BEFORE THE

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission : R-2015-2469665

Office of Consumer Advocate : C-2015-2474515

Office of Small Business Advocate : C-2015-2475969

:

v. :

:

Columbia Gas of Pennsylvania, Inc. :

**RECOMMENDED DECISION**

Before

Mark A. Hoyer

Administrative Law Judge

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I. HISTORY OF THE PROCEEDING

On February 27, 2015, Columbia Gas of Pennsylvania, Inc. (Columbia or Company) submitted its pre-filing information in support of its annual purchased gas cost (PGC) filing to the Pennsylvania Public Utility Commission (Commission) pursuant to 52 Pa.Code §§ 53.64 and 53.65.

On March 31, 2015, Columbia filed a letter with the Commission stating that, for the quarterly period commencing April 1, 2015, the Company’s recalculated PGC rate will decrease $0.03148/Therm. 52 Pa.Code §53.64(i)(5)(iii). On April 1, 2015, Columbia filed Supplement No. 230 to Tariff Gas – Pa. PUC No. 9 (Supplement No. 230) with a proposed effective date of October 1, 2015. Supplement No. 230 was filed pursuant to Section 1307(f) of the Public Utility Code, 66 Pa.C.S.A. §1307(f). Supplement No. 230 provides for the Company’s annual adjustment and reconciliation of its gas cost recovery rates. Relative to the current PGC rate of $0.50743/Therm, Columbia’s definitive filing anticipated a decrease of $0.10902/Therm to a PGC rate of $0.39841/Therm.

On or about March 11, 2015, the Office of Small Business Advocate (OSBA) filed a formal complaint at Docket No. C-2015-2475969. On or about March 12, 2015, the Commission’s Bureau of Investigation and Enforcement (I&E) filed a notice of appearance. On March 27, 2015, Interstate Gas Supply, Inc., Shipley Energy Company and Dominion Retail, Inc. (NGS Parties) filed a petition to intervene. On March 30, 2015, the Office of Consumer Advocate (OCA) filed a formal complaint at Docket No. C-2015-2474515. Also on March 30, 2015, Columbia Industrial Intervenors (CII) filed a petition to intervene.[[1]](#footnote-1)

On April 1, 2015, a Prehearing Conference Order was issued and a Notice was mailed scheduling a prehearing conference for Tuesday, April 7, 2015. The prehearing conference proceeded as scheduled. Counsel for Columbia, I&E, the OCA, the OSBA, CII and the NGS Parties attended the conference. On April 8, 2015, a Prehearing Order was issued memorializing the matters decided and agreed upon by the parties attending the conference, granting the petitions to intervene filed by CII and the NGS Parties, and consolidating the formal complaints filed by the OSBA and the OCA with this 1307(f) rate proceeding.

On June 3, 2015, a technical evidentiary hearing was held. Prior to the hearing, counsel for Columbia informed the undersigned Administrative Law Judge (ALJ) that a partial settlement had been achieved and that the parties intended to stipulate to the admissibility of the pre-served testimony and exhibits and waive cross-examination. At the hearing, the parties pre-served testimony and exhibits were admitted into the record.

On June 16, 2015, main briefs were filed by Columbia, I&E, OCA, OSBA and the NGS Parties. On June 24, 2015, reply briefs were filed by Columbia, I&E, OCA, and the NGS Parties. Also on June 24, 2015, a Joint Petition for Partial Settlement (Joint Petition or Partial Settlement) was filed by Columbia, I&E, OCA and OSBA (hereinafter collectively referred to as, Joint Petitioners). Joint Petitioners’ Statements in Support of the Partial Settlement were attached to the Joint Petition as appendices. The non-signatory parties, CII and the NGS Parties, did not oppose the Joint Petition.

In the Joint Petition, Columbia has calculated that the effect of the settlement term, which recalculates the Unified Sharing Mechanism (USM) credit amount, will reduce PGC rates by $0.00053 per therm. The currently effective PGC rate is $0.46790 per therm, which became effective July 1, 2015.

On July 24, 2015, the undersigned ALJ issued an order closing the hearing record.

II. FINDINGS OF FACT

Based on the evidence of record in this proceeding, and as required by Section 1318(a) and (b) of the Code, 66 Pa. C.S. §1318(a) and (b), the following findings are made:

1. Columbia’s Exhibit No. 3 lists Federal Energy Regulatory Commission (FERC) proceedings through calendar year 2014 affecting Columbia’s ratepayers. Exhibit No. 3 outlines Columbia’s participation in these FERC proceedings. Columbia has intervened and actively participated in proceedings of the interstate pipelines serving Columbia.

2. Columbia was active in relevant FERC cases involving Columbia Gas Transmission Corporation (Columbia Transmission), Columbia Gulf Transmission Company (Columbia Gulf), Equitrans, L.P. (Equitrans), National Fuel Gas Supply Corporation (National Fuel), Tennessee Gas Pipeline Company, L.L.C. (Tennessee), and Texas Eastern Transmission, L.P. (Texas Eastern). (Columbia St. No. 1, pp. 20-23, Columbia Ex. No. 3.)

3. In 2014, Columbia was active before the FERC in rulemakings and policy statements that have the potential to significantly impact Columbia’s efforts to provide reliable gas service at the least cost. (Columbia St. No. 1, pp. 20-23.) Columbia has intervened in proceedings of interstate pipelines involved in construction projects in the Marcellus region. (Columbia Ex. No. 5, pp. 22-23.) Columbia has also been an active participant in FERC and North American Energy Standards Board (NAESB) proceedings concerning Gas Electric coordination. (Columbia Ex. No. 5, pp. 23-24.)

4. Columbia will continue its policy of active participation in individual pipeline supplier rate and certificate proceedings before the FERC, along with FERC generic type rulemaking and policy proceedings which could have a material impact on Columbia’s costs or operations, as fully described in Columbia Statement No. 1, pp. 20-23.

5. Numerous Columbia Transmission facilities are used to transport and store Columbia’s supply purchases. Because Columbia’s local market areas are spread across Pennsylvania and are connected primarily, and in many cases exclusively, to Columbia Transmission facilities, the vast majority of Columbia’s peak day supply is delivered by Columbia Transmission. (Columbia St. No. 1, pp. 12-13.)

6. Columbia has full responsibility for purchasing all of its gas supplies directly from producers and marketers. To the extent that affiliated interests offer Columbia gas supplies under competitive terms and conditions, Columbia will consider those supplies like all others in accordance with its policy of purchasing gas supplies from reliable sources at the lowest cost. (Columbia St. No. 1, pp. 12-13; Columbia Ex. No. 8-C.)

