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August 29, 2011

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

RE: Pennsylvania Public Utility Commission, Office of Consumer Advocate, Office of Small Business Advocate, Columbia Industrial Intervenors, The Pennsylvania State University, Pennsylvania Communities Organizing for Change d/b/a ACTION United, Nettie Pelton and Carol Collington, James Landis, Marie Weaver, Margaret Sentz, Albert Jochen, Patsy Orlando, Maureen A. Doerr-Roman, and Shipley Energy Company, Dominion Retail, Inc., Interstate Gas Supply, Inc., v. Columbia Gas of Pennsylvania, Inc. - Docket Nos. R-2010-2215623, C-2011-2224941, C-2011-2224985, C-2011-2227004, C-2011-2230067, C-2011-2232186, C-2011-2224944, C-2011-2225050, C-2011-2225828, C-2011-2225878, C-2011-2227222, C-2011-2231015

Pennsylvania Public Utility Commission, Office of Small Business Advocate, Office of Consumer Advocate, v. Columbia Gas of Pennsylvania, Inc. - Docket Nos. R-2010-2201974, C-2010-2208133 and C-2010-2208503 (Consolidated)

Dear Secretary Chiavetta:

Enclosed, for filing, are the Reply Exceptions of Columbia Gas of Pennsylvania, Inc. in the above-referenced proceedings.

Copies have been provided to the persons as indicated on the certificate of service.

Respectfully Submitted,

Michael W. Gang

MWG/jl
Enclosures

cc: Honorable Katrina L. Dunderdale
Certificate of Service
David Huff
Edward Berzonsky
Brent W. Killian

CERTIFICATE OF SERVICE

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

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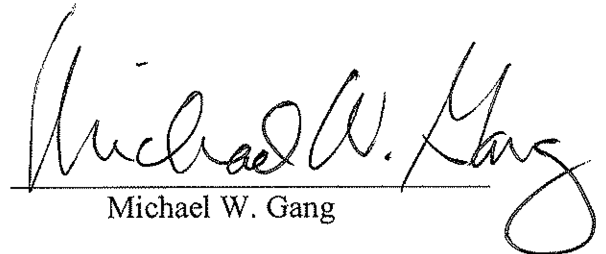

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Date: August 29, 2011

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission, et al.	:	Docket Nos. R-2010-2215623
	:	C-2011-2224941
	:	C-2011-2224985
	:	C-2011-2227004
	:	C-2011-2230067
	:	C-2011-2232186
	:	C-2011-2224944
	:	C-2011-2225050
	:	C-2011-2225828
	:	C-2011-2225878
	:	C-2011-2227222
	:	C-2011-2231015
v.	:	
	:	
Columbia Gas of Pennsylvania, Inc.	:	

Pennsylvania Public Utility Commission, et al.	:	Docket Nos. R-2010-2201974
	:	C-2010-2208133
	:	C-2010-2208503
	:	
v.	:	
	:	
Columbia Gas of Pennsylvania, Inc.	:	

REPLY EXCEPTIONS OF COLUMBIA GAS OF PENNSYLVANIA, INC.

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I. INTRODUCTION

Columbia Gas of Pennsylvania, Inc. ("Columbia" or the "Company") hereby files these Replies to Exceptions in response to the Exceptions filed by the Bureau of Investigation and Enforcement ("BI&E," formerly the "Office of Trial Staff" or "OTS") and Pennsylvania Communities Organizing for Change d/b/a ACTION United, Nettie Pelton and Carol Collington ("PCOC") to the Recommended Decision ("RD") of Administrative Law Judge Katrina A. Dunderdale (the "ALJ") issued on August 10, 2011.[1]

II. ARGUMENT

A. THE BI&E RESIDENTIAL RATE DESIGN PROPOSAL SHOULD NOT BE ADOPTED

1. Introduction

BI&E has filed an Exception to the RD relating to the ALJ's rejection of its proposed residential rate design ". . . *in the event* that the Commission, for whatever reason, considers the Company's argument in support of its [Levelized Distribution Charge]." BI&E Exc., p. 4, emphasis in original. As such, BI&E appears to suggest that its residential rate design proposal might be considered as an alternative to Columbia's Levelized Distribution Charge ("LDC") or as a compromise position between the LDC and OCA's proposal to place all of the residential rate increase in usage-based distribution rates. The BI&E proposal is not a reasonable alternative or compromise but is more accurately viewed as just a minor variant of OCA's proposal.

The only real difference between BI&E's proposal and OCA's proposal is that BI&E's proposal would include a 2 Mcf usage allowance in the residential customer charge, and this allowance would be priced into the customer charge. Like OCA's proposal, residential rates

[1] The Office of Consumer Advocate ("OCA") also filed Exceptions to the RD. However, OCA's Exceptions are directed solely to the portion of the RD that mistakenly concluded that the manner of application of LIHEAP grants to customer accounts under Columbia's CAP-Plus program violates Low Income Home Energy Assistance Program ("LIHEAP") requirements. Columbia also has excepted to this incorrect conclusion, and thus will not reply to the OCA's Exceptions.

under BI&E's proposal would continue to be structured with a customer charge and a usage-based distribution charge. Also, like OCA's proposal, the usage-based distribution charge under BI&E's proposal would increase over Columbia's current rates, in order to recover the residential class rate increase set forth in the Partial Settlement. Therefore, BI&E's residential rate design proposal represents only a minor departure from OCA's rate design proposal.

The BI&E residential rate design proposal cannot be viewed as a viable alternative to the LDC because it meets none of the purposes and goals of the LDC, including:

- Matching rates to cost incurrence
- Increasing revenue stability to encourage capital investment
- Aligning Columbia's and residential customers' interests in encouraging adoption of effective energy-efficiency measures
- Simplifying customer bills

For the reasons explained herein, and in Columbia's Main and Reply Briefs, the BI&E proposal would not accomplish any of the goals of the LDC and should not be adopted in lieu of the LDC.

2. The BI&E Residential Rate Design Proposal Does Not Match Rates to Cost Incurrence

BI&E argues that its residential rate design proposal "represents sound ratemaking" as it is based upon a direct customer cost analysis. BI&E Exc., p. 8. Columbia strongly disagrees. In fact, the fundamental error inherent in the BI&E (and OCA) residential rate design proposals is their reliance on "direct customer costs," which is an incorrect concept of cost incurrence.

