

See OSBA M.B. at 12 (proportionally scaled back to accommodate the revenue increase set forth in the Partial Settlement).

The OSBA submitted that for the revenue allocation in the above table to be consistent with record evidence, it must be directionally consistent with the results of the ACCOSS and specifically with the P&A ACCOSS methodology that the Commission required be used for the cost allocation of the Company's mains in the *Columbia February 2021 Order*. OSBA Objection at 4. The OSBA cited to its Statement 1 at 12, in which its witnesses Mark D. Ewen and Robert D. Knecht explained how regulators try to move class revenues more into line with cost-based rates. In this regard, the OSBA witnesses explained that "rate classes whose revenues substantially exceed allocated costs are assigned either relatively low rate increases or rate decreases," whereas "[r]ate classes whose revenues are well below allocated costs are assigned larger rate increases than those classes whose revenues are only slightly below allocated costs." *Id.* As such, the OSBA is of the opinion that the revenue allocation in the Non-Unanimous Settlement ignores the goal of moving the revenue recovered from each class as close as possible to the allocated costs of each class. The OSBA also submitted that the revenue allocation

under the Non-Unanimous Settlement is substantially inconsistent with the results of *any* P&A ACCOSS filed in this proceeding. *Id.*

The OSBA cited to the table below that compares the rates of return by rate class for present rates in the Company's and the OSBA's P&A ACCOSSs with the proposed percentage rate increases proposed in the Non-Unanimous Settlement. OSBA Objection at 4-5.

	ACOSS Results: Class Rate of Return at Current Rates		Rate Increase
	Columbia P&A	OSBA P&A	NUS
Residential	8.0%	7.6%	7.04%
SGS1[5]	6.7%	7.1%	9.45%
SGS2	6.7%	6.5%	12.06%
SDS/LGSS	5.4%	5.8%	15.39%
LDS/LGSS	1.7%	1.7%	11.71%
MDS	179.2%	179.2%	0.00%
Flex	-4.2%	-4.0%	0.14%
Total	**6.1%**	**6.1%**	**8.33%**
Sources: Exhibit 111, Schedule 2; IEc WPS3; NUS			

The OSBA noted that a rate of return below system average in the above table indicates that the class is under-recovering costs, and a rate of return above system average indicates an over-recovery. Based on its review of the above table, the OSBA submitted the following observations with regard to inconsistencies in the proposed Non-Unanimous Settlement's revenue allocation:

- At current rates, and relative to the total system return of 6.1 percent, the Residential class is over-recovering costs (at an 8% percent rate of return), as are both SGS classes, albeit by a smaller amount. The SDS classes moderately under-recover costs.

- At current rates, the LDS/LGSS class substantially under-recovers allocated cost. As shown in the OSBA's testimony, the LDS/LGSS revenues represent less than half the class's allocated costs. Thus, to move revenues in line with costs for that class, a rate increase of more than 100 percent would be necessary. OSBA St. 1 at 20.

- The system average rate increase agreed to by the parties in the Partial Settlement is 8.33%. The JPNUS proposed increase for the Residential class of 7.0 percent is directionally consistent with the results of the P&A ACCOSSs, in that it is below system average. The JPNUS proposed increase for the SGS1 class is modestly above the system average increase despite having a class rate of return above system average. However, the OSBA does not deem this increase to be obviously unreasonable, given the need to recover the enormous revenue shortfall from the LDS/LGSS and Flex rate classes.

- The JPNUS proposed revenue allocation for the other rate classes, however, is completely detached from the P&A ACCOSS.

- First, the OSBA observes that the JPNUS's proposed percentage increase for the LDS/LGSS class is lower than the proposed increase for the SGS2 class, despite the fact that the SGS2 rate class is over-recovering costs while the LDS/LGSS class produces revenue far below allocated costs.

- Second, the SDS/LGSS customer class would receive a 15.4% rate increase, while the LDS/LGSS customer class would receive an 11.7% increase, despite the fact that the SDS/LGSS class exhibits a far higher class rate of return than the LDS/LGSS class.

OSBA Objection at 5-6.

Next, the OSBA asserted that the Non-Unanimous Settlement's revenue allocation should also be consistent with the evidence for rate gradualism to be

reasonable. OSBA Objection at 6-7. Although other Parties in this proceeding advocated that class rate increases should not exceed 1.5 times the average in accordance with the *Columbia February 2021 Order*, the OCA and the OSBA witnesses argued for a more relaxed standard in this particular case, with increases up to 2.0 times the system average in order to reflect the extreme cost under-recovery from some rate classes. OSBA Objection at 7. As shown in the table above, since the maximum class increase in the Non-Unanimous Settlement revenue allocation is 15.39 percent, or 1.85 times the 8.33 percent system average increase, the OSBA is of the opinion that the Non-Unanimous Settlement is supported by the record evidence regarding the maximum possible increase for any rate class in this proceeding. OSBA Objection at 7.

Next, in its Objections, the OSBA provided an overview of the Parties' revenue allocation proposals. OSBA Objection at 7-14. For comparison purposes, the OSBA summarized the various revenue allocation proposals, as set forth in the record, showing the effects on the SDS and LDS rate classes compared to the revenue allocation proposed in the Non-Unanimous Settlement. The comparisons provided by the OSBA are summarized below in table format:

Name of Party	Revenue Allocation Effect on SDS	Revenue Allocation Effect on LDS	Comparison of Revenue Allocation Between SDS and LDS
1. Columbia	+20.5%	+22.5%	SDS < LDS
2. I&E	+22.5%	+22.0)	SDS 0.5% greater than LDS
3. OCA	+28.2%	+28.2%	SDS = LDS
4. OSBA	+21.1%	+28.4%	SDS < LDS
5. OSBA Aggressive	+28.4	+28.4%	SDS = LDS
6. Penn State 1	-35.10%	-42.17%	SDS and LDS rate decreases
7. Penn State 2	0.00%	0.00%	SDS = LDS
8. Penn State 3	+9.8%	+7.7%	SDS 2.1% greater than LDS
Non-Unanimous Settlement	+15.39%	+11.71%	SDS 3.68 percentage points greater than LDS

See OSBA Objection at 14. In consideration of the above table, the OSBA argued that the Non-Unanimous Settlement's proposed revenue allocation must be rejected by the Commission because there is no record evidence that would allocate an increase to the SDS/LGSS customer class that is more than 3.8 percentage points greater than the increase to the LDS/LGSS customer class. In comparison, the OSBA noted that of the eight revenue allocation proposals in record evidence, six of the eight would require rate decreases to SDS/LGSS, lesser increases to SDS/LGSS, or equal increases to SDS/LGSS in comparison to LDS/LGSS.

The OSBA was also concerned that approval of the Non-Unanimous Settlement would have serious implications for future Columbia base rate proceedings, all other natural gas distribution company rate proceedings, and likely electric and water rate proceedings. In this regard, the OSBA averred that if the Commission approves the JPNUS: (1) Commission precedent regarding cost allocation methodology will either be mostly or entirely irrelevant; (2) a settlement can be deemed reasonable if the increases for each rate class are within the range of increases proposed by the various parties; (3) it will be implicitly accepted that an increase for some Columbia rate classes can reasonably exceed 1.5 times the system average; and (4) settling parties will be encouraged to assign disproportionately large rate increase to unrepresented classes. OSBA Objection at 16-17.

b. Mr. Culbertson

With regard to the JPNUS, Mr. Culbertson submitted an objection in response to Section IV of the Partial Settlement entitled "Reserved Issues for Litigation" which states:

> 52. Simultaneous with the filing of this Partial Settlement, a separate Joint Petition for Non-Unanimous Settlement Regarding Revenue Allocation and Rate Design has been

> filed, with joinder or non-objection from all active parties other than OSBA and Mr. Culbertson. Issues regarding revenue allocation and rate design, other than the residential customer charge, are reserved for briefing. Also, Mr. Culbertson's right to submit briefs on issues he properly preserved, and other parties' right to respond, are retained.

With respect to the above paragraph concerning the Non-Unanimous Settlement, Mr. Culbertson submitted that, whether or not other participants agree, he is entitled to due process before and during a rate case proceeding and no one has the authority to either limit or expand his rights as a Complainant in this rate case. Culbertson Objection at 8-9.

Mr. Culbertson alleged that the current rate case process has issues that need to be identified and fixed, including his contentions that the Commission did not conduct a proper investigation in this proceeding. Culbertson Objection at 9. Mr. Culbertson contended that his Complaint was not properly investigated by the Company as required by Section 59.13 of the Commission's Regulations, 52 Pa. Code § 59.13 (Complaints),[24] and the Commission did not enforce Section 308.2(11) of the Code, 66 Pa. C.S. § 308.2(11).[25] Mr. Culbertson also cited to Section 501 of the Code, 66 Pa. C.S. § 501 (General Powers) and submitted that rates should be based on legitimate costs that are determined by an investigation, because if no investigation is conducted, the legitimate costs are unknown. Culbertson Objection at 9. Mr. Culbertson claimed that Columbia's accelerated costs are not actual legitimate costs and, therefore, those costs

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[24] Section 59.13 states in pertinent part, "Each public utility shall make a full and prompt investigation of complaints made to it or through the Commission by its customers."

[25] Section 308.2(11) of the Code states that "the Commission may establish other bureaus, offices and positions to perform the following functions . . . (11) Take appropriate enforcement actions, including rate proceedings, service proceedings and application proceedings, necessary to insure compliance with this title, commission regulations and orders.

must be withdrawn from Columbia's rate base with appropriate adjustments in rates. *Id*. at 10. Mr. Culbertson further contended that because proper investigations and audits were not conducted in this case, the "black box" settlement should not be approved as in the public interest. *Id*. at 11.

6. ALJs' Recommendation on the Non-Unanimous Settlement

The ALJs concluded that the terms of the JPNUS achieve a just and reasonable rate increase among Columbia's customer rate classes, including the small business class, which is within the range of possible outcomes argued by the Parties, is supported by substantial evidence of record, and is in the public interest. In reaching this conclusion, the ALJs analyzed the requirements of reviewing a non-unanimous settlement in their Recommended Decision, and stated:

> The Commission's policy permits parties to enter "partial" or "nonunanimous" settlements. As with full settlements, partial settlements, whether involving a partial settlement of issues or a partial settlement of the parties involved (non-unanimous), must be reasonable and in the public interest. The Commission has approved non-unanimous settlements as being just and reasonable and in the public interest and has not rejected or disfavored settlements because they are non-unanimous.
>
> ***
>
> The standards for approving the terms of non-unanimous settlements are the same as those for deciding a fully contested case, i.e., the parties to the non-unanimous settlement must demonstrate that the proposed settlement is supported by substantial evidence and that the rates agreed to are just and reasonable, in the public interest, and in conformity with the Commission's orders and regulations.

R.D. at 17-18 (citations omitted).

In addition to the ALJs providing a summary of the law governing the setting of rates in their Recommended Decision, the ALJs also noted the importance and presence of due process in the context of non-unanimous settlements, as follows:

> Also relevant to the Commission's approval of a non-unanimous settlement is the due process afforded to non-settling parties, such as whether non-settling parties were provided an opportunity to object to the settlement and to present their positions on the issues, and the range of interests represented in the non-unanimous settlement. In this case, the non-settling parties to the Joint Petition for Non-Unanimous Settlement were given an opportunity to first submit briefs on the issues related to revenue allocation and rate design. In addition, the Non-Unanimous Settlement was served on all parties to the proceeding, and we established procedures for filing comments in opposition thereto. The OSBA and Mr. Culbertson presented their positions in briefing and comments to the JPNUS, and therefore have been provided due process to present their positions and object to the JPNUS.

R.D. at 104-105 (citations omitted).

As such, the ALJs found no merit in Mr. Culbertson's assertions that the JPNUS was improperly proposed:

> As we stated above, the Commission favors settlements and historically has approved of the use of "black box" settlements. Contrary to Mr. Culbertson's assertions, the terms of the Non-Unanimous Settlement have been disclosed in the JPNUS, the reasons for the settling parties support have been disclosed, both in briefs and the parties' statements in support, and Mr. Culbertson has had the opportunity to express his position regarding the JPNUS. We note that the Commission rejected similar claims by Mr. Culbertson in Columbia's last base rate proceeding regarding the alleged

impropriety of "black box" settlements. *See Columbia Gas December 2021 Order* at 36-44.

R.D. at 106. As to the other non-settling Parties, the ALJs noted that although Mr. Serrano and Ms. Wile were each provided a copy of the JPNUS and offered an opportunity to comment or object to its terms, neither Party responded. Inasmuch as their due process rights have been fully protected, their Formal Complaints can be dismissed for lack of prosecution. R.D. at 106 (citing *Schneider v. Pa. PUC*, 479 A.2d 10 (Pa. Cmwlth. 1984)).

Regarding the OSBA's argument that the Commission's *Columbia February 2021 Order* necessitates rejection of the JPNUS because it does not appropriately reflect the use of the P&A ACCOSS methodology,[26] the ALJs pointed out that the determination in the *Columbia February 2021 Order* was within the context of a full litigation of issues related to rate allocation and rate design. R.D. at 104. As such, the ALJs noted that the *Columbia February 2021 Order* "is not fully instructive on what is required when considering the JPNUS as a non-unanimous settlement on revenue allocation and rate design." *Id*.

The ALJs were likewise not persuaded by the OSBA's argument that approval of the JPNUS will encourage assignment of disproportionately large rate increases to unrepresented classes. The ALJs noted that "[t]he OCA, the OSBA, and I&E have all fully participated in this proceeding, and the Commission has previously found that, arguably, active participation by these three entities alone constitutes representation of the entire public whose welfare is to be protected." R.D. at 105 (citing *UGI Utilities* -

[26] In the *Columbia February 2021 Order*, the Commission accepted that the allocation of distribution costs should be based, primarily, on a study that utilized the P&A ACCOSS methodology for the allocation of mains costs. *See Columbia February 2021 Order* at 230.

Electric at 37-38). Accordingly, similar to their recommendation regarding the Joint Petition, the ALJs recommended that the Commission approve the JPNUS without modification. R.D. at 106.

7. Exceptions and Replies

a. OSBA Exception No. 1 and Replies

(1) OSBA Exception No. 1

In its Exception No. 1, the OSBA argues that the ALJs failed to recognize that "no record evidence supports the revenue allocation" proposed by the Non-Unanimous Settlement. OSBA Exc. at 1. Specifically, the OSBA refers to a copy of the following table from the Recommended Decision:

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.

OSBA Exc. at 2 (citing R.D. at 97). The OSBA compares each Party's revenue allocation litigation position "at the scaled-back revenue number," based on that Party's preferred ACCOSS methodology, with the revenue allocation proposed in the Non-Unanimous Settlement. OSBA Exc. at 2.

The OSBA submits that the record evidence for the possible revenue allocations demonstrates that: (1) for Columbia and the OCA, the SDS/LGS (SDS) rate class will get a smaller percentage increase than the LDS/LGS (LDS) rate class; (2) for the OSBA, the SDS and LDS classes will get the same percentage increase; and (3) for I&E and PSU, the SDS class will get a slightly larger increase than the LDS class. *Id.* The OSBA argues that because "no party proposed an increase for the SDS class that was more than 1.13 percentage points higher than the rate increase for [the] LDS [class] at the scaled back increase," the Non-Unanimous Settlement would require the SDS class customers to incur an increase that is 3.68 percentage points higher than that for the LDS class. OSBA Exc. at 2-3. Therefore, the OSBA submits that "there is no record evidence to support the large difference in rate increases between [the] SDS and LDS [classes]." OSBA Exc. at 3 (emphasis omitted).

The OSBA also argues that the revenue allocation proposed by the Non-Unanimous Settlement "has no evidentiary basis that would allow it to be approved." OSBA Exc. at 4. The OSBA refers to a comparison of the SDS and LDS class rates of return based on each of Columbia's ACCOSS methodologies (P&A, Customer-Demand, and Average) to the Company's total system average:

	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%

OSBA Exc. at 3 (citing Columbia Exh. 111, Schs. 1 at 2, 2 at 2, and 3 at 2). The OSBA contends that the P&A ACCOSS methods indicate that the "cost recovery at present rates is much better from the SDS class than it is from the LDS class, whereas the Customer-Demand ACCOSS indicates that cost recovery from [the SDS and LDS] classes are essentially identical." OSBA Exc. at 3. Further, the OSBA argues that in the *Columbia February 2021 Order*, the Commission rejected the use of the Customer-Demand and Average ACCOSS methodologies for Columbia. Therefore, the OSBA submits that neither the revenue allocation evidence nor the cost allocation evidence supports the ALJs' conclusion that the Non-Unanimous Settlement is supported by substantial record evidence, and no Party has proffered a revenue allocation that, when compared to the LDS class, would allocate significantly larger revenue increases to the SDS class. OSBA Exc. at 3-4.