7. Columbia’s gas purchasing objectives and strategies seek a portfolio of least-cost supply from both Pennsylvania and interstate producers. Columbia also seeks capacity that is flexible and reliable. These efforts will continue. (Columbia St. No. 1, pp. 25, 29.)

8. Columbia contracts for firm transportation and storage services to meet customers’ requirements in its diverse market areas. (Columbia Ex. No. 5, pp. 10-13; Columbia St. No. 1, pp. 11-12.) Columbia’s firm contracts for gas supply provide it with sufficient supply to meet the human needs demand of firm sales customers under design weather conditions. (Columbia St. No. 1, p. 24.)

9. Columbia’s current day design temperature reflects a 6.67 percent risk level which translates to the capacity necessary to meet firm customer requirements when there is an average temperature of -5°F on the design day. (Columbia St. No. 1, pp. 8-9; Columbia Ex. No. 5, p. 5.)

10. Columbia has created a tiered approach in renewing its Columbia Transmission Firm Transportation Service (FTS) contracts. (Columbia Ex. No. 5, p. 12.) In 2014, Columbia extended for two years a Columbia Transmission FTS contract having capacity of 13,334 Dth. (Columbia Ex. No. 5, p. 11.) Columbia also renewed for two years a Columbia Transmission FTS contract having 30,237 Dth of capacity per day that had a primary termination date of October 31, 2014. (Columbia St. No. 1, pp. 19-20; Columbia Ex. No. 5, p. 12.)

11. Columbia holds a contract for Firm Storage Service (FSS) with Columbia Transmission and a contract for Storage Service Transportation (SST). Columbia uses the FSS service to provide daily injection and withdrawal capacity into or out of storage, along with firm peak day deliverability and seasonal storage capacity. The SST capacity provides firm transportation of storage volumes from storage fields to Columbia’s city gates, and also transports flowing gas supplies to fill storage during the summer. The use of FSS in conjunction with SST provides Columbia with its primary daily no-notice balancing service. (Columbia St. No. 1, p. 12.)

12. In addition to its contracts for transportation and storage from Columbia Transmission, Columbia has access to various other pipelines. These arrangements currently include the following:

(a) Columbia has two firm transportation contracts and one storage contract with Dominion Transmission, Inc. (DTI). The transportation contracts move storage supplies from DTI’s storage fields to Columbia’s city gates. The first transportation contract provides 6,000 Dth per day, and the second provides 3,000 Dth per day November through March and 2,000 Dth per day April through October. Columbia’s storage contract with DTI provides it with 9,000 Dth per day of peak day deliver­ability and approximate­ly 941 MDth of seasonal supply. Columbia utilizes these DTI con­tracts to provide supplies to its customers in Beaver County through its Darlington interconnect and in Cranberry Township through its Warrendale intercon­nect. (Columbia St. No. 1, p. 14.)

(b) Columbia has acquired additional storage and transportation capacity on DTI, effective April 1, 2014, to provide Elective Balancing Service (EBS) to General Distribution service customers and peak day service to sales and CHOICE customers in the State College markets. The new storage contract provides for daily withdrawal rights of 4,800 Dth/day and a seasonal quantity of 240,000 Dth. The firm transportation contract has 4,800 Dth/day of capacity. (Columbia Ex. No. 5, p. 13; Columbia St. No. 1, pp. 14-15.)

(c) Columbia also contracts for firm transportation and storage service on Equitrans. The capacity is used to provide EBS to General Distribution service customers and peak day service to sales and CHOICE customers. (Columbia St. No. 1, p. 15.) Columbia notified Equitrans that effective April 1, 2014, it was reducing its storage contract and associated FTS contract daily delivery and storage capacity to a peak day deliverability capacity of 14,348 Dth and a seasonal capacity of 1,500,000 Dth. Columbia’s decision to reduce its Equitrans contracts and replace the capacity with DTI capacity is driven by the need to provide EBS, system balancing and system supply to the growing State College market. Demand in that market is exceeding Columbia’s existing capacity rights to provide service. (Columbia Ex. No. 5, p. 13.)

(d) Columbia contracts for firm transportation service with Tennessee totaling 36,100 Dth per day. When the gas supply available through Tennessee is not needed to serve daily demand in Columbia markets that are directly served by Tennessee, Columbia can direct the supply to interconnections with Columbia Transmission for injection into storage or to serve other local markets, thereby increasing Columbia’s operating flexibility. (Columbia St. No. 1, pp. 15-16.)

(e) Columbia also has contracts for long-haul firm transportation service with Texas Eastern, totaling 22,335 Dth per day. A total of 19,253 Dth per day is required to serve peak day firm customer demand in Columbia markets directly connected to Texas Eastern, while 3,082 Dth per day must be delivered to Columbia Transmission as an upstream supply in order to meet peak day demand in Columbia markets served by Columbia Trans­mis­sion. Similar to operations on Tennessee, on days when the 19,253 Dth per day delivered directly to Columbia cannot be absorbed by those markets, Columbia can divert that supply to secondary delivery points off Texas Eastern or to Texas Eastern inter­connects with Columbia Transmis­sion for injection into storage or delivery to other Columbia markets served by Columbia Transmission. Columbia also contracts for 10,000 Dth per day of winter season, market-area firm backhaul transportation capacity. Columbia utilizes this capacity to satisfy cold weather requirements behind the city gates connected to Texas Eastern. (Columbia St. No. 1, pp. 16-17.)

(f) Columbia also contracts for 4,281 Dth per day of city gate capacity under the FTS rate schedule of National Fuel. This capacity provides service to Columbia’s Warren market area and also can be redirected to deliver supplies to Columbia Transmission. (Columbia St. No. 1, pp. 16-17.)

13. In order for Columbia to meet its objective of securing and delivering competitively-priced, reliable gas supplies, Columbia has developed a portfolio of gas purchase contracts, which can include long-term and short-term contracts, that have flexibility both to meet reliability standards and be able to take advantage of low price opportunities where available and operationally feasible. (Columbia St. No. 1, pp. 23-24.)

14. Columbia maintains a program for purchasing local production. In addition to local gas purchases delivered directly into Columbia’s system, Columbia purchased Appalachian pool gas delivered by producers into Columbia Transmission’s system and redelivered to Columbia under transportation agreements. Although it is certain that Pennsylvania production enters the Appalachian production pools, once the gas is part of pool supplies it is commingled with other sources of supply. Thus, the portion of these supplies coming from Pennsylvania production is not known. (Columbia St. No. 1, p. 29.)

