



COMMONWEALTH OF PENNSYLVANIA

November 2, 2023

**E-FILED**

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

**Re: Columbia Water Company Supplement No. 121 To Tariff – Water Pa. P.U.C. No. 7 /  
Docket No. R-2023-3040258**

Dear Secretary Chiavetta:

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

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

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

Sincerely,

*/s/ Steven C. Gray*

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

*Enclosures*

cc: Brian Kalcic  
Parties of Record

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Columbia Water Company 2023 General Base** :  
**Rate Increase Filing - Supplement No. 121 To** : **Docket No. R-2023-3040258**  
**Tariff – Water Pa. P.U.C. No. 7** :  
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**EXCEPTIONS TO THE RECOMMENDED DECISION**  
**ON BEHALF OF THE**  
**OFFICE OF SMALL BUSINESS ADVOCATE**

**Steven C. Gray**  
**Senior Supervising**  
**Assistant Small Business Advocate**  
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**Date: November 2, 2023**

## **I. Introduction**

On April 28, 2023, Columbia Water Company (“Columbia Water” or the “Company”) filed Supplement No. 121 to Tariff Water – Pa. P.U.C. No. 7 (“Supplement No. 121”). Supplement No. 121 proposed rate increases for all customers in the Columbia and Marietta Rate Division in order to produce an increase in the Company’s total annual operating revenues for water service of approximately \$999,900.

On May 9, 2023, the Office of Small Business Advocate (“OSBA”) filed its Complaint in this proceeding.

On June 15, 2023, Administrative Law Judges (“ALJs”) Mary D. Long and Charece Z. Collins issued their Prehearing Conference Order.

On June 23, 2023, a Prehearing Conference was held before ALJs Long and Collins.

On June 26, 2023, ALJs Long and Collins issued their Prehearing Order.

On August 4, 2023, the OSBA served the Direct Testimony of Brian Kalcic.

On August 14, 2023, the OSBA served the Rebuttal Testimony of Mr. Kalcic.

On August 22, 2023, the OSBA served the Surrebuttal Testimony of Mr. Kalcic.

On August 28, 2023, an Evidentiary Hearing was held before ALJs Long and Collins.

On August 30, 2023, ALJs Long and Collins issued their Interim Order on Briefs and Closing of the Record.

On September 7, 2023, ALJs Long and Collins issued their Interim Order Admitting OCA Statement 3SR – Errata.

On September 12, 2023, the OSBA filed its Main Brief.

On September 21, 2023, the OSBA filed its Reply Brief.

On October 23, 2023, the ALJs issued their Recommended Decision (“RD”).

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

## II. Exceptions

**Exception No. 1: The ALJs state a standard for the evaluation of a cost of service methodology that appears to contradict a recent Commission Order. (RD, at 66)**

In their RD, the ALJs concluded, as follows:

The Commonwealth Court has, however, concluded that the class cost of service is the ‘polestar’ of utility ratemaking. Despite its heightened importance in the ratemaking process, cost allocation remains an inexact science, and there is no single ‘correct’ cost allocation methodology. There are, however, two fundamental principles—cost causation and consistency. Cost causation means that costs should be allocated based on what causes a cost to be incurred or what causes a cost to vary. *Consistency means that once a reasonable cost allocation methodology is established, it should not be changed without a compelling reason.*

RD, at 66 (emphasis added).

In contrast, the Commission Order in *Pa. PUC v. Columbia Gas of Pennsylvania, Inc.*,

Docket No. R-2022-3031211 (Order entered December 8, 2022):

We note that even in cases in which the revenue allocation methodology is litigated, a determination regarding which ACCOSS [Allocated Class Cost of Service Study] 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.*”.

*Columbia Order*, at 107, footnote 30 (emphasis added) (citation omitted).

The OSBA respectfully submits that the above two *highlighted* standards appear to conflict. The OSBA requests that the Commission address this inconsistency in its Opinion and Order.