(2) Columbia's Reply

In reply, Columbia argues that the ALJs correctly concluded that there is substantial record evidence to support the revenue allocation proposed in the Non-Unanimous Settlement and, specifically, the proposed revenue allocations to the SDS and LDS rate classes. Columbia R. Exc. at 1-2 (citing R.D. at 104; OSBA Exc. at 1-3). Columbia submits that the revenue allocation agreed upon in the Non-Unanimous Settlement is essentially the same allocation that the OSBA proposed for the SDS class and is supported by the OSBA's evidence. Columbia notes that the JPNUS

Joint Petitioners agreed to a 15.39% rate increase for the SDS class and, in litigation, the OSBA proposed a scaled back rate increase of 15.4% to the SDS class. Columbia R. Exc. at 2 (citing R.D. at 97).

Columbia also submits that the Non-Unanimous 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 R. Exc. at 3 (citing Columbia R.B. at 5). Columbia notes that the revenue allocation agreed to in the Non-Unanimous Settlement for the SDS and LDS classes is: (1) fully-supported by the various Parties' evidence; and (2) within the range of the Parties' positions, including those who based their revenue allocation proposals on the P&A ACCOSS. Specifically, Columbia explains that, with regard to the LDS class: (1) I&E recommended the largest increase at 21.98%; (2) PSU recommended the smallest increase at 4.15%; (3) Columbia proposed an 11.91% increase; (4) the OCA and the OSBA proposed nearly identical increases of 15.38% and 15.39%, respectively; and (5) the Non-Unanimous Settlement proposes an 11.71% increase. Columbia R. Exc. at 2-3 (citing R.D. at 97).

(3) I&E's Reply

In its Replies, I&E disagrees with the OSBA's claim that the ALJs failed to recognize that no record evidence supports the revenue allocation proposed in the Non-Unanimous Settlement. I&E submits that the OSBA's argument that the Non-Unanimous Settlement allocates more revenue to the SDS class than the LDS class, even though the Parties argued for similar increases for both the SDS and the LDS classes, is baseless. I&E R. Exc. at 3 (citing OSBA Exc. at 1-2, 4).

I&E argues that although ACCOSSs provide guidance to rate design and are useful in determining whether costs are properly allocated between different customer classes, such studies are not exact and their results are not the only consideration in rate

design. I&E R. Exc. at 3-4 (citing *Pa. PUC v. National Fuel Gas Distribution Corporation*, 73 Pa. P.U.C. 552, 621 (1990); *Pa. PUC v. Equitable Gas Company*, 73 Pa. P.U.C. 301, 347 (1990)). Further, I&E notes that rate design is one of the most subjective elements in ratemaking, and the Commission has recognized that the ACCOSS is one factor, albeit an important factor. I&E R. Exc. at 4 (citing *Pa. PUC v. West Penn Power Company*, 73 Pa. P.U.C. 454, 516-518 (1990)). Moreover, I&E notes that although the litigated positions on revenue allocation of Columbia, the OCA, the OSBA, and I&E are all based upon the Commission-approved P&A ACCOSS methodology, their recommendations are different. Specifically, despite using the same methodology, I&E notes that Columbia recommended an allocation of 8.13 % to the residential class, 11.11% to the SDS class and 11.91% to the LDS class, in contrast to I&E's litigation recommendations of 6.17%, 22.5% and 21.97%, respectively. Accordingly, I&E submits that the Non-Unanimous Settlement allocates 15.39%, or $4,627,000, to the SDS class, which is significantly less than I&E's litigated position. I&E R. Exc. at 4 (citing I&E M.B. at 8).

I&E also addresses the OSBA's claims that a Party did not propose "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," and "the [Non-Unanimous Settlement] would require SDS customers to face an increase that is 3.68 percentage points higher than that for the LDS class." I&E R. Exc. at 5 (citing OSBA Exc. at 2-3). I&E counters that the OSBA has failed to demonstrate that the SDS class is subsidizing other customer classes because this alleged difference does not violate *Lloyd*, nor does it demonstrate that the Non-Unanimous Settlement is flawed. I&E argues that, given that the SDS class was allocated $4,627,000 in the Non-Unanimous Settlement and the analyses of the OSBA and I&E showed recommended allocations to the SDS class of $4,627,285 and $6,762,891, respectively, the Non-Unanimous Settlement allocated less revenue to the SDS class than I&E's recommended allocation. I&E R. Exc. at 5 (citing *Lloyd*).

Therefore, I&E contends that the record demonstrates that the SDS class is not subsidizing other customer classes. I&E R. Exc. at 5.

I&E also cites the testimony of its witness, Mr. Ethan H. Cline, to highlight that from the time of Columbia's 2021 base rate case[27] to the instant base rate case, the SDS class was Columbia's only customer class that moved farther from its cost to serve:

> [T]he SDS/LGSS class is the only customer class that has had its relative rate of return move further away from the system average relative return following recent base rate cases. This, along with its relative rate of return being below the system average relative rate of return shows that the SDS/LGSS was being subsidized by the RSS/RDS class and that subsidization was not being sufficiently reduced in this base rate case.

I&E R. Exc. at 6 (citing I&E St. 3 at 17-18). Further, I&E notes that it reallocated $600,000 from the residential class to the SDS class, thereby moving the SDS class toward the system average relative rate of return. Moreover, I&E notes that although I&E recommended a $6,762,891 increase to the SDS class, through the Non-Unanimous Settlement, the SDS class received an increase of only $4,627,000. I&E R. Exc. at 6. Accordingly, I&E maintains that the SDS class is not subsidizing other customer classes under the Non-Unanimous Settlement rates and, therefore, the agreed upon allocation does not violate *Lloyd*. *Id.*

I&E also argues that in Columbia's last three years of rate cases, the record demonstrates that the residential class has consistently subsidized Columbia's other customer classes, including the SDS and LDS classes. I&E R. Exc. at 6-7 (citing I&E St. 3 at 15-16). I&E notes that given that both the SDS and LDS classes are subsidized by the residential class and because the LDS class is being subsidized, the OSBA's

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[27] *Pa. PUC v. Columbia Gas of Pennsylvania, Inc.*, Docket No. R-2021-3024296 (Order entered December 16, 2021) (*Columbia December 2021 Order*)

concern appears to be that the SDS class should have received more of the subsidy in the Non-Unanimous Settlement. Accordingly, I&E submits that contrary to the OSBA's argument, although *Lloyd* does not permit substantial, long-term subsidization of one customer class at the expense of other classes, *Lloyd* does not create an entitlement to a greater subsidy. I&E R. Exc. at 7.

(4) OCA's Reply[28]

In its Replies, the OCA disagrees with the OSBA's argument that the Non-Unanimous Settlement is not based on substantial record evidence, arguing that the Non-Unanimous Settlement is consistent with an allocation that is primarily based on a P&A ACCOSS, as was approved in the *Columbia February 2021 Order*. OCA R. Exc. at 4 (citing OSBA Exc. at 3-5). The OCA notes that because it has been a proponent of the P&A ACCOSS methodology in every major gas distribution case for more than thirty years, the OCA's litigation allocation is "unquestionably" based on P&A ACCOSS. OCA R. Exc. at 4. Further, the OCA notes that its witness, Mr. Jerome D. Mierzwa, utilized the P&A ACCOSS as a guide and recommended that small commercial customers receive an allocation that is more than the allocation included in the Non-Unanimous Settlement. Moreover, the OCA argues that the ALJs recognized that the agreed upon allocation is within the range of possible outcomes because the Non-Unanimous Settlement allocates the OSBA's main represented class less money than if the Commission were to accept the OCA's proposed allocation. OCA R. Exc. at 4 (citing R.D. at 105). The OCA adds that the ALJs noted that the Non-Unanimous Settlement results in revenue allocations that lead to no system average increases above two times the current system average, including for the LDS class. OCA R. Exc. at 4

[28] The OCA submits that although it does not specifically reply to the OSBA's Exception No. 2, the OSBA's Exception No. 1 is "substantively similar" to the OSBA's Exception No. 2. OCA R. Exc. at 1.

(citing R.D. at 87). Accordingly, the OCA submits that the Commission should adopt the ALJs' conclusion that the Non-Unanimous Settlement is "supported by substantial evidence and is in the public interest in that it is within the range of possible outcomes argued by the [P]arties and is supported by their respective experts' testimony." OCA R. Exc. at 4 (citing R.D. at 105).

(5) PSU's Reply

In its Replies, PSU argues that the OSBA fails to acknowledge that its litigation position at settlement rates would result in an increase of 15.40% to the SDS class, or 0.1% more than under the Non-Unanimous Settlement. PSU R. Exc. at 5 (citing OSBA Exc. at 2-4). PSU submits that based on the record of litigation positions, the OSBA's assertion that there is an absence of record evidence supporting the Non-Unanimous Settlement allocation to the SDS rate is incorrect. PSU R. Exc. at 5 (citing OSBA St. 1-SR, Table IEc-S3; PSU St. 1-SR, Exh. PSU-SR-1; Columbia Exh. 103, Sch. 8 at 4).

PSU disagrees with the OSBA's argument that no record evidence supports an increase to the SDS class that is 3.68% larger than the increase to the LDS class, arguing that the OSBA is "parsing percentages to make comparisons to suit [the] OSBA's position now that it is opposing the allocation in the Non-Unanimous Settlement." PSU R. Exc. at 6. PSU contends that the agreed-upon allocation rate increase to the SDS class is supported by the OSBA's evidence and litigation position. PSU notes that if the full rate increase were approved, the OSBA recommended up to a 28.4% increase for both the SDS and LDS rate classes. PSU R. Exc. at 6 (citing OSBA St. 1-SR, Table IEc-S3). Further, PSU argues that based on the evidence in this proceeding, both I&E and PSU recommended a larger allocation for the SDS class than the LDS class. PSU R. Exc. at 6 (citing I&E St. 3 at 26; I&E Exh. 3, Sch 6 at 2; PSU St. 1-SR, Exh. PSU-SR-1). Moreover, PSU argues that given the competing positions and evidence submitted

supporting each Party's position, the Non-Unanimous Settlement is a reasonable outcome supported by the record evidence that substantially reduces the allocated increase to the SDS class. Furthermore, PSU contends that because the agreed upon allocation increase is 0.01% lower than the OSBA's proposed allocation at settlement rates and is 1.85 times the system average increase, the Non-Unanimous Settlement is within the Commission's guidance regarding gradualism for rate increases. PSU R. Exc. at 6 (citing the *Columbia February 2021 Order* at 138). In short, PSU submits that the OSBA's arguments fail to show any reason that the Non-Unanimous Settlement should be rejected by the Commission. PSU R. Exc. at 6.

b. OSBA Exception No. 2 and Replies

(1) OSBA Exception No. 2

In its Exception No. 2, the OSBA disagrees with the ALJs' conclusion that the revenue allocation proposed in the Non-Unanimous Settlement was within a range of litigated outcomes. OSBA Exc. at 4 (citing R.D. at 104-105). The OSBA again refers to a comparison of each Party's revenue allocation litigation position based on each Party's preferred ACCOSS methodology to the revenue allocation proposed in the Non-Unanimous Settlement to submit that when compared to the LDS rate class, "none of the various [P]arties' revenue allocation proposals assigns a much larger increase to the SDS [class]." OSBA Exc. at 4-5 (citing R.D. at 97) (emphasis omitted).

The OSBA argues that a just and reasonable rate allocation involves more than determining whether the rate increase for a specific rate class falls within the range of rate increases proposed by all of the Parties. The OSBA explains that revenue allocation is an "exercise in assigning relative increases among the various rate classes, based on ACOSS results, competitive considerations, rate gradualism, and other factors." OSBA Exc. at 5. Specifically, the OSBA asserts that in the context of the revenue

allocation criteria, evaluating the reasonableness of a revenue allocation proposal must involve consideration of the "relative" rate increases among the various rate classes. *Id.* The OSBA argues that the Non-Unanimous Settlement "simply takes an à la carte approach," by assigning a large rate increase to the SDS class based on the positions of the OCA and the OSBA, "while the LDS class is assigned a rate increase that is much lower than [the] SDS [class] and is even lower than [the] SGS2 [class] based on the position of [PSU]." OSBA Exc. at 6. Therefore, the OSBA submits that this approach "produces an illogical and unreasonable revenue allocation scheme" that will result in unfair treatment of unrepresented classes. *Id.* The OSBA further submits that the Non-Unanimous Settlement demonstrates that 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." *Id.*

The OSBA also submits that in a fully-litigated proceeding, the revenue allocation pattern of the Non-Unanimous Settlement would not arise, and the Commission would not take the "pick and choose" approach to revenue allocation. OSBA Exc. at 6. The OSBA refers to *Lloyd* and the *Columbia February 2021 Order* to argue that in a fully-litigated revenue allocation proceeding, the Commission would first evaluate the cost allocation methodology, then adjudicate the revenue allocation issues based on cost of service and other revenue allocation criteria, and finally approve a "logical and internally consistent revenue allocation across rate classes." OSBA Exc. at 6 (citing *February 2021 Columbia Gas Order*; *Lloyd*). Accordingly, the OSBA asserts that given that the "unrepresented classes are mistreated," the Non-Unanimous Settlement produces a "biased and distorted approach," and "maltreats the SDS class which is not represented by any of the settling [P]arties." OSBA Exc. at 7.

(2) Columbia's Reply

In its Replies, Columbia addresses the OSBA's: (1) disagreement with the ALJs and the JPNUS Joint Petitioners that the revenue allocation proposed in the Non-Unanimous Settlement falls within the range of likely litigation outcomes; and (2) assertion that, when compared to the proposed increase to the LDS class, no Parties proposed a revenue allocation that supports the Non-Unanimous Settlement's proposed increase to the SDS class. Columbia R. Exc. at 3 (citing OSBA Exc. at 4-5). Columbia argues that the OSBA fails to recognize that the Non-Unanimous Settlement is not based on any one Party's revenue allocation for all classes. Columbia asserts that the revenue allocation agreed to in the Non-Unanimous Settlement considers all of the Parties' proposals for all of the rate classes in reaching a reasonable compromise. Therefore, Columbia submits that the fact that one Party did not propose both an increase to the SDS class and an increase to the LDS class that matches the Non-Unanimous Settlement's proposals for those two classes does not make the Non-Unanimous Settlement unreasonable. Columbia R. Exc. at 3-4

Columbia disagrees with the OSBA's criticism of the Non-Unanimous Settlement for not considering relative rate increases among the various rate classes and instead taking an "à la carte" approach to revenue allocation. Columbia R. Exc. at 4 (citing OSBA Exc. at 6). Columbia argues that contrary to the OSBA's argument that nearly identical revenue allocation percentages should be assigned to the SDS and LDS classes, the OSBA's revenue allocation proposal for the SDS and LDS classes would allocate an unreasonably large increase to the LDS class, thereby violating the principles of gradualism. Columbia R. Exc. at 4 (citing Columbia M.B. at 13; OSBA Exc. at 5). Further, Columbia contends that there is no evidence to support the OSBA's argument that the JPNUS Joint Petitioners considered only the increases to the individual classes in isolation. Moreover, Columbia notes that the JPNUS Joint Petitioners considered many factors in evaluating the revenue allocation proposals and reaching the Non-Unanimous

Settlement, including: (1) the rate of return relative to the other system classes; (2) movement toward the cost of service; (3) gradualism; (4) rate stability; (5) predictability; (6) fairness; and (7) affordability. Columbia R. Exc. at 4 (citing Columbia St. 1 at 16-18; I&E St. 3 at 14-15; OCA St. 3 at 9; PSU St. 1 at 8, 18; CII St. 1 at 5-6).