15. Columbia eliminated its gas price hedging program as part of the settlement of its 2013 PGC case (Docket No. R-2013-2351073). Pursuant to that settlement, Columbia has not entered into new hedging contracts. Prior to the 2013 PGC settlement, Columbia purchased 247 hedging contracts for the winter of 2014-15 at an average price of $4.37 per Dth. Columbia has used these futures contracts pursuant to its previously approved hedging program and the 2013 PGC settlement. March 2015 is the last month that these futures contracts are in place. (Columbia St. No. 1, p. 43.)

16. Columbia annually submits a Request For Proposal (RFP) to numerous suppliers identified as capable and willing to provide firm gas supplies to Columbia. Columbia requests proposals for supplies with varying term lengths, nomination flexibility and innovative pricing options. (Columbia St. No. 1, p. 25-26.)

17. Columbia’s gas purchases were a least cost supply mix during the historic reconciliation period, consistent with reliable service. (Columbia Ex. No. 8-C.)

18. In the twelve months ended January 31, 2015, Columbia did not shut in or withhold from the market any gas supply or transportation or storage capacity other than for the purposes of retaining sufficient supply to assure reliable supply and balancing services under colder than normal conditions. (Columbia Ex. No. 8-E.)

19. Neither Columbia nor its affiliates withheld any gas from the market or caused any gas supplies to be withheld from the market that should have been utilized as part of a least-cost fuel procurement policy. (Columbia Ex. No. 8-E.)

20. Columbia retains firm contractual rights to all storage, other upstream pipeline and capacity, if any, and all capacity assignments made to Natural Gas Suppliers (NGSs) participating in Columbia’s Customer CHOICE program are made on a recallable basis. This allows Columbia to maintain service in the event an NGS fails to deliver supplies under Columbia’s Customer CHOICE Program. (Columbia St. No. 1, pp. 39-41.)

III. DISCUSSION

Columbia, I&E, the OCA and the OSBA executed a Joint Petition for Partial Settlement that was filed on June 24, 2015. The remaining parties to this proceeding, CII and the NGS Parties, did not oppose the Partial Settlement. In the Partial Settlement, the Joint Petitioners reached agreement on the findings required pursuant to 66 Pa.C.S. §1307(f) and 66 Pa.C.S. §1318 of the Pennsylvania Public Utility Code (the Code). The Joint Petitioners also agreed on the projection of customer share of Unified Sharing Mechanism (USM) net proceeds.

The parties to this proceeding reserved for litigation the following issues: (1) the allocation of the customer share of USM net proceeds between the Purchased Gas Demand Cost (PGDC) and the Purchased Gas Commodity Cost (PGCC) rates and; (2) the NGS Parties’ proposal that Columbia conduct a study regarding how Columbia’s retained pipeline capacity is utilized.

A. Partial Settlement

The Joint Petitioners agreed that the Company will continue to calculate the USM projection of the customer’s share based upon an average of the three most recently completed PGC periods for which data are available at the time of the PGC pre-filing. Joint Petitioners further agreed that for the twelve months ended September 30, 2014, the USM net proceeds shall be deemed to be $7.5 million, and this amount shall be included in the three-year average for purposes of this proceeding and the 2016 and 2017 PGC proceedings. Joint Petition, p. 11.

With respect to Columbia’s gas purchases and gas purchasing practices during the twelve-month historic reconciliation period ended January 31, 2015, Joint Petitioners request that the Commission find that Columbia has met the standards set out in Section 1318 of the Public Utility Code, 66 Pa.C.S. § 1318, and required by Section 1307(f)(5) of the Public Utility Code, 66 Pa.C.S. § 1307(f)(5), as to all actual purchased gas costs in the historic period. It is also requested by the Joint Petitioners that the Commission find, pursuant to Section 1307(f)(5) of the Public Utility Code, and based upon the evidence presented by the parties in this case, that, during the twelve months ended January 31, 2015: (1) Columbia met the requirements of Section 1318(a) of the Public Utility Code by pursuing a least-cost fuel procurement policy, consistent with its obligation to provide safe, adequate and reliable service to its customers; and (2) Columbia met the requirements of Section 1318(b) of the Public Utility Code relating to its purchases of gas, transportation and storage services from affiliates. Joint Petition, pp. 12-13.

With respect to the twelve-month period beginning October 1, 2015, which is the period of time during which the proposed rates contained in this Partial Settlement would be in effect, Joint Petitioners request that the Commission make the findings under Section 1318 of the Public Utility Code, including Sections 1318(a)(1) through (a)(4), and 1318(b)(1) through (b)(3), based upon information presently available and based upon evidence of record in this proceeding concerning Columbia’s purchasing policies. Joint Petition, p. 13.

The Joint Petitioners agree that, based upon evidence of record in this proceeding concerning Columbia’s projected gas purchases and gas purchasing policies, it appears that Columbia’s projected gas purchases and projected gas purchasing policies will comply with the standards of Section 1318 of the Public Utility Code. Nevertheless, it is expressly understood and agreed by the Joint Petitioners that the findings relating to the rate to become effective October 1, 2015, are made solely for the purpose of setting prospective rates that shall be subject to the standards of Section 1318, and further review in an appropriate future proceeding. According to the Joint Petitioners, this section of the Partial Settlement is not intended to limit or prevent in any way present or future complainants from reviewing, after such projected gas purchases actually have been made and gas purchasing practices actually have been implemented, whether Columbia’s gas purchases and gas purchasing practices have, in fact, complied with the standards of Section 1318. If, in an appropriate future proceeding, gas purchases and gas purchasing practices relating to the period October 1, 2015, through September 30, 2016, are challenged, Joint Petitioners agree that the Commission’s findings in this section of the Partial Settlement shall pose no bar to the examination of such purchases and practices including, but not limited to, disallowance of, or reductions to, such costs during the one-year period commencing October 1, 2015. Joint Petition, pp. 13-14.

The Joint Petitioners agree that future examination of the gas costs relating to the period February 1, 2015, through September 30, 2015, to determine whether Columbia’s experienced and projected gas purchases and gas purchasing practices complied with the standards set forth in Section 1318 of the Public Utility Code, shall be permitted and that the Commission’s adoption of the findings under this section of the Partial Settlement shall not be construed to limit or prevent any disallowance or reduction of such costs. Joint Petition, p. 14.

1. Columbia’s Position re: Public Interest

Columbia points out that Commission policy promotes settlements. *See* 52 Pa.Code § 5.231. Settlements lessen the time and expense that the parties must expend litigating a case and, at the same time, conserve precious administrative resources. The Commission has indicated that settlement results are often preferable to those achieved at the conclusion of a fully-litigated proceeding. *See* 52 Pa.Code § 69.401. In order to accept a settlement, the Commission must first determine that the proposed terms and conditions are in the public interest. *Pa. Pub. Util. Comm’n v. York Water Co.*, Docket No. R-00049165 (Order entered Oct. 4, 2004); *Pa. Pub. Util. Comm’n v. C.S. Water and Sewer Assocs.*, 74 Pa. PUC 767 (1991). Columbia St. in Support, pp. 1-2.