The underlying flaw of direct customer cost studies is that they are limited to essentially meters and services investments, and very narrow definitions of associated expenses, such as meter reading and collections. However, the application of proper cost causation principles would recognize that the remaining costs to serve residential customers, not accounted for in a "direct customer cost" study, do not vary with residential customer usage levels. Therefore,

fixed costs, such as mains that must be in place to provide service, should be recovered in fixed charges rather than usage-based distribution charges. Without factoring these costs into the calculation of fixed charges, low use customers are improperly subsidized for the cost of the system that is in place to serve them.[2] The Commission recognized this subsidy in its recent order regarding American Recovery and Reinvestment Act of 2009 ("ARRA") compliance.[3]

BI&E's proposal does not match rates to cost incurrence, and should be rejected.

3. BI&E's Proposal Does Not Contribute to Revenue Stability

BI&E asserts that its residential rate design proposal is responsive to the Company's argument for a residential rate design that increases revenue stability. BI&E Exc., p. 4. However, Columbia would continue to experience substantial revenue volatility under BI&E's proposal because only a small percentage of Columbia's residential monthly billings are for 2 Mcf or less. OTS Exh. 3, Sch. 26. Also, the first 2 Mcf of monthly usage is essentially base usage that would be unaffected by energy-efficiency measures or temperature. Columbia St. 102-R, p. 12. As a result, Columbia's residential revenue would still be substantially affected by conservation or weather, and would therefore be subject to the same volatility that is a problematic feature of traditional Pennsylvania rate design. Thus, BI&E's proposal is not comparable to the LDC with respect to improving revenue stability.[4]

---

[2] In this regard, BI&E's contention that its rate design proposal is reasonable "because it limits customers that use no gas in a particular month to a lower increase" actually demonstrates the unreasonableness of BI&E's proposal from a cost causation perspective. Columbia's entire system is in place to serve residential customers, every day of the year, and those distribution costs should not be avoided because a customer uses little or no gas in a month.

[3] *Compliance of Commonwealth of Pennsylvania with Section 410(a) of the American Recovery and Reinvestment Act of 2009*, Docket No. I-2009-2099881, Order entered August 1, 2011 ("*ARRA Order*"), p. 20.

[4] BI&E's own calculations demonstrate that Columbia's current usage-based distribution charges would increase under BI&E's residential rate design proposal. OTS RB, Appendix "A". As a result, any reduced usage from adoption of energy efficiency measures will result in <u>increased</u> distribution revenue loss under the BI&E proposal, as compared to Columbia's current rates.

As shown in the table below, when a customer's consumption drops as a result of the energy-efficiency measures or temperature, Columbia will experience nearly the same drop in revenue under BI&E's rate design that it would under OCA's rate design:

Residential Rates[5]	CPA Present Rates	CPA Proposed Rates	OTS Proposed Rates	OCA Proposed Rates
Monthly Customer Charge	$12.25	-	$18.73	$12.25
Monthly Levelized Distribution Charge	-	$33.04	-	-
Usage-Based Charge	$2.6891	-	$2.8658	$3.0688
Residential Revenue				
Customer using 80.2 Mcf per year:				
Fixed Revenue	$147.00	$396.48	$224.76	$147.00
Usage-Dependent Revenue	$215.67	$0.00	$165.64	$246.12
Total Revenue	$362.67	$396.48	$390.40	$393.12
Customer using 75 Mcf per year:				
Fixed Revenue	$147.00	$396.48	$224.76	$147.00
Usage-Dependent Revenue	$201.68	$0.00	$150.74	$230.16
Total Revenue	$348.68	$396.48	$375.50	$377.16
Percent Decrease in Revenue	**3.86%**	**0.00%**	**3.82%**	**4.06%**

Under CPA's existing rate design, when the consumption of an average residential customer drops from 80.2 Mcf per year to 75 Mcf per year due to warmer temperatures or energy efficiency measures, Columbia's revenues will decrease by 3.86%. Under Columbia's proposed LDC rate design, its revenues would not decrease. Under BI&E's proposed rate design, Columbia's revenues would drop by 3.82% and under OCA's proposed rate design Columbia's

[5] The 80.2 Mcf per year represents the consumption of an average residential customer as per Exhibit RAF-1. The 75 Mcf per year illustrates a 6.5% reduction in annual consumption due to temperature or energy efficiency measures. The reduction is assumed to occur during the heating months due to conservation or weather variation. CPA's present rates as per Exhibit RAF-1. CPA proposed rate was calculated by dividing the sum of the future test year revenue and the base revenue increase contained in the settlement by the number of residential bills in Exhibit 103, Schedule 8. OTS proposed rates as per BI&E's reply brief at page 4. OCA's proposed rates were calculated by maintaining the existing $12.25 fixed customer charge and spreading the entire settlement increase over annual residential volumes as per OCA main brief at page 8 and Exhibit 103. Rates under the OTS and OCA rate designs are based upon the settlement volumes as shown in Appendix A to OTS' Reply Brief. Revenues from the average residential customer vary slightly based upon the rate design employed.

revenues will drop by 4.06%. Clearly, BI&E's proposed rate design would not have a material stabilizing impact Columbia's revenues because its seeks to stabilize revenues that are *not* subject to temperature or energy efficiency measures. The BI&E rate design is not materially different than Columbia's existing rate design, yet it will be more difficult for customers to understand.

As explained above, BI&E's proposal is little more than a variant of the current residential rate structure. This structure must be revised in order for Pennsylvania utilities to compete for capital with utilities in numerous other jurisdictions that have adopted or are considering adopting decoupling/revenue stabilization mechanisms. Columbia MB, pp. 18-22, Columbia RB, pp. 15-19.

4. BI&E's Proposal Gives False Price Signals and Does Not Encourage Cooperative Efforts Toward Energy Efficiency

BI&E asserts that its residential rate design proposal "sends proper pricing signals" for energy conservation. BI&E Exc., p. 8. That assertion is flawed. A usage-based distribution rate, as proposed by BI&E, cannot be a proper price signal because it gives a *false* signal of the true cost to serve and the true benefits from energy efficiency. This was explained by Columbia's witness Mr. Feingold:

> SFV [Straight Fixed Variable] pricing is economically efficient because first, the customer faces the full economic cost of a decision to elect gas service as a new customer. When a customer elects to connect to the delivery system, that customer knows that the full delivery cost will be paid no matter how much gas the consumer uses. Second, the marginal cost of additional commodity use is also recovered going forward. Thus, if a customer evaluates the benefits of a conservation measure designed to reduce gas consumption, the value of that change will be reflected in lower gas commodity costs. This lower gas commodity cost is not de minimis as suggested by Mr. Watkins as the gas commodity charge represents the largest portion of the annual bill for most customers.