Columbia also disagrees with the OSBA's claim that if this issue were fully-litigated, the Commission would never adopt the Non-Unanimous Settlement's approach to revenue allocation. Columbia R. Exc. at 4 (citing OSBA Exc. at 6). Columbia argues that contrary to the OSBA's claims otherwise, 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. Columbia R. Exc. at 4 (citing Columbia M.B. at 4-5). Further, Columbia argues that the ALJs correctly concluded that the Non-Unanimous Settlement's revenue allocation meets this standard for approval. Columbia R. Exc. at 4 (citing R.D. at 104). Moreover, Columbia contends that the Non-Unanimous 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. Columbia R. Exc. at 4-5 (citing *Columbia December 2021 Order* at 54).

Columbia continues that the OSBA's theory that the Non-Unanimous Settlement should not be approved unless the Commission would reach the same result in a fully-litigated proceeding fails to recognize that the Commission: (1) could rely on the recommendations of multiple different parties in reaching an appropriate revenue allocation; and (2) is not required to select one party's proposal for all rate classes. Columbia asserts that contrary to the OSBA's contention otherwise, the revenue allocation proposed in the Non-Unanimous Settlement represents a reasonable compromise of all of the revenue allocation proposals and, if the revenue allocation issues were fully-litigated, the Commission could adopt the revenue allocation that was agreed to in the Non-Unanimous Settlement. Columbia R. Exc. at 5.

Columbia further argues that based on the record evidence, the OSBA's claim that the revenue allocation agreed to in the Non-Unanimous Settlement is unfair to the unrepresented rate classes, and specifically the SDS class, is unclear and baseless. Columbia R. Exc. at 5-6 (citing OSBA Exc. at 5-7). Columbia counters that contrary to the OSBA's claims, there are no unrepresented rate classes in this proceeding and I&E fully-participated in this proceeding, representing the public interest as a whole. Accordingly, Columbia notes that to determine an appropriate result for the Company and all of the customers, I&E evaluated the revenue allocation issues from multiple perspectives. Columbia R. Exc. at 5 (citing R.D. at 77-78). Moreover, Columbia notes that CII indicated that its members receive service from Columbia under several rate schedules, including the SDS schedule. Columbia R. Exc. at 5 (citing CII St. 1 at 5). Columbia also notes that PSU presented testimony regarding its position on revenue allocation to the SDS class. Columbia R. Exc. at 5 (citing PSU St. 1-SR at 18).

(3) I&E's Reply

In its Replies, I&E disagrees with the OSBA's assertion that the revenue allocation outlined in the Non-Unanimous Settlement does not fall within a range of possible outcomes. I&E contends that the Non-Unanimous Settlement allocates a portion of the revenue increase to each class within the range of the Party's litigated positions, and, based on the five allocation proposals, there is no allocation that is outside of the range of possibilities. I&E R. Exc. at 7 (citing OSBA Exc. at 5). I&E explains that for the SDS class which received a 15.39% increase, the range would be 5.28% at the low end and 22.5% at the high end, which is within the range of possibilities for this class. Further, I&E argues that contrary to the OSBA's claim that just and reasonable revenue allocation involves more than "simply determining whether the rate increase for any particular class lies within the range of rate increases proposed by all of the [P]arties," revenue allocation is more of an art than a science and many factors and subjectivity go into each party's position. *Id.*

I&E challenges the OSBA's arguments that: (1) when compared to the LDS class, none of the proposed revenue allocations assigns a larger increase to the SDS class; and (2) there is no record evidence to support the large difference in rate increases between the SDS and LDS classes. I&E R. Exc. at 8 (citing OSBA Exc. at 3, 5). I&E refers to the table presented by the OSBA in its Exceptions to assert that the OSBA focuses on the percentage of difference in the SDS and LDS rate increases to argue that this percentage demonstrates a large difference. However, I&E counters that the OSBA's concern here is flawed because I&E's litigated position shows that it allocated approximately $1.5 million more to the SDS class than the LDS class. Further, I&E argues that the Non-Unanimous Settlement reflects a $1.8 million difference between the same rate classes. Moreover, I&E notes that in the context of allocating the agreed-upon $44.5 million revenue increase, the approximate $300,000 of additional revenue allocated to the SDS class is not much larger, particularly given that the SDS and LDS classes are not paying their cost to serve. I&E R. Exc. at 8.

I&E also challenges the OSBA's assertions that the Non-Unanimous Settlement: (1) "cherry-picks" the best-looking revenue allocation among the rate classes, leaving the balance for the unrepresented classes; (2) "maltreats" the SDS class; and (3) leaves the SDS class unrepresented by a settling Party. I&E R. Exc. at 8-9 (citing OSBA Exc. at 6-7). I&E avers that the Commission has the authority to take appropriate enforcement actions that are necessary to ensure compliance with the Code and Commission Regulations and Orders, and the Commission established I&E to serve as the prosecutory bureau to represent the public interest in ratemaking and utility service matters and to enforce compliance with the Code. I&E R. Exc. at 8-9 (citing 66 Pa. C.S. § 308.2(a)(1l); 66 Pa. C.S. §§ 101, *et seq.;* 52 Pa. Code §§ 1.1, *et seq.*; *Implementation of Act 129 of 2008; Organization of Bureaus and Offices*, Docket No. M-2008-2071852 (Order entered August 11, 2011)). Further, I&E notes that by representing the public interest in rate proceedings before the Commission, I&E balances the interests of customers, utilities, and the regulated community, thereby ensuring that a utility's rates

are just, reasonable, and nondiscriminatory. I&E R. Exc. at 9 (citing 66 Pa. C.S. §§ 1301, 1304). Moreover, I&E argues that contrary to the OSBA's claims otherwise and given that I&E provided its litigation positions and engaged in the settlement discussions to ensure that the public interest was represented, I&E takes its charge to represent the public interest seriously. I&E R. Exc. at 9. Therefore, I&E submits that although the SDS class was not explicitly represented in this proceeding, I&E participated on behalf of the public interest as a whole and presented a position on revenue allocated to all customer classes, including the SDS class, in its testimony and settlement discussions. Therefore, I&E submits that the increase allocated to the SDS class is supported by the record and is in the public interest. *Id*. at 10.

I&E also questions the OSBA's use of the terms "cherry-pick" and "maltreat," noting that this implies that the Parties "took what they wanted for their customer classes and then allocated outrageous amounts to the SDS class." I&E R. Exc. at 9. I&E argues that the SDS class was allocated $4,627,000 in the Non-Unanimous Settlement and, with regard to the litigation positions: (1) I&E recommended an allocation to the SDS class of $6,762,891, or more than the agreed upon allocation; (2) Columbia and the OCA recommended allocations to the SDS class of $3,339,868 and $4,414,877, respectively, or less than the agreed upon allocation; and (3) the OSBA recommended an allocation to the SDS class of $4,627,285, or "exactly what was agreed upon in the JPNUS." *Id*. at 9-10. I&E states that given that the Non-Unanimous Settlement allocation is what the OSBA recommended for the SDS class and fell within the range of being higher than what some Parties recommended and lower than what other Parties recommended, the OSBA's concern here is difficult to understand. *Id*. at 10.

I&E also notes that the Parties did not pick the most-favorable numbers within each range, as the OCA and PSU agreed to take more revenue for their respective classes than what was presented in their litigated positions. I&E explains that although

the residential class was already subsidizing other customer classes, the OCA recommended a 6.7% increase and received a 7.04% increase, and PSU recommended a 4.15% increase for its class and received an 11.71% increase. Therefore, I&E submits that the OSBA's contention that the represented Parties cherry-picked their preferred allocations and shifted all other revenue to the unrepresented SDS class is incorrect. I&E R. Exc. at 10.

(4) PSU's Reply

In its Replies, PSU disagrees with the OSBA's reasoning that the Commission should reject the Non-Unanimous Settlement because: (1) the agreed-upon allocation to the SDS class is not within a reasonable range of litigated outcomes; and (2) if the increase to the SDS class were within a reasonable range of litigated outcomes, then such a measurement should not be utilized by the Commission when evaluating settlements. PSU R. Exc. at 7 (citing OSBA Exc. at 4-7). PSU refers to the table presented by the OSBA in its Exceptions to note that the allocation to each rate class, including the SDS class, is within a reasonable range of outcomes, and some Parties wanted less of an increase and other Parties wanted more of an increase. PSU R. Exc. at 7 (citing OSBA Exc. at 2). PSU explains that when comparing the litigation position of each Party at the agreed upon revenue increase of $44.5 million: (1) the Residential class would have received an increase between $23.2 million and $33.9 million; (2) the SDS class would have received an increase between $1.59 million and $6.76 million; and (3) the LDS class would have received an increase between $0.99 million and $5.25 million. Therefore, PSU submits that each allocation within the Non-Unanimous Settlement is a reasonable compromise and avoids the possibility of relatively high percentage increases for some rate classes. PSU R. Exc. at 7 (citing OSBA Exc. at 2).

PSU contends that the OSBA's argument that the Commission should not approve revenue allocation settlements where the agreed upon revenue allocation is

within a reasonable range of litigation positions is incorrect and should be rejected because it: (1) ignores prior Commission decisions; (2) is based on the false premise that a rate allocation is a predetermined equation that turns an ACCOSS into a specific rate increase to each class and, therefore, revenue allocation must align to a specific ACCOSS; (3) alleges that the Non-Unanimous Settlement reflects a "pick and choose" outcome between rate classes; and (4) asserts that contrary to record evidence, 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. PSU R. Exc. at 7-8.

PSU cites *Pike County* to note 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. Further, PSU submits that the ALJs correctly applied this standard and the Non-Unanimous Settlement fulfills this standard. Moreover, PSU contends that the OSBA's argument is "contradictory and ironic" because the OSBA "ignores Commission decisions when it suits its position." PSU R. Exc. at 8. PSU explains that the OSBA, when discussing the proceeding for the *Columbia February 2021 Order*, argues that Commission decisions have precedence and must be followed, but ignores prior Commission decisions, such as *Pike County*, when arguing that the Commission should change how it evaluates non-unanimous rate allocation settlements. PSU R. Exc. at 8 (citing OSBA Exc. at 5-6, 7-8).

PSU also questions the OSBA's belief that a specific ACCOSS must support each rate allocation, arguing that this is a misinterpretation of the purpose of a rate allocation and an ACCOSS. PSU contends that its witness, Mr. James L. Crist, presented substantial evidence to support that the Customer-Demand ACCOSS should be used to determine revenue allocation. PSU R. Exc. at 8. PSU explains that during the settlement process, the Parties' views and the evidence were considered, and the resulting revenue allocation represents a compromise of the Parties' positions. PSU R. Exc. at 8-9

(citing OSBA St. 1 at 15-18). PSU submits that because rate allocation is often based on a variety of positions or methods to support the rate class that a particular party is representing, a range of reasonable outcomes is appropriate to evaluate the Non-Unanimous Settlement and determine whether it is just, reasonable, and in the public interest. PSU R. Exc. at 9.

PSU disagrees with the OSBA's assertion that the Non-Unanimous Settlement reflects a "pick and choose" between the Parties and that the SDS class rate allocation reflects the absence of representation by a Party. PSU R. Exc. at 9. PSU contends that the OSBA ignores that in addition to the LDS class, PSU also represents the interests of the SDS class because PSU has customer accounts in both classes. PSU notes that Knouse, a member of the CII in this proceeding, indicated that it receives service from the Company under the LDS, SDS, and SGDS rate schedules. PSU R. Exc. at 9 (citing CII St. 1 at 8). Further, PSU notes that Mr. Crist testified against the litigation positions on revenue allocation of the OCA and I&E, both of which were seeking larger increases for the SDS and LDS classes than initially proposed by the Company. PSU R. Exc. at 9-10. Moreover, PSU notes that its recommended increase for the SDS class of $82.2 million was substantially lower than the OSBA's, with PSU recommending an increase to the SDS class of no more than $2.932 million, whereas the OSBA recommended that the SDS class receive an increase of no more than $8.53 million, or 3 times as much as PSU's recommendation. PSU R. Exc. at 10 (citing PSU St. 1-SR, Exh. PSU-1-SR; OSBA St. 1-SR, Table IEc-S3). Accordingly, PSU submits that "the result of technical, lengthy, and thorough negotiations" is that the JPNUS Joint Petitioners fully-support the Non-Unanimous Settlement, and PSU strongly disagrees with the OSBA's position that the SDS class was treated unfairly when the SDS class rate allocation at the settlement revenue increase is nearly identical to the OSBA's litigation position. PSU R. Exc. at 10 (citing OSBA Exc. at 5). PSU adds that 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." PSU R. Exc. at 10-11 (citing *Peoples TWP Order*).

c. OSBA Exception No. 3 and Replies

(1) OSBA Exception No. 3

In its Exception No. 3, the OSBA argues that the ALJs committed a legal error by rejecting Commission precedent. Specifically, the OSBA provides a "parsing [of] the phrases" from the following conclusion in the Recommended Decision to assert that "this legal conclusion will lead to chaos and should be rejected by the Commission:"

> We disagree with the OSBA that the Commission's *Columbia Gas February 2021 Order* [*Columbia 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* [*Columbia February 2021 Order*] was in the context of full litigation of issues related to rate allocation and rate design. Therefore, the *Columbia Gas February 2021 Order* [*Columbia February 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.

OSBA Exc. at 7 (citing R.D. at 104).

First, the OSBA refers to the phrase "not fully instructive" to argue that this "will encourage parties to reject Commission precedent to litigate and re-litigate every issue before the Commission." OSBA Exc. at 7 (citing R.D. at 104). The OSBA contends that in the context of a non-unanimous settlement, this policy will encourage parties who disagree with Commission precedent to join-together to attempt to overturn precedent through non-unanimous settlements. OSBA Exc. at 8. Further, the OSBA argues that if the Commission were to reject the Non-Unanimous Settlement, it would

retain its ability to defend its own precedent; however, if the Commission approves the Non-Unanimous Settlement, then the Commission "must recognize that it has effectively reversed its position." OSBA Exc. at 8. The OSBA explains that in this proceeding, the Commission approved the P&A approach to mains cost allocation, which produces a 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%." OSBA Exc. at 8 (citing Columbia Exh. 111, Sch 2). The OSBA contends that consistent with Commission policy and the decision in *Lloyd*, the LDS class should be assigned the largest rate increase, but the Non-Unanimous Settlement assigns higher increases to both the SGS2 and SDS classes than to the LDS class. Moreover, the OSBA argues that a lower increase for the LDS class can only be justified on a cost basis by relying, in-part, on the Customer-Demand ACCOSS methodology. Therefore, the OSBA submits that adoption of the revenue allocation in the Non-Unanimous Settlement must "be deemed to be a rejection of the Commission's *Columbia February 2021 Order* on mains cost allocation." OSBA Exc. at 8.

Next, the OSBA addresses the phrase "in the context of a non-unanimous settlement" to argue that if it applies to a non-unanimous settlement, then it will apply to a full settlement and "this will be a death sentence for any customer class that is not represented by counsel for the Commission." OSBA Exc. at 9 (citing R.D. at 104). Finally, the OSBA refers to the phrase "revenue allocation and rate design" to argue that there is nothing special about restricting the issues to revenue allocation and rate design and "any attorney worth their hourly fee will apply this standard to any issue before the Commission." *Id.* In sum, the OSBA submits that, whether the outcome is litigated, a full settlement, or a non-unanimous settlement, the Commonwealth Court's ruling that cost of service is the "polestar" of utility rates is one legal requirement that cannot be ignored by any party. OSBA Exc. at 9 (citing R.D. at 72; *Lloyd*).

(2) Columbia's Reply

In its Replies, Columbia argues that the OSBA's concerns lack factual and legal support and do not provide a basis for rejecting the ALJs' approval of the Non-Unanimous Settlement. Columbia R. Exc. at 6 (citing OSBA Exc. at 7-8). The Company submits that contrary to the OSBA's allegations, the Non-Unanimous Settlement is not inconsistent with the Commission's endorsement of the P&A ACCOSS in the *Columbia February 2021 Order*. Columbia notes that the JPNUS Joint Petitioners did not specify an ACCOSS that was used to arrive at the agreed upon revenue allocation; rather, based on their various positions on revenue allocation, the JPNUS Joint Petitioners compromised on the agreed upon revenue allocation. Accordingly, Columbia submits that it is unnecessary for the Commission to accept a specific ACCOSS in order to approve the Non-Unanimous Settlement, and the OSBA's claim that if the Commission approves the Non-Unanimous Settlement, then the Commission will have reversed its position in the *Columbia February 2021 Order*, is incorrect. Columbia R. Exc. at 6-7.