As an initial matter, Columbia asserts that the fact that the Partial Settlement is unopposed is, in and of itself, strong evidence that the Partial Settlement is reasonable and in the public interest. According to Columbia, the Partial Settlement was achieved after a comprehensive investigation of Columbia’s gas purchasing practices, including extensive discovery and discussion among the parties. Columbia submits that the Partial Settlement fairly balances the interests of the Company and its customers and, therefore, is in the public interest. Columbia respectfully requests approval of the Partial Settlement in its entirety, without modification. Columbia notes that by resolving all but two issues in this proceeding through Partial Settlement, the parties were able to successfully avoid a portion of the additional costs associated with litigation. Columbia St. in Support, p. 2.

USM net proceeds are shared with 75 percent returned to customers and 25 percent retained by Columbia. Columbia has for a number of years included a projection of the customer share of USM net proceeds,[[2]](#footnote-2) which is subsequently reconciled to actual net proceeds. (Columbia St. No. 2-R, p. 5); Columbia St. in Support, p. 3.

Prior to Columbia’s 2014 PGC case, Columbia based its projection of the customer share of USM net proceeds on the amount of actual net proceeds achieved in the most recently completed PGC period. (OCA St. No. 1, p. 4). However, this approach was changed as part of the partial settlement in Columbia’s 2014 PGC case. In that partial settlement, the parties agreed to calculate the USM projection based on an average of the three most recently completed PGC periods at the time of Columbia’s pre-filing. (Columbia St. No. 2, p. 5); Columbia St. in Support, p. 3.

According to Columbia, the parties to the 2014 PGC partial settlement reserved another aspect of the projection for this year’s PGC case. In last year’s proceeding, Columbia and the parties were aware that, due to unique circumstances, Columbia expected to achieve net proceeds that would result in a customer share in excess of $11 million for the twelve months ended September 30, 2014. (Columbia St. No. 2, p. 6). According to Columbia, this amount far exceeded recent experience. (Columbia St. No. 1, p. 44). As a consequence, the parties included the following provision in the 2014 PGC partial settlement:

Parties agree that as part of next year’s PGC proceeding they shall consider whether to exclude the expected USM credit amount of $11.4 million for the twelve months ending September 30, 2014 from the average calculation on the basis that it is extraordinary and likely to distort the projection of USM credits.[[3]](#footnote-3)

Columbia St. in Support, pp. 3-4.

In this proceeding, Columbia contends that it offered substantial evidence to support exclusion of the actual customer share of $11,971,233 from the three-year average. Columbia asserts that it showed that the $11.9 million was clearly extraordinary and well in excess of recent experience. (Columbia St. No. 1, p. 44). Columbia asserts that it further demonstrated that if the $11.9 million were incorporated into the three-year average, the resulting USM credit amount in this case would be over $7.2 million. (Columbia St. No. 1, p. 3). That amount, according to Columbia, would continue to be well in excess of recent experience, and well in excess of Columbia’s projection of USM credits of about $6 million for the twelve months ending September 30, 2015. (Columbia St. No. 2-R, p. 4); Columbia St. in Support, p. 4.

Based upon the foregoing, Columbia proposed to replace the $11.9 million amount with an amount of approximately $6.9 million, which was derived from an average of USM credits for the five years ended September 30, 2013. (Columbia Exh. No. NJDK-1R, p. 3). Columbia calculated that using the $6.9 million figure results in a three-year average of $5,549,510. (Columbia St. No. 1-R, p. 4; Columbia Exh. No. NJDK-1R, p. 3); Columbia St. in Support, p. 4.

The only party to oppose Columbia’s proposal was the OCA, which continued to argue in favor of the use of the $11.9 million figure in the calculation. Columbia St. in Support, p. 4.

In this Partial Settlement, the Joint Petitioners have agreed to use a proxy of $7.5 million in lieu of the experienced $11.9 million for the twelve months ended September 30, 2014, and agreed that this amount would be included in the three-year average to be used to calculate the projected USM credit for this proceeding as well as the 2016 and 2017 PGC proceedings. Columbia St. in Support, p. 5.

Columbia opines that the Joint Petitioners have achieved a reasonable compromise on this issue, and argues that it should be adopted. The amount is somewhat higher than the proxy originally proposed by Columbia, reflecting a compromise of the issue. In addition, the Joint Petitioners have agreed to a fixed proxy amount for the twelve months ended September 30, 2014, for this PGC proceeding and the following two. This is important, according to Columbia, because the twelve months ended September 30, 2014 will be part of the three-year average for all three PGC cases. Thus, according to Columbia, the Joint Petitioners have eliminated the distorting effect of the extraordinary experienced credit of $11.9 million from future calculations. Columbia St. in Support, p. 5.

2. The OCA’s Position re: Public Interest

The OCA submits that the terms and conditions of the proposed Partial Settlement are in the public interest and the interest of Columbia’s ratepayers and should be approved. OCA St. in Support, p. 4.

As part of the Partial Settlement in the 2014 Columbia PGC case, Columbia agreed to calculate the projection of the customers’ share of the USM projection based upon an average of the three most recently completed PGC periods for which data are available at the time of the Company’s PGC pre-filing. The parties also agreed that as part of the 2015 PGC proceeding, the parties would consider whether to exclude the expected $11.4 million USM credit amount for the twelve months ending September 30, 2014 from the average calculation on the basis that it is extraordinary and likely to distort the projection of USM credits. The actual USM credit revenue totaled $11.9 million. CPA St. 2 at 6; OCA St. in Support, p. 3.

As part of this proposed Partial Settlement, the Joint Petitioners agreed that for the twelve months ended September 30, 2014, the USM net proceeds shall be deemed to be $7.5 million, and this amount shall be included in the three-year average for purposes of this proceeding and the 2016 and 2017 PGC proceedings. The Joint Petitioners further agreed that the Company will continue to calculate the USM’s projection of the customer’s share based upon an average of the three most recently completed PGC periods for which data are available at the time of the PGC pre-filing. OCA St. in Support, p. 3.

The OCA submits that these provisions are in the public interest because they will help to moderate the impact of extraordinary events on the USM credit and are consistent with the OCA’s position in the last two PGC proceedings. The OCA believes the use of an average prevents abnormally large or small proceeds in a particular year from unduly impacting the projected credit in the immediately following PGC period. According to the OCA, the averaging methodology also recognizes the appropriateness of passing through to PGC customers the credits to which they are entitled in a timely manner. OCA St. in Support, pp. 3-4.

