



COMMONWEALTH OF PENNSYLVANIA

September 2, 2022

E-FILED

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

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

Dear Secretary Chiavetta:

Enclosed please find the Reply Brief, on behalf of the Office of Small Business Advocate (“OSBA”), in the above-captioned proceeding.

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

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

Sincerely,

/s/ Steven C. Gray

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

Enclosures

cc: Robert D. Knecht
Mark Ewen
Parties of Record

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I. Introduction

A. History of the Proceeding

On March 18, 2022, Columbia Gas of Pennsylvania, Inc. (“Columbia” or the “Company”) filed Supplement No. 337 to Tariff Gas Pa. P.U.C. No. 9 (“Supplement No. 337”), which was filed with the Pennsylvania Public Utility Commission (“Commission”). The rates set forth in Supplement No. 337, if approved by the Commission, would increase Columbia’s annual jurisdictional revenues by approximately \$82.2 million.

On March 28, 2022, the Office of Small Business Advocate (“OSBA”) filed a formal Complaint in opposition to Supplement No. 337.

On April 29, 2022, a telephonic prehearing conference was held before Administrative Law Judge (“ALJ”) Christopher P. Pell.

On May 2, 2022, ALJ John Coogan was assigned to this proceeding.

On May 3, 2022, ALJ Pell and ALJ Coogan issued their Prehearing Order #1.

On June 7, 2022, the OSBA served the Direct Testimony of Robert D. Knecht and Mark D. Ewen.

On July 6, 2022, the OSBA served the Rebuttal Testimony of Mr. Knecht and Mr. Ewen.

On July 26, 2022, the OSBA served the Surrebuttal Testimony of Mr. Knecht and Mr. Ewen.

On August 3, 2022, ALJ Pell and ALJ Coogan conducted an evidentiary hearing.

B. Current Procedural Status

All parties except Mr. Richard C. Culbertson have reached a settlement agreement on all issues in this proceeding except for revenue allocation and rate design. The OSBA is a party to that partial settlement. The OSBA understands that all parties except the OSBA and Mr.

Culbertson have reached an agreement (“Non-Unanimous Settlement”) on revenue allocation and rate design issues. The OSBA is not a party to the Non-Unanimous Settlement.

On August 22, 2022, at 11:31 AM, ALJ Pell and ALJ Coogan sent the following email message to all parties in this proceeding:

[B]riefs regarding revenue allocation, or any other unresolved issue, should be submitted according to the briefing schedule. Separately, the proposed settlement along with its supporting documents should be submitted by the due date of the reply brief, September 2. Comments in response to the proposed settlement will be due by September 12. It is up to the parties what they would like to include in their briefs.

Any arguments regarding evidentiary deficiency can be raised in briefing or in comments to the settlement. Also, regarding use of an Excel spreadsheet, settling parties must support their settlement, and it is up to them on how they choose to support their settlement.

On August 23, 2022, the OSBA submitted its Main Brief addressing the record evidence on the issue of revenue allocation. The OSBA did not address the Non-Unanimous Settlement in its Main Brief, as that settlement was not yet part of the record.

On August 23, 2022, Columbia, the Bureau of Investigation and Enforcement (“I&E”), The Pennsylvania State University (“Penn State”), and Mr. Richard C. Culbertson also submitted Main Briefs.

On August 23, 2022, the following parties sent email messages stating that they were not filing Main Briefs in this proceeding: the Office of Consumer Advocate (“OCA”); the Columbia Industrial Intervenors (“CII”); the Coalition for Affordable Utility Service and Energy Efficiency (“CAUSE-PA”); the Retail Energy Supply Association, Shipley Choice, LLC d/b/a Shipley Energy, and NRG Energy, Inc. (“RESA/NGS Parties”); the PA Weatherization Providers Task Force; and the Natural Resources Defense Council.

The OSBA submits this Reply Brief in accordance with the ALJs' May 3rd Prehearing Order #1.

II. Summary of Argument

The selection of a cost of service study by the Commission has consequences, and directly impacts the revenue allocation to a company's customer classes.

In its Main Brief, the OSBA presented a corrected Peak & Average cost of service study and developed a revenue allocation based upon that cost of service study.

The revenue allocation presented by the OSBA is a just and reasonable solution to this issue.

Commission precedent requires the use of the Peak & Average cost of service study methodology.

Commission precedent appears to permit a "gradualism" metric of 2.0-times the system average increase for any customer class.

III. Argument

A. The Parties that did not Submit a Main Brief

The OCA, CII, CAUSE-PA, the RESA/NGS Parties, the PA Weatherization Providers Task Force, and the Natural Resources Defense Council have not submitted Main Briefs on the issue of revenue allocation in this proceeding. Therefore, those parties have waived any proposed revenue allocation and/or scale back argument previously presented in their respective testimonies.

It is the OSBA's understanding that those parties will be providing Statements in Support of the Non-Unanimous Settlement on the issue of revenue allocation.

B. The Main Briefs submitted by Columbia, I&E, and Penn State

The Main Briefs of Columbia, I&E, and Penn State include advocacy for the Non-Unanimous Settlement on the issue of revenue allocation and rate design. The OSBA cannot and will not respond to that advocacy addressing the Non-Unanimous Settlement, as that settlement, in accordance with the ALJs’ August 22nd email message, is not due to be submitted until the Reply Brief date of September 2, 2022. Therefore, also in accordance with the ALJs’ August 22nd email message, the OSBA will be providing its full response to the Non-Unanimous Settlement on September 12, 2022.

C. Issues raised in the Parties’ Main Briefs

1. Columbia

The principal standards for evaluating whether a revenue allocation proposal is reasonable is whether the proposal serves to move class revenues more into line with allocated cost (“cost standard”) and whether the proposal results in unreasonably large increases for any rate classes (“gradualism”).

In its Main Brief, Columbia sets forth a table illustrating its originally filed revenue allocation, at its originally filed revenue request of \$82.06 million.¹ Columbia’s table uses the Percentage of Proposed Increase metric to compare the Company’s originally proposed revenue allocation (which the OSBA believes accurately reflects the Company’s filed position) to the Non-Unanimous Settlement proposal (which is extra record evidence).

Columbia makes no attempt to defend its own revenue allocation proposal in its Main Brief. Specifically, Columbia offers no defense of its proposed revenue allocation based on its

¹ Columbia Main Brief, at 8.

three allocated cost of service studies, or even based on the Peak & Average (“P&A”) cost of service study upon which the Company indicates it primarily relies.

It is important to recognize however, that the OSBA witnesses’ proposal for revenue allocation would assign modestly higher increases to the combined SGS1 and SGS2 classes than would the Company’s filed proposal. The OSBA witnesses base that proposal on the results of their version of the P&A cost of service study, and the need for more aggressive progress toward cost-based rates.²

For the purpose of evaluating whether a revenue allocation proposal results in an excessive rate increase for any particular class, a typical “rule of thumb” is to place a limit on the ratio of the average rate class increase to the system average rate increase. Columbia, in fact, discusses this “rule of thumb” in its main brief, as follows:

Mr. Knecht’s and Mr. Ewen’s revenue allocation proposal would result in the LDS/LGSS class receiving an increase of 2.0 times the system average [increase], which violates principles of gradualism. In Columbia’s 2020 rate case, the Commission determined that 1.5 times the *average system increase* was the upper bound for rate gradualism.

Columbia Main Brief, at 13 (citation omitted) (emphasis added).

As the ALJs and Commission know by heart, evaluating “gradualism” starts with a reference percentage – the overall system average rate increase. For example, if a utility will be receiving an overall 6% increase in revenues, gradualism would limit any particular customer class rate increase to 9% (1.5 times the system average increase), or possibly 12% (2.0 times the system average increase).

Columbia also states the following in its Main Brief:

As indicated by the Commonwealth Court in *Lloyd*, cost of service is the “polestar” of utility rates. *Lloyd v. Pa. P.U.C.*, 904 A.2d

² OSBA Statement No. 1 at 24-25; OSBA Statement No. 1-R at 2-6; OSBA Statement No. 1-S at 5-6.

1010, 1020 (Pa. Cmwlth. 2006) *appeal denied*, 591 Pa. 676, 916 A.2d 1104 (2007) (“*Lloyd*”). While other factors, such as gradualism, may be considered, these factors are not permitted to trump cost of service as the primary basis for allocating the revenue increase. *Id.* at 1020-21. Consistent with the Commonwealth Court's directive in *Lloyd*, a proposed revenue allocation will only be found to be reasonable where it moves distribution rates for each class closer to the full cost of providing service. *Pa. Publ. Util. Comm'n, et al. v. PPL Electric Utilities Corporation*, Docket Nos. R-00049255, et al., 2007 Pa. PUC LEXIS 55 (Order on Remand entered July 25, 2007).

Columbia Main Brief, at 9. The OSBA agrees that Columbia has correctly stated the requirements of *Lloyd*.

However, the OSBA disagrees with the statement by Columbia that “Cost allocation studies require a considerable amount of judgment and are described as more of an accounting/engineering art rather than science.”³ The Company had to cite 1998 and 1983 cases for this old-school, hand-waving thinking. This approach was rejected by the Commonwealth decision in *Lloyd*, where allocated costs were established as the polestar criterion for ratemaking, and by the Commission in its February 2021 decision rejecting the specific methodology now being advanced again in this proceeding.

Finally, in its Main Brief, Columbia argues that “gradualism” only permits a 1.50-times the system average increase for any customer class, citing the Columbia 2020 rate case.⁴ Note that Columbia did *not* provide a page citation for this claim. In fact, the Commission stated the following in that Order:

The record indicates that although there are no definitive rules for determining what kind of rate increase would violate the principle of gradualism, limiting the maximum average rate increase for any particular class to 1.5 to 2.0 times the system average increase is

³ Columbia Main Brief, at 10.

⁴ Columbia Main Brief, at 13.

one common metric that has been used by experts in the Commonwealth.

Opinion and Order, Docket No. R-2020-3018835 (Order entered February 19, 2021), at 233 (citing the OSBA).

The OSBA acknowledges that a 1.50 times system average cap is often employed in Pennsylvania. However, the OSBA respectfully submits that the circumstances in this case require a different approach. Specifically, OSBA witnesses Ewen and Knecht explain that, under present rates, the LDS/LGSS rate class produces revenues far below average cost, with a revenue to cost ratio of 55 percent using the Company's P&A cost of service study method. With a 1.50-times system average limit, that value increases only to 59 percent at Columbia's proposed rates.⁵ Messrs. Ewen and Knecht therefore recommended that the higher rule-of-thumb limit of 2.0 times system average be used in this proceeding, to make at least some modest progress toward cost-based rates for the LDS/LGSS class.⁶

The OCA's expert testimony also advocates for increases in excess of 1.5 times the system average in this proceeding. Like the OSBA witnesses, OCA Witness Mierzwa cites to the enormous cost under-recovery for the LDS/LGSS rate class in support of his proposal to apply rate increases to both the SDS/LGSS and LDS/LGSS classes at roughly 2.0 times system average.⁷

Finally, I&E Witness Cline cites to the lack of any material progress toward cost-based rates for the residential class over the past three rate proceedings as support for his proposal to apply "first dollar relief" ("FDR") for the residential class. When applied to a \$44.5 million

⁵ OSBA Statement No. 1 at 24, Table IEc-4.

⁶ OSBA Statement No. 1, at 25.

⁷ OCA Statement No. 3 at 10-11 and Table 3.

increase, the I&E proposal is shown in the Columbia Main Brief at Appendix C. With a little arithmetic, it is obvious that the I&E proposal results in rate increases far above 1.5 times the system average. Specifically, the system average increase at \$44.5 million is 7.7 percent. The I&E increase for the SDS/LGSS class (\$6.76 million) would be an increase of 22.5 percent, while the I&E increase for the LDS/LGSS class (\$5.25 million) would be an increase of 22.0 percent, both nearly 3 times the system average increase.

In effect, all three statutory advocates in this proceeding reject the use of the 1.50 times system average increase cap. The OSBA respectfully submits that *Lloyd* requires that revenue allocation should make material progress toward cost-based rates, and that a 1.5 cap in this proceeding results in insufficient progress. Consequently, the OSBA disagrees that gradualism must be limited to 1.50 times the system average increase for any customer class.

2. I&E

In its Main Brief, I&E raises the issue of the appropriate cost allocation method to employ in this proceeding. I&E indicates that the Company filed three allocated cost of service studies, but that Columbia relied *only* its “P&A” version of the ACOS study for its revenue allocation proposal.

This statement is not quite consistent with that of Columbia witness Kevin L. Johnson, who indicated that the Company on the P&A ACOS study as the “. . . primary guide for the allocation of the revenue increase in this case.” Columbia Statement No. 6 at 4.

I&E’s Main Brief acknowledges that the alternative ACOS study methods were rejected by the Commission in Columbia’s 2020 base rate case. However, Columbia witness Johnson concludes that the Company’s third cost of service study, namely the one that is an average of the P&A and Customer-Demand (“CD”) methods, “. . . provides the Company, the parties and

the Commission with another set of returns that can be used as a guide in revenue allocation. In other words, the average study serves as another tool that can be used by the parties to inform the revenue allocation in setting cost-based rates.” *Id.*

In short, while I&E’s Main Brief indicates that the Company has relied entirely on the P&A ACOS study, the Company’s witness in this proceeding indicates that Columbia has indeed considered the results of the average ACOS study, and all but begged the other parties and the Commission to do so as well.

As a theoretical matter, the OSBA agrees with Company witness Johnson that the parties should consider alternative cost allocation methods for revenue allocation issues. As Messrs. Ewen and Knecht explained, including a customer component to mains costs reflects the economies of scale for serving larger customers.⁸ However, because OSBA respects recent Commission precedent, the OSBA relied only on the P&A cost of service study methodology for its revenue allocation proposals in this proceeding. While a time may come when the Commission’s decision from February 2021 (just 18 months ago) can be reasonably contested, doing so at this time, strikes the OSBA as wholly inappropriate.

Thus, an issue before the Commission in this proceeding is whether the cost basis for revenue allocation should be only the P&A ACOS method, which appears to have been the position of the I&E, OCA, and OSBA witnesses, or whether the CD method should also be factored into the calculus, which is the position of the Penn State and Company witnesses. The OSBA observes that this issue goes not only to how this matter should be resolved in a litigation context for this proceeding, but also as to whether a settlement is reasonable. That is, can a settlement be deemed to be reasonable if it relies, in part, on the testimony of witnesses who

⁸ OSBA Statement No. 1, at 13 and 14-15.

reject the Commission's cost allocation precedent? The OSBA respectfully requests that the Commission provide clarity as to whether the CD cost of service study, or the Company's average-of-the-two cost of service studies, can or cannot be relied upon (even in part) for achieving a resolution to the issue of revenue allocation.

Within the P&A cost of service study study there is a disagreement between the Company witnesses and the OSBA witnesses regarding the development of the design day peak demand allocation factor. The OSBA witnesses observed that the Company's filed P&A cost of service study implied that there was some significant shift in load patterns in this case relative to the last case – a shift that was unexplained by the Company. I&E's Main Brief cites to the Company's rebuttal testimony to OSBA, wherein the Company argues that the current values are not out of line with those from *the case just prior to the last one*. I&E cites to I&E Witness Cline, who apparently accepted the Company's rebuttal. However, Witness Cline offered no independent analysis, nor did he provide an explanation for the large drop in class load factors for the SGS classes.

In contrast, OSBA witnesses Ewen and Knecht provided detailed surrebuttal, showing that the Company's forecast load factor for the SGS1 and SGS2 classes was far lower than that used by the Company in the last four proceedings. OSBA Statement No. 1-S at 2-5. The unexplained shift in load factors was not addressed in the Company's rejoinder.⁹ As such, the OSBA respectfully submits that the Company has not explained why the forecast class load factors for the SGS1 and SGS2 rate classes in its various cost of service studies are well below

⁹ Messrs. Ewen and Knecht also indicated that the Company's historical method for deriving class-specific design day demands was not reasonable. OSBA Statement No. 1-S, at 2. This issue was contested by Company Witness Johnson in rejoinder. Columbia Statement No. 6-RJ, at 3. However, since Messrs. Ewen and Knecht did not attempt to adjust their cost of service study for that bias, the Company's rejoinder testimony is not relevant.

those from the past several cases. Therefore, the adjustments offered by Messrs. Ewen and Knecht should be adopted.

A second issue raised in I&E's Main Brief to which the OSBA will respond is set forth, below:

A relative rate of return indicates how the rate of return of each customer class compares to the system average rate of return. In general, a relative rate of return that provides revenue equal to its cost to serve would have a relative rate of return equal to 1.0.

I&E Main Brief, at 6.

As set forth in detail in the OSBA's Main Brief, "relative rate of return" (or "indexed rate of return") return cannot be used to show progress towards a class's cost of service using current and proposed rates. Relative Rate of Return provides results that cannot be trusted, as it frequently shows that a customer class is moving towards its cost of service, when the complete opposite is true.¹⁰

3. Penn State

In its Main Brief, Penn State provides a table of what it claims is the Non-Unanimous Settlement revenue allocation, showing the purported settlement allocation of the rate increase and the average percentage increases associated with each class.¹¹ At the time of this writing, this table includes extra record evidence that the OSBA will not address in this Reply Brief.

Penn State also states, as follows:

[I]n large part, the selection of [cost of service] study, implementation and execution thereof, and 'judgment' for adjustments reflect the allocation that is most beneficial to the class of customers that each party represents.

¹⁰ OSBA Main Brief, at 8-9. The OSBA is willing to provide an in-person presentation to the entire Commission, all ALJs, and all Parties, explaining why the indexed rate of return metric should be banished for all time.

¹¹ Penn State Main Brief, at 2.

Penn State Main Brief, at 9. This may be true for other parties, but the OSBA can unequivocally state that it does not tailor its arguments, its cost of service study, or its revenue allocation proposals to cleverly benefit its clients.¹² As noted earlier, the OSBA’s revenue allocation proposals in this proceeding are less favorable to the SGS classes than that proposed by the Company.

The OSBA also rejects (as it did for a similar argument from Columbia, above) Penn State’s argument that cost of service studies are merely “subjective . . . judgments” that include “a wide range of beliefs on cost of service study principles” which “are far from being an exact art” as this was overruled by the Commonwealth Court in *Lloyd*.¹³ The Court stated that the cost of service was *the polestar criterion* in a rate case, not a subjective evaluation of a variety of different methods with no standard. If the Commission believes that both the P&A and CD cost allocation methods should be considered equally, it should rely on Columbia’s average cost of service study. If the Commission believes that it should rely 90 percent on the P&A cost of service study methodology and 10 percent on the CD cost of service study methodology, it should require Columbia to make that evaluation in the future.

Moreover, while the OSBA disagrees with the Commission’s decision in Columbia’s 2020 rate case regarding cost allocation, it has respected that precedent. If the Commission accepts the implication of Penn State’s position that cost allocation be relitigated in each base rates proceeding (which for Columbia comes nearly every year), and that all cost allocation

¹² The OSBA would not have supported the P&A methodology in this proceeding if what Penn State claimed was true.

¹³ Penn State Main Brief, at 9 and 16-17. Of course, Penn State had to reach back to Commission Orders from 1978 and 1985 to find these obsolete notions.

methods should be considered by the Commission in evaluating litigation and settlement positions, there will be no reason for parties such as the OSBA to refer to or adhere to precedent.

The OSBA again respectfully requests that the Commission provide clarity as to whether there is one approved cost of service methodology for this proceeding, or whether multiple methods should always be considered.

Later in its Main Brief, Penn State argued, as follows:

PSU, however, disagreed with the litigation positions of the Company, OCA, OSBA, and I&E. For one, PSU disagreed that the peak & average cost of service study is the preferred cost of service study, recommending that the Commission adopt the customer-demand cost of service study. PSU witness, Mr. Crist, testified that because mains investment and their maintenance costs are the largest component of rate base and operating expenses, it is critical that the cost of service study reflect the Company's actual process of planning, designing, and constructing natural gas mains. Based upon discovery responses to PSU interrogatories and engineering experience, Mr. Crist concluded that the mains investment is determined based upon peak demand and customer location, not based on annual throughput. Accordingly, Mr. Crist recommended that the customer-demand study is the appropriate cost of service study method to use in this proceeding.

Penn State Main Brief, at 13 (citations omitted). As explained above, the OSBA does not disagree with Penn State regarding consideration of a CD cost of service study. However, as set forth in the OSBA's Main Brief, the Commission was explicit in its February 2021 Order that the P&A methodology was to be used for Columbia, and that CD methodology was wholly rejected.¹⁴

Finally, Penn State cites witness testimony, as follows:

Indeed, as testified by CII's witness Plank, such increases would detrimentally impact the largest customers who are already struggling in today's economic climate.

¹⁴ OSBA Main Brief, at 6-7.

Penn State Main Brief, at 19. The OSBA understands that Commonwealth industrial customers are struggling. Yet small businesses suffered heavily during the on-going the COVID-19 Pandemic and are being further crushed by inflation.

Whether either argument sways the Commission to consider a CD cost of service methodology is not for the OSBA to say.

IV. Conclusion

Once again, the OSBA emphasizes that the selection of cost of service studies has consequences. In its Main Brief, the OSBA presented a corrected Peak & Average cost of service study and developed a revenue allocation based upon that cost of service study.

In this proceeding, the OCA, CII, CAUSE-PA, the RESA/NGS Parties, the PA Weatherization Providers Task Force, and the Natural Resources Defense Council did not file Main Briefs supporting their respective positions on the proper cost of service study, and the resulting revenue allocation. By choosing to support the Non-Unanimous Settlement on revenue allocation, they have all abandoned their respective positions on this issue.

Therefore, the ALJs and the Commission will have to choose between the OSBA's proposed revenue allocation and the Non-Unanimous Settlement revenue allocation proposed by the other parties on September 2, 2022. In making that finding, the OSBA respectfully requests that the Commission provide as much clarity as it can to the parties regarding whether the CD cost of service methodology can be reasonably considered in this proceeding in light of the Commission's February 2021 decision; whether the Commission precedent in this proceeding should have any bearing on future Columbia base rate proceedings; and whether the a "rule-of-thumb" upper bound for rate gradualism of 1.50 times system average will provide sufficient progress toward cost-based rates in this proceeding to satisfy the requirements of *Lloyd*.

The OSBA submits that nothing in the Main Briefs submitted by Columbia, I&E, and Penn State, alter the fact that the OSBA revenue allocation is a just and reasonable solution to this issue.

The OSBA will respond to the Non-Unanimous Settlement on September 12, 2022, as order by the ALJs in their August 22nd email message.

Respectfully submitted,

/s/ Steven C. Gray

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Dated: September 2, 2022

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

CERTIFICATE OF SERVICE

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

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