COMMONWEALTH OF PENNSYLVANIA

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November 9, 2023

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

Re: Pennsylvania Public Utility Commission
v.
Columbia Water Company
Docket No. R-2023-3040258

Dear Secretary Chiavetta:

Attached for electronic filing please find the Office of Consumer Advocate's Reply Exceptions in the above-referenced proceeding.

Copies have been emailed to the parties listed on the enclosed Certificate of Service.

Respectfully submitted,

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Enclosures:
cc: The Honorable Mary D. Long (email only)
The Honorable Charece Z. Collins (email only)
Office of Special Assistants (email only: ra-OSA@pa.gov)
Certificate of Service

*4896-0448-4750

CERTIFICATE OF SERVICE

Pennsylvania Public Utility Commission	:	
v.	:	Docket No. R-2023-3040258
Columbia Water Company	:	

I hereby certify that I have this day served a true copy of the following document, the Office of Consumer Advocate's Reply Exceptions, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed below. This document was filed electronically on the Commission's electronic filing system.

Dated this 9th day of November 2023.

SERVICE BY E-MAIL ONLY

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission	:	
	:	Docket Nos. R-2023-3040258
v.	:	C-2023-3040567
	:	C-2023-3040746
Columbia Water Company	:	

REPLY EXCEPTIONS OF THE
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Dated: November 9, 2023

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I. INTRODUCTION

The Office of Consumer Advocate (OCA) submits these Replies to the Exceptions of Columbia Water Company (CWC or Company) and the Office of Small Business Advocate (OSBA). For the reasons stated below and in the OCA's Exceptions and Briefs, the OCA respectfully requests that the Commission deny the Exceptions addressed herein, and grant the OCA's Exceptions.

II. REPLIES TO EXCEPTIONS

A. Rate of Return

Reply to CWC Exc. 1: The ALJs Correctly Rejected CWC's Overstated Return on Equity and the Flawed Underlying Analyses and Additions to the Return on Equity. R.D. at 44-64; OCA Exc. at 11-18; OCA M.B. at 33-55; OCA R.B. at 19-34.

ALJs Long and Collins adopted the Company's proposed capital structure and recommended a return on equity of 9.55%, applied to the Company's proposed ratemaking capital structure of 63.34% equity. R.D. at 45-49, 59-64. The combined impact of these two decisions substantially drove the ALJs resulting overall recommendation that CWC should receive **95%** of its requested revenue increase. R.D., Table I. Despite that, the Company filed an Exception complaining that the ALJs erred by not awarding a higher return on equity – even while acknowledging that might bump the Company over 100% of its requested revenue increase of $999,900. CWC Exc. at 1. CWC's arguments are without merit.[1]

[1] The OCA filed Exceptions showing that CWC's proposed ratemaking capital structure is well above the average of the proxy group and should not be used for ratemaking and that while the 9.55% return on equity is certainly more reasonable than CWC's overstated, flawed return on equity of 11.25%, the OCA retains its position that return on equity chosen by the Commission should be 8.80% at the OCA (or I&E) recommended capital structure or 9.40% at the Company's proposed capital structure, for the reasons set forth in OCA Statements 2 and 2SR. *See* OCA Exceptions at 11-18; *see also* OCA M.B. at 33-55; OCA R.B. at 19-34.

CWC provides no legal justification for its excessively inflated return on equity. CWC Exc. at 7-19. The facts and law do not support CWC's position, as it ignores the Commission's statutory duty to ensure that ratepayers' interests, along with investors and shareholders' interests are balanced in setting rates that are just and reasonable. *See* OCA St. 2 at 11-16; OCA M.B. at 33-44; OCA R.B. at 22-30. ALJs Long and Collins correctly rejected CWC's return on equity (ROE) of 11.25% as an overstated recommendation. R.D. at 59-64. CWC's proposed 11.25% relies on the flawed results of multiple models, an unsatisfactory CAPM, and unfounded add-ons to reach a return on equity that is biased and excessively high. R.D. at 60-64.

In its Exceptions, the Company repeats positions that did not persuade the ALJs and should not be accepted by the Commission to set a just and reasonable return on equity (ROE) and overall rate of return. *See* R.D. at 52, 54-58, 61-64; CWC Exc. at 2-4, 7-18. The record, as discussed in the OCA Briefs and Exceptions, establishes that CWC's requested ROE is overstated and should be set no higher than 9.4% based upon the OCA recommended capital structure of 49.4% debt and 50.6% equity, or an ROE of 8.8% if the Company's equity-heavy capital structure is adopted for ratemaking. OCA M.B. at 33-55; OCA R.B. at 19-34; OCA Exc. at 11-18.

The Company's efforts to impose as high a cost of capital upon Columbia and Marrietta ratepayers as possible is most blatant in the Company's Exception 1.e, which is really not an "exception" to the Recommended Decision at all. Long after CWC submitted its direct case and after the close of the record, CWC makes a new ratemaking claim that the Commission should provide a higher ROE pursuant to Section 523(a) of the Public Utility Code. CWC Exc. at 4-5, 18-19; 66 Pa. C.S. § 523(a). The Company's Exception 1.e is procedurally improper and substantively unsupported.

The Company's multi-part exception to the ALJs' return on equity recommendation should be denied. CWC Exc. at 7-19. The Commission should reject CWC's arguments that return on equity of 9.55% is too low.

a. <u>The ALJs Properly Rejected CWC's ECAPM Results Based Upon Commission Practice and the Record, Contrary to the Company's Exception.</u>

Contrary to CWC's Exception, the ALJs' determination to not accept the Company's ECAPM results is supported in the Recommended Decision. *See* CWC Exc. at 9-10; R.D. at 48-49, 54-57, 59-64. The ALJs noted the Company's reliance on many models in general, as well as the Company's particular combined CAPM/ECAPM results of 11.76%. R.D. at 48, 54, 59. However, in recommending a 9.55% cost of equity, the ALJs only considered the Company's CAPM result of 11.45%. R.D. at 63 (Table). The ALJs did not err in declining to accord the Company's ECAPM results any weight in the identifying the ALJs recommended cost of equity.

The ALJs focused on the parties' DCF and CAPM results, to the exclusion of the other model results, based upon the Commission's stated preference for using the DCF model and recent receptiveness to consideration of the results of the CAPM. R.D. at 59-60. The ALJs properly did not accord weight to the results of CWC's other models, such as the ECAPM, because the Commission has not relied on results from those other models. *Id*. at 60-61.

The ALJs did acknowledge CWC's contention that the ECAPM is a helpful measure and claim that "numerous tests of the CAPM have confirmed the validity of the ECAPM." R.D. at 54, 62; CWC Exc. at 9-10. However, the ALJs took special note of I&E witness Keller's criticisms of the ECAPM as a modified version of the CAPM that attempts to correct for supposed under-estimates of returns but in effect just adds another layer of subjectivity. R.D. at 62-63. OCA witness Garrett's criticism that CWC's ECAPM effectively double-counts upward beta adjustments already made once by Value Line provided further record support for the ALJs' determination. OCA M.B. at 50-51.

The Company's argument that the ALJs did not explain and should not have rejected the Company's ECAPM results is contrary to the clear language of the R.D. and testimony of OCA and I&E in opposition. The ALJs properly found the ECAPM results were not appropriate and should be afforded no weight. R.D. at 63.

b. <u>The ALJs Correctly Determined that the Company's 10.0% Equity Risk Premium Is Overstated.</u>

In Exception 1.b, the Company claims the ALJs erred by not accepting its 10.0% Equity Risk Premium (ERP) as reliable. CWC Exc. at 11-13; R.D. at 59-64. CWC points to the methodologies and results of Company witness D'Ascendis' various ERP values, the average of which is 10.0%. CWC Exc. at 11-12. CWC defends its result as reasonable for use in both the Company's CAPM and ECAPM, which produced the Company's combined CAPM/ECAPM value of 11.76%. *Id*. at 8, 11-13. CWC further excepts to the ALJs consideration of the OCA's ERP of 5.5% and the OCA CAPM result of 8.2% as unsupported and an outlier. *Id.* at 12-13.

The Commission should deny CWC's Exception 1.b. As explained above in the OCA's Reply to Exception 1.a, the ALJs properly rejected consideration of the Company's ECAPM result – inclusive of the 10.0% ERP. R.D. at 54-64. So rather than consider the Company CAPM/ECAPM result of 11.76%, the ALJs considered and declined to solely adopt the Company's 11.45% CAPM result. R.D. at 63. As the ALJs concluded, after consideration of the Company's position, the Company's ERP appears "overstated" and "we find the Company's CAPM result unsatisfactory." R.D. at 63. The burden of proof lies with the Company to support each element of its rate of return request, including the soundness of its ROE request. 66 Pa. C.S. §§ 315(a), 1301, 1308(c), R.D. at 13-14; OCA M.B. at 5-7; OCA R.B. at 2, OCA Exc. at 12.

OCA Exception 5 lays out why the ALJs erred by giving even partial weight to the Company's ERP of 10.0% and CAPM result of 11.45%. OCA Exc. at 12-16; *see* OCA M.B. at 49-51. The Company's ERP used in its CAPM is based in part on historical averages of the difference between returns on stocks and returns on bonds from as early as 1926. OCA Exc. at 12; OCA M.B. at 49-50; R.D. at 61. OCA witness Garrett explained that in calculating the CAPM "what matters in the model is the current and forward-looking risk premium." OCA Exc. at 12; OCA M.B. at 49. The ALJs decision to consider CAPM results was guided by the Commission's willingness to consider "the results of CAPM analysis because it is better suited to reflect changing market conditions." R.D. at 59-60, citing *Aqua 2022*; OCA Exc. at 12. The Company's ERP and CAPM results do not reflect the application of current and forward-looking risk premiums.

CWC's exceptions do not support reliance by the Commission on the Company's overstated ERP of 10.0% and CAPM result of 11.45%., much less the combined CAPM/ECAPM result of 11.76%, based upon use of the same ERP in each. *See* CWC Exc. at 7-13. The ALJs did not err, based upon the full record, in determining that the Company's ERP is overstated and the Company's CAPM is unsatisfactory. R.D. at 59-64.

c. <u>The ALJs Properly Limited Consideration of Models and Model Results to the DCF and CAPM, to the Exclusion of the Company's Other Risk Premium Approaches.</u>

The Company states that the ALJs erred by not specifying why the R.D. states the Company's equity risk premium is overstated. CWC Exc. at 13-15; R.D. at 63. According to CWC, Mr. D'Ascendis' use of the Predictive Risk Premium Model (PRPM) produced a reliable and appropriate risk premium and the Company's total market RPM. CWC Exc. at 13. Individually, the Company notes the respective results of 12.52% and 11.57%, when averaged produce an equity cost rate of 12.05%. CWC Exc. at 14. Based on the premise that more models produce better results, the Company faults the ALJs for not basing their recommended cost of equity upon these additional Company estimates. *Id.* at 13-15.

The Company's exception should be denied. First, the Company's mixes "risk premiums". The context of the ALJs' characterization of the Company's "equity risk" as "overstated" clearly relates to the Company's CAPM. *See* R.D. 63. The OCA has refuted the Company's CAPM related exception above.

As to the Company's puzzlement that the ALJs did not include the CWC's additional risk premium analyses and results in determination of the recommended cost of equity, the Recommended Decision is also clear. The ALJs acknowledged the Company's additional risk premium analyses. R.D. 55-56. The record also contains OCA witness Garrett's criticism of the Company's multiple risk equity analyses as unnecessary when the CAPM is a real risk premium model. OCA St. 2 at 48-49.

Further, as addressed in this OCA Reply Exception, the ALJs did consider the "more models" proposition and made an informed decision to base the recommended cost of equity upon two models: the DCF and CAPM. R.D. at 43-44, 59-64. The Commission should deny the Company's request to base the cost of equity on more than the DCF and CAPM.

d. The Commission Should Reject Any Size Adjustment for CWC, to Recognize and Balance Ratepayer Interests.

The ALJs declined to make an upward adjustment to their recommended 9.55% ROE based on size or financial risk. R.D. at 64. The Company calls this an error and exhorts the Commission to award a higher ROE. CWC Exc. at 18. CWC argues that its financial and business risk must both be recognized, i.e. it is not sufficient to get either a higher equity capital structure or a higher ROE, it must get both in order mitigate its risk.[2] CWC Exc. at 15-16. The ALJs supported their ROE on the basis that the result:

- Is higher than the DCF results of either the Company or the OCA
- Accounts for some level of interest rate volatility
- Produces "an adequate rate of return to provide the Company with a sufficient ability to attract capital **but it also results in reasonable rates for the Company's customers**"

R.D. at 64. CWC's challenge to the ALJs' ROE and overall return recommendation focuses solely on decreasing risk and increasing return for shareholders, ignoring the necessity and importance of factoring its customers' interests into the determination of overall rate of return that will be used to set rates. *See* OCA M.B. at 36-37 (citing in *Federal Power Comm'n v. Hope Nat. Gas Co.*, 320 U.S. 591, 603 (1944) and *Duquesne Light Co. v. Barasch*, 488 U.S. 299 (1989), *aff'g Barasch v. Pa. PUC*, 532 A.2d 325 (Pa. 1987)).

While the Commission has allowed size adjustments in other cases, such adjustment is not warranted based on the facts presented here. Company witness D'Ascendis acknowledged that CWC's size or leverage based upon debt is different for ratemaking than as viewed by investors, due to the Company's surcharge recovery of PENNVEST-related debt. Tr. 99-101. CWC's PENNVEST debt "is outside and not included in the Company's capital structure for ratemaking." *Id.* at 100. As PENNVEST debt and interest are recovered directly from ratepayers, CWC does not have to pull from operating cash to pay it. Tr. 99-101. Investors are able to look at the whole CWC and see a portion of the Company's debt as less risky.

[2] On the capital structure side, the Company renews disproven claims that if the Commission determines to use a hypothetical capital structure for ratemaking purposes, CWC must align its actual capital structure by taking on more debt. CWC Exc. at 16, n.72. The Company misses the distinction between a utility's *actual* capital structure, which is fully within the discretion of utility management and *ratemaking* capital structure. OCA M.B. at 41-42; *see* OCA St. 2SR at 9; *see also* I&E M.B. at 17 ("use of a hypothetical capital structure never implies that the Company is obligated to acquire more debt to make its actual capital structure match that of the hypothetical. Rather, the hypothetical capital structure is simply a tool to reflect the industry norm.")

As additional reason not to burden ratepayers with a higher ROE, the Columbia rate district customers are already charged the PENNVEST surcharge and would in turn be charged the higher equity return adjusted for size. Tr. 99-101; OCA M.B. at 53-54. Further, the Company treats revenues received though the PENNVEST surcharge as subject to tax, an expense to be collected through the new base rates. CWC St. 2R at 22, 23; CWC Exh. GDS 2R, Supporting Sch. 1, 2. These facts distinguish the record of this proceeding and support the ALJs' rejection of an upward adjustment to ROE. The Company has not proven that a size adjustment of 100 basis points or any other amount will result in just and reasonable rates for the Company's Columbia and Marietta customers. This is consistent with prior cases where the Public Utility Commission has rejected size and leverage adjustments where their addition would be contrary to the public interest. *See, e.g., Pa. PUC v. UGI Util., Inc. – Elec. Div.*, R-2017-2640058, 100 (Order Oct. 25, 2018); *Pa. PUC v. Aqua Pennsylvania, Inc.*, R-2021-3027385, 166-67 (Order May 16, 2022).

For these reasons and as further discussed in the OCA and I&E Briefs, no size adjustment is warranted here. OCA M.B. at 51-54; OCA R.B. at 32-34; I&E M.B. at 33; I&E R.B. at 10-11.

e. <u>CWC's Request for An Unquantified Upward Adjustment to the Return on Equity is An Improper Pleading and Untimely Request for Affirmative Relief That Should Be Denied.</u>

The Company's Exception 1.e does not identify any error by the ALJs or denial of a Company position that the Commission should decline or reject. Instead, the Company simultaneously makes a *de novo* request for an additional adjustment to the return on equity, while declaiming "Columbia Water is not seeking a management efficiency adjustment or proposing any specific adjustment." *See* CWC Exc. at 4, n.17, 5, 18, n.83, 19. The Company's inference that it has no burden of production and proof because the grounds are "adequacy of service" rather than "efficiency" is not supported by Sections 315(a) and 523(a). 66 Pa. C.S. §§

315(a), 523(a). Until the Company's Exceptions, the OCA and I&E had no notice of the Company's request that the Commission consider a ratemaking adjustment in the Company's favor for service quality that exceeds its obligations under Section 1501. 66 Pa. C.S. § 1501. The Company's Exception requesting affirmative relief is untimely, procedurally improper, and contrary to the due process interests of the OCA.[3] It should be denied.

Further, the ALJs' comment about excellent service does not arise to the level of evidentiary support required by Section 523(a). *See* R.D. at 85. Section 523(a) requires the Commission to make specific findings of fact in support of such a ratemaking adjustment. The ALJs observation that consumers did not participate in the public input hearing (PIH) and that the Company resolved consumers' informal complaints does not support an inference that CWC's service quality exceeds the Company's statutory obligations under Section 1501. The record does not support consideration much less approval of the Company's untimely and unsupported request to impose even greater cost of capital expense on its Columbia and Marietta rate district customers.

B. <u>Expenses</u>

<u>Reply to CWC Exc. 2:</u> <u>The ALJs Were Correct to Normalize Rate Case Expense Based on Historic Filing Frequency to Assure That Ratepayers Pay Only a Reasonable and Justified Level of Expense in Rates.</u> R.D. at 22-26; OCA M.B. at 12-13; OCA R.B. at 5-9.

The Company excepts to the ALJs adoption of a five-year/60-month period to normalize rate case expense. CWC Exc. at 19-23. The Company does not dispute that five years is the average interval between its last rate filings and recognizes that actual filing frequency is considered by the Commission. It argues, however, that the ALJs erred by not giving proper weight or consideration to the evidence CWC provided about the timing of its next base rate

[3] 52 Pa. Code § 5.535(a).

case. The Company particularly relies on a 2019 Wellsboro Electric rate case and claims that, like Wellsboro, CWC has provided concrete evidence that it "must" file another base rate case in three years. CWC Exc. at 21-22.

Notably, the Company misunderstands the ALJs' discussion of Wellsboro. CWC Exc. at 20. As the ALJs correctly summarized, although Wellsboro provided evidence supporting its claims that it would file a base rate case within three years and was granted a three-year normalization period, Wellsboro *did not* end up filing a base rate case in three years. Wellsboro's 2019 rate case was filed in July 2019 and, four years later (and counting), that utility has not filed a base rate case. R.D. at 25 (citing *Pa. PUC v. Wellsboro Elec. Co.*, R-2019-3008208, 70-73 (Order Apr. 16, 2020)); I&E R.B. at 4. The ALJs recognized this and other examples where a utility's plans for filing have proven unreliable. As they correctly concluded, an actual historic filing pattern "often presents the best evidence of a representative time period to anticipate the company's future behavior with respect to filing its next rate case." R.D. at 25 (citing *Pa. PUC v. Emporium Water Co.*, R-2014-2402324, 48 (Order Jan. 28, 2015).

CWC also misses the mark when it claims the Fact Finders did not give proper weight to its evidence about the timing of its next rate case. The ALJs expressly considered, and were not persuaded by the Company's "evidence." R.D. at 25-26. As one example, the Company points to its witness's statement – referencing no other supporting information – that "the Company will ***need*** to address costs and revenues associated with the EDTMA system" in the next three years. To the contrary, the ALJs were persuaded by the actual evidence provided by the OCA regarding the representations made by CWC in the acquisition proceeding, which undercut its current claims about the timing of its next base rate case. Specifically, CWC projected that current EDTMA rates would generate $150,080 annually above costs for operating the system.

Application of Columbia Water Co., A-2021-3027134, 14 (Order Feb. 3, 2022). As for capital improvements, the Company told the Commission that those would be funded through that income and borrowed funds, which might include PENNVEST loans. *Id*. at 10. The Company already has a PENNVEST surcharge mechanism in place, to which it can incorporate new PENNVEST loans without filing a base rate case. *See, e.g.*, *Columbia Water Co. Supplement No. 117 To Tariff – Water Pa. P.U.C. No. 7*, R-2022-3036936, 4 (Order Feb. 9, 2023).

In its Exceptions, CWC claims incorrectly that the ALJs found that having a DSIC means the Company will not need to seek a rate increase. CWC Exc. at 22. While the DSIC is not a replacement for rate cases, the Company has acknowledged that its DSIC has allowed it to manage infrastructure replacement costs "without the need for additional rate case filings." OCA R.B. at 8 (citing *Petition of Columbia Water Co. for Approval of its Second Long-Term Infrastructure Improvement Plan*, P-2022-3034702, 5 (Order Dec. 8, 2022)). Again, CWC's representations in another proceeding show that the Company's projections are not a reliable or reasonable measure for normalizing rate cases expense and do not warrant a deviation from the Commission's practice of basing normalization periods on known and actual historic filing intervals.

The Commission should adopt the ALJs' recommendation for a 60-month normalization period for rate case expense and apply the same normalization period for the Company's other normalized expenses. Decreasing the normalization period would serve to increase rates. If the actual interval turns out to be shorter than five years, that shorter interval will be factored into the actual, historic filing frequency in that next case and reduce the normalization period to the Company's benefit. *See* OCA R.B. at 8; OCA M.B. at 13. That is a more reasonable result than increasing rates in this case and putting the customers at risk that the projected timing of CWC's next case – timing that is entirely at the discretion of the utility – shows to be longer than three years. The Company's proposal to increase rates by $50,000 per year should be rejected.

For the reasons discussed here and in the OCA and I&E Briefs, the ALJs adjustment to rate case expense is soundly supported and should be adopted by the Commission. OCA R.B. at 5-9; OCA M.B. at 12-13; I&E R.B. at 2-4; I&E M.B. at 8-11.

Reply to CWC Exc. 3: The ALJs Correctly Recommended Normalizing an $18,000 Portion of the Company's Materials and Supplies Expense Claim that Did Not Represent Normal Annual Costs. R.D. at 30-31; OCA M.B. at 16-18; OCA R.B. at 9-10.

In its filing, the Company proposed a Going Level adjustment of $55,010 to the HTY base amount of expense to set the end of FTY level of expense for ratemaking. CWC Exh. GDS 1 at 1-15 (Revised), 1-17 (Revised). The OCA accepted the support provided by the Company for $37,010 of that increase. OCA M.B. at 16-17; OCA St. 1 at 7-9; OCA St. 1SR at 13-15. The OCA's challenge and the subject of CWC's Exception is $18,000 for the estimated cost for a specific 2023 road restoration project (Kinderhook Project). The dollars involved are even less because the OCA did not recommend disallowing $18,000, the OCA recommended normalizing that amount over 60 months (the historic average interval between rate case filings). The ALJs adopted the OCA's recommendation and reduced the annual CWC's Materials and Supplies expense by $14,400 (4/5 of the $18,000). R.D. at 31.

In its Exception, CWC opposes normalizing the expense. CWC Exc. at 23-25. It acknowledges that the Kinderhook Project was unusual in terms of the degree of expense incurred but argues that the ALJs should have treated it as normal because CWC, and all utilities with underground infrastructure, have to make roadway repairs each year. *Id*. at 23-24. The ALJs considered and were not persuaded by CWC's testimony that the event and magnitude of an $18,000 roadway repair are normal and occurring annually. R.D. at 30-31. Even if a second expensive repair occurred in 2023, that does not, without more, establish that *either* project was a normal annual expense. *Id*. at 31; OCA M.B. at 18. Further, if the $18,000 road restoration project related to a water main break was a normal event, then there should be no need for the Company to include the entire $18,000 as part of the Going Level adjustment to establish a FTY level of Materials and Supplies expense, as OCA witness Rogers explained:

> Regular, recurring expenses related to water main breaks, however, would already be captured prior to inclusion of any going-level adjustments, in the historical value used as the basis for the FTY. In response to I&E-RE-14-D, the Company cites the costs associated with this specific $18,000 roadway restoration as an element used to determine its going-level adjustment, and that these costs reflect an abnormal occurrence due to the significance of the damage that occurred as a result. In their own words, "Normally pavement restoration for a water main repair is confined to patch over the repair area." That was not the case in this instance, which was the Company's justification for including it in the going-level adjustment as an abnormal cost not accounted for in the usual recurring costs already reflected in the per books value for the year ended December 31, 2022. If the expense is not normalized, rates will be set to reflect an expense that is outside what is expected to be incurred on a regular basis.

OCA St. 1SR at 13.

Again, the ALJs' resolution of this issue does not deny CWC recovery of the incremental $18,000 addition to its Going Level adjustment for the 2023 FTY. It balances the interest of the Company and ratepayers by recognizing the $18,000 Kinderhook Project expense at a normalized level. R.D. at 31; OCA M.B. at 18. CWC's Exception, which seeks to increase Materials and Supplies expense by $14,400 annually should be denied.

The Company further argues that, if the Commission adopts the ALJs' recommendation to normalize the incremental $18,000, the normalization period should be three years instead of five. CWC Exc. at 25. This argument should be rejected for the same reasons discussed on pages 24 through 26 of the Recommended Decision and in the OCA's Reply to CWC Exception 3, relating to the appropriate period for normalizing Rate Case expense.

Reply to CWC Exc. 4: For the Same Reasons Discussed in Regard to Rate Case Expense, a Five-Year Normalization Period Should Apply to Office Expense. R.D. at 24-26, 32-33; OCA M.B. at 13, 24-25; OCA R.B. at 5-9, 13-14.

CWC's only exception related to Office expense is the period of the normalization that the ALJs applied to the one-time expense for upgrading the Company's billing software. CWC Exc. at 25. As noted by the ALJs, both OCA and CWC agree that the same normalization period applied to rate case expense should apply to the Company's billing software upgrade expense. R.D. at 33. For the reasons discussed in the Recommended Decision, these Replies to CWC's Exceptions and the OCA's Briefs and testimony, the appropriate normalization period is five years. *Id*. at 33, 24-26; OCA M.B. at 13, 24-25; OCA R.B. at 5-9, 13-14. Accordingly, the Company's Exception should be denied.

Reply to CWC Exc. 5: Columbia and Marietta Customers Rates Should Not Increase to Recover 100% of General Operating Costs That Also Benefit Customers in the EDTMA Division. R.D. at 34-37; OCA M.B. at 25-30; OCA R.B. at 15-17.

The Company acquired the East Donegal Township Municipal Authority (EDTMA) system on March 31, 2022. CWC excluded that system from its base rate filing. CWC Exh. GDS 1 at 1-2; OCA St. 1 at 14. However, the Company only removed costs from its cost of service claim that it could directly and exclusively assign to the EDTMA Division. The Company proposed for the Columbia and Marietta Divisions to bear all of the Company's general operating costs, even where those costs benefit customers in all three systems. R.D. at 34-35; OCA M.B. at 26-27. OCA witness Rogers addressed this problem by developing allocation factors to remove from CWC's cost of service elements of general operating costs for which the EDTMA Division should be responsible. *Id*.

As observed by the ALJs, CWC generally agrees that customers in the Marietta and Columbia Divisions should not be responsible for costs associated with service to the EDTMA system. R.D. at 36. In its Exception, however, the Company continues to quibble about the allocation of indirect costs. CWC Exc. at 26-27. CWC argues that the allocations are duplicative of direct costs already removed. Point for point, the OCA provided evidence refuting those claims. *See* OCA R.B. at 16 (citing OCA St. 1 at 17, 19; 1SR at 18, 20).

The ALJs considered and properly rejected the arguments CWC makes in its Exception because CWC has not met its burden to show that allocating only direct costs to EDMTA is just and reasonable for setting rates. Further, the OCA demonstrated that its adjustments are both reasonable and conservative, as reflected in the ALJs disposition of the issue:

> We agree that it is appropriate to remove a portion of the Company's general operating costs that can be attributed to the cost of serving the customers in the EDTMA Rate Division. Columbia Water has only removed direct costs. While Ms. Rogers was required to use some data that may predate the acquisition of EDTMA, any negative impact from the use of that data is mitigated by the 25% reduction of the Company's HTY expense and is also outweighed by the benefit to Columbia and Marietta customers because they will not be required to bear the indirect costs of the EDTMA customers.
>
> Columbia Water does not argue here that it did not have adequate time to develop data regarding indirect costs attributable to service to EDTMA. Indeed, the Company had adequate time to track the direct costs attributable to EDTMA. We find OCA's proposed method of allocation of indirect costs related to EDTMA reasonable and fair.

R.D. at 37. For these reasons and as further addressed in the OCA's Briefs, the Company's Exception should be denied.

C. <u>Rate Base</u>

<u>Reply to CWC Exc. 6: Cash Working Capital Should Be Adjusted Downward Consistent with the Commission's Adjustments to CWC's Expense Claims.</u> R.D. at 19-20; OCA M.B. at 11; OCA R.B. at 4.

The ALJs properly made a downward adjustment to CWC's claim for cash working capital to reflect their downward adjustments to the Company's claimed level of operating expense. R.D. at 20. The OCA has demonstrated that additional downward adjustments to operating expense are warranted and should be adopted by the Commission. Cash working capital should be adjusted accordingly, to flow through those expense adjustments. Specifically, the OCA recommended a reduction to rate base of $25,501. OCA M.B., App. A, Table II, col. C, ln. 14. The Company's Exception, based on its disagreement with the ALJs' adoption of any OCA recommendations, should be denied.

D. Revenue Allocation and Rate Design

Reply to OSBA Exc. 1: The ALJs Applied Appropriate Standards in Reviewing the Company's Cost of Service Methodology, Including Recognition that There is No Single "Correct" Methodology. R.D. at 65-68; OCA M.B. at 57-59; OCA R.B. at 35.

In its first Exception, the OSBA contends that the standards applied by the ALJs for evaluating cost of service methodology appear to conflict. OSBA Exc. at 3. The OSBA focuses on two statements:

> 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*.

R.D. at 66 (emphasis added by OSBA) (OSBA did not include the first sentence above in its quotation from the R.D.).

> 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. Columbia Gas of Pennsylvania, Inc., R-2022-3031211, 107, n.30 (Order Dec. 8, 2022) (emphasis added by OSBA) (citation omitted). It would seem that these statements are readily reconciled if the "circumstances of the situation on a case-by-case basis" provide "compelling reason" for changing the cost allocation methodology. More to the point, however, the ALJs did not accept the Company's COSS because it was "consistent," they accepted it as adequate given the data available in this case. R.D. at 67. The ALJs stated:

> Although the Company's COSS lacks a certain level of precision, a cost of service study is but one consideration in the development of a reasonable rate design. 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.

R.D. at 67 (citing OCA St. 3 at 7 referencing James C. Bonbright et al., *Principles of Public Utility Rates* (2d ed. 1988)). The OSBA's Exception should be denied.

<u>Reply to OSBA Exc. 2: The ALJs Properly Accepted the COSS Methodology as Adequate Based on the Data Available in This Case.</u> R.D. at 65-67; OCA M.B. at 57-59; OCA R.B. at 35.

In its second Exception, the OSBA repeats arguments made in its testimony and Briefs that CWC did not completely execute the base-extra capacity methodology because the Company did not have the required granularity and detailed data to develop a cost-based class revenue allocation. OSBA Exc. at 4-6; OSBA M.B. at 6-11. No party disputed such. Rather, the ALJs, CWC, and the OCA agreed that, based on the data that *is* available, the Company's methodology was a reasonable starting point for developing rates.[4] R.D. at 65-67.

The disputed matter was whether, in the absence of CWC-specific cost data supporting either proposal, the existing volumetric rate structure should be continued or changed to mitigate the differential between the rate tiers. The Company proposed a change. The OSBA opposed. The OCA determined to support a modification to the differentials based on many of the same non-cost factors recognized by the ALJs: the need for gradualism in unifying the rates between

[4] While the OCA agreed that the Company's methodology is generally acceptable and a reasonable starting point for developing unified rates for the Columbia and Marietta rate districts, the OCA does not agree with the Company's functionalization of certain costs in its cost of service study as being customer-related. OCA M.B. at 62-72; OCA R.B. at 37-38; OCA St. 3 at 6-11; OCA St. 3SR at 2-5; OCA Sch. JDM-1SR; OCA Sch. JDM-2SR. The ALJs recommended the Commission adopt the OCA's proposed customer charges and scale back from the filed-for revenue increase and the Company did not except to those recommendations. R.D. at 72-76.

the Marietta and Columbia divisions and the benefits of sending a stronger pricing signal to promote conservation. As summarized by the ALJs:

> We agree with the general allocation proposal of the Company that is supported by OCA. 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 as advocated by OSBA either. That is, both approaches to revenue allocation are, to some degree, arbitrary and dependent upon professional judgment.
>
> 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 pricing signal to promote conservation is persuasive. Customer conservation may provide a benefit of delaying, reducing or avoiding the costs of capital improvement projects.

R.D. at 71-72 (footnotes omitted); OCA M.B. at 60-62; OCA R.B. at 36-37. The ALJs properly accepted the Company's allocation methodology as a starting point, and informed by the other evidence provided by the parties – cost-based and policy-based – determined to modify the existing differentials between the volumetric usage blocks. OSBA's Exception should be denied.

<u>Reply to OSBA Exc. 3:</u> <u>The ALJs Correctly Rejected the OSBA's Motion to Strike Evidence Provided by the OCA Responsive to Arguments Presented by CWC for the First Time in Its Rebuttal Testimony, and Promoted Full Development of the Record.</u> R.D. at 70-72; Tr. at 71-91; OCA St. 3SR at 6-9.

The OSBA argues that the ALJs erred by not finding that the OCA introduced evidence during a rebuttal phase (its surrebuttal testimony) that should have been included in the OCA's case-in-chief. OSBA Exc. at 7-8. The ALJs properly rejected this argument because OCA witness Mierzwa responded in surrebuttal to testimony that Company witness Fox provided for the first time in his rebuttal testimony. Tr. 73; CWC St. 3R at 11; OCA St. 3SR at 6-9. As such, Mr. Mierzwa's first opportunity to respond to that testimony was in surrebuttal. *Id*.

Contrary to the OSBA's allegation, it was not until rebuttal that the Company presented support for using its proposed allocation versus that proposed by the OSBA, i.e. the relative discrepancy in discounts between the existing tiers and the benefit of a stronger conservation pricing signal. OCA St. 3SR at 7-9. The OSBA had the same opportunity as the OCA to respond in surrebuttal to the arguments presented for the first time in the Company's rebuttal testimony. *See* OSBA St. 1S at 4-6.

Moreover, any prejudice resulting from the late development of CWC's position was cured because the ALJs afforded the OSBA the opportunity to respond to the contested OCA surrebuttal testimony during the evidentiary hearing. Tr. 75-83, 86-91. Thus, in addition to extensive cross examination and recross examination of Mr. Mierzwa by the OSBA's attorney, the OSBA was able to develop its position in the evidentiary record through the oral testimony of Mr. Kalcic responsive to Mr. Mierzwa's surrebuttal testimony. Tr. 88-91.

Finally, the OCA prepared a class rate impact analysis (based on its own revenue requirement recommendation) with its Main Brief because it was directed to do so after the evidentiary hearing, through the Interim Order on Briefs issued on August 30, 2023. The OCA's adjustments regarding customer charges and scale back were already spelled out in the OCA's rebuttal testimony both "in the event that the Company is able to justify its method of assigning revenue responsibility to customer class" and in the event that the OSBA's alternative proposal was adopted. *See* OCA St. 3R at 4-5. The OSBA responded in surrebuttal to the OCA's scale back recommendation under its primary and secondary customer charge recommendation. OSBA St. 1S at 6-7. Further, the OSBA responded in its Reply Brief to the OCA's class rate impact analysis. OSBA R.B. at 10-12. The ALJs had the benefit of the OSBA's responses when they considered the evidence and rendered their recommendation on the matter. No violation of due process occurred in this matter; to the contrary, the ALJs worked to ensure that the record was fully developed, and afforded the testimony provided by the OCA and the OSBA appropriate weight in making their recommendation regarding revenue allocation. The OSBA's Exception should be denied.

Reply to OSBA Exc. 4: The ALJs' Recommendation to Modify the Differential Between Volumetric Rate Tiers Properly Considered the OCA's Reference to the AWWA Manual as One of Several Supporting Factors. R.D. at 70-72; Tr. At 80; OCA M.B. at 59-62; OCA R.B. at 35-37.

The OSBA notes that in his base-extra capacity cost of service study, Mr. Fox attempted to allocate classified costs to general metered service (GMS) rate blocks. OSBA Exc. at 9. The OSBA claims that the base-extra capacity method utilized in the AWWA Manual allocates costs to customer classes, not rate blocks and, therefore, the AWWA Manual does not support the allocation of a utility's classified costs to GMS rate blocks. *Id*. On this basis, the OSBA argues that the ALJs erred in relying on the OCA's reference to the AWWA Manual in recommending a class revenue allocation.

The OSBA's argument is a distinction without a difference. As explained during Mr. Mierzwa's response to OSBA cross-examination, the Tier 1 rate block includes most Residential customers, the Tier 2 rate block includes most Commercial customers, and the Tier 3 rate block includes most Industrial customers. Tr. 80; R.D. at 70-71; *see also* OCA M.B. at 59-60; OCA St. 3SR at 6. Therefore, the rate block-based allocations reflected in Mr. Fox's base-extra capacity cost of service study provide for the allocation of costs to rate classes, consistent with the approach reflected in the AWWA Manual. Tr. 79-80; OCA St. 3SR at 6-7.

Further, as discussed in response to the OSBA's second exception, Mr. Mierzwa's testimony regarding the AWWA manual was one of several factors – cost-based and policy-based – considered in the ALJs determination to adopt the Company's proposal to reduce the differentials that exist between Tier 1 and Tiers 2 and 3 volumetric rates. R.D. at 67-72. The OSBA's Exception should be denied.

Reply to OSBA Exc. 5: The Evidence in This Case Provides Cost-Based and Policy-Based Support for Modifying the GSM Rate Structure. R.D. at 67-72; OCA M.B. at 57-62; OCA R.B. at 35-37.

The OSBA acknowledges that the existing differentials are significant but argues that they must be significant because they accommodate customers ranging from residential to industrial. OSBA Exc. at 12. The OSBA also recognizes that there is no class cost of service study supporting the existing GMS rate structure *or* the proposed GMS rate structure. *Id*. at 10-11. The OSBA's lone argument thus, is that the existing rate structure should be maintained because it was approved in CWC's last rate case.

The law and facts do not bear out the OSBA's position. A cost of service study is but one consideration in the development of a reasonable rate design. R.D. at 67-69. As the ALJs explained:

> The allocation of revenue among a utility's various rate classes, while informed by science and engineering, also involves consideration of ratemaking policy and principles of gradualism. The application of science and policy to the allocation of a revenue increase is within the Commission's discretion: "[T]here is no set formula for determining proper ratios among the rates of different customer classes. What is reasonable under the circumstances, the proper difference among rate classes, is an administrative question for the Commission to decide."

Id. at 67-68 (citing *Peoples Nat. Gas Co. v. Pa. PUC*, 409 A.2d 446, 456 (Pa. Cmwlth. Ct. 1979). Other important considerations include gradualism and rate affordability. *Id.* at 68 (citing *Pa. PUC v. Community Utils. of Pa., Inc.*, R-2021-3025206, 65-66 (Order Jan. 13, 2022)).

Considerations of gradualism and rate affordability are particularly relevant to the circumstances of this case, where rates are being fully unified for the Marietta and Columbia systems. That is an important distinction from the Company's prior rate case, which was settled, and where the existing GMS rate blocks were used for customers in the Columbia division but *not* for customers in the Marietta division.[5] R.D. at 64-65. Those considerations weigh in favor of reducing the severity of the differences between the rate tiers in this proceeding.

Further, no cost of service study was performed in the last case, but was required to be provided if the Company made a rate filing proposing to fully unify rates between the two divisions. CWC St. 1 at 3, 13. While no *class*-based analysis was provided by CWC in this case, evidence was provided by reference to the AWWA Manual and the cost-based volumetric rate structures applied by other water utilities, which supported reducing the ratios between the volumetric rate blocks.[6] OCA M.B. at 61-62; OCA R.B. at 36; OCA St. 3SR at 8-9; OCA Sch. JDM-3 at 1-3.

For all of these reasons, the OSBA's Exception should be denied.

Reply to OSBA Exc. 6: OCA's Scaleback Methodology. R.D. at 76-77; OCA M.B. at 30-31; OCA R.B. at 18-19.

The OCA has refuted OSBA's claims regarding full and fair development of the evidentiary record. *See* Reply to OSBA Exc. 3, supra. In its Sixth Exception, the OSBA also claims that the OCA scaleback methodology should not have been adopted by the ALJs because it would assign greater than proportional rate relief in a scale back to the Residential and Public classes, at the expense of the Commercial and Industrial classes. The OSBA made the same argument in its Reply Brief. OSBA Exc. at 12-13 (citing OSBA R.B. at 11-12).

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[5] Currently, Columbia Division customers have a three rate block structure (10,000, 240,000 and above 250,000 gallons per month) and Marietta Division customers have a four rate block structure (1,000, 5,000 and 50,000 and more than 50,000 gallons per month). *See Pa. PUC v. Columbia Water Co.*, R-2017-2598203, App. A (Tariff) at 4, 6D (Joint Petition for Full Settlement of Rate Proceeding Dec. 12, 2017) (CWC 2017 Settlement) (adopted without modification by Commission Order Mar. 1, 2018). As noted by the OSBA, the rates applied to those different rate blocks are considerably lower than the Company's Columbia Division charges. OSBA St. 1 at 3-4.

[6] As discussed in the OCA's Reply Brief, the OSBA tried to discredit this comparison on the basis that those utilities' water rates include subsidies under Act 11. OCA R.B. at 36. As Mr. Mierzwa explained during the hearing, however, if the water rates set in the PAWC and York cases did not include Act 11 wastewater subsidies, the volumetric *rates* might be different without the additional revenue requirement but he would not expect the *ratios* between the volumetric rate blocks to be different. Tr. at 85, ln. 11-17, 86, ln. 11-16.

The issue is the calculation of rates at the approved revenue requirement as opposed to the Company's filed-for revenue requirement ($999,900). The OSBA calculates the impact of the OCA's scaleback recommendation using the OCA's recommended revenue increase of $657,819. The relative scaled increase between the classes necessarily changes because the OCA's scaleback is first applied to customer charges. No party excepted to the ALJs' adoption of the OCA's recommended customer charges. R.D. at 75-76. Because the customer charges are lower than proposed by the Company, the resulting revenue deficiency at the Company's filed-for revenue increase is accounted for by proportionately increasing the Company's proposed volumetric rates (also adopted by the ALJs). Then, under the OCA's methodology, both the customer charges and volumetric rates in that first step are proportionately scaled back to account for the difference between the approved revenue requirement and the Company's filed-for revenue requirement. *Id*. at 76 (citing OCA St. 3 at 8; OCA St. 3R at 4-5).

As the ALJs concluded, the OCA's scaleback methodology preserves the benefits of their recommended revenue allocation by apportioning the reduction in revenue increase consistently and proportionately between customer charges and volumetric charges. R.D. at 77. Specifically, the OCA's recommended $12.45 customer charge at the Company's filed-for increase provides for fixed charge recovery of an appropriate level of customer-related revenues and Public Fire revenues, while moderating the percentage increase in the monthly fixed customer charge for Columbia and Marietta Division customers under unified rates.[7] OCA M.B. at 68. OCA witness Mierzwa explained why a proper balance of fixed and volumetric revenue recovery is important:

> Customer charge increases particularly impact low-volume customers. Further, increasing fixed monthly customer charge revenues requires corresponding

[7] On page 72 of the R.D., the ALJs reflect the OCA's recommended customer charge as of surrebuttal testimony ($12.15). CWC made corrections to its filing in rejoinder, however, that increased the OCA's recommended customer charge from $12.15 to $12.45. OCA M.B. at 67-68; OCA R.B. at 38; CWC Exh. DF-9RJ at 1.

> reductions in usage rates that customers pay. Reducing customers' ability to control their bills through conservation will, in turn, reduce the expected benefits of conservation such as delaying, reducing, or avoiding the costs of capital improvement projects that could increase rates higher than they would be otherwise.

OCA St. 3 at 11. Maintaining this balance is particularly important in this case, where due to rate unification, a $12.45 customer charge for 5/8" service will increase customer charges for Marietta Division customers by **52%** at the Company's filed-for increase. The scaleback methodologies proposed by OSBA (and I&E) would shift more cost recovery from fixed to volumetric rates and should not be adopted.

For these reasons and as discussed in the Recommended Decision and the OCA's Briefs and testimony, the OCA's recommended scaleback should be adopted, in addition to the OCA's recommended customer charges.

III. CONCLUSION

For the reasons herein and articulated in the OCA's Briefs, the OCA respectfully requests that the Commission grant the OCA's Exceptions and Reply Exceptions and adopt the OCA's positions as discussed above.

Respectfully Submitted,

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