3. I&E’s Position re: Public Interest

I&E submits that the terms and conditions on the Partial Settlement are in the public interest and represent a fair, just and reasonable balance of the interests of Columbia and its customers. According to I&E, the Partial Settlement meets all the legal and regulatory standards necessary for approval. “The prime determinant in the consideration of a proposed Settlement is whether or not it is in the public interest.”[[4]](#footnote-4) I&E St. in Support, p. 1.

Prior to agreeing to the terms presented in the Joint Petition, I&E conducted a thorough review of the Company’s filing and supporting information, as well as discovery responses and additional submitted filing data. Based on its analysis of the Company’s filing and supplemental data, I&E is satisfied that the Partial Settlement reflects adherence to the proper regulatory standards and contains adequate protections for ratepayers. I&E St. in Support, p. 4.

The Partial Settlement includes the acknowledgement that the natural gas costs incurred by the Company during the historic period were done so under adherence to a least cost fuel procurement policy. As provided for in the Public Utility Code, “[n]o rates for a natural gas distribution utility shall be deemed just and reasonable unless the commission finds that the utility is pursuing a least cost fuel procurement policy….”[[5]](#footnote-5) I&E’s review of all available information in this proceeding confirms this representation. A least cost fuel procurement policy protects ratepayers from unnecessary and imprudent gas costs and prevents the Company from making a profit on gas supplies provided to its Purchased Gas Cost (PGC) customers. I&E St. in Support, p. 4.

The Partial Settlement also provides that the natural gas costs that the Company expects to incur in the upcoming period will be based on the Company’s adherence to its established least cost fuel procurement policy.[[6]](#footnote-6) According to I&E, the Company’s diligence in adhering to a least cost procurement strategy benefits customers directly in their gas bills. The Company’s procurement strategy, despite the quarterly fluctuations, benefits ratepayers on an annual basis because it ensures that the Company is diligently obtaining gas on a reliable basis for its customers, at the most advantageous prices possible. This statutory policy must be adhered to and I&E is of the opinion that the Company’s practices reflect this requirement and are based on sound regulatory principles. I&E concludes that the Company’s average costs reported to the Commission in their quarterly filings demonstrate the prudence of its purchasing practices. I&E St. in Support, pp. 4-5. I&E opines that ratepayers are protected in that the Company does not gain any unwarranted financial advantage through its gas purchasing practices. I&E St. in Support, p. 6.

I&E reviewed the filings for Columbia and opines that the reported Unaccounted for Gas (UFG) is reasonable based on the standards presented in this proceeding. According to Columbia, a reasonable amount of UFG is expected in a natural gas distribution system. As the costs associated with this gas are recovered from ratepayers through the PGC, it is necessary to take appropriate measures to control this expense. If acceptable levels of UFG are not achieved, ratepayers will be protected from unjust and unreasonable rates by the regulatory provision that allows for the denial of the recovery of costs associated with imprudent Company practices. I&E opines that Company’s UFG level is reasonable and that no action or recommendation is necessary in this proceeding. I&E St. in Support, p. 6.

According to I&E, the establishment of the proper Retainage levels is necessary to ensure that transportation customers contribute an adequate, but not excessive, amount of gas to compensate for the corresponding system wide UFG. I&E claims this practice of establishing proper Retainage percentages eliminates the unwarranted shifting of responsibility for UFG between retail and transportation customers. I&E further claims that proper Retainage levels equalize the responsibilities of the rate classifications and protect all ratepayers by ensuring equitable contributions to account for UFG. I&E concludes that the Retainage percentage applied to the Company’s transportation customers in this proceeding represents the appropriate level of their responsibility for UFG. I&E St. in Support, p. 7.

The Partial Settlement provides that Columbia may place into effect the natural gas supply rates as proposed. The proposed rates are subject to quarterly updates, with limited exceptions, as required by the Commission’s regulations. I&E’s analysis in this proceeding supports that these proposed rates are just and reasonable, accurately reflect the costs of Columbia’s purchased natural gas and are based on sound regulatory practices. As such, I&E opines that these rates are in the public interest and should be approved. I&E St. in Support, p. 7.

In conclusion, based upon I&E’s analysis of the filing, all prepared testimony, and prior Commission Orders and Joint Motions, I&E believes that acceptance of this proposed Partial Settlement is in the public interest because the resultant rates are just and reasonable and comply with the requirements of the Public Utility Code for purchased gas cost proceedings. Further, resolution of all issues in this case by Partial Settlement, while reserving for litigation only those two issues that were not resolved by agreement among the parties, minimizes the substantial time and effort involved in continuing to formally pursue all issues in this proceeding at the risk of accumulating excessive expense, which is ultimately passed on to ratepayers, while still securing for ratepayers a settlement of all other issues that is in the public interest. I&E St. in Support, p. 9.

4. OSBA’s Position re: Public Interest

In this proceeding, the OSBA identified the following specific issues of concern:

1. Whether the Company’s claims for unaccounted-for gas costs are reasonable;
2. Whether the Company’s proposed gas retainage rates for transportation customers are reasonable;
3. Whether the Company’s design day demand forecasting method is reasonable and whether upstream capacity is reasonably consistent with the design day demand forecast; and
4. Splitting Unified Sharing Mechanism (USM) credits between PGCC and PGDC.

After careful review of the filing and review of numerous sets of discovery materials, the OSBA concluded that the Company’s filed claims for unaccounted-for gas costs, its proposal for gas retainage rates for transportation customers, and its design day demand forecasting method were all reasonable with respect to the impacts on small business customers. The OSBA further determined that the Company’s upstream capacity was consistent with the aforementioned design day demand forecast. For these reasons, the OSBA did not deem it necessary to submit testimony on the first three issues listed above. OSBA St. in Support, p. 3.

The OSBA, however, did submit the Direct and Surrebuttal Testimony of Mr. Knecht on the issue of the allocation of USM credits, which had been previously addressed in Columbia’s 2008 1307(f) proceeding as well as in the 2014 1307(f) proceeding. The OSBA also addressed the USM issue in its main brief. OSBA St. in Support, pp. 3-4.

The OSBA asserts that the Partial Settlement of this proceeding avoids the litigation of many of the complex, competing proposals and saves the possibly significant costs of further and more extended administrative proceedings. Such costs are borne not only by the Joint Petitioners, but ultimately by the Company’s customers as well. Avoiding extended litigation of this matter has served judicial efficiency, and allows the OSBA to more efficiently employ its resources in other areas. OSBA St. in Support, p. 4.