Columbia St. 112-R, p. 20. As noted by Mr. Feingold, the accurate price signal for energy efficiency measures – gas costs – remains a strong signal, contrary to BI&E's assertions. BI&E

Exc., p. 7. The pro forma purchased gas cost rate plus unbundled uncollectables in this case is approximately \$7.91 per Mcf. This is approximately 75% of the current volumetric charge (gas commodity costs, unbundled uncollectables and usage-based distribution charges). Columbia RB, p. 12. Therefore, true savings will continue to provide a strong incentive for residential customers to reduce energy usage.

Accurate, not false, price signals should be the Commission's goal. BI&E's proposal fails to provide an accurate price signal. This point was emphasized by Columbia:

> Artificially inflating the customer's volumetric charges by adding a volumetric distribution charge that is not reflective of how the Company incurs costs to distribute gas to residential customers is by definition an inaccurate price signal. As explained by Mr. Feingold, inaccurate pricing of the distribution cost of gas distorts savings, as any temporary savings will be offset by the need for Columbia to increase rates to recover lost margin. Thus, "savings" from energy efficiency related to distribution costs will decline, thereby extending the recovery period of investing in energy efficiency. Again, Columbia's costs to serve residential customers are fixed. They are not related to the amount of gas consumed. Columbia believes it is important to give customers clear and accurate price signals. The LDC will do that by communicating the clear and accurate message to the customer that they pay a flat charge for distribution service (which is reflective of how Columbia incurs costs to serve residential customers) and they pay a volumetric charge for the gas commodity (which is reflective of the cost of the gas commodity).

Columbia St. 102-R, pp. 19-20. The BI&E rate design proposal will continue to give residential customers false signals about savings from energy efficiency equipment, by including fixed distribution costs in usage charges. This only results in consumer disappointment when the "savings" are undone in the next base rate case. Columbia St. 2, p. 35.

Furthermore, BI&E's proposal does not align Columbia's interests with customers' interests in encouraging energy efficiency. BI&E's rate design perpetuates Columbia's disincentive to support energy efficiency measures because reductions in usage will continue to decrease Columbia's distribution revenues. Thus, BI&E's proposal in contrary to the goal of the aligning utility and customers' interests in encouraging cost-effective energy efficiency

measures, as stated in the ARRA.

5. BI&E's Residential Rate Design Proposal Will Not Simplify Bills

BI&E's proposal would not contribute to bill simplicity. Under BI&E's proposal, residential customers will receive a bill that has a customer charge, a commodity charge for all gas supply and usage-based distribution charges that are calculated on 2 Mcf less than the gas supply charges. By contrast, Columbia's LDC proposal features a flat rate distribution charge and a commodity charge for gas supply costs. Moreover, BI&E's proposal will not reduce bill volatility throughout the year. BI&E's proposal will still result in a substantial portion of distribution costs being billed on a usage basis. As a result the portion of customers' distribution bills would continue to be much higher in winter months than they would be in summer months. Columbia St. 102-R, pp. 16-19. Thus the BI&E proposal will not simplify bills.

6. "Disproportionate" Monthly Bill Impacts Are Not a Basis to Reject the LDC or Adopt the BI&E Proposal

Finally, BI&E asserts that Columbia's LDC should be rejected because it would have a "disproportionate" effect on monthly bills with no usage and decrease bills with usage over 9,500 Mcf in a month.[6] OTS Exc., p. 9. Such assertion is without merit.

Virtually any determination about rate design can be asserted to have a disparate impact upon different customers. However, claims about "disproportionate" monthly bill impacts should not prevent the Commission from designing rates to match cost incurrence. In this case, Columbia's proposed LDC for residential customers will require the greatest increase in payments from low use customers who currently pay the least for distribution service. As explained previously, this result is fully justified as the evidence establishes that these customers are being subsidized by high use customers. BI&E's residential rate design proposal will

[6] Columbia believes BI&E intended to refer to cubic feet, and not Mcf. Columbia's average residential customer uses 80.2 Mcf per year (i.e., less than an average of 7 Mcf per month). Columbia has no residential customers that use 9,500 Mcf in a month.

continue this improper subsidy by increasing usage based distribution charges.

Columbia further notes that monthly bill impacts do not offer an accurate depiction of bill impacts on individual customers through the year. For example, many residential customers use less than 15 Ccf (1.5 Mcf) in summer months, and thus will pay substantially more on a percentage basis under the LDC in those months than under the current rate design. These customers will pay about $20 more during those months. However, those same customers may use in excess of 150 Ccf (15 Mcf) in winter months, and thus will pay less in those months under the LDC than under the current rate design. These customers will pay about $15 less during those months. These offsetting effects are demonstrated on Columbia Exhibit RAF-1. It is the nature of a Levelized Distribution Charge that monthly bills are brought closer together by levelizing the annual bill over the months.

Far more relevant than monthly bill impacts are annual bill impacts. Columbia St. 112-R, p. 29. The vast majority of Columbia's residential customers – 98.5% – are heating customers, and thus there are very few residential customers that have very low usage throughout the year. Columbia St. 102-R, p. 11. Therefore, the monthly percentage differences referenced by BI&E do not present an accurate portrayal of the annual effect of the LDC upon most residential customers, and provide no support for adoption of BI&E's proposal.

7. Conclusion

For the reasons set forth herein, in Columbia's Main and Reply Briefs, and its Exceptions, BI&E's residential rate design proposal should be rejected, and Columbia's proposed residential LDC should be adopted.

B. PCOC'S CHALLENGE TO COLUMBIA'S CAP-PLUS PLAN

1. Introduction

Columbia provides reduced rates/discounts to low income residential customers pursuant

to a Customer Assistance Program ("CAP"). Columbia Exh. 14, Sch. 2, pp. 143-147. In general, the CAP provides for reduced residential rates to customers with incomes at, or below, 150% of the federal poverty level. Discounts are based upon levels of income and household size. Columbia's CAP was established many years ago pursuant to the Commission's CAP Policy Statement, 52 Pa. Code § 69.261 et. seq. ("CAP Policy Statement"), and is reviewed every three years by the Commission through the Universal Service and Energy Conservation Plan ("USECP") filing required by 52 Pa. Code § 62.4(a)(1).