Columbia cites several prior Commission decisions to challenge the OSBA's contention that approval of the proposed allocation in the Non-Unanimous Settlement represents the reversal of a prior Commission decision. Specifically, Columbia argues that the Commission has previously explained that as long as a settlement is in the public interest, parties to settled cases are afforded flexibility in reaching amicable resolutions. Columbia R. Exc. at 7 (citing *Pa. PUC v. MXenergy Electric Inc.*, Docket No. M-2012-2201861 (Order entered December 5, 2013)). Further, Columbia argues that the Commission has previously approved settlements that proposed a "black box" revenue allocation without specifying a particular ACCOSS. Columbia R. Exc. at 7 (citing *Pa. PUC v. Peoples Natural Gas Company*, Docket No. R-2018-3006818 (Order entered October 3, 2019); *Columbia December 2021 Order*). Moreover, Columbia maintains that the agreed-upon revenue allocation is fully supported

by the evidence presented by the Parties that relied on the P&A ACCOSS. Columbia R. Exc. at 7 (citing Columbia M.B. at 11; Columbia SISNUS at 5).

Columbia also disagrees with the OSBA's concern that approval of the Non-Unanimous Settlement will encourage parties to use settlements to overturn Commission precedent. Columbia R. Exc. at 7 (citing OSBA Exc. at 7). Columbia argues that the Commission has recognized that rate case settlements are the product of compromise and, as such, are not binding on anyone other than the settling parties and should not be afforded precedential value. Columbia R. Exc. at 7 (citing *Pa. PUC v. PECO Energy Company – Gas Division*, Docket No. R-2020-3018929 (Order entered June 22, 2021) (*2021 PECO Order*)). Further, Columbia argues that contrary to the OSBA's assertion otherwise, the Non-Unanimous Settlement clearly states that the JPNUS Joint Petitioners do not intend to use the Non-Unanimous Settlement as an indirect attempt to overturn Commission precedent. Columbia R. Exc. at 8 (citing JPNUS at ¶ 33). Moreover, Columbia disagrees with the OSBA's assertion that approval of the Non-Unanimous Settlement would violate *Lloyd*. Columbia R. Exc. at 8 (citing OSBA Exc. at 9).

Columbia further challenges the OSBA's position that 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 P&A ACCOSS. Columbia explains that the OSBA's position here misinterprets *Lloyd* by requiring cost of service to be the only factor that the Commission would consider for revenue allocation. Columbia counters that although the cost of service is the primary consideration in allocating the revenue requirement, other important factors, including gradualism, may be considered as long as the proposed revenue allocation moves rates closer to the cost of service. Columbia R. Exc. at 8-9 (citing *Pa. PUC. v. PPL Electric Utilities Corporation*, Docket No. R-00049255 (Order on Remand entered July 25, 2007)). Further, Columbia notes that 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 R. Exc. at 9 (citing Columbia M.B. at 13). Moreover, Columbia argues that unlike the OSBA's proposed revenue allocation, the agreed upon revenue allocation for the Non-Unanimous Settlement gradually moves distribution rates for each class closer to the full cost of providing service. Therefore, Columbia submits that the ALJs correctly approved the Non-Unanimous Settlement as just, reasonable, and supported by substantial evidence. Columbia R. Exc. at 9 (citing Columbia R. Exc. at 2-3; R.D. at 106).

(3) I&E's Reply

In its Replies, I&E disagrees with the OSBA's argument that the agreed-upon revenue allocation in the Non-Unanimous Settlement is inconsistent with the Commission's *Columbia February 2021 Order*. I&E contends that the OSBA's argument ignores that the Non-Unanimous Settlement is a "black box" settlement in which the revenue allocation methodology was not explicitly agreed upon. I&E R. Exc. at 11 (citing OSBA Exc. at 7). I&E notes that in the context of a base rate case, "black box" settlements are common given that it is difficult, if not impossible, for the various parties to agree upon most of the specific components. I&E R. Exc. at 11. Further, I&E notes that it is unaware of any settlement of a base rate case, including those settlements to which the OSBA was a party, that was rejected by the Commission as a result of not specifying a revenue allocation methodology. Accordingly, I&E submits that whether in the context of a unanimous or non-unanimous settlement, specifying an allocation methodology has not historically been a requirement for Commission approval. *Id.*

I&E argues that to find that a settlement is in the public interest, identifying and resolving each issue raised in the proceeding is unnecessary and such a result could not be achieved as part of a settlement. I&E explains that revenue allocation can be

arrived at through a variety of ways, but the nature of a "black box" settlement is preferable because the parties are permitted to agree upon an ultimate outcome without making compromises on positions that they may wish to take in future litigation. As such, I&E submits that because of its "black box" nature, the Non-Unanimous Settlement does not reflect agreement upon individual issues. I&E R. Exc. at 11-12.

I&E cites the *Peoples Twp Order* in support of its position that the Commission has endorsed the use of "black box" settlements, the concept of "black box" settlements does not change when the settlement is non-unanimous, and it is unnecessary to identify the methodology used to determine the agreed upon revenue allocation. I&E R. Exc. at 12 (citing *Peoples Twp Order* at 28). Further, I&E argues that the Non-Unanimous Settlement remains silent regarding the methodology that was used to determine the agreed upon revenue allocation and rate design and by accepting the Non-Unanimous Settlement as a "black box" settlement, the Commission would not be overturning precedent, nor would it be establishing new precedent because settlements are non-precedential. I&E R. Exc. at 12-13. Moreover, I&E notes that the Non-Unanimous Settlement states that "its terms and conditions may not be cited as precedent in any future proceeding." I&E R. Exc. at 13 (citing Non-Unanimous Settlement at ¶¶ 7, 30).

I&E refers to the *Pike County* rate case to support its position that the Commission has recently affirmed that non-unanimous "black box" settlements, with respect to revenue allocation and rate design, are appropriate and in the public interest. Specifically, I&E notes that in *Pike County*, the parties to the non-unanimous settlement agreed to a rate design and structure, but the OSBA argued that "a single cost of service study must be identified as the underpinning of the agreed upon compromise rate structure and rate design." I&E R. Exc. at 13 (citing *Pike County* at 32). Further, I&E notes that because no single ACCOSS was required as a prerequisite for approval of a "black box" settlement of the revenue allocation among customer classes, the Parties to

the settlement indicated that "no single cost of service study methodology was relied upon in reaching the compromise rate structure and rate design." I&E R. Exc. at 13 (citing *Pike County* at 33). Moreover, I&E notes that the Commission adopted the recommended decision approving the "black box" rate design settlement without modification. I&E R. Exc. at 13 (citing *Pike County* at 35).

I&E also argues that, in the instant proceeding, although the OSBA appears to advocate for adherence to Commission precedent, the OSBA makes inconsistent statements indicating that it would "accept any revenue allocation proffered by any party in this proceeding," and "the issue of the ALJs ignoring Commission precedent to approve the JPNUS seems absurd." I&E R. Exc. at 14 (citing OSBA Exc. at 10). Specifically, I&E questions the OSBA's claim that it would accept any revenue allocation, asserting that the OSBA seems to agree that it would be appropriate for the Commission to adopt PSU's position, which does not utilize the Commission's approved P&A ACCOSS methodology and, therefore, would ignore recent Commission precedent that required the use of the P&A ACCOSS methodology in the proceeding for the *Columbia February 2021 Order*. I&E R. Exc. at 14.

I&E maintains that the revenue allocation set forth in the Non-Unanimous Settlement reflects a compromise between the JPNUS Joint Petitioners and recognizes the influence of the P&A ACCOSS methodology. Further, I&E asserts that consistent with *Lloyd*, the Non-Unanimous Settlement mitigates the proposed subsidies and moves each class closer to its actual cost of service. I&E R. Exc. at 14 (citing I&E M.B. at 9-10). Moreover, I&E avers that the Non-Unanimous Settlement, as a "black box" settlement with no specific methodology, must be adopted by the JPNUS Joint Petitioners. Accordingly, I&E submits that because the revenue allocation proposed is in the public interest and not contrary to Commission precedent, the ALJs did not err when they approved the Non-Unanimous Settlement without modification. I&E R. Exc. at 14.

(4) OCA's Reply

In its Replies, the OCA submits that the ALJs' recommended adoption of the Non-Unanimous Settlement is consistent with sound ratemaking principles. OCA R. Exc. at 1 (citing OSBA Exc. at 7-8). The OCA avers that the ALJs properly observed that the decision in the *Columbia February 2021 Order* was within the context of a full litigation of issues related to rate allocation and rate design and, thus, "is not fully instructive on what is required" when considering a non-unanimous settlement on revenue allocation and rate design. OCA R. Exc. at 2 (citing R.D. at 104). Moreover, the OCA asserts that in the instant proceeding, the ALJs applied the correct standard for the review of the Non-Unanimous Settlement, and correctly determined that the Non-Unanimous Settlement met that standard. OCA R. Exc. at 2-3 (citing R.D. at 17-18). The OCA refers to *Pike County* to note that although the OSBA opposed the revenue allocation that was recommended for approval in that case, the Commission approved the Non-Unanimous Settlement over the OSBA's objections. OCA R. Exc. at 3.

The OCA addresses the ALJs' summary of the law governing the setting of rates and the importance of due process in the context of a non-unanimous settlement to submit that the Non-Unanimous Settlement is consistent with applicable law regarding the allocation of distribution costs. OCA R. Exc. at 3 (citing R.D. at 104-105). The OCA observes that the Commission and courts have recognized that cost of service is a guide, or "polestar," in the settling of rates. OCA R. Exc. at 3 (citing *Lloyd*). Accordingly, the OCA submits that it was reasonable to utilize the ACCOSS that was presented in this proceeding, as well as the P&A ACCOSS methodology produced by Columbia, in the allocation of the settled upon revenue requirement increase. OCA R. Exc. at 3 (citing R.D. at 74).

The OCA also disagrees with the OSBA's argument that the Non-Unanimous Settlement must adhere to ratemaking principles (*i.e.*, revenue

allocation) that were accepted in the utility's most-recent litigated Commission proceeding (*i.e.*, the proceeding for the *Columbia February 2021 Order*). The OCA contends that the OSBA's argument could hinder settlement discussions and harm the development of the record in future proceedings. OCA R. Exc. at 4-5. Further, the OCA argues that the JPNUS Joint Petitioners are aware that settlements do not constitute Commission precedent, and the OCA never advocated for the overturning of Commission precedent through a non-unanimous settlement because such an attempt would be unreasonable. Moreover, the OCA asserts that an examination by the Commission of the Non-Unanimous Settlement under the framework requested by the OSBA is unnecessary. OCA R. Exc. at 5.

(5) PSU's Reply

In its Replies, PSU disagrees with the OSBA's argument that the Commission's decision in the *Columbia February 2021 Order* is precedential and requires that the P&A ACCOSS methodology must be used in the instant proceeding. PSU R. Exc. at 11 (citing OSBA Exc. at 7-9). PSU cites the *2021 PECO Order* to note that the Commission relied on the Average and Excess (A&E) methodology as a guide for revenue allocation and rejected the OCA's P&A ACCOSS methodology. PSU R. Exc. at 11 (citing *2021 PECO Order* at 129). Further, PSU argues that the Commission understands that different ACCOSS methodologies exist, and the selection of one methodology for one utility in one rate case does not require that same methodology in all subsequent cases. Accordingly, PSU submits that the Commission is not required to follow precedent and must decide each case based on the merits, facts, and evidence in a particular proceeding. PSU R. Exc. at 11-12 (citing PSU St. 1-SR at 15; *Columbia February 2021 Order*).

PSU notes that there are materially different circumstances between the evidentiary record for this proceeding and the evidentiary record in the proceeding for the

Columbia February 2021 Order. As such, PSU asserts that the record here does not support the use of the P&A ACCOSS methodology. PSU R. Exc. at 12. PSU explains that in the proceeding for the *Columbia February 2021 Order*, the Customer-Demand ACCOSS would have been the preferred methodology if Columbia's Customer-Demand ACCOSS had not contained alleged errors. PSU continues that in the instant proceeding, those errors have since been removed from Columbia's Customer-Demand ACCOSS. PSU R. Exc. at 12-13 (citing PSU St. 1 at 12-13). Further, PSU argues that it has presented novel evidence demonstrating that Columbia's process for determining new mains investment does not consider average annual demand but is a function of the location and peak demand of a new customer. PSU R. Exc. at 13 (citing PSU St. 1 at 14-18). Moreover, PSU argues that Columbia similarly demonstrated that the P&A ACCOSS over-allocates mains investment to the Company's largest customers. PSU R. Exc. at 13 (citing Columbia St. 6-R at 9-10). Therefore, PSU submits that the OSBA's argument that the Commission set a precedent in the *Columbia February 2021 Order* that the P&A ACCOSS methodology must be adopted for all natural gas ACCOSS is "fundamentally wrong as a matter of both fact and law." PSU R. Exc. at 13 (citing *Columbia February 2021 Order* at 124). Additionally, PSU notes that the JPNUS Joint Petitioners do not endorse an ACCOSS methodology but, rather, reach a compromise without admission or prejudice to any Party's position. PSU R. Exc. at 13-14 (citing 52 Pa. Code § 5.231(a)).

PSU also argues that the Commission cannot declare a particular ACCOSS be used in future proceedings through this proceeding because only the facts and circumstances in this proceeding should be considered. PSU submits that the OSBA's argument that "chaos" will ensue if the Commission does not mandate that the P&A ACCOSS be used in all future Columbia base rate cases ignores due process, the mandates of the Code, and that facts and circumstances can and do change. PSU R. Exc. at 14. Further, PSU argues that the Commission cannot ignore or preclude evidence in a future proceeding and default to an "irrebuttable presumption" from facts in a prior case.

PSU R. Exc. at 14 (citing *Pa. PUC v. City of Pittsburgh*, 90 A.2d 607, 618 (Pa. Super. 1952)). PSU notes that the Commission has previously addressed the concept that due process requires adjudicating proceedings on a case-by-case basis when rejecting a request by a party seeking to exclude evidence from a future proceeding. PSU R. Exc. at 14-15 (citing *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 (Order entered June 22, 2000)).

d. Mr. Culbertson Exception No. 5 and Reply

(1) Mr. Culbertson Exception No. 5

In his Exception No. 5, Mr. Culbertson objects to the ALJs' Finding of Fact No. 15 which states that "[t]he revenue allocation set forth in the Joint Petition for Non-Unanimous Settlement is within the range of possible outcomes had revenue allocation been fully litigated." Culbertson Exc. at 26 (citing R.D. at 13). Mr. Culbertson questions why a publicly traded company would submit a document asking for $82 million for capital expenditures and then settle for $44.5 million. He opines that the $44.5 million revenue requirement increase agreed to in the Partial Settlement is probably "too good to be true!" and contends that one or both of the numbers are wrong. Mr. Culbertson also avers that a "Truth-In-Negotiations" law should be passed to protect ratepayers. Culbertson Exc. at 27.

(2) Columbia's Reply

In reply, Columbia avers that 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 Recommended Decision. Columbia R. Exc. at 16. In regard to Mr. Culbertson's suggestion for the need to pass a "Truth-In-Negotiations" law, Columbia asserts that a utility's rate case is not an appropriate place to advocate for the General Assembly to pass new legislation pertaining to public utilities. *Id*. at 17.

8. Disposition

Based upon our review, and as discussed in more detail, *infra*, having thoroughly reviewed Columbia's base rate filing, the supporting evidence of record, and the proposed revenue allocation and rate design in the Non-Unanimous Settlement, the Recommended Decision, and the OSBA's and Mr. Culbertson's Exceptions and the Replies thereto, we conclude that it is in the public interest to approve the Non-Unanimous Settlement. Therefore, we shall deny the OSBA's Exceptions Nos. 1, 2, and 3 and Mr. Culbertson's Exception No. 5, adopt the ALJs' recommendation, and approve the Non-Unanimous Settlement without modification.

In taking this action, we concur with Columbia, I&E, the OCA, PSU, CII, CAUSE-PA, and PA Task Force and the ALJs that the provisions of the Non-Unanimous Settlement, in these circumstances, achieve a just and reasonable rate increase among Columbia's customer rate classes, which was supported by substantial evidence of record. Accordingly, we disagree with the OSBA's argument that the negotiated Non-Unanimous Settlement is not supported by substantial evidence.

In its Exceptions, the OSBA contends that the JPNUS; "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." OSBA Exc. at 6. The OSBA further argues that considering the competing positions regarding revenue allocation offered by the Parties in this proceeding, in order to satisfy *Lloyd*, nearly identical revenue allocation percentages should be assigned to the SDS and

LDS rate classes. The OSBA therefore, contends that the JPNUS is flawed since it allocates a higher percentage increase to the SDS than the LDS rate class, and posits that, "[o]nly the SDS class is not explicitly represented. Not surprisingly, the JPNUS maltreats the SDS class which is not represented by any of the settling parties." OSBA Exc. at 7.

Contrary to the OSBA's contention, the ALJs correctly concluded that there is substantial record evidence to support the revenue allocation set forth in the Non-Unanimous Settlement, including the proposed allocations for the SDS and LDS classes. R.D. at 104. We find that the OSBA's position, that the ALJs were required to approve and rely upon a single ACCOSS among those proffered by the Parties in order to approve the "black box" compromise revenue allocation and rate design achieved under the Non-Unanimous Settlement, is without merit. To the contrary, we approve the Parties' efforts at reaching a reasonable and just resolution of the allocation of revenues based upon their agreement that is within the range of possible outcomes argued by the Parties and supported by their respective experts' testimony.

The OSBA's argument partially relies on the OSBA's version of Columbia's P&A ACCOSS and ignores that the revenue allocation under the Non-Unanimous Settlement was a compromise between the Parties' competing *revenue allocation* proposals, which albeit were guided by the ACCOSS methodology utilized by each Party's expert. Nonetheless, the OSBA fails to acknowledge that because the JPNUS Joint Petitioners agreed to a negotiated methodology for allocating the settled upon revenue increase, there was not a full settlement cost of service available to calculate the degree to which each rate class is moved closer to its actual cost of service under settlement rates. Rather, the revenue allocation and rate design put forth in the Non-Unanimous Settlement reflect a negotiated compromise between the JPNUS Joint Petitioners' positions on parity.

In this proceeding, four out of the five litigated positions (the positions of Columbia, the OCA, the OSBA, and I&E) presented in the following table (scaled down to the agreed upon $44.5 million increase) use some form of the P&A ACCOSS methodology as guidance for their respective revenue allocation recommendations. Although the four Parties based their own recommendations on the P&A ACCOSS methodology, all four arrived at different conclusions about how a revenue allocation should be structured.

Comparison of Scaled Back Litigation Positions vs. Settlement Revenue Allocation

Class	Columbia Allocation[1]		OCA Recommended Allocation[2]		OSBA Recommended Allocation[3]		I&E Recommended Allocation[4]		PSU Recommended Allocation[5]		JPNUS Allocation[6]	
(A)	(B)		(C)		(D)		(E)		(F)		(G)	
RSS/RDS	$30,579,714	5.1%	$25,213,700	4.2%	$26,498,108	4.4%	$23,230,021	3.9%	$33,867,576	5.7%	$26,500,019	4.4%
SGSS/DS-1	$3,752,629	5.1%	$5,166,450	7.0%	$3,726,845	5.1%	$4,488,601	6.1%	$3,656,336	5.0%	$4,537,000	6.2%
SGSS/DS-2	$3,976,116	5.2%	$6,029,750	8.0%	$5,961,404	7.9%	$4,755,919	6.3%	$4,387,603	5.8%	$6,030,000	8.0%
SDS/LGSS	$3,338,312	9.4%	$4,414,400	12.4%	$4,627,285	13.0%	$6,762,891	19.0%	$1,588,393	4.5%	$4,627,000	13.0%
LDS/LGSS	$2,845,712	11.8%	$3,675,700	15.2%	$3,679,219	15.2%	$5,253,498	21.7%	$992,576	4.1%	$2,800,000	11.6%
MLS/MLDS	$122	0.01%	$0	0.0%	$0	0.0%	$224	0.0%	$122	0.01%	$0	0.0%
Flex	$7,394	0.2%	$0	0.0%	$7,139	0.2%	$8,845	0.2%	$5,981	0.1%	$5,981	0.1%
Total	**$44,500,000**	**5.5%**	**$44,500,000**	**5.5%**	**$44,500,000**	**5.5%**	**$44,500,000**	**5.5%**	**$44,500,000**	**5.5%**	**$44,500,000**	**5.5%**

[1] Columbia's allocation was derived by applying the Company's proposed allocation percentages for each class to the agreed-upon revenue increase. *See* Columbia St. 6 at 20.

[2] The OCA's allocation was derived by applying the OCA's proposed scale back methodology to the OCA's litigation position on revenue allocation. *See* OCA St. 3SR at 4; OCA St. 3 at 12.

[3] The OSBA's allocation was derived by proportionally scaling back the OSBA's litigation position on revenue allocation. *See* OSBA St. 1-S at 6.

[4] I&E's allocations are derived after applying I&E's proposed scale back methodology to the agreed-upon revenue increase. *See* I&E Exh. 3, Sch. 6 at 2; I&E St. 3 at 26.

[5] The PSU allocation was derived by proportionally scaling back PSU's alternative 3 revenue allocation. *See* PSU Exh. PSU-SR-1.

[6] *See* JPNUS, Appendix A.

As previously explained, the flaw with the OSBA's approach is that neither Columbia's P&A ACCOSS nor the OSBA's version of the Company's P&A ACCOSS were used to allocate the revenues under the JPNUS. Rather, the revenues under the JPNUS were allocated based on a compromise between the JPNUS Joint Petitioners' competing cost of service methodologies, the implementation and execution thereof, and the adjustments deemed appropriate according to the judgment of each Party's expert(s).

According to the table above, when comparing the litigation positions of each Party at the agreed upon revenue increase of $44.5 million: (1) the residential class would have received an increase between $23.2 million (I&E) and $33.9 million (PSU); (2) the SGSS/DS-1 rate class would have received between $3.66 million (PSU) and $5.17 million (the OCA); (3) the SGSS/DS-2 rate class would have received between $3.98 million (Columbia) and $6.03 million (the OCA); (4) the SDS rate class would have received between $1.59 million (PSU) and $6.76 million (I&E); and (5) the LDS rate class would have received between $0.99 million (PSU) and $5.25 million (I&E). Consequently, the JPNUS allocates a portion of the revenue increase to each class within the range of the Parties' litigated positions. There is no allocation that is outside of the range of possibilities presented by the five allocation proposals. More specifically, the JPNUS revenue allocation is in the public interest because it is within the range of revenue allocations proposed by the Parties that supported the use of the P&A ACCOSS methodology, reducing inter-class subsidies and moving each rate class closer to its respective cost to serve.

The allocation of the agreed-upon increase depicted in the JPNUS contradicts the OSBA's contention that the JPNUS Joint Petitioners "cherry-picked" their preferred allocations and shifted all other revenue to the unrepresented SDS rate class. First, the revenue allocation agreed upon in the Non-Unanimous Settlement ($4,627,000) is essentially the same allocation that the OSBA proposed ($4,627,285) for the SDS rate class, falling within the range of being higher than what some Parties recommended and lower than what other Parties recommended. Second, according to Columbia's P&A ACCOSS, at present rates the residential class is subsidizing other customer classes, which include the SDS and LDS rate classes. *See* Columbia Exh. 111, Sch. 2 at 1. Nonetheless, the OCA and I&E recommended 4.2% and 3.9% increases, respectively, to the residential class and compromised on a 4.4% increase, PSU recommended a 4.1% increase to the LDS rate class and compromised on an 11.6% increase, significantly more than its litigation position, and I&E recommended a 19% increase to the SDS rate class

and compromised on a 13% increase, significantly less than its litigation position. Thus, since the OCA and PSU agreed to take more revenue for their respective classes than what was presented in their litigation positions and I&E agreed to a lesser increase to the SDS rate class than its litigation position, the OSBA's contention is demonstrably inaccurate. Therefore, the OSBA's contention that the JPNUS Joint Petitioners cherry-picked their preferred allocations and shifted all other revenue to the unrepresented SDS rate class is without merit.

Moreover, the OSBA's contention that the SDS was unrepresented in this proceeding is unsupported. PSU points out in its Replies to Exceptions that both PSU and CII have customer accounts under several rate schedules, including the SDS rate schedule. PSU R. Exc. at 9. Furthermore, I&E noted that its participation in this proceeding nullifies the OSBA's contentions, since it is charged with representing the public interest as a whole, and consequently took a position on revenue allocated to all customer classes in this proceeding, including the SDS rate class, asserting its position in both testimony and settlement discussions.

Contrary to the OSBA's argument that given that both the SDS and LDS rate classes are currently being subsidized under present rates, nearly identical revenue allocation percentages should be assigned to the SDS and LDS classes, we agree with I&E's contention that the fact that one Party did not propose both an increase to the SDS class and an increase to the LDS class that matches the Non-Unanimous Settlement's proposal for those two rate classes does not make the Non-Unanimous Settlement unreasonable. The OSBA's comparison of the revenue deficiency calculated at Columbia's present rates with the revenue allocation under the Non-Unanimous Settlement is not a relevant comparison. To perform a correct comparison of present and proposed revenues, one must use the same cost of service methodology for both present and proposed revenues. The OSBA, however, compares the results of Columbia's filed P&A ACCOSS at present revenues with the results of the revenue allocation under the

Non-Unanimous Settlement, which are based on entirely different cost of service methodologies as previously explained. Nonetheless, contrary to the OSBA's argument that the SDS class should receive more of the subsidy in the Non-Unanimous Settlement, while *Lloyd* does not permit substantial, long-term subsidization of one customer class at the expense of other classes, *Lloyd* does not create an entitlement to a greater subsidy. *See* I&E R. Exc. at 7.

Although complete agreement could not be reached among all of the JPNUS Joint Petitioners with respect to either the Company's P&A ACCOSS or the revisions and refinements to that study proposed by other Parties, there was no dispute that an ACCOSS should be used as a guide, that rates should be designed to move all classes closer to their indicated cost of service, and that the Commission has long recognized that the movement toward cost of service should be tempered by the concept of gradualism in order to avoid large, disruptive, one-time increases to any particular customer class. As such, we additionally find that the revenue allocation depicted in the JPNUS considers the principle of gradualism. We have previously recognized 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 rate class to 1.5 to 2.0 times the system average increase is one common metric that has been used by experts in the Commonwealth. *See Columbia February 2021 Order* at 233. Considering the allocation of the increase in base revenues set forth in the JPNUS, the SDS class would experience the largest increase at 15.4%, which falls within the common metric referenced above with a 1.85 factor (15.4% / 8.3%). Additionally, as previously indicated, the SDS rate class is currently being subsidized by other rate classes at present rates. Given that the Non-Unanimous Settlement allocates far less revenue to the SDS class ($4,627,000) than I&E's recommendation ($6,762,891), it is reasonable to surmise that the SDS rate class will continue to be subsidized by other classes. Therefore, we do not consider the revenue allocation under the JPNUS to be unreasonable. The allocation of the agreed-upon revenue increase set forth in the JPNUS

is within the range proposed by the Parties and, more importantly, reflects a negotiated compromise between the Parties' positions on parity. Accordingly, the revenue allocation depicted on Appendix A of the JPNUS is consistent with *Lloyd*.[29]

Furthermore, in evaluating the OSBA's Exception No. 3, we disagree with the OSBA's argument that the ALJs committed legal error by rejecting Commission precedent. At the outset, we note that this case is substantially similar from a procedural and factual standpoint to the Commission's recent decision in *Pike County*. In that case, we approved a non-unanimous, "black box" settlement in which all parties, except the OSBA, agreed upon a rate structure. We rejected the OSBA's argument that we were required to approve and rely on a single ACCOSS among those proposed by the parties in order to approve the "black box" settlement. *Pike County* at 36. In reaching our decision, we stated the following:

> We note that our disposition of the [Settlement] in this case requires our consideration whether a nonunanimous settlement is just and reasonable and in the public interest. It is understood that, per *Popowsky II*, in rate proceedings, the Commission has broad discretion to determine what factors are relevant to consider and what weight is to be given to those factors, when determining whether the proposed rate increase should be approved. Therefore, while the standard for approval of a partial or nonunanimous settlement remains whether the settlement is reasonable and in the public interest *per Pa. PUC v. Philadelphia Electric Company*, the Commission's discretion continues to include consideration of whatever factors are deemed relevant in a given case per

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[29] Moreover, as the Commonwealth Court recognized in pre-*Lloyd* decisions, which were not disturbed by its holding in *Lloyd*, "there is no single cost of service study or methodology that can be used to answer all questions pertaining to costs" nor is there any "set formula for determining proper ratios among rates of different customer classes." *See Executone of Philadelphia, Inc. v. Pa. PUC*, 415 A.2d 445, 448 (Pa. Cmwlth. 1980); *Peoples Natural Gas Co. v. Pa. PUC*, 409 A.2d 446, 456 (Pa. Cmwlth. 1979).

> *Popowsky II*. Such factors may be weighed differently as the Commission deems appropriate in the given circumstances.
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> While we acknowledge the rate increase and rate design and structure was achieved under the terms of a "black box" settlement, which does not necessarily attribute specific factors relied upon in the specified rate increase, we expressly find that the substantial evidence of record supports the rate structure and rate design agreed to under the terms of the [Settlement].

Pike County at 35-36. Accordingly, consistent with *Pike County*, we have properly considered the record before us in reaching our decision to approve the JPNUS, without modification, because it is in the public interest and is supported by substantial evidence.

Contrary to the OSBA's contention, we need not strictly adhere in this case to the *Columbia February 2021 Order*, in which we determined that the P&A ACCOSS was the most appropriate allocation methodology to use in that proceeding. In that case, the appropriate revenue allocation and the ACCOSS methodology upon which it was based was heavily litigated, and the parties did not reach a settlement on that issue. Here, most of the Parties entered into a "black box" settlement, and a specific ACCOSS methodology has not been identified. The Parties' actions in this case are consistent with Commission policy, which encourages settlements, including "black box" settlements, and permits the Parties a greater amount of flexibility than they would have in litigated

cases to resolve contested issues, such as revenue allocation methodologies. *See* 52 Pa. Code §§ 5.231, 69.401; *Peoples TWP* at 28.[30]

Likewise, the OSBA's concerns that the settlement terms and conditions we approve in this proceeding can be used to overturn precedent, or that we are opening the door to a new precedent of overturning past Commission decisions through non-unanimous settlements, are unfounded. It is well-established that the terms and conditions of settlements are not relied upon as precedential. *See, e.g.*, *Pa. PUC v. Columbia Gas of Pennsylvania, Inc*., Docket No. R-2020-3018835 (Order on Reconsideration entered April 15, 2021), at 18. In fact, most parties to settlements in Commission proceedings include language in the settlements specifying that the settlement terms and conditions may not be cited as precedent in future proceedings. Such language was included in the JPNUS in this proceeding. JPNUS ¶ 30.

Moreover, we agree with Columbia's reply to Mr. Culbertson's Exception No. 5. Inasmuch as Mr. Culbertson cites to no substantial or legally credible evidence in support of his contentions that would justify rejecting the Recommended Decision, Mr. Culbertson's Exception No. 5 is denied.

Viewed in its entirety, the Non-Unanimous Settlement fairly and equitably resolves the issues impacting residential consumers, business customers, and the public interest at large and represents a fair balance of the interests of Columbia and its customers. Additionally, we find that the Non-Unanimous Settlement will result in

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[30] We note that even in cases in which the revenue allocation methodology is litigated, a determination regarding which ACCOSS should be used should be determined on a case-by-case basis. We have observed 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." *Pa. PUC v. PECO Energy Company – Gas Division*, Docket No. R-2020-3018929 (Order entered June 22, 2021), at 230-231.

significant savings of time and expenses for all Parties involved by reducing or avoiding the necessity of further administrative proceedings, as well as reducing or avoiding the need for possible appellate court proceedings, thereby conserving administrative resources. Further, the Non-Unanimous Settlement provides regulatory certainty with respect to the disposition of issues which benefits all the Parties. For the reasons stated herein and in the JPNUS Joint Petitioners' Statements in Support, we concur with the ALJs' conclusion that the Non-Unanimous Settlement is supported by substantial evidence and is in the public interest. Accordingly, we shall adopt the ALJs' Recommended Decision that approves the Non-Unanimous Settlement, without modification.