The OSBA supports the proposed Joint Petition and respectfully requests approval of the Joint Petition in its entirety without modification. OSBA St. in Support, p. 4.

5. Recommendation – Partial Settlement in the Public Interest

The undersigned ALJ concludes that the proposed Partial Settlement is in the public interest because the resultant rates are just and reasonable and comply with the requirements of the Public Utility Code for purchased gas cost proceedings. The record supports the proposed findings of fact agreed to by the Joint Petitioners in the Partial Settlement, which were included in the previous section of this Recommended Decision. Further, resolution of all issues in this case by Partial Settlement, while reserving for litigation only those two issues that were not resolved by agreement among the parties, minimizes the substantial time and effort involved in continuing to formally pursue all issues in this proceeding at the risk of accumulating excessive expense, which is ultimately passed on to ratepayers, while still securing for ratepayers a settlement of all other issues that is in the public interest.

Prior to Columbia’s 2014 PGC case, Columbia based its projection of the customer share of USM net proceeds on the amount of actual net proceeds achieved in the most recently completed PGC period. (OCA St. No. 1, p. 4). However, this approach was changed as part of the partial settlement in Columbia’s 2014 PGC case. In that partial settlement, the parties agreed to calculate the USM projection based on an average of the three most recently completed PGC periods at the time of Columbia’s pre-filing. (Columbia St. No. 2, p. 5); Columbia St. in Support, p. 3.

The parties to Columbia’s 2014 PGC partial settlement reserved another aspect of the projection for this year’s current PGC case. In last year’s proceeding, Columbia and the parties were aware that, due to unique circumstances, Columbia expected to achieve net proceeds that would result in a customer share in excess of $11 million for the twelve months ended September 30, 2014. (Columbia St. No. 2, p. 6). This amount far exceeded recent experience. (Columbia St. No. 1, p. 44). As a consequence, the parties included the following provision in the 2014 PGC partial settlement:

Parties agree that as part of next year’s PGC proceeding they shall consider whether to exclude the expected USM credit amount of $11.4 million for the twelve months ending September 30, 2014 from the average calculation on the basis that it is extraordinary and likely to distort the projection of USM credits.[[7]](#footnote-7)

Columbia St. in Support, pp. 3-4.

In this proceeding, Columbia contends that it offered substantial evidence to support exclusion of the actual customer share of $11,971,233 from the three-year average. Columbia asserted that it showed that the $11.9 million was clearly extraordinary and well in excess of recent experience. (Columbia St. No. 1, p. 44). Columbia asserted that it further demonstrated that if the $11.9 million were incorporated into the three-year average, the resulting USM credit amount in this case would be over $7.2 million. (Columbia St. No. 1, p. 3). That amount, according to Columbia, would continue to be well in excess of recent experience, and well in excess of Columbia’s projection of USM credits of about $6 million for the twelve months ending September 30, 2015. (Columbia St. No. 2-R, p. 4); Columbia St. in Support, p. 4.

Based upon the foregoing, Columbia proposed to replace the $11.9 million amount with an amount of approximately $6.9 million, which was derived from an average of USM credits for the five years ended September 30, 2013. (Columbia Ex. No. NJDK-1R, p. 3). Columbia calculated that using the $6.9 million figure results in a three-year average of $5,549,510. (Columbia St. No. 1-R, p. 4; Columbia Ex. No. NJDK-1R, p. 3); Columbia St. in Support, p. 4.

The only party to oppose Columbia’s proposal was the OCA, which continued to argue in favor of the use of the $11.9 million figure in the calculation. Columbia St. in Support, p. 4.

In this Partial Settlement, the Joint Petitioners have agreed to use a proxy of $7.5 million in lieu of the experienced $11.9 million for the twelve months ended September 30, 2014, and agreed that this amount would be included in the three-year average to be used to calculate the projected USM credit for this proceeding as well as the 2016 and 2017 PGC proceedings. Columbia St. in Support, p. 5.

The undersigned ALJ concludes that the Joint Petitioners have achieved a reasonable compromise on this issue and finds this compromise to be in the public interest. The Joint Petitioners obviously agreed first the $11,971,233 USM net proceeds figure for 2014 was extraordinarily high. The amount agreed upon in the Partial Settlement is somewhat higher than the proxy originally proposed by Columbia, reflecting a compromise of the issue. In addition, the Joint Petitioners have agreed to a fixed proxy amount for the twelve months ended September 30, 2014, for this PGC proceeding and the following two. This is important because the twelve months ended September 30, 2014 will be part of the three-year average for all three PGC cases. Thus, the Joint Petitioners have eliminated the distorting effect of the extraordinary experienced credit of $11.9 million from future calculations. Columbia St. in Support, p. 5. The undersigned recommends approval of the Joint Petition without modification because it is in the public interest.

B. Proposed Modifications to the USM

The parties have reserved two issues related to Columbia’s PGC for litigation in this proceeding. The first issue, which is a continuation of an issue first raised by the NGS Parties in Columbia’s 2014 Section 1307(f) proceeding, is a proposal to change the Company’s current allocation of the customer share of net proceeds associated with off-system sales and capacity releases that are subject to sharing under Columbia’s USM.[[8]](#footnote-8) The NGS Parties proposed that the Company’s current allocation of 60 percent of the customer share of net proceeds to the Purchased Gas Commodity Charge (PGCC) and 40 percent to the Purchased Gas Demand Charge (PGDC) should be modified to allocate 100 percent of net proceeds to the PGDC. (NGS Parties St. No. 1, p. 7). The OCA proposes to retain the current allocation percentages, or alternatively, to reduce the PGDC portion of net margins to approximately 20 percent, based upon a four-year average of capacity release net margins. (OCA St. No. 1-R, p. 13). The OSBA and I&E present alternative calculations, which operate similar to the alternative mechanism presented by Columbia in its Exhibit No. 16, but with somewhat different inputs. Columbia does not take a position on these proposals. Columbia M.B., pp. 4-5.

By way of background, Columbia is responsible for fulfilling the needs of its firm service customers, including CHOICE and PGC sales customers. (Columbia St. No. 1, p. 12). To meet its obligation, Columbia purchases gas supply and pipeline capacity.[[9]](#footnote-9) Excess supply and/or capacity can result when the actual requirements of firm service customers on any day are less than the supply and/or capacity that Columbia has obtained to meet the expected demand of firm service customers. (Columbia St. No. 1-R, p. 4). When supply and/or capacity are not needed to meet the requirements of its firm service customers, Columbia seeks out transactions to earn revenue from the unused supply and/or capacity. (*Id.* at pp. 2-3). The Commission has encouraged gas utilities to undertake such transactions through sharing mechanisms. (Columbia St. No. 2-R, p. 8); Columbia M.B., p. 6.