In this proceeding, PCOC challenges certain adjustments made by Columbia to its CAP, and approved by Commission Order of August 18, 2010 at Docket No. R-2009-2149262, which established CAP-Plus. As explained below, CAP-Plus was a reaction to a 2009 directive issued by the Pennsylvania Department of Public Welfare ("DPW"), with regard to use of federal LIHEAP grants to low income customers administered by DPW. PCOC contends in this proceeding that Columbia's Commission-approved CAP-Plus violates LIHEAP requirements.

For many years, Columbia's CAP customers were provided an affordable bill, based upon Commission guidelines in the CAP Policy Statement. Columbia St. 117-R, p. 9. This is typically done by requiring customers to pay a percentage of their income toward their monthly gas bill.[7] The remainder of the residential bill not paid by the CAP customer, commonly referred to as the "CAP shortfall" or "CAP credit," is recovered from non-CAP customers through the Company's universal service rider, Rider USP. Columbia St. 117-R, pp. 8-9.[8] CAP customers are required to apply for LIHEAP grants, which are paid directly to Columbia as the "Vendor" under the LIHEAP program. Because CAP customers were already being provided an affordable bill, Columbia's prior CAP used the LIHEAP grants received for all CAP customers to reduce

[7] Some customers pay a percentage of what a residential customer would pay under the budget payment plan, but this formula also is based upon income and ability to pay. Columbia St. 117-RJ, p. 3.
[8] For CAP customers who pay their discounted bills, CAP features forgiveness of their pre-program arrearages, which is recovered from non-CAP customers through Rider USP.

the amount of discounts that were recovered from non-CAP customers by applying the grants against the CAP customer shortfall. Columbia St. 117-R, p. 7.

In the summer of 2009, DPW proposed changes in the way federal LIHEAP grants are applied to the accounts of CAP customers. Specifically, DPW directed utilities to apply the LIHEAP cash grants to the customer's monthly asked to pay amount, rather than the CAP credit. In response to DPW's directive, the Commission temporarily suspended the portion of its CAP Policy Statement which provides that "the LIHEAP grant should be applied to reduce the amount of CAP credits" at 52 Pa. Code § 69.265(9)(iii). *Customer Assistance Program Policy Statement Suspension and Revision*, Docket No. M-00920345 (Order entered April 9, 2010).

In response to DPW's directive that LIHEAP cash grants be applied to the customer's monthly asked to pay amount, OCA proposed, in Columbia's 2010 base rate proceeding at R-2009-2149262, that Columbia adjust its CAP to provide for the following:

1. Direct reduction of each CAP customer's CAP charge or asked to pay amount for the LIHEAP grant received by Columbia for the customer; and

2. An increase to all CAP customers' CAP charges to avoid the increase in discounts that would be created by the loss of LIHEAP grants as an offset to amounts charged to non-CAP customers under Rider USP.

2010 Rate Case, Docket No. 2010-2149262 (Rec. Decision, dated July 10, 2010, p. 20).

Columbia agreed to OCA's CAP-Plus proposal in the 2010 rate case settlement, which provides as follows:

> Columbia will adopt a CAP-plus program consistent with the CAP-plus program recommended by OCA witness Colton's testimony (OCA Statement No. 4). The Company will work with the interested parties to develop and design interim changes to the CAP payments in time to request any required waiver of its approved universal service plan from the Commission prior to the start of the 2010-2011 LIHEAP season. If a consensus cannot be developed, Columbia will file its proposal with the Commission by October 1, 2010.

2010 Rate Case, Docket No. 2010-2149262 (Joint Petition for Settlement, ¶ 21(f)(3)).

On July 21, 2010, a LIHEAP Information Memorandum ("LIHEAP IM") was issued by the Office of Community Services of the US Department of Health and Human Services ("HHS"). The LIHEAP IM states as follows:

> HHS has determined that the process of subtracting the LIHEAP benefit from the client's energy bill and to then calculate the PIPP discount and/or the client's payment amount appears to be using LIHEAP as a resource and creates an inequity or adverse treatment for LIHEAP clients participating in the PIPP. Such use of LIHEAP funds appears to be out of compliance with Sections 2605(b)(7) of the LIHEAP statute, which in part states: ". . . no household receiving assistance under this title will be treated adversely because of such assistance under applicable provisions of State law or public regulatory requirements . . ." and Section 2605(f) which states ". . . home energy assistance payments or allowances provided directly to, or indirectly for the benefit of, an eligible household under this title shall not be considered income or resources of such household (or any member thereof) for any purpose under any Federal or State law . . ."

LIHEAP-IM-2010-2013 (Exhibit PCOC-PAB-6).

Pursuant to the 2010 Columbia Rate Case Settlement, on August 25, 2010, Columbia filed a petition to amend its USECP to include CAP-Plus. The Commission approved the proposed CAP-Plus by Order entered October 19, 2010 at Docket No. P-2010-2195759.[9]

PCOC now challenges the legality of the CAP-Plus plan. PCOC contends that Columbia's additional charge to all CAP customers (approximately $17 per month) that was implemented under the approved CAP-Plus violates LIHEAP requirements. It is noteworthy that PCOC pursues this challenge even though CAP customers already receive an affordable bill without consideration of LIHEAP grants and therefore, any CAP customer that receives a LIHEAP grant and applies it to their gas service would be paying a net gas bill amount that is well below Commission standards of affordability. Columbia St. 117-R, pp. 10-12.

[9] The Commission's Order stated that it would be served on DPW. However, PCOC contends that DPW was not served because DPW was not on the Commission's service list.

2. Summary Response to PCOC's Seven Exceptions to the Recommended Decision

PCOC's seven exceptions to the RD all relate to CAP-Plus. For the most part, the exceptions advance or are based in the following two PCOC arguments:

- The Plus component of CAP-Plus treats CAP customers who receive LIHEAP grants adversely as compared to non-CAP customers who receive LIHEAP.
- The Plus component of CAP-Plus treats LIHEAP grants as a resource in determining the asked to pay amount that is charged to CAP customers.

PCOC weaves these contentions through its seven exceptions. For the convenience of the Commission, Columbia here explains why these contentions are fundamentally flawed and should be rejected, thereby resulting in rejection of each of PCOC's challenges to CAP-Plus and its exceptions. Thereafter, Columbia will briefly address each of PCOC's exceptions.

a. CAP-Plus Does Not Treat CAP Customers Receiving LIHEAP Adversely as Compared to Non-CAP Customers Receiving LIHEAP.