D. Issues Raised by Complainant Mr. Culbertson

1. Positions of the Parties

Mr. Culbertson raised various issues in his Main and Reply Briefs in opposition to Columbia's requested rate increase in this proceeding. Mr. Culbertson averred that Columbia's accelerated pipeline replacements are unreasonable and wasteful. Culbertson M.B. at 27; Culbertson R.B. at 15-22. Mr. Culbertson also objected to the established process for investigation into the reasonableness of Columbia's requested rate increase for several reasons, including the following: (1) that the Commission did not fulfill the requirements of financial, performance and special audits; (2) that the Parties and their experts were not impartial auditors; (3) that the ALJs and the Parties did not conduct a proper investigation; and (4) that Columbia provided unreliable financial information to the Parties. Culbertson M.B. at 27-30; Culbertson R.B. at 5, 9-10, 15, 23. Mr. Culbertson also argued that his Complaint has not been investigated although he requested a special investigation into the rate case. Culbertson R.B. at 12-13. Further, Mr. Culbertson contended that Columbia has not sufficiently explained why its current

rates are higher than other natural gas distribution utilities in Pennsylvania. Culbertson M.B. at 30-32; Culbertson R.B. at 10-11, 23.

In reply to Mr. Culbertson's arguments, Columbia argued that Mr. Culbertson did not present evidence to support his claim that proper audits were not conducted. Columbia averred that Mr. Culbertson failed to acknowledge that the Company is subject to regular audits by the Commission that are publicly available and that the Company conducts internal audits on a routine basis. Additionally, Columbia asserted that it provided all material required in support of a general base rate increase consistent with Section 53.53 of the Commission's Regulations, 52 Pa. Code § 53.53, which requires the submission of detailed materials covering all aspects of the Company's operations. Columbia R.B. at 10-11. Columbia continues that the GAO Yellow Book and Pennsylvania Management Directives do not apply to this base rate case, because the Commission's Regulations and Orders do not require it to follow the GAO Yellow Book and Pennsylvania Management Directives and the Company is not a government entity or Commonwealth agency. *Id*. at 11.

In response to Mr. Culbertson's argument that Columbia's rates are unreasonable because they are higher than rates of other Pennsylvania gas utilities, the Company stated that this argument is irrelevant to Columbia's base rates, because there are many reasons rates vary between utilities, including the geographic location and size of the utility's service territory, the number and types of customers served, and the location/density of those customers within the utility's service territory. Columbia R.B. at 12-13. Columbia also stated that Mr. Culbertson improperly relied on material that is not part of the record in this proceeding and was not presented until Mr. Culbertson filed his Main Brief. Consequently, the Company argued that the ALJs should not consider this argument. *Id*. at 12.

In reply to Mr. Culbertson's arguments concerning Columbia's accelerated pipeline replacement, Columbia asserted that Mr. Culbertson has not provided any evidence in support of his opinions. Columbia averred that the record evidence demonstrates that the Company's accelerated pipeline replacement efforts are necessary to maintain a safe and reliable distribution system. Columbia noted that its accelerated infrastructure replacement program has resulted in a significant reduction in the Company's inventory of bare steel pipe as well as a significant reduction in leaks on the Company's system. Columbia R.B. at 14 (citing Columbia St. 14 at 32, 41). Regarding Mr. Culbertson's safety concerns about the installation of curb valves and the ability to shut off gas in an emergency, the Company responded that Mr. Culbertson did not present any evidence to support his arguments. R.B. at 15. Columbia noted that to the contrary, its witness Mr. Mark Kempic explained that: (1) 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; (2) 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; and (3) 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. *Id*. (citing Columbia St. 1-R at 18-19).

In its Reply Brief, I&E stated that Mr. Culbertson appears to be requesting that I&E conduct an investigation into the lawfulness, justness, and reasonableness of the rates, rules, and regulations contained in Columbia's proposed Supplement No. 337 to its Tariff Gas Pa. P.U.C. No. 9. I&E avers that it has been an active participant in this proceeding. I&E submits that its investigation into this base rate case has been demonstrated throughout this proceeding based on the testimony, discovery, and pleadings it has served. I&E R.B. at 4.

2. ALJs' Recommendation

The ALJs recommended that Mr. Culbertson's Formal Complaint be denied, concluding that Mr. Culbertson did not adequately present evidence or analysis demonstrating that his recommendations or adjustments to Columbia's filing are warranted. First the ALJs addressed Mr. Culbertson's general assertion that Columbia's base rate filing has not been properly investigated and reflects unsubstantiated rates. The ALJs found that Columbia's filing has been subject to an extensive and detailed investigation and a comprehensive evidentiary record exists. R.D. at 114. The ALJs stated that Columbia provided material supporting its claim in accordance with the Commission's Regulations and filing requirements for a proposed general rate increase in excess of $1 million. *Id*. (citing 52 Pa. Code § 53.53; Columbia Sts. 1-16; Columbia Exhs. 1-17, 101-117, and 400-414; Columbia Standard Data Responses COS 1-21, ROR 1-23 and RR 1-55). The ALJs also stated that multiple expert witnesses for nine other active Parties have reviewed Columbia's filing information and the testimony of Columbia's witnesses and have submitted their own testimony analyzing Columbia's case. R.D. at 114. The ALJs further stated that four public input hearings and a technical evidentiary hearing were held to hear public opinion and to examine Columbia's case. *Id*. at 114-115.

Next, the ALJs addressed Mr. Culbertson's argument that Columbia's rates are unreasonable because they are higher than other gas utilities' rates in Pennsylvania based on the information in the "Rate Comparison Report" dated April 15, 2022, which was prepared by the Commission's Bureau of Technical Utility Services (Rate Comparison Report). The ALJs reasoned that the Rate Comparison Report is not part of the record and, accordingly, it would be inappropriate to rely on it. Additionally, the ALJs concluded that the Joint Petitioners presented substantial evidence that the Settlements reflect rates that are just and reasonable, and Mr. Culbertson did not present sufficient evidence to rebut that finding. R.D. at 115.

Third, the ALJs addressed Mr. Culbertson's claims that Columbia's accelerated pipeline replacement program is wasteful and unnecessary and that Columbia fails to recognize safety concerns. The ALJs determined that Columbia satisfied its burden of proof to support its rate filing as it relates to both its accelerated pipeline replacement program and the safety concerns Mr. Culbertson raised. The ALJs observed that both Columbia and I&E presented testimony and evidence concerning the appropriateness of Columbia's accelerated pipeline replacement program and concerning the adequacy of Columbia's curb valves and the Company's ability to shut off gas in case of an emergency. The ALJs found that to the contrary, Mr. Culbertson did not present evidence to support his claims about Columbia's accelerated main replacement program or the safety of Columbia's distribution system. *Id*. at 116.

3. Exceptions, Replies, and Disposition

a. Culbertson's Exceptions Nos. 1 and 15, Columbia's Replies, and Disposition

(1) Culbertson's Exceptions Nos. 1 and 15

In his Exception No. 1, Mr. Culbertson disagrees with the ALJs' approval of the Settlements in this case and questions whether they are in the public interest, consistent with the Code, and supported by substantial evidence. Mr. Culbertson lists several reasons for his disagreement with the ALJs. First, Mr. Culbertson avers that the Commission did not conduct a proper investigation to determine the lawfulness, justness, and reasonableness of the rates approved in the Recommended Decision as was contemplated in the *April 2022 Order.* In a similar argument, Mr. Culbertson contends that in order to conduct a proper investigation, the Commission should have conducted "financial, management, operational and special audits" as part of this rate case and the ALJs and the Commission should have followed the internal controls set forth in the

"GAO [Government Accountability Office] Green Book" and the auditing standards set forth in the "GAO Yellow Book." Third, Mr. Culbertson argues that part of the investigation in this rate proceeding should have included consideration of the Rate Comparison Report. Mr. Culbertson provided a link to the Rate Comparison Report and included a chart from the Report in his Exceptions. He believes that the Commission failed to consider the average monthly bills of other Pennsylvania natural gas distribution company customers in comparison to Columbia's average monthly bills for customers.

Mr. Culbertson further avers that the Commission is "weak and unreliable" in the enforcement of its Regulations. As an example, Mr. Culbertson cites to a separate complaint proceeding that he initiated against Columbia in 2016 involving his customer service line. Culbertson Exc. at 18-19 (citing *Culbertson v. Columbia Gas of Pennsylvania, Inc*., Docket No. F-2017-2605797 (Order on Reconsideration entered August 25, 2022) (*Culbertson 2022 Complaint Order*)).

In his Exception No. 15, Mr. Culbertson makes a similar argument to that in his Exception No. 1 that the information Columbia submitted in this rate case is unreliable because the Commission has not conducted proper financial audits of the Company in accordance with generally accepted audit standards. Mr. Culbertson believes that Columbia's internal audits are insufficient. Culbertson Exc. at 34-35.

(2) Columbia's Replies

In its Replies to Mr. Culbertson's Exception No. 1, Columbia first responds to Mr. Culbertson's argument that the Commission did not conduct an adequate investigation of Columbia's proposed rates as was required by the Commission's *April 2022 Order* suspending Columbia's requested rate increase. Columbia avers that other than his personal opinions on how a rate case should be conducted, Mr. Culbertson did not present any evidence to support his allegations. Columbia R. Exc. at 9-10.

Columbia asserts that the record evidence shows that a comprehensive investigation occurred in this proceeding, and the ALJs accurately summarized the investigation. *Id.* at 10 (citing R.D. at 114-115). Columbia points to the following in support of its position: (1) 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 pursuant to 52 Pa. Code § 53.53 (Columbia Sts. 1-16; Columbia Exhs. 1-17, 101-117, and 400-414; Columbia Standard Data Responses COS 1-21, ROR 1-23 and RR 1-55); (2) the other active Parties to the proceeding, including the three statutory advocates, conducted a thorough examination of Columbia's proposals; (3) Columbia responded to hundreds of formal interrogatories from the various Parties; and (4) 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. Columbia submits that 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. Columbia R. Exc. at 10.

In addition, Columbia submits that a public input hearing was held to hear public opinion and to examine Columbia's case. Further, the Parties engaged in settlement discussions that resulted in the Partial Settlement and the Non-Unanimous Settlement. The ALJs' recommendation to approve both Settlements is based on an extensive evidentiary record, as well as the supporting statements from each of the Joint Petitioners. Columbia R. Exc. at 10.

Second, Columbia replies to Mr. Culbertson's claims that the Commission should have conducted "financial, management, operational and special audits" as part of this rate case and that the ALJs and the Commission should have followed the internal controls set forth in the "GAO Green Book" and the auditing standards set forth in the "GAO Yellow Book." Columbia avers that Mr. Culbertson failed to present any

evidence in support of his claims regarding audits. Columbia states that it is subject to regular audits by the Commission, which are publicly available. Columbia submits that it does not have control over the Commission's auditing process, and nothing in the Code, the Commission's Regulations, or Commission's Orders requires adherence to the "GAO Green Book" or the "GAO Yellow Book." Columbia R. Exc. at 12. Columbia explains that although an audit is not required to meet Columbia's burden of proof in a rate proceeding, Columbia does undertake internal audits on a routine basis. *Id*. (citing Columbia Exh. 13, Sch. 4). Columbia notes that it also submitted all required material in support of its general base rate increase in accordance with Section 53.53 of the Commission's Regulations, 52 Pa. Code § 53.53, which requires the submission of detailed materials covering all aspects of Columbia's operations. Columbia argues that Mr. Culbertson did not present any evidence challenging the information Columbia provided and, as such, the ALJs correctly determined that Mr. Culbertson's claims regarding insufficient auditing are not supported by substantial evidence. Columbia R. Exc. At 12.

Third, Columbia replies to certain material Mr. Culbertson cites in support of his positions that is not part of the evidentiary record in this case. *Id*. In response to Mr. Culbertson's inclusion of the Rate Comparison Report that compares the rates of different natural gas utilities in Pennsylvania, Columbia observes that because Mr. Culbertson introduced the rate comparison report for the first time in his Main Brief, it should not be considered. *Id*. at 12-13. Columbia avers that it is well-established that Parties cannot present new evidence in briefs or exceptions that is not part of the evidentiary record. *Id*. at 13 (citing *Myers v. PPL Electric Utilities Corporation*, Docket No. C-2017-2620710 (Order entered August 29, 2019). Columbia states that the ALJs correctly determined that the Rate Comparison Report referenced by Mr. Culbertson is not part of the record and, consequently, the ALJs did not rely on the Report. Columbia R. Exc. at 13 (citing R.D. at 117). Additionally, Columbia responds to Mr. Culbertson's reference to an entirely separate complaint proceeding that Mr. Culbertson initiated

against Columbia in 2016 involving Mr. Culbertson's service line. Columbia R. Exc. At 13 (citing *Culbertson 2022 Complaint Order*). Columbia explains that complaint was fully litigated and decided in a separate proceeding, and there is no evidence pertaining to Mr. Culbertson's gas service in the evidentiary record in this case. Columbia R. Exc. At 13. Moreover, Columbia argues that Mr. Culbertson is barred from re-raising the same issues that were previously litigated in another case. *Id*. (citing *Joint Application of EarthLink, Inc.*, Docket No. A-2011-2218791 (Order entered April 20, 2011)).

In reply to Mr. Culbertson's Exception No. 15, Columbia reiterates its above arguments that Mr. Culbertson's claims regarding audits are incorrect and are not supported by substantial evidence.

(3) Disposition

Upon review, we do not find merit in Mr. Culbertson's related arguments that: (1) the Commission did not conduct a proper investigation to determine the lawfulness, justness, and reasonableness of the rates, and (2) that to conduct a proper investigation, the Commission was required to conduct "financial, management, operational and special audits" and to follow the standards in the "GAO Green Book" and the "GAO Yellow Book." The record in this case demonstrates that in addition to the testimony and exhibits Columbia presented in support of its filing, Columbia's filing has been subject to an extensive and detailed investigation by the Statutory Advocates, I&E, the OCA, and the OSBA, as well as various other active Parties, including CAUSE-PA, CII, PSU, the Task Force, and the RESA/NGS Parties. These Parties engaged in extensive discovery with the Company, had their expert witnesses review Columbia's filing and testimony, submitted direct, rebuttal, and surrebuttal testimony analyzing Columbia's case; were represented by counsel at the evidentiary hearing in this proceeding during which their various testimony and exhibits were admitted into the

record, and engaged in settlement discussions that resulted in the Partial Settlement and the Non-Unanimous Settlement in this proceeding.

Consistent with our decision in the *Columbia December 2021 Order*, we conclude that the investigation conducted in this case was proper and was similar to investigations conducted in other recent Section 1308(d) general rate increase proceedings to ensure that a public utility's rates are just and reasonable. *See UGI Utilities - Electric*; *Pa. PUC v. Philadelphia Gas Works*, Docket No. R-2020-3017206 (Order entered November 19, 2020); *Pa. PUC v. Columbia Water Company*, Docket No. R-2017-2598203 (Order entered March 1, 2018). Accordingly, we agree with the ALJs that "this proceeding has been subject to the same level of scrutiny as Columbia's last base rate filing," and that there is no support for Mr. Culbertson's claim that the investigation in this base rate proceeding has been deficient. *See* R.D. at 115.

The GAO Yellow Book and the GAO Green Book do not apply to Commission rate investigations, and neither the Code nor the Commission's Regulations require audits to be conducted in the manner Mr. Culbertson proposes. Under the Code, the Commission is responsible for ensuring that a public utility's base rates are just and reasonable and not unduly discriminatory. 66 Pa. C.S. §§ 1301, 1304. We explained the Commission's process for determining just and reasonable rates in the *Columbia February 2021 Order*, as follows:

> "In determining just and reasonable rates, the PUC has discretion to determine the proper balance between interests of ratepayers and utilities…Further, the PUC is obliged to consider broad public interests in the rate-making process." *Popowsky v. Pa. PUC*, 665 A.2d 808, 812 (Pa. 1995) (*Popowsky I*) (citations omitted); *see also Hope Natural Ga*s, 320 U.S. at 603 (the "fixing of 'just and reasonable' rates, involves a balancing of the investor and the consumer interests…").

Regarding our discretion in fixing just and reasonable rates, the Pennsylvania Supreme Court explained:

> There is ample authority for the proposition that the power to fix "just and reasonable" rates imports a flexibility in the exercise of a complicated regulatory function by a specialized decision-making body and that the term "just and reasonable" was not intended to confine the ambit of regulatory discretion to an absolute or mathematical formulation but rather to confer upon the regulatory body the power to make and apply policy concerning the appropriate balance between prices charged to utility customers and returns on capital to utility investors consonant with constitutional protections applicable to both.

Columbia February 2021 Order at 42-43 (citations omitted). As such, we conclude that a proper investigation, which considered investor and consumer interests, was conducted in this proceeding.

Additionally, we disagree with Mr. Culbertson's argument that part of the investigation in this rate proceeding should have included consideration of the Rate Comparison Report. First, we concur with the ALJs' reasoning that because the Rate Comparison Report is not part of the record before us and was not included in Mr. Culbertson's arguments until he filed his Main Brief, we cannot consider the information in the Report in reaching our determination herein. *See* R.D. at 15; *see also Hess v. Pa. PUC*, 107 A.3d 246, 265-2669 (Pa. Cmwlth. 2014); *Pa. PUC v. Uber Technologies, Inc*., Docket No. C-2014-2422723 (Order entered September 1, 2016); *Ruth Matieu-Alce v. Philadelphia Gas Works*, Docket No. F-2015-2473661 (Order entered April 7, 2016). Even if we were to consider the merits of Mr. Culbertson's argument, we note that we have previously rejected arguments seeking to compare rates among utilities operating in Pennsylvania, finding that because each public utility has different problems of supply, production, distribution, competition, and geographic conditions, there need not be, and cannot be, absolute equality and uniformity of rates

between utilities or between classes of service within the same utility. *Hersca v. Twin Lakes Utilities, Inc*., Docket No. C-2020-3020883, at 14 (Order entered August 5, 2021). We observe that rate base may differ among utilities based on differences in size, territory, number and types of customers, and location of customers.

Moreover, we will not consider in this rate proceeding any issues pertaining to Mr. Culbertson's complaint against Columbia concerning his service line. We agree with Columbia that those issues are not properly before us because that complaint was fully litigated and decided in a separate proceeding, culminating in the *Culbertson 2022 Complaint Order,* and there is no evidence pertaining to Mr. Culbertson's gas service in the evidentiary record in this case. For these reasons, we deny Mr. Culbertson's Exceptions Nos. 1 and 15.

b. Culbertson Exception No. 2, Reply, and Disposition

(1) Culbertson Exception No. 2

In Mr. Culbertson's Exception No. 2, he raises several objections to the Recommended Decision based on the ALJs' denial of his formal Complaint.[31] *See* Culbertson Exc. at 22-25. Mr. Culbertson argues that the ALJs and the Company failed

[31] In addition to the arguments addressed below, Mr. Culbertson also raises, *inter alia*, the following arguments: (1) that Columbia's proposed rate increase was not properly investigated; (2) that the "black box" settlements in this case are illegal; (3) that Columbia's rates are higher than the rates of other natural gas distribution companies in Pennsylvania; and (4) that proper audits, consistent with the GAO Yellow Book, were not conducted in this proceeding. Because these arguments are addressed in detail in other portions of this Opinion and Order, they will not be addressed in the disposition of Mr. Culbertson's Exception No. 2.

to follow 52 Pa. Code § 59.13[32] in this proceeding because they did not investigate his Complaint. Mr. Culbertson also argues that he was not provided with adequate due process because of the way his Complaint was handled in this proceeding. Culbertson Exc. at 23.

Mr. Culbertson also excepts to the ALJs' denial of his Motion[33] requesting, *inter alia*, an independent audit of Columbia's finances and management performance. The Motion was denied by the presiding ALJs. *See* R.D. at 7; Prehearing Order #3. Mr. Culbertson objects to the denial and, additionally, complains that certain interrogatories propounded to Columbia regarding cost accounting standards used, and operational safety issues exposed by Columbia's employees, were not answered. *See* Exc. at 24-25.

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[32] **§ 59.13. Complaints.**

(a) *Investigations.* Each public utility shall make a full and prompt investigation of complaints made to it or through the Commission by its customers.
(b) *Records of complaints.* Each public utility shall preserve written or recorded service complaints showing the name and address of the complainant, the date and character of the complaint, and the adjustment or disposal made of the complaint. Records required by this chapter shall be kept within this Commonwealth at an office or offices of the utility located in the territory served by it, and shall be open for examination by the Commission or its staff.

[33] *See* R.D. at 4-5 for full caption/self-styled *Motion* . . ..

(2) Columbia's Replies

In Replies to Mr. Culbertson's Exception No. 2, Columbia initially responds to the allegations of Mr. Culbertson that he was not afforded due process. Columbia cites *Groch v. Unemployment Compensation Board of Review*, 472 A.2d 286, 287-88 (Pa. Cmwlth. 1984) for the proposition that due process before administrative agencies requires notice and an opportunity to be heard. Columbia R. Exc. at 14. Columbia, therefore, briefly summarizes the active participation of Mr. Culbertson in this matter. This participation includes, *inter alia:* (a) the issuance of interrogatories to which Columbia either responded or objected when appropriate; (b) Mr. Culbertson's use of motion practice under Commission Rules of procedure to compel discovery responses which motions were ruled upon by the ALJs; (c) submission of briefs concerning issues; and (d) filing written objections to the settlement petitions. R. Exc. at 14-15.

Columbia states that Mr. Culbertson did not submit written testimony or exhibits in the proceeding. However, Columbia noted that Mr. Culbertson could have provided testimony and exhibits in accordance with the procedural schedule established by the presiding ALJs. Columbia argues that Mr. Culbertson's due process rights were protected and the fact that he chose not to submit testimony or exhibits for the record does not mean that he was deprived of due process.

Columbia addresses Mr. Culbertson's Exceptions wherein he alleges that testimony concerning its operations by an employee was not received into the record by the ALJs. *See* Columbia R. Exc. at 15 (citing Culbertson Exc. at 24-25). Columbia states that the testimony cited by Mr. Culbertson was presented by a Columbia employee at one of the public input hearings in this proceeding. Columbia further responds that nothing about this testimony was "hidden" and that Columbia fully responded to the issues raised in the public input hearing testimony. Columbia R. Exc. at 15 (citing Columbia St. 1-R at 18-19).

(3) Disposition

We shall deny Mr. Culbertson's Exception No. 2. Mr. Culbertson's allegations that he was not afforded procedural due process are not supported by the record. As an administrative body, the Commission is bound by the due process provisions of constitutional law and by fundamental principles of fairness. *Popowsky v. Pa. PUC*, 805 A.2d 637 (Pa. Cmwlth. 2002); *Fusaro v. Pa. PUC*, 382 A.2d 794 (Pa. Cmwlth. 1978). The fundamental requirements of due process are notice and an opportunity to be heard at a meaningful time and in a meaningful manner. *Gombach v. Department, Bureau of Com'ns, Elections & Legislation*, 692 A.2d 1127, 1130 (Pa. Cmwlth. 1997). Mr. Culbertson has been provided sufficient opportunity to be heard at a meaningful time in a meaningful manner and has availed himself of such opportunity. As Columbia has indicated, Mr. Culbertson's participation in this proceeding included the following: (a) issuing interrogatories to which Columbia either responded or objected, when appropriate; (b) filing motions to compel discovery responses which the ALJs ruled upon; (c) submitting briefs concerning issues; and (d) filing written objections to the settlements.

Additionally, we also deny the assertion that the presiding ALJs did not comply with our Regulation at 52 Pa. Code § 59.13. This provision cited by and relied upon by Mr. Culbertson is primarily directed to service complaints of regulated gas distribution companies. Nonetheless, the service complaint allegations of Mr. Culbertson have been considered in this matter and have been addressed on their merits in other proceedings involving Columbia.

c. Culbertson Exception No. 3, Reply, and Disposition

(1) Culbertson Exception No. 3

In his Exception No. 3, Mr. Culbertson excepts to the Recommended Decision's Finding of Fact No. 4 and the role and duties of I&E. Finding of Fact No. 4 states:

> 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. I&E St. 1 at 1; I&E St. 2 at 1; I&E St. 3 at 1; I&E St. 4 at 2.

R.D. at 11.

Mr. Culbertson argues that Finding of Fact No. 4 is not true and not consistent with the Code and framework of rate cases. Unlike Public Utility Commissioners that are responsible to balance interests, Mr. Culbertson avers that prosecutors in an adversarial legal system do not share that responsibility; rather, the role of prosecutors representing I&E should be "to seek, look into wrongdoing, and collect evidence to prosecute wrongdoing of public utilities," and not to balance the interest of utilities and customers. Culbertson Exc. at 25. Mr. Culbertson contends that confusion about the duties of the prosecutorial function leaves gaps in achieving just and reasonable rates and safe operations. Furthermore, Mr. Culbertson states that I&E does not need permission to investigate alleged or suspected wrongdoing of a public utility, and that they have free access to Columbia's operations but do not investigate and enforce when they should. Mr. Culbertson argues that I&E should be "in the active business of promoting transparent material information, righting wrongs, and using their power and

authority to enforce" the Code. *Id*. According to Mr. Culbertson, when prosecutors are passive or act like advocates, the fair outcome of rate cases is harmed. *Id*.

(2) Columbia's Reply

In reply, Columbia avers that the Commission has established separate entities, such as I&E, to undertake investigations because, as an adjudicatory body, the Commission cannot undertake a prosecutory or investigative function because it would violate due process. Columbia R. Exc. at 15-16 (citing 66 Pa. C.S. § 308.2(b); *Pa. PUC v. Gary Polzot, t/a, Airport Exec. Car Service*, Docket No. C-2011-2271305 (Order entered Oct. 31, 2013); *Lyness v. State Bd. of Med*., 529 Pa. 535, 605 A.2d 1204 (1992); *Delegation of Prosecutory Authority to Bureaus with Enforcement Responsibilities*, 1994 Pa. PUC LEXIS 148, Docket No. M-00940593 (Order entered September 2, 1994)). Columbia contends that Mr. Culbertson's criticisms of I&E's and the Commission's functions do not support rejecting the Recommended Decision's Finding of Fact No. 4. *Id*. at 16.

(3) Disposition

Upon review, we conclude that the Recommended Decision's Finding of Fact No. 4 is an accurate restatement and description of the role and duties of I&E. Moreover, Mr. Culbertson has not raised any evidence or made any arguments in support of his criticisms of I&E. His opinions are insufficient and do not support overturning the Recommended Decision's Finding of Fact No. 4. Therefore, we will deny Mr. Culbertson's Exception No. 3.

d. Culbertson Exception No. 4, Reply, and Disposition

(1) Culbertson Exception No. 4

In his Exception No. 4, Mr. Culbertson excepts to Finding of Fact No. 13, which states as follows:

> The Settlement set forth in the Joint Petition for Partial Settlement resolves all issues in this proceeding except for Revenue Allocation and Rate Design as well as issues raised by Complainant Richard C. Culbertson.

R.D. at 12.

Mr. Culbertson argues that he was excluded from participating in the settlement negotiations, which impairs the credibility and fairness of it. Mr. Culbertson avers that the ALJs should have adopted rules requiring that all complainants should be included in settlement talks, and he references several articles and states that "diverse groups make better outcomes than homogeneous groups." Culbertson Exc. at 26. Moreover, citing to Chapter 8 of the United States Sentencing Commission's Federal Sentencing Guidelines, Mr. Culbertson states that it is not a good strategy for Columbia to be "willfully ignorant" or "to have condoned" an offense. *Id*.

(2) Columbia Reply

In reply, Columbia disagrees that Mr. Culbertson was excluded from settlement discussions and that the credibility and fairness of the settlement is impaired. Columbia states that it and Mr. Culbertson were unable to resolve his issues through settlement; however, Mr. Culbertson was provided with an opportunity to comment on or

submit objections to the Settlements in accordance with 52 Pa. Code § 69.406, which he did. Columbia R. Exc. at 16.

(3) Disposition

Upon review, we find that Mr. Culbertson's due process rights regarding the Settlements were protected in this proceeding. Although it appears that Columbia and Mr. Culbertson were unable to resolve his issues informally, Mr. Culbertson was provided an opportunity to review, comment, and object to the terms of the Settlements, which he did. On September 2, 2022, the ALJs issued a letter to the Parties informing them of two proposed settlements in the case and how to submit comments or objections regarding those settlements to the ALJs for consideration. *See* ALJs' Letter, Docket No. R-2022-3031211 (Sept. 2, 2022). Pursuant to the ALJs' letter, as previously discussed herein, Mr. Culbertson filed an Objection to the Settlements. Mr. Culbertson offers no evidence to support his claim that he was inappropriately excluded from settlement discussions. Therefore, we shall deny Mr. Culbertson's Exception No. 4.

e. Culbertson Exceptions Nos. 6 and 16, Replies, and Disposition

(1) Culbertson Exceptions Nos. 6 and 16

In his Exceptions No. 6 and No. 16 (identified as No. 14), Mr. Culbertson objects to the ALJ's conclusion that the following arguments Mr. Culbertson made were not supported by substantial evidence: (1) Mr. Culbertson's challenge to Columbia's accelerated pipeline replacement program, and (2) Mr. Culbertson's safety concerns regarding Columbia's installation of curb valves and Columbia's ability to shut off gas in case of an emergency. Culbertson Exc. at 27-28, and 35-36 (citing Columbia St. 1 at 14, Columbia St. 14 at 32; I&E St. 4 at 21; R.D. at 116).

In his Exception No. 6, regarding Columbia's pipeline replacement, Mr. Culbertson states that the testimony of Columbia and I&E witnesses with respect to pipeline replacements is insufficient to be qualified as expert testimony regarding allowable costs. Mr. Culbertson further avers that Columbia's investments in accelerated pipeline replacements are unnecessary. By his Exception, Mr. Culbertson questions the need for pipeline replacements and alleges that, "[u]nnecessary cost for unnecessary accelerated pipe replacements with associated write-offs is unnecessary – not essential, imprudent, and looks like a source of waste, fraud, and abuse." Culbertson Exc. at 28.

In his Exception No. 16, Mr. Culbertson argues that the ALJs erred by dismissing safety concerns regarding the adequacy of Columbia's distribution system, as it pertains to the placement of shutoff valves, asserting a requirement for installation of curb valves. Mr. Culbertson reiterates his position that Columbia's practice of not installing curb box safety shutoff valves to shut off gas in an emergency is unsafe. Mr. Culbertson also cites to a news article in support of his position.[34] Culbertson Exc. at 36-37.

(2) Columbia's and I&E's Replies

In Reply to Mr. Culbertson's Exception No. 6, both Columbia and I&E aver that the ALJs correctly concluded that Mr. Culbertson's challenge to Columbia's pipeline replacement program was unfounded. Columbia R. Exc. at 17; I&E R. Exc. at 15-16. Columbia avers that the ALJs correctly rejected Mr. Culbertson's challenge to Columbia's pipeline replacement on the basis that it is not supported by substantial evidence. Columbia R. Exc. at 17 (citing R.D. at 116). Columbia argues that Mr. Culbertson's position that the pipeline replacements are unnecessary is contrary to the

[34] We note that the article cited by Mr. Culbertson was not part of the record of the proceeding and, accordingly, we will not consider it herein. *See Kyu Son Yi v. State Bd. of Veterinary Med.,* 960 A.2d 864, 873 (Pa. Cmwlth 2008).

evidence. *Id*. (citing Culbertson Exc. at 28). Columbia notes that Mr. Culbertson neither challenged Columbia's evidence regarding the necessity of the pipeline replacements nor presented any evidence in response. Rather, Columbia avers, Mr. Culbertson simply offered his own lay opinion on the necessity of the pipeline replacement. Columbia R. Exc. at 17.

Columbia asserts that Mr. Culbertson's opinions are properly rejected when weighed against the expert testimony offered by both I&E and Columbia. Columbia avers that the record evidence of both I&E's and Columbia's experts demonstrates that Columbia's accelerated pipeline replacement efforts are properly deemed necessary to maintain a safe and reliable distribution system. *Id*. For example, Columbia notes that Columbia's witness C.J. Anstead testified that a significant reduction in leaks are attributable to the inception of Columbia's accelerated infrastructure replacement program, whereby Columbia has significantly reduced its inventory of bare steel pipe. Columbia R. Exc. at 17 (citing Columbia St. 14 at 32, 41). In addition, Columbia notes that 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." Columbia R. Exc. at 17 (citing I&E St. 4 at 21).

In its Replies, I&E argues that Mr. Culbertson's Exception No. 6 is without merit and should be denied. I&E asserts that to the extent Mr. Culbertson challenges the ALJ's conclusion regarding the necessity and approval of costs of Columbia's pipeline replacement program by challenging the qualifications of I&E's expert witness Merritt, Mr. Culbertson's challenge should be rejected. I&E R. Exc. at 15. I&E notes that under Pennsylvania Rule of Evidence 702, Pa. R.E. 702, which the Commission recognizes as setting forth the standard for qualification of experts, I&E's witness was well qualified to present expert testimony. I&E argues that under the Rule 702 standard, a witness is qualified as an expert by knowledge, skill, experience, training, or education in the

specific subject matter. I&E asserts that I&E witness Merritt was well qualified to provide expert testimony in the area of pipeline safety. I&E R. Exc. at 15. I&E asserts that Mr. Merritt's qualifications are established by his testimony that:

> Mr. Merritt received his Bachelor of Science Degree in Petroleum and Natural Gas Engineering in 2017 from the Pennsylvania State University. He then joined the Pennsylvania Public Utility Commission's Safety Division in June of 2018. The Safety Division regulates safety standards for pipeline facilities and utilities engaged in the transportation of natural gas and other gas by pipeline.

Id. (citing I&E St. 4 at 1).

I&E submits that its witness Merritt's background establishes his qualifications as an expert in pipeline safety. Therefore, I&E asserts that Mr. Merritt's testimony was appropriate and well within the scope of his expertise. In addition, I&E notes that Mr. Merritt's testimony in this proceeding was based upon his expert opinion on pipeline safety matters and was offered to serve the public interest on behalf of I&E. I&E. R. Exc. at 16.

Finally, I&E disputes Mr. Culbertson's assertion that Columbia's pipeline replacement is unnecessary. I&E notes that its witness Merritt offered extensive testimony in support of the assertion that it was necessary for Columbia to increase its cast iron and bare steel pipeline replacement to reduce safety risks on the Company's distribution system. I&E R. Exc. at 15-16.

In Reply to Mr. Culbertson's Exception No. 16, both Columbia and I&E aver that the ALJs correctly concluded that Mr. Culbertson's safety concerns regarding Columbia's installation of curb valves and Columbia's ability to shut off gas in case of an emergency were unfounded. Columbia R. Exc. at 22-23; I&E R. Exc. at 16-17.

In its Reply, in explaining the safety and adequacy of its distribution system, including the ability to shut off gas in an emergency, Columbia notes that Columbia's expert witness Kempic testified that a meter valve enables quicker shutoff during an emergency situation since it is located above ground and next to the meter, which makes it easy to locate, while a curb valve is not in plain sight or near the meter. In certain instances, it is necessary to call personnel to locate a curb valve. Columbia R. Exc. at 22 (citing Columbia St. 1-R at 18-19). In addition, in its Reply, I&E notes that I&E's witness Merritt agreed with Columbia witness Kempic. I&E R. Exc. at 17 (citing I&E St. 4-SR at 10-11).

Columbia and I&E assert that given the expert testimony of both Columbia's and I&E's witness regarding the safety of Columbia's distribution system as it specifically pertains to the use of curb shut off valves versus shut off valves located next to the meter to enable quick shut off in emergency situations, it was necessary for Mr. Culbertson to present some evidence to support his position. Given that Mr. Culbertson failed to present any evidence on the issue, both Columbia and I&E assert that the ALJs properly dismissed Mr. Culbertson's averments related to the safety of Columbia's distribution system, and, therefore, argue that Mr. Culbertson's Exception No. 16 should be denied. Columbia R. Exc. at 23; I&E R. Exc. at 17.

(3) Disposition

Upon review, we will deny Mr. Culbertson's Exception No. 6 and Exception No. 16. Based upon the evidence presented, including the uncontradicted expert testimony of Columbia's witness Anstead, and I&E's witness Merritt regarding the necessity of Columbia's accelerated pipeline replacement program, and the adequacy of Columbia's curb valves and the ability to shut off gas in case of an emergency, we conclude that substantial credible evidence supports Columbia's position on the necessity of its accelerated pipeline replacement program and the safety of its distribution system,

including the location of shut off valves. *See*, Columbia St. 14 at 32, 41; I&E St. 4 at 21; I&E St. 4-SR at 10-11.

As the party challenging Columbia's practices, including the need for the pipeline replacement program and the safety and adequacy of its curb valves and the ability to shut off gas in case of an emergency, Mr. Culbertson must present substantial evidence in support of his opposition to Columbia on both issues.[35] In the present case, regarding Mr. Culbertson's opposition to Columbia's rate increase associated with the accelerated pipeline replacement program and the safety and adequacy of Columbia's shut off valves and ability to shut off gas in an emergency, the ALJs reviewed the record evidence and concluded Mr. Culbertson failed to meet his burden of proof, stating:

> Mr. Culbertson also asserts Columbia's accelerated pipeline replacement program is wasteful and unnecessary, and that Columbia fails to recognize safety concerns. *We find that Columbia has met its burden of proof in supporting its rate filing as relates to both its accelerated pipeline replacement program and safety concerns as raised by Mr. Culbertson.* Both Columbia and I&E presented testimony as relates to the appropriateness of Columbia's accelerated pipeline replacement program. Columbia and I&E also presented evidence as relates to the adequacy of Columbia's curb valves and ability to shut off gas in case of an emergency. *To the contrary, Mr. Culbertson submitted no record evidence to support his claims critiquing Columbia's accelerated main*

[35] To the extent that Mr. Culbertson's claims regarding the pipeline replacement program can be viewed as an adjustment to Columbia's ratemaking claim, as a party proposing an adjustment to a utility's ratemaking claim, Mr. Culbertson has the burden of presenting some evidence or analysis tending to demonstrate the reasonableness of the adjustment. *See, e.g., Pa. PUC v. PECO*, 1990 Pa. PUC LEXIS 155; *Pa. PUC v. Breezewood Tel. Co*., 1991 Pa. PUC LEXIS 45. Additionally, with regard to any of Mr. Culbertson's gas safety claims that involve issues that were not included in Columbia's general rate case filing, Mr. Culbertson has the burden of proof on those issues pursuant to Section 332(a) of the Code, 66 Pa. C.S. § 332(a). *Pa. PUC v. Metro. Edison Co*., Docket No. R-00061366 (Order entered January 11, 2007).

replacement program or the safety of Columbia's distribution system.

R.D. at 116 (emphasis added) (citing Columbia St. 1 at 14; Columbia St. 14 at 32; I&E St. 4 at 21; Columbia St. 1-R at 18-19; I&E St. 4-SR at 10-11).

Based on our review of the credible expert testimony of Columbia and I&E regarding the necessity of the pipeline replacement and the safety of Columbia's distribution system, we find that the ALJs properly concluded that Mr. Culbertson failed to meet his burden of proof because he did not present any record evidence in support of the Complaint opposing Columbia's rate increase based upon either the pipeline replacement costs or the safety and adequacy of Columbia's shut off valves and ability to shut off gas in an emergency. *See*, Columbia St. 1 at 14; Columbia St. 14 at 32; I&E St. 4 at 21; Columbia St. 1-R at 18-19; I&E St. 4-SR at 10-11. Therefore, we shall adopt the ALJs' recommendation dismissing Mr. Culbertson's Complaint and deny Mr. Culbertson's Exceptions No. 6 and No. 16.

f. Culbertson Exception No. 7, Reply, and Disposition

(1) Culbertson Exception No. 7

In his Exception No. 7, Mr. Culbertson objects to the ALJs' statement that he did not submit any written testimony or exhibits for the record in the proceeding. In essential part, he argues that not having written testimony or exhibits submitted was a "calculated" result of the Commission administrative procedure. Mr. Culbertson continues his objection to the Recommended Decision and his failure to submit written testimony or exhibits for the record by attributing the effect of the Commission administrative procedure as " . . . preventing independent audits and investigations and denying interrogatories related to significant and material financial information and

safety issues. This suppressed substantial evidence to be entered in the record of this rate case." Culbertson Exc. at 29.

(2) Columbia's Reply

In its reply, Columbia refers to its Replies to Culbertson Exception No. 2 for incorporation by reference. Columbia, therefore, takes the position that Mr. Culbertson could have submitted written testimony and exhibits pursuant to the procedural schedule established by the ALJs in this proceeding but chose not to do so. Based on the foregoing, Columbia advises that Mr. Culbertson's choice not to submit evidence does not provide a basis for rejecting the Recommended Decision.

(3) Disposition

We are constrained to deny Mr. Culbertson's Exception. We note that Mr. Culbertson does not cite any written testimony or exhibit that he was precluded from proffering in the case. We agree with Columbia that while Mr. Culbertson did not present testimony or exhibits in this case, he was provided with the opportunity to do so. As noted herein and by the presiding ALJs, the Commission is required to base its decisions on "substantial evidence":

> Additionally, any finding of fact necessary to support an adjudication of the Commission must be based on substantial evidence. *Met-Ed Indus. Users Group v. Pa. Pub. Util. Comm'n*, 960 A.2d 189 (Pa. Cmwlth. 2008) (citing 2 Pa.C.S. § 704). Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Borough of E. McKeesport v. Special/Temporary Civil Serv. Comm'n*, 942 A.2d 274 (Pa. Cmwlth. 2008). Although substantial evidence must be "more than a scintilla and must do more than create a suspicion of the existence of the fact to be established," *Kyu Son Yi v. State Bd. of Vet. Med*., 960 A.2d 864, 874 (Pa. Cmwlth. 2008) (citation

> omitted), the "presence of conflicting evidence in the record does not mean that substantial evidence is lacking." *Allied Mech. & Elec., Inc. v. Pa. Prevailing Wage Appeals Bd*., 923 A.2d 1220, 1228 (Pa. Cmwlth. 2007) (citation omitted).

See R.D. at 20. The lack of any written testimony or exhibits in support of Mr. Culbertson's claims fails to provide substantial evidence on which this Commission may base a determination.

g. Culbertson Exception No. 8, Reply, and Disposition

(1) Culbertson Exception No. 8

In his Exception No. 8, Mr. Culbertson asserts that the Recommended Decision omits any acknowledgment or discussion of the multiple written letters to the Commission in opposition to this rate case, which are part of the public comment file. Mr. Culbertson also argues that there are other submissions from the public who wrote in and opposed or protested Columbia's proposed rate increase. Mr. Culbertson further avers that the Commission's failure to include these submissions in the record is, in some way, "disrespectful," as he is of the opinion that the contents of these letters may have benefited the complainants and decision-makers of the Commission in this rate case. Culbertson Exc. at 29.

(2) Columbia Reply

In its Replies, Columbia argues that Mr. Culbertson fails to recognize that the Commission may only consider sworn testimony in reaching its decision. Columbia R. Exc. at 18 (citing 52 Pa. Code § 1005.151). The Company notes that participants were encouraged to provide sworn testimony at the public input hearings held in this proceeding and that 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. Columbia R. Exc. at 18.

(3) Disposition

We shall deny Mr. Culbertson's Exception No. 8. Our review of the record in this matter includes sworn testimony received at the public input hearings held in this matter, as discussed herein and on pages 13-15 of the Recommended Decision. As an administrative agency, we shall review all submissions that are properly made a part of the record in this matter.

IV. Conclusion

We have reviewed the record developed in this proceeding, including the ALJs' Recommended Decision and the Exceptions and Replies filed thereto. Based upon our review, evaluation, and analysis of the record evidence, we shall deny the Exceptions filed by the OSBA and Mr. Culbertson, approve the Partial Settlement and the Non-Unanimous Settlement, without modification, and adopt the ALJs' Recommended Decision, consistent with this Opinion and Order; **THEREFORE,**

IT IS ORDERED:

1. That the Exceptions filed by the Office of Small Business Advocate on October 14, 2022, are denied.

2. That the Exceptions filed by Richard C. Culbertson on October 14, 2022, are denied.

3. That the Motion to Strike filed by Columbia Gas of Pennsylvania, Inc. on November 11, 2022, is granted consistent with this Opinion and Order.

4. That the Recommended Decision of Administrative Law Judges Deputy Chief Christopher P. Pell and John Coogan served on October 4, 2022, is adopted consistent with this Opinion and Order.

5. That the Joint Petition for Partial Settlement filed on September 2, 2022, by Columbia Gas of Pennsylvania, Inc., the Commission's Bureau of Investigation and Enforcement, the Office of Consumer Advocate, the Office of Small Business Advocate, the Pennsylvania State University, the Columbia Industrial Intervenors, the Retail Energy Supply Association, Shipley Choice, LLC and NRG Energy, Inc., the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania, and the Pennsylvania Weatherization Providers Task Force, is approved in its entirety without modification.

6. That the Joint Petition for Non-Unanimous Settlement Regarding Revenue Allocation and Rate Design filed on September 2, 2022, by Columbia Gas of Pennsylvania, Inc., the Commission's Bureau of Investigation and Enforcement, the Office of Consumer Advocate, the Pennsylvania State University, the Columbia Industrial Intervenors, the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania, and the Pennsylvania Weatherization Providers Task Force, is approved in its entirety without modification.

7. That Columbia Gas of Pennsylvania, Inc. shall file tariff supplements with the Commission, reflecting the rates set forth in its proposed compliance tariff attached to the Joint Petition for Partial Settlement as Appendix A and the Joint Petition for Non-Unanimous Settlement as Appendix B, to become effective on one (1) days' notice after the entry date of this Opinion and Order, for service rendered

on and after December 17, 2022, so as to produce an annual increase in base rate operating revenues not to exceed $44.5 million, consistent with this Opinion and Order.

8. That after Columbia Gas of Pennsylvania, Inc. files the required tariff supplements set forth in Ordering Paragraph No. 6 of this Opinion and Order, the Formal Complaints filed by the Office of Consumer Advocate at Docket Number C-2022-3031767, by the Columbia Industrial Intervenors at Docket No. C-2022-3032178, and the Pennsylvania State University at Docket No. C-2022-3031957 shall be deemed satisfied, and the Commission's investigation at Docket No. R-2022-3031211 shall be terminated, and all three dockets shall be marked closed.

9. That the Formal Complaint filed by the Office of Small Business Advocate against Columbia Gas of Pennsylvania, Inc. at Docket No. C-2022-3031632, is dismissed and marked closed.

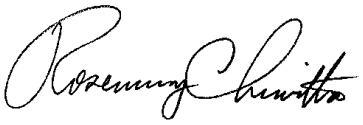
10. That the Formal Complaint filed by Richard C. Culbertson against Columbia Gas of Pennsylvania, Inc. at Docket No. C-2022-3032203, is dismissed and marked closed.

11. That the Formal Complaint filed by Jose A. Serrano against Columbia Gas of Pennsylvania, Inc at Docket No. C-2022-3031821, is dismissed and marked closed.

12. That the Formal Complaint filed by Constance Wile against Columbia Gas of Pennsylvania, Inc. at Docket No. C-2022-3031749, is dismissed and marked closed.

13. That if Columbia Gas of Pennsylvania, Inc. does not file a new Long-Term Infrastructure Improvement Plan by December 31, 2022, Columbia Gas of Pennsylvania, Inc.'s Distribution System Improvement Charge shall terminate pursuant to 52 Pa. Code § 121.5(c), and Columbia Gas of Pennsylvania, Inc. shall file a tariff supplement effective on one (1) day's notice that removes any provisions or language related to its Distribution System Improvement Charge.

BY THE COMMISSION,



Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: December 8, 2022

ORDER ENTERED: December 8, 2022