The USM is a method for distributing the net proceeds that Columbia earns from transactions involving excess supply and/ or capacity. (Columbia St. No. 2, p. 5). Under the USM, 75 percent of the proceeds are credited to customers and Columbia retains 25 percent. *See Pa. Pub. Util. Comm’n., et al. v. Columbia Gas of Pennsylvania, Inc.*, Docket No. R-2009-2093219 (Opinion and Order entered September 30, 2009). The USM is intended to encourage Columbia to seek out those transactions that maximize net margins, while maintaining safe and adequate service. (Columbia St. No. 1-R, p. 3). The 75 percent that is credited to customers is further split between the PGCC and the PGDC. (Columbia St. No. 2-R, p. 6). CHOICE and PGC sales customers receive the PGDC credit because both groups pay the PGDC charge. (Columbia St. No. 2, pp. 15-16). Only PGC sales customers pay the PGCC charge; therefore, only PGC sales customers receive the PGCC credit. (*Id*.). Columbia’s current Commission-approved tariff provides for a credit of 60 percent of the customer share of total USM revenues to the PGCC and 40 percent to the PGDC. (Columbia St. No. 2, p. 28); Columbia M.B., pp. 6-7.

Columbia engages in five types of transactions to produce net proceeds that are shared through the USM: (1) capacity release, (2) options, (3) exchanges, (4) off system sales,[[10]](#footnote-10) and (5) asset management agreements (AMAs). (Ex. HAC 1-R). The market determines the value of each transaction at any point in time. (Columbia Ex. No. 16); Columbia M.B., p. 7.

Capacity release is a transaction, completed under Federal Energy Regulatory Commission (FERC) regulations and interstate pipeline tariffs, that “releases” firm contract capacity rights to a third party shipper. (Ex. HAC 1-R). Releases can be recallable or nonrecallable. Under FERC rules, Columbia identifies potential buyers of such capacity, negotiates the release price and completes the transaction utilizing the pipeline’s internet based system. (*Id.*). An Options agreement or sale is an arrangement in which Columbia sells a counter party the right, but not the obligation, to sell natural gas to Columbia at a specific location at an agreed-to purchase price and agreed-to volume. (*Id.*). An Exchange Agreement is an arrangement between Columbia and a counter party in which like volumes of natural gas, adjusted if needed for pipeline retention, are exchanged at specific agreed-to locations. (*Id.*). Exchanges can occur during the same day or can span a defined time period. (*Id.*). An off-system sale is an arrangement between Columbia and a buyer for the sale of natural gas at a specific location and at an agreed-to purchase price. (*Id.*). An AMA is an arrangement in which Columbia releases specific capacity assets to a seller that provides a delivered natural gas service to Columbia to serve its customers. (*Id.*); Columbia M.B., p. 7.

In Columbia’s 2014 Section 1307(f) proceeding, the NGS Parties challenged the 60 percent PGCC/40 percent PGDC allocation in the USM mechanism. Although the Final Order did not direct any change to the mechanism at that time, the Commission did direct Columbia to undertake a study of its allocation of net proceeds between the PGCC and PGDC. *Pa. Pub. Util. Comm’n, et al. v. Columbia Gas of Pennsylvania, Inc.*, Docket No. R-2014-2408268 (Opinion and Order entered September 18, 2014). The Commission’s Order directed Columbia to address six questions in its study: (1) Are transportation and storage assets equally allocated between CHOICE and PGC customers, taking into account base-load assignments of firm transportation given to and paid for by NGSs?; (2) Do both NGSs and PGC customers pay a roughly equal load-weighted share of total system storage and transportation costs, taking into account NGS-assigned capacity and balancing costs?; (3) Can Columbia definitely identify any off-system sales that do not involve the use of its transportation and storage assets?; (4) Under Columbia’s AMAs, are the underlying released transportation and storage assets paid for by CHOICE and PGC customers in proportion to their load?; (5) Under Columbia’s released capacity transactions, are the released transportation and storage assets paid for by CHOICE and PGC customers in proportion to their load?; and (6) Under Columbia’s off-system sales transactions, are the underlying transportation and storage assets paid for by CHOICE and PGC customers in proportion to their load? (*Pa. Pub. Util. Comm’n, et al. v. Columbia Gas of Pennsylvania, Inc.*, Docket No. R-2014-2408268 (Opinion and Order entered September 18, 2014); Columbia M.B., p. 8.

As required by the Commission’s Final Order in the 2014 1307(f) proceeding, Columbia presented answers to these questions in Exhibit 16 of its pre-filing in the present case. In response to the first question, Columbia answered that its transportation and storage assets are, in fact, equally allocated between CHOICE and PGC customers from a total demand cost perspective. (Columbia Ex. No. 16). Columbia responded to the second question by explaining that total system storage and transportation costs are allocated between CHOICE and PGC customers based on total capacity cost and annual demand for CHOICE and PGC customers, and therefore are allocated in an equitable manner. (*Id.*). The third question resulted in a finding that, while it is possible to structure various off system sales arrangements that do not use capacity assets, the vast majority of Columbia’s off system sales currently involve the use of Columbia’s transportation or storage assets. (*Id.*). Columbia answered the final three questions in the affirmative. (*Id.*); Columbia M.B., pp. 8-9.

As a result of its study, Columbia determined that capacity releases, which derive their value solely from the use of capacity assets, accounted for 19.1 percent of the total USM net revenue over the past four years. (Columbia Ex. 16). Sales, options, AMAs, and exchanges, which utilize both supply and capacity, account for 80.9 percent of the total USM net revenue over the past four years. (*Id.*). When a transaction involves both supply and capacity, it is impossible for Columbia to determine which aspect of the transaction, supply or capacity, provides value. (Columbia St. No. 2-R, p. 6). The inherent value of a product in providing gas supply and capacity is encompassed within the negotiated value for the various products, and is determined solely by the counter-party (Columbia Ex. No. 16). As a result, Columbia could not conclude what portion of USM net proceeds from these other transactions are derived because a counter-party values the capacity or values the gas supply used to accomplish the transaction. (Columbia St. No. 2-R, p. 6).

1. Columbia’s Position-No New Proposal

Although Columbia did not offer any new proposal for allocating the customer share of net proceeds between the PGCC and the PGDC, it did recognize that if CHOICE participation increased, the use of fixed allocation percentages between the PGDC and PGCC would increase the per therm PGCC credit. (Columbia St. No. 1-R, pp. 2, 7). To address this situation, Columbia presented an alternative USM calculation. The alternative calculation would base the allocation to the PGDC on two factors: (1) the percentage of capacity release to total off system sales and capacity release based on a four-year average; and (2) the current CHOICE participation rate applied to the percentage of revenues derived from sales, options, AMAs, and exchanges based on a four-year average. Following the calculation of the PGDC percentage, the remainder of the customer share of net margins would be allocated to the PGCC. (Columbia St. No. 2, p. 28); Columbia M.B., p. 10.