PCOC argues that CAP customers receiving LIHEAP are treated adversely because non-CAP customers receiving LIHEAP are not charged the Plus amount. PCOC Exc., pp. 12-14. DPW states in its letter to the Commission that CAP-Plus treats CAP customers adversely because all customers are not charged the Plus amount. DPW Letter, Tr. 130-131.

These contentions are erroneous. Columbia has demonstrated that CAP customers receive an affordable bill under CAP-Plus that is less than that received by non-CAP customers. The reason that the non-CAP bill is higher is two fold: 1) the non-CAP customer does not receive the CAP discount; and 2) the non-CAP customer must pay for the CAP customers' discounts through the Rider USP charge, which was approximately 96¢/Mcf at the time of this rate filing. Columbia St. 117-R, p. 10. A comparison of the charges to CAP and non-CAP residential customers, with or without the minimum LIHEAP grant of $300, was illustrated in a

chart, which was provided in Columbia's Main Brief at p. 35. The chart demonstrates that Columbia's existing CAP-Plus methodology does not adversely impact CAP LIHEAP recipients relative to other customers when all rate components are considered. The chart illustrates how much each of the following customers pay of a typical average low income residential $100 monthly customer bill from Columbia:[10]

- Non-CAP customer: The chart illustrates that the non-CAP customer pays the full $100 monthly bill – $93.00 in full tariffed rate charges plus $7.00 per month via Rider USP.[11]
- Non-CAP Customer – LIHEAP Recipient: The chart illustrates that the customer receives a minimum monthly LIHEAP grant of $25.00.[12] Therefore, the customer will pay a total of $75.00 in monthly charges, $68 in full tariffed rates plus $7.00 in Rider USP charges.
- CAP Customer – Non-LIHEAP Recipient: As noted above, CAP customers do not pay Rider USP charges. Therefore, the CAP customer's $100 monthly bill consists of $49.00 in average CAP payment[13] plus the $17 of CAP-Plus payment for a total of $68.00. This results in the customer receiving an average discount (i.e. CAP credit) and avoidance of Rider USP charges totaling $34.00.
- CAP Customer – LIHEAP Recipient: The CAP Customer – LIHEAP recipient receives an average discount (i.e. CAP credit) and avoidance of Rider USP charges

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[10] See Columbia Exh. DAD-1RJ, Question 2, Column 3, ($1,217.61/12).

[11] As reflected in Columbia Exhibit DAD-1RJ, in response to Question 2, Rider USP charges make up approximately 7.0% of a non-CAP customer's monthly bill regardless of whether the customer is low-income or not - Rider USP/Annual Bill * 100 = 7.3%. ($77.34/ 1053.44 * 100 = 7.3%). Column D of Exhibit DAD-1RJ, p. 2

[12] Assumes that the customer receives the minimum LIHEAP grant of $300. Columbia St. 117-RJ, p. 4. ($300/12 = $25/month in LIHEAP grants). The effect of the LIHEAP grant is shown in the chart on an equal monthly basis. However, pursuant to the 2009 DPW directive, a LIHEAP grant is posted to the customer's account in full upon receipt of the grant. See Columbia Exc., p. 28. This presentation may have contributed to the ALJ incorrectly concluding that Columbia annualizes the effect of the LIHEAP grant and credits it to the account monthly.

[13] Columbia St. 117-R, 16.

totaling $34.00, which is the same as the CAP non-LIHEAP recipient. However, based upon participation in LIHEAP, the customer also receives $25.00 per month via a minimum LIHEAP grant of $300. This results in the customer paying a net average amount of $41 per month, the lowest payment of any customer group.

As evidenced by this chart and as explained above, contrary to the unsupported assertions of PCOC and DPW, the use of CAP-Plus does not adversely impact CAP customers that receive LIHEAP grants. In fact, the CAP LIHEAP recipient pays equal to or less than any other group both before and after consideration of the LIHEAP grant.

PCOC also argues that CAP customers that receive LIHEAP grants obtain less benefit from their grant than non-CAP LIHEAP recipients. PCOC Exc., p. 13. This argument is both illogical and unsupported. First, as noted above, the argument is based upon consideration of only the CAP-Plus amount and ignores the substantially lower asked to pay amount and reprogram arrearage forgiveness for the CAP customer. Second, PCOC has failed to make any presentation to support that there are a significant number of non-CAP LIHEAP recipients. Third, if any CAP LIHEAP recipients believe that they are disadvantaged by participating in CAP, they could withdraw from the CAP. Of course, that would be foolish because it would cause the customer's bill to increase since CAP charges, including the CAP-Plus amount, are always less than the full residential bill.

PCOC's arguments require parsing of claims about alleged offsets to LIHEAP benefits without consideration of the full level of benefits of the CAP program. Further, PCOC attempts to bootstrap HHS's determination about the prior CAP program's treatment of LIHEAP benefits, which has been resolved by CAP-Plus, into another alleged violation of HHS requirements. The Commission should not accept such arguments as a basis to reject the CAP-Plus approach.

b. CAP-Plus Does Not Use the LIHEAP Grant as a Resource in Determining the CAP Asked to Pay Amount.

PCOC's second argument is that adding the Plus amount to the CAP asked to pay amount effectively uses a portion of the LIHEAP grant to produce an affordable CAP payment. However, the assertion that the CAP-Plus plan uses LIHEAP grants to reach affordability levels is factually unsupported and erroneous. While prior CAP plans accumulated all LIHEAP grants for CAP customers and used such funds as an offset to discounts recovered from non-CAP customers, the Commission's approval of Columbia's CAP-Plus specifically removed such provision of Columbia's CAP program and was a direct response to cure the resource issue raised by DPW and the LIHEAP IM. Columbia St. 117-R, p.8-9. Under CAP-Plus the LIHEAP grant is applied directly to each recipient's account. As a result, CAP-Plus permits CAP customers to further reduce their already affordable CAP bill by receipt of LIHEAP. For example, the record in this proceeding demonstrates that both of PCOC's named complainants have affordable bills under CAP-Plus and would have essentially no gas bill if they applied for and received a LIHEAP grant and assigned it to gas service. Columbia St. 117-RJ, pp. 1-6. Therefore, CAP-Plus is a substantial change to the prior CAP where LIHEAP payments did not reduce the CAP asked to pay amount. This is clearly the focus of the LIHEAP IM.

PCOC's argument that the CAP-Plus amount effectively uses LIHEAP funds as a resource is incorrect for two reasons. First, the CAP-Plus amount is charged to all CAP customers.[14] Since non-LIHEAP recipients are charged the Plus amount, the Plus amount cannot be using LIHEAP funds as a resource. Second, the Plus amount is part of the determination by the Commission of the payment levels that are affordable. The ALJ correctly concluded that the

[14] DPW recently challenged Philadelphia Gas Works ("PGW") proposed changes to its version of CAP wherein it proposed to charge the "plus" amount to just those customers that receive LIHEAP. *Petition of Philadelphia Gas Works To Modify its Universal Service and Energy Conservation Plans with respect to the Customer Responsibility Program*, P-2010-2178610. DPW asserted that PGW's proposal would have adversely impacted PGW's LIHEAP customers solely due their receipt of LIHEAP grants. However, Columbia CPA never considered charging the "plus" amount to just LIHEAP customers as it would have violated DPW policy. Columbia St. 117-R, p. 9.

determination of the total affordable payment was a matter within the exclusive jurisdiction of the Commission.[15] PCOC should not be permitted to deconstruct the affordable payment to justify its resource contention. The Commission's prior approval of CAP-Plus confirms that customer payment levels comply with the CAP Policy Statement. PCOC has failed to meet its burden of showing that the existing CAP-Plus rate does not comply with Commission policies and regulations.[16]

3. Responses to Specific PCOC Exceptions

As explained in Section II.B.2 of these Replies to Exceptions, all of PCOC's exceptions are based on two fundamentally flawed arguments that should be rejected. Columbia will briefly address each exception below.

a. Response to PCOC Exception 1 – The ALJ Correctly Gave No Weight to the Letter Submitted by DPW.

PCOC asserts that the ALJ's "failure to acknowledge or consider in any manner the legal guidance provided by DPW, much less to defer to the views of DPW, the agency with the responsibilities of LIHEAP administration, constitutes an error." PCOC Exc., p. 8. A review of the record in this proceeding demonstrates that PCOC's argument is without merit.

As noted in the RD, on May 25, 2011, PCOC filed an Application for Issuance of a Subpoena to the Pennsylvania DPW Secretary Gary D. Alexander or his designee relative to Columbia's CAP-Plus program. RD at 75. In addition, the RD notes:

> The letter dated June 6, 2011 contains DPW's response "in lieu of

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[15] PCOC's contentions to the contrary are addressed in response to PCOC Exception No. 6, infra pp. 22-23.

[16] It is PCOC's burden to prove that the CAP Plus rate is unjustified and unreasonable and PCOC has failed to do so. (Where a party proposes an adjustment to a ratemaking claim of a utility, the proposing party bears the burden of presenting some evidence or analysis tending to demonstrate the reasonableness of the adjustment. *See, e.g., Pa.P.U.C. v. PECO*, Docket No. R-891364, *et al.*, 1990 Pa. PUC LEXIS 155 (May 16, 1990); *Pa.P.U.C. v. Breezewood Telephone Company*, Docket No. R-901666, 1991 Pa. PUC LEXIS 45 (January 31, 1991). In addition, tariff provisions previously approved by the Commission are deemed just and reasonable and, therefore, a party challenging a previously-approved tariff provision bears the burden to demonstrate that the Commission's prior approval is no longer justified. *See, e.g., Pa.P.U.C. v. Philadelphia Gas Works*, Docket Nos. R-00061931, *et al.*, 2007 Pa. PUC LEXIS 45 at *165-68 (September 28, 2007) (adopting the ALJ's discussion on burden of proof)).

participating in these proceedings," and in which the writer purported to offer a "response based on federal law and guidance that govern LIHEAP." The writer indicated DPW had not reviewed Columbia Gas' CAP-Plus program but indicates there might be a problem with Columbia Gas maintaining its vendor status in the LIHEAP program and recommended the Commission not approve the CAP-Plus program if Columbia Gas plans to be a LIHEAP vendor.

RD at 75-76. Although PCOC correctly notes in its Exceptions that on June 6, 2011 both the Company and OCA argued in favor of allowing the DPW letter into the record, Columbia rejects PCOC's characterization of the Company's position relative to this letter. Specifically, PCOC implies that Columbia and OCA simply expressed "concerns" relative to the DPW letter but "ultimately concede that DPW's legal opinion should be admitted into the record of this case." (Emphasis added.) PCOC Exc., p. 9. Further, PCOC states in its Exceptions that the Company:

> [A]ctively argued for admitting the letter into the record pursuant to 52 Pa. Code §5.408. The Company asserted that pursuant to §5.408, the ALJ could take judicial notice of three facts: (1) there is a letter from DPW; (2) the letters offers a legal conclusion that the CAP-Plus plan is impermissible under federal law; and (3) DPW is considering withdrawing vendor status under the LIHEAP program.

PCOC Exc., p. 9. PCOC has mischaracterized the Company's position relative to the admission of the DPW letter.

As noted at the hearing, Columbia expressed its concerns about the DPW letter and the way it was produced in lieu of presenting a witness. Tr. 125. Further, the Company stated that allowing the letter into the record without cross-examination was troublesome. *Id.* However, the Company noted that because the DPW letter "purports" to say that the Company's CAP-Plus plan may violate federal law and threatens to potentially revoke the Company's LIHEAP vendor status, Columbia and the parties had agreed to request that the ALJ take "official notice" of the existence of the DPW letter as a "fact." Tr. 125-126. That is, the Company requested that ALJ and the Commission simply note that the DPW letter exists. Tr. 124.

Contrary to PCOC's characterization, the letter was not being admitted for the truth or the

legal correctness of the matters asserted therein. Tr. 130-131. In its Exceptions, PCOC noted that the ALJ reluctantly admitted the DPW Letter into the record at the request of the parties:

> And I see your point, Mr. Gang, under 5.408; and I will bring it in <u>not for the truth of the fact stated therein</u> but because of the issue that's involved and to note that is there so that the parties can discuss it, particularly Columbia, OCA, and PCOC et al., so that you all are free to discuss the logic and the rationale that is contained in that response. You sort of have something to sort of explain why you're talking about it.

Tr. 130-131. PCOC did not challenge the ALJ's ruling at the hearing. Indeed, PCOC's counsel stated:

> <u>We agree it's not being admitted for the truth of the matter asserted</u>; but we are requesting that it be in the record and that, given that there's been testimony filed about it, the parties can argue one way or another about import in their respective briefs. And that's the limited extent to which we believe this document should be treated in the record. (Emphasis added.)

Tr. 126-127. Nevertheless, in its Exceptions PCOC inappropriately criticizes the ALJ for her decision not to rely on DPW letter. Further, PCOC improperly and erroneously contends that the DPW letter represents ". . . substantial evidence that DPW will definitively determine that Columbia's CAP-Plus plan violates Pennsylvania's LIHEAP State Plan and federal law." PCOC Exc., p. 11. The DPW letter was admitted only to advise the Commission of the letter and not for the truth of any matter asserted therein and therefore, cannot provide the basis for any factual or legal conclusion in this proceeding. Tr. 130-131. Therefore, the ALJ's decision was completely justified.

Columbia, OCA <u>and</u> PCOC agreed that the DPW letter should be admitted into the record for the limited purpose of informing the Commission of the letter's existence, DPW's proffered legal conclusion that Columbia's CAP-Plus may be impermissible under federal law and DPW's reference to potentially withdrawing the Company's vendor status under the LIHEAP program. The ALJ admitted the DPW letter into the record only to allow the parties the opportunity to thoroughly address this issue in their briefs. PCOC has and continues to present its legal

arguments relative to the legality of the Company's CAP-Plus plan and has relied heavily on the DPW Letter in support of its position. The ALJ's decision to assign no weight to the DPW Letter in rendering her decision was appropriate.[17] Indeed, in its letter, DPW admits that it has not reviewed Columbia's CAP-Plus plan and makes no determination as to its legality. Columbia asserts that the ALJ properly exercised her discretion in deciding not to rely on the DPW Letter in rendering her decision. Moreover, the ALJ states clearly that she did rely upon the federal provisions provided by PCOC subsequent to the hearing. RD at 77. Therefore, the ALJ relied upon federal law and regulations to assess Columbia's CAP-Plus plan rather than on the DPW letter wherein DPW admits that it had not reviewed the Company's Cap-Plus plan. Thus, the ALJ was correct in approach and in her finding that Columbia's CAP-Plus plan may continue.

b. Response to PCOC Exception 2 – The ALJ Properly Rejected PCOC's Contention that CAP-Plus Treats CAP Customers Receiving LIHEAP Adversely.

PCOC's Exception 2 raises PCOC's contention that CAP-Plus treats CAP customers receiving LIHEAP adversely as compared to non-CAP customers receiving LIHEAP. As explained previously, this contention is belied by the fact that non-CAP customers receive no CAP discount and also pay the Rider USP charge. supra, pp. 12-15. A CAP customer that receives a LIHEAP grant can reduce his/her bill to well below affordability levels set by the Commission. Columbia St. 117-RJ, pp. 2-7. The ALJ correctly recognized these facts and properly rejected PCOC's contentions as invading the Commission's prerogative to set CAP rates. PCOC's Exception should be rejected.

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[17] *Hatfield Twp. Mun. Auth. v. Pa. P.U.C.*, 853 A.2d 1, 5 (Pa. Cmwlth. 2004) ("The PUC rejected Hatfield's exception which challenged the ALJ's credibility and evidentiary weight determinations regarding PECO's witnesses, noting that it was within the purview of the ALJ to weigh all of the evidence.").

c. **Response to PCOC Exception 3 – The ALJ Correctly Concluded That Including the CAP-Plus Amount in the CAP Asked to Pay Amount Does Not Violate LIHEAP Requirements.**

In Exception 3, PCOC contends that the ALJ has directed Columbia to annualize the LIHEAP grant and provide it to the customer over 12 months. PCOC Exc., p. 15. PCOC contends that this violates LIHEAP requirements. PCOC Exc., pp. 15-16. PCOC's contention is moot because this is neither what the ALJ recommended nor what Columbia does.

In the RD, the ALJ recommended as follows:

> For all the foregoing reasons, I recommend the Commission require Columbia Gas to apply the LIHEAP grants to each individual LIHEAP recipient's account without deducting the annualized CAP-Plus payment first.

RD, p. 138.

Contrary to PCOC's contention, the ALJ did not recommend that Columbia annualize CAP grants by dividing the grant into 12 monthly installments. The ALJ simply recommended that Columbia be directed not to reduce the grant by deducting the CAP-Plus amount.

As explained in Columbia's Exceptions, Columbia does not reduce the grant by the annualized Plus amount. Columbia Exc., p. 28. To the contrary, the Plus amount is part of the monthly affordable CAP bill. Columbia credits the entire LIHEAP grant to the customer's account when it is received. Columbia Exc., pp. 28-29.

Once the LIHEAP grant is credited to the customer's account, it is up to the customer to determine how to use it. The customer may make some monthly payments and use some of the credit on his or her bill to cover the remainder of the required CAP payment (as illustrated by Appendix B to the RD) or the customer may cease CAP payments until the credit is exhausted.

The ALJ has not directed Columbia to annualize and apply the LIHEAP grant on a monthly basis and Columbia does not do so. PCOC's Exception 3 is without merit and should be

rejected.

d. Response to PCOC Exception 4 – The ALJ Correctly Concluded That CAP-Plus Does Not Use LIHEAP as a Resource to Make CAP Bills Affordable.

In Exception 4, PCOC argues that adding a Plus amount to one of Columbia's four CAP options ". . . has the effect of treating his LIHEAP grant as an available resource" PCOC Exc., pp. 17-18. PCOC's words are carefully chosen. To make this argument, PCOC contends that the effect of increasing the CAP payment is to use the LIHEAP grant to reduce the customer's CAP discount. PCOC ignores two important points. First, by tariff rules, every CAP customer is charged the Plus amount irrespective of whether the customer receives a LIHEAP grant, so the tenuous connection between the LIHEAP grant and the Plus amount is only made by the fact that the sum of the Plus amounts roughly equals the sum of LIHEAP grants to all CAP customers in the *previous* year. This tenuous connection can readily be removed by establishing the Plus amount or CAP payment options in a manner unrelated to LIHEAP grants.

Second, and perhaps more importantly, the Commission already has determined by approving Columbia's CAP plan that the CAP payments, including the Plus amount, meet the standards of its CAP Policy Statement, including the affordability standard.[18] Therefore, the determination of CAP payments is in accord with Commission policy. PCOC's argument that this determination should be overturned improperly invades the Commission's exclusive authority to determine the affordable CAP payment.

For these reasons, PCOC's Exception 4 should be rejected.

e. Response to PCOC Exception 5 – The ALJ Did Not Fail to Consider the Loss of Columbia's Vendor Status.

In Exception 5, PCOC contends that the ALJ failed to consider the potential loss of

[18] Petition of Columbia Gas of Pennsylvania, Inc. to Modify its Universal Service and Energy Conservation Plan for the 2010-2011 Heating Season, Docket No. P-2010-2195759 (Order entered October 19, 2010).

Columbia's vendor status under the LIHEAP program. Columbia strongly disagrees.

The ALJ, Columbia and OCA consider the potential loss of vendor status, which results in Columbia not being able to receive and administer LIHEAP grants for its customers, to be a serious matter. For this reason, Columbia recommended to the ALJ that the DPW letter be made part of the record in this case to advise the Commission of such claim. The ALJ correctly recognized the significance of the proposed actions of DPW and correctly admitted the letter for the very limited purposes described previously in these Replies to Exceptions, supra, p. 16-19.

PCOC, however, suggests that the ALJ erred in simply not accepting its argument about CAP-Plus because of the potential consequence which might be invoked by DPW.

In Columbia's view, the ALJ acted correctly to review PCOC's underlying challenges concerning CAP-Plus. The ALJ concluded that these challenges were not valid. Having done so, it would not have been appropriate to yield to PCOC's contention simply because DPW might revoke Columbia's vendor status.

Finally, Columbia notes that revocation of vendor status would make it difficult to administer LIHEAP to Columbia's customers to the detriment of Columbia's customers, Columbia, the Commission and DPW. Columbia's interest is to see that all of its customers are treated fairly, both CAP and non-CAP customers. The revocation of LIHEAP vendor status is not a constructive solution to this matter.

f. Response to PCOC Exception 6 – The ALJ Correctly Concluded that the Determination of CAP Rates is a Matter Exclusively Reserved for the Commission.

The ALJ correctly and succinctly analyzed the respective jurisdictions of HHS/DPW and the Commission in this matter:

a. HHS gets to dictate how the federal LIHEAP funds are applied to a ratepayer's bill, and;

b. The Commission gets to dictate how much a ratepayer pays and what charges (such as a Universal Service Charge or a CAP-Plus charge) can be added to a monthly bill. RD. pp. 134-135.

PCOC, in its Exception 6, challenges this analysis, claiming that DPW may go behind the setting of rates by the Commission to determine whether the LIHEAP grant is being used "to reduce the costs to subsidize CAP by non-CAP customers." PCOC Exc., p. 23. The problem with this contention is that it confuses the roles of HHS/DPW and the Commission by attempting to ascertain the "intent" of the Commission in taking actions to set utility rates. PCOC's contentions would require an impermissible invasion of the Commission's authority to set the affordable CAP rate and therefore is properly rejected.

PCOC Exception 6 should be rejected.

g. Response to PCOC Exception No. 7 – PCOC's Assertion That CAP-Plus Payments Make CAP Rates Unaffordable Should Be Rejected.

PCOC asserts that the ALJ erred by failing to acknowledge that CAP-Plus increases the payment of the lowest income level CAP participants and results in making the bill unaffordable. PCOC Exc., p. 24. As demonstrated by the record evidence in this proceeding, PCOC's argument is without merit.

PCOC first contends that the uniform Plus amount violates LIHEAP requirements. This argument is not credible. CAP-Plus provides that each CAP customer receives an affordable bill and also is entitled to apply for LIHEAP and further reduce that bill with a LIHEAP grant. The CAP bill remains affordable even with the CAP-Plus amount and no receipt of a LIHEAP grant. OCA St. 3-R, p. 14. Every CAP customer is eligible to apply for and receive LIHEAP. Columbia St. 117-R, p. 9. Very low income CAP customers that receive LIHEAP and apply it to their gas bill essentially pay little or no gas bill. Columbia St. 17, pp. 1-6. Further, CAP-Plus

does not prohibit DPW from making grants to the most needy customers and such grants lower the Commission-determined asked to pay affordable amounts. PCOC's argument, applied to its logical conclusion, would divest the Commission of all authority to determine an affordable bill for a CAP customer receiving LIHEAP.

PCOC also contends that a uniform Plus amount of $17 per month makes bills of the very low income CAP customers unaffordable. However, PCOC presents a distorted view of the facts. PCOC asserts that small households with low incomes have received a large percentage increase in their CAP payment due to the Plus amount. PCOC Exc., p. 26. However, percentages present a distorted picture about overall bill affordability. A $17 per month increase is a significant percentage increase, but is not an unreasonable dollar increase given the very low monthly bill previously provided under Columbia's very favorable CAP plan for very low income customers in small household sizes. For example, a $204 annual Plus amount ($17 x 12) represents a 50% increase to an annual CAP bill that would have been only $408 without the Plus amount. The fact that the annual bill increases to $612 with CAP-Plus, or from $34 to $51 per month, does not demonstrate that the bill is unaffordable. Indeed, the record in this proceeding demonstrates that both of PCOC's named complainants have affordable bills under CAP Plus and would pay essentially no gas bill if they applied for and received a LIHEAP grant and assigned it to gas service.[19] Columbia St. 117-RJ, pp. 1-6.

The fundamental flaw in PCOC's analysis is its failure to give adequate deference to the Commission's authority to determine the affordable CAP payment. The Commission approved the CAP Plus program by its Order of October 19, 2010 at Docket No. P-2010-2195159. Columbia MB, p. 30. All charges to CAP customers, including the CAP Plus amount, are therefore approved as in compliance with Commission requirements, including its affordability

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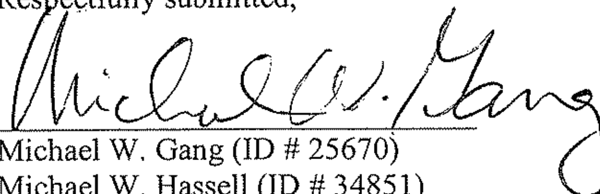
[19] It is important to note that the examples detailed in Columbia's testimony use the minimum LIHEAP grant of $300. Columbia St. No. 117-RJ, p. 4.

standards. PCOC, therefore, bears the burden of demonstrating that the CAP Plus rates are unjust and unreasonable. PCOC has failed to meet its burden in challenging CAP Plus.

III. CONCLUSION

For the foregoing reasons, the Exceptions of BI&E and PCOC should be rejected.

Respectfully submitted,



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