**Exception No. 2: The ALJs erred by concluding that Columbia’s filed cost of service study was “adequate.” (RD, at 67)**

The ALJs observed that the Company used the Base-Extra Capacity (“BEC”) methodology when performing its originally-filed cost of service study. RD, at 66. The ALJs also observed that no party, including the OSBA, objected to the Company’s use of the BEC cost of service methodology. RD, at 67.

The ALJs continued, as follows:

OSBA notes that Columbia Water does not possess a customer class demand study, therefore Columbia Water did not perform the third step of the BEC cost methodology. Consequently, the Company’s COSS does not provide cost-based GMS [General Metered Service] class revenue targets, which, according to OSBA would otherwise be available to guide GMS rate design in this proceeding.

RD, at 67.

Furthermore, the ALJs’ Section IV Findings of Fact, paragraph 39 states, as follows:

The Company’s COSS takes into account *estimates* for max-day and peak-hour peaking factors by rate tier, in the absence of granular and more detailed data.

RD, at 10 (emphasis added) (citation omitted).

However, the ALJs ultimately concluded:

The Company, OCA and OSBA were each able to recommend a revenue allocation and rate design that each party believes results in reasonable rates. Therefore, for the purposes of this rate filing, *we accept the Company’s COSS as adequate.*

RD, at 67 (emphasis added).

The Company’s as-filed cost of service study cannot be deemed “adequate” as it did not complete execution of the BEC methodology. It bears repeating that in the first step of the BEC methodology, a utility’s system-wide revenue requirement is *functionalized*, or assigned to multiple service categories, such as supply, treatment, storage distribution, etc. In the second step, a utility’s functionalized costs are *classified* into cost categories. These cost categories

include base costs, extra capacity costs (which contain maximum day and maximum hour components), customer costs, and fire protection costs. Of note is the fact that the Company's BEC cost study executed each of these two initial steps.

However, the third step in the BEC methodology, where each classified cost category is *allocated* to the utility's rate classes in accordance with a factor that reflects relative cost responsibility, was not performed by the Company.<sup>1</sup>

Specifically, as Columbia Water did not complete the BEC methodology's third step when executing the Company's BEC cost of service methodology, Columbia witness David M. Fox instead assigned classified max-day and max-hour costs to *GMS rate blocks* rather than *GMS customer classes*.

The ALJs acknowledged this assignment, as follows:

Company witness Fox calculated consumption-based charges by allocating revenue requirements to base (average use), maximum day, and peak hour demands. *Once the costs were allocated to these components, they were distributed to each consumption block's proportionate share of each component.* Specifically, consumption falling into consumption blocks which produce more peak hour demands, were distributed a greater percentage of the peak hour costs. Consumption based rates were then calculated based on the distributed costs and relative demand per consumption block.

RD, at 69-70 (emphasis added).

When asked to provide support for the factors he used to assign such classified costs to GMS rate tiers, Mr. Fox responded that his chosen factors "were simply *assumptions* for purposes of rate design to reasonably maintain the Company's existing (Columbia) volumetric rate structure," and that no other supporting documentation was available.<sup>2</sup>

Furthermore, the only support offered by the Company for the manner in which it assigned BEC classified costs to GMS rate tiers is Mr. Fox's professional opinion that the factors

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<sup>1</sup> OSBA Statement No. 1, at 4-5.

<sup>2</sup> OSBA Statement No. 1, at 11-12 (emphasis added).

he used to assign classified costs to GMS rate tiers are reasonable and “more accurately reflect the true cost of providing volumetric service to each rate tier.”<sup>3</sup>

The record shows that Columbia Water did not sponsor a complete BEC cost-of-service study in this proceeding. The record also shows that the Company’s cost-of-service study fails to provide *cost-based* GMS class revenue targets that would otherwise be available to assist the Commission in its determination of a just and reasonable class revenue allocation.

Consequently, the OSBA respectively submits that Columbia Water’s cost-of-service study cannot be deemed “adequate” or useful for determining an appropriate class revenue allocation in this case.

Finally, the fact that “the Company, OCA and OSBA were each able to recommend a revenue allocation and rate design that each party believes results in reasonable rates”<sup>4</sup> says nothing about the adequacy of the Company’s cost of service study. The OSBA, recognizing the deficiencies inherent in the Company’s cost of service study, recommended that GMS classes in the Columbia Division receive uniform increases, *precisely because there is no cost evidence in the record that supports the assignment of anything other than uniform increases to such classes.* The Company and the OCA, on the other hand, choose to ignore the record evidence and develop non-cost-based class revenue allocations that favor the residential class, based upon an unsupported and arbitrary assumptions regarding class cost of service.

This OSBA respectively requests that the Commission deem the Company’s cost-of-service study to be incomplete and therefore inadequate for determining a just and reasonable class revenue allocation in its Opinion and Order.

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<sup>3</sup>Columbia Water Statement No.3-R at 11

<sup>4</sup> RD, at 67.

**Exception No. 3: The ALJs erred by not striking the surrebuttal testimony of OCA witness Jerome Mierzwa from the record, and then relying on that testimony in their RD. (RD, at 70-72)**

52 PA Code Section 5.243 (e)(2) states, as follows:

(e) A party will not be permitted to introduce evidence during a rebuttal phase which:

(2) Should have been included in the party's case-in-chief.

The OCA served the surrebuttal testimony of Mr. Mierzwa on August 22, 2023. In that surrebuttal testimony, Mr. Mierzwa, while not sponsoring a separate cost of service study in this proceeding, approved of the “cost of service analysis” provided by the Company, for the first time.

At the August 28, 2023, evidentiary hearing, the OSBA moved to strike Mr. Mierzwa’s surrebuttal testimony as in violation of Section 5.243(e)(2).<sup>5</sup> The ALJs denied the OSBA motion to strike, instead agreeing with the OCA attorney’s argument that Mr. Mierzwa had “reserved” the right to respond to the Company’s rebuttal testimony in surrebuttal, and that’s what he was doing.<sup>6</sup>

The OSBA respectfully submits that the ALJ ruling is a serious error. First, if the Office of ALJ is not going to uphold Commission regulations, then the Commission is going to receive evidentiary records from its ALJs that are incomplete and biased against the positions of one or more parties.

Second, the procedural stance taken by OCA witness Mierzwa is something that the Commission must quash immediately. The notion that an expert witness can reserve, in rebuttal,

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<sup>5</sup> Transcript, page 71 line 15 – page 72 line 11.

<sup>6</sup> Transcript, page 74 line 23 – page 75 line 8.



the right to provide evidence in surrebuttal that could have been presented in rebuttal (or even direct) is antithetical to the very notion of due process.<sup>7</sup>

Third, Columbia Water provided all the detail and “support” for its cost-of-service study and subsequent class revenue allocation in its original filing and through discovery. The proof of that fact, which undermines the OCA’s argument, is that the detail and “support” was cited by OSBA witness Brian Kalcic *in his direct testimony*.<sup>8</sup> There was no valid reason for Mr. Mierzwa to have waited until his surrebuttal testimony to address the Company’s cost-of-service study results and class revenue allocation proposal.

Finally, in an unheard-of violation of due process, the OCA’s class rate impact analysis under its rate design and class revenue allocation proposals appears for the *first time* in Appendix B to the OCA’s *Main Brief*. Table A in Appendix B provides the OCA’s proposed class revenue allocation, by Division, under the OCA’s (i) primary customer charge recommendation and (ii) secondary customer charge recommendation. Table A also illustrates, for the *first time*, the OCA’s proposed scale back methodology using the OCA’s recommended revenue requirement level. The OSBA submits that is unreasonably too late in the evidentiary process for Appendix B to the OCA’s *Main Brief* to be deemed valid record evidence, or be used as a basis for an RD. Allowing new evidence in the Briefing stage creates a precedent that invites chaos before the Commission.

**Exception No. 4: The ALJs erred by relying on the OCA’s reference to the AWWA Manual when recommending a class revenue allocation. (RD, at 70-72)**

In their RD, the ALJs observed the following:

Mr. Mierzwa recognized that more granular and detailed data such as monthly usage by block rate was not available in this case, to

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<sup>7</sup> Transcript, page 72 line 24 – page 73 line 11.

<sup>8</sup> OSBA Statement No. 1, at 11-12.

then be used with AWWA [American Water Works Association] Manual demand factors in developing volumetric rates.

\* \* \*

Mr. Mierzwa found that the ratios applied by Mr. Fox to Tier 1 (most residential customers), Tier 2 (most commercial customers), and Tier 3 (most industrial customers) were not unreasonable, when compared with the AWWA Manual typical maximum hour factors.

RD, at 70-71 (citations omitted). The ALJs continued by concluding, as follows:

We agree with the general allocation proposal of the Company that is supported by OCA.

RD, at 71.

However, Mr. Kalcic testified that the AWWA rate manual does not support Mr. Fox's actual method, which is to attempt to allocate classified costs to *GMS rate blocks*. Even OCA witness Mr. Mierzwa confirmed on cross examination that "The AWWA manual doesn't address allocating costs to rate blocks."<sup>9</sup>

This raises a significant question for the Commission. If Mr. Mierzwa admits that the AWWA manual does not provide guidance for the allocation of costs to rate blocks, why did the ALJs rely on this passage, set forth *supra*, when approving the Company's revenue allocation?

The record evidence is undisputed that the BEC cost methodology discussed in the AWWA manual uses maximum day and maximum hour class demand factors to allocate a utility's maximum day and maximum hour classified costs to customer classes. The AWWA manual does *not* support the allocation of a utility's classified costs to *GMS rate blocks*.<sup>10</sup> Moreover, the maximum day and maximum hour class demand factors that the AWWA manual uses to *illustrate* how to execute the BEC methodology do not apply to Columbia Water's *GMS*

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<sup>9</sup> Transcript, page 78, lines 1-2.

<sup>10</sup> Transcript, page 89 line 10 – page 90 line 7.

classes, or to any specific water utility. If such factors were generally applicable to utilities, there would be no need for individual water utilities to conduct class demand studies for the purpose of determining class peaking factors.

In summary, the AWWA class peaking factors referenced by OCA witness Mierzwa are simply examples, illustrative in nature, and would not be appropriate to use for the purpose of executing the third step of the BEC cost methodology in a Columbia Water rate case, and certainly should not be assumed to be valid to use for an altogether different and unsupported purpose – the allocation of classified costs to GMS *rate blocks* on the Columbia Water system.

**Exception No. 5: The ALJs erred in their conclusion that the existing differentials in rate levels across the Company’s GMS rate tiers are significant and should be modified. (RD, at 71-72)**

In their RD, the ALJs stated, as follows:

There is no evidence that the existing differentials among the rate tiers has any cost justification. Therefore, there is not necessarily an evidentiary basis to assign uniform increases [to the Columbia Division’s GMS rate tiers] as advocated by OSBA either.

\* \* \*

However, there are benefits to ratepayers by approving the approach of the Company and OCA. As noted by the Company, the existing differentials between the rate tiers are significant. The Company’s proposal reduces the severity of these differentials. Further, the Company’s position that increasing the higher volume tiers at a larger percentage increase would provide a stronger signal to promote conservation is persuasive.

RD, at 71-72.

With regard to the ALJs first point, the OSBA respectfully submits there is one critical distinction to be made regarding Columbia Water’s *existing* GMS rate differentials that the ALJ choose to ignore. While the Company has not presented any cost evidence in support of either its existing or its proposed GMS rate design, the Commission previously approved Columbia

Water's existing GMS rate structure in the Company's last base rate case at Docket No. R-2017-2598203.

Therefore, absent new evidence to the contrary, the Company's *existing* GMS rate structure must be deemed just and reasonable. Moreover, absent new cost evidence, the Company's existing GMS rate structure in the Columbia Division must be maintained at the conclusion of this case, as proposed by the OSBA.

With regard to the ALJs second point, the ALJs recognize the fundamental reason for the existence of Columbia Water's rate tiers in the RD's Section IV Statements of Facts, paragraph 36:

The Company's Columbia and Marietta Rate Divisions rely upon a single general metered service (GMS) rate schedule that is applicable to all residential, commercial, industrial and public authority customers.

RD, at 9. The Company's use of a single GMS rate schedule necessitates that separate rates (*i.e.*, rate tiers) apply to different levels of usage. In other words, in the absence of separate class rate schedules, utilities such as Columbia Water must incorporate separate rate blocks in their *single* GMS rate schedule in order to have any chance of recognizing the differences that exist in the cost of serving residential versus commercial versus industrial GMS customers.<sup>11</sup>

Alternatively stated, if Columbia Water's tariff supported separate GMS volumetric charges, by customer class, the Company could theoretically set each class's volumetric charge at its respective cost-based level, thereby eliminating *all* rate tiers, along with the perception that the Company is offering significant discounts to larger water users.

Finally, whether or not there exists a cost-of-service justification for the current differences in rate levels across the Company's GMS rate tiers is dependent upon the cost of serving each GMS

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<sup>11</sup> OSBA Statement No. 1-S, at 4.

customer class. However, the Company has declined to calculate *GMS class* cost of service in its cost-of-service study. Therefore, there is no record evidence, or cost basis, from which to conclude, as Columbia Water claimed, that CWC's existing rate tiers are too "deeply discounted."<sup>12</sup>

To sum up, as the ALJs recognized, Columbia Water's single GMS rate schedule must accommodate customers ranging from residential to industrial. Therefore, the fact that the "existing differentials between the rate tiers are significant" should come as no surprise. Moreover, those existing rate differentials were found to be just and reasonable in Columbia Water's 2017 rate case.

**Exception No. 6: The ALJs erred in recommending adoption of the OCA's proposed scale back methodology. (RD, at 76-77)**

In their RD, the ALJs recommend adopting the OCA's scale back methodology, stating:

We recommend that both the [GMS] customer charges and volumetric rates be scaled back [proportionately] as proposed by OCA. This method of scale back apportions the revenue increase consistently and preserves the benefits of the recommended revenue allocation.

RD, at 77.

The OCA's scale back proposal was illustrated for the first time in Table A of Appendix B to the OCA's Main Brief.<sup>13</sup> As set forth above, that is an egregious violation of due process. Nevertheless, and contrary to the ALJs' stated conclusion, the OCA's scale back methodology *would not preserve* the revenue allocation that results from the ALJ's recommended GMS rate design, but rather would assign greater than proportional rate relief to the Residential and Public classes, at the expense of the Commercial and Industrial classes.<sup>14</sup> Stated differently, the OCA's scale back methodology would only exacerbate the non-cost-based class increases that the

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<sup>12</sup> OSBA Statement No. 1-S, at 4-5.

<sup>13</sup> OSBA Reply Brief, at 10.

<sup>14</sup> OSBA Reply Brief, at 12.

Company and OCA propose to assign to GMS customers in the Columbia Division.<sup>15</sup> Neither the ALJs nor the OCA provide any argument in support of why the OCA's scale back proposal would result in just and reasonable rates.<sup>16</sup> However, the OCA proposal would implement more favorable rates for the Company's residential class to the detriment of Columbia Water's small businesses.

Consequently, the OSBA respectfully requests that the Commission reject the OCA's discriminatory scale back methodology. The OSBA's scale back proposal, which would preserve the relative magnitude of the OSBA's recommended Columbia Division class increases, while facilitating the consolidation of Columbia Division and Marietta Division rates, should be adopted by the Commission at the conclusion of this proceeding.<sup>17</sup>

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<sup>15</sup> OSBA Reply Brief, at 11.

<sup>16</sup> OSBA Reply Brief, at 11.

<sup>17</sup> RD, at 77.

### III. Conclusion

Wherefore, the OSBA respectfully requests that the Commission adopt OSBA Exception Nos. 1, 2, 3, 4, 5, and 6, as set forth above, and revise the Recommended Decision accordingly.

Respectfully submitted,

*/s/ Steven C. Gray*

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Dated: November 2, 2023

**BEFORE THE  
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**Tariff – Water Pa. P.U.C. No. 7** :  
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**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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*/s/ Steven C. Gray*

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