According to Columbia, under this alternative calculation, the share of USM credits allocated to the PGDC revenue would change in direct relation to CHOICE participation levels. (*Id.*). Under this alternative calculation, at a 100 percent CHOICE participation rate, 100 percent of the customers’ share of USM credits would be credited to the PGDC. (Columbia St. No. 2, pp. 28-29); Columbia M.B., p. 10.

Other parties in this proceeding have suggested various alterations to the current allocation of USM revenues. Columbia has not taken a position with regard to the other parties’ proposals to revise the allocation of USM net proceeds between the PGDC and the PGCC. However, the Company does oppose two proposals raised by the OCA for the first time in its rebuttal testimony: (1) that Columbia redo its USM study to account for capacity assigned to marketers on behalf of CHOICE customers, including capacity for standby and balancing service; and (2) that Columbia bid capacity and supply products in an AMA separately.[[11]](#footnote-11) Columbia M.B., pp. 10-11.

Columbia argues that the OCA’s proposal that Columbia redo its USM study to take into account capacity assigned to third party marketers on behalf of CHOICE customers, “including for standby and balancing services,” is unnecessary and inappropriate. Initially, according to Columbia, it is important to understand who does and who does not receive USM credits. Firm sales customers and CHOICE customers (i.e., transportation customers receiving service under Rate RDS and Rate SCD) are the only customers who receive the USM credit, through either the PGDC rate (sales and CHOICE) or both the PGDC and PGCC rate (sales). Other General Distribution Service (GDS) transportation customers are not subject to the PGDC and do not purchase gas under the PGCC rate. (Columbia St. No. 2SR, p. 4). It is also necessary to understand, Columbia explains, that standby service and EBS – Elective Balancing Service are services available only to GDS customers. (Columbia St. No. 2SR, pp. 4-5). As a result, Columbia contends there is no reason to redo Columbia’s USM study to account for the provision of standby or balancing service as the customers who are eligible for these services do not receive USM credits. Columbia M.B., p. 11.

Columbia asserts that a further flaw in the OCA’s proposal to redo the USM study is its failure to distinguish between capacity used to serve CHOICE customers and that acquired to provide EBS. The OCA contends that CHOICE customers receive EBS and that EBS amounts to a mandatory assignment of PGC capacity to provide balancing. (OCA St. No. 1-R, p. 9). Columbia argues that the OCA is wrong on both counts. OCA M.B., pp.11-12.

First, Columbia explains that CHOICE customers are not eligible for and do not receive EBS. (Columbia St. No. 2-SR, p. 4). CHOICE customers pay for firm service through a combination of: (1) the cost of capacity assigned to and paid by their CHOICE NGS; and (2) the PGDC rate net of the credit for assigned capacity. According to Columbia, the balancing between CHOICE customers’ requirements and daily deliveries by CHOICE NGSs pursuant to the CHOICE average day program are managed through use of the retained assets, including storage, paid by all sales and CHOICE customers. (Columbia St. No. 1, p. 34). Thus, Columbia contends that CHOICE customers pay the same amount for capacity as firm sales customers and receive the same level of firm service as sales customers. (Columbia St. No. 2-R, pp. 10-11). They do not use EBS, and there is no reason for Columbia to redo its study to account for CHOICE customers’ use of EBS. Columbia M.B., p. 12.

Second, Columbia points out that the additional capacity used to provide balancing and banking service to GDS customers under EBS Option 1 is not reflected as a PGC cost.[[12]](#footnote-12) Columbia acquires separate capacity to meet the balancing and banking services provided under EBS. As set forth in the settlement that established EBS at Docket No. R-00016668, neither the cost of additional capacity acquired to provide EBS service, nor the revenues from EBS customers are included in the PGC. (*Id.*). The OCA was a signatory party to that settlement. (*Id.*). Because EBS is made possible through non-PGC capacity assets, there is no need to account for EBS capacity in a revised USM study of PGC credits. Columbia M.B., p. 12.

For the foregoing reasons, Columbia argues that the OCA’s proposal that Columbia redo the USM study directed by the Commission should be rejected. Columbia M.B., p. 12.

The OCA’s second proposal is that Columbia should be required to bid capacity and supply products in an AMA separately. Columbia requests that this proposal be rejected as well. According to Columbia, the OCA’s proposal would be contrary to AMA rules established by FERC. (Columbia St. No. 1, p. 3; NGS Parties St. No. 1, p. 8; OCA St. No. 1-R, p. 13). As explained above, an AMA is an arrangement in which Columbia releases specific owned assets to a seller that provides a delivered natural gas service to Columbia to serve its tariff customers. (Ex. HAC 1-R). Columbia explains that, to qualify as an AMA, the AMA counter party must hold the asset as part of a bundled package and deliver certain quantities as part of the AMA. (Columbia St. No. 2-SR, p. 6); Columbia M.B., p. 13.

If Columbia were required to bid capacity and supply products separately as the OCA suggests, Columbia contends that it would be unable to engage in AMA transactions. (*Id.*). Columbia asserts that the OCA’s second proposal would effectively eliminate Columbia’s ability to utilize AMAs as a source of USM revenue. Columbia opines that the Company’s inability to enter into AMA contracts could harm its customers who receive a share of USM revenues by reducing total USM proceeds.[[13]](#footnote-13) Columbia argues it should not be required to forgo engaging in AMAs that benefit its USM customers. Therefore, Columbia requests that the OCA’s proposal that Columbia refrain from engaging in AMA transactions and, instead, bid capacity and supply productsseparately be denied. Columbia M.B., p. 13.

In its reply brief, Columbia presents a legal argument why the OCA’s two proposals should be rejected. Columbia points out that the OCA failed to present argument in its main brief regarding its two proposals, raised for the first time in rebuttal testimony, and therefore, Columbia contends the OCA should be deemed to have waived these proposals. Columbia R.B., p. 4.

According to Columbia, due process requires that a party be afforded a fair opportunity to respond to adverse claims. *Smith v. Pa. Pub. Util. Comm’n*, 162 A.2d 80, 83 (Pa. Super. 1960). Columbia asserts that, by failing to mention either proposal in its main brief, the OCA has deprived Columbia of an opportunity to address the OCA’s proposals in the Company’s reply brief. Columbia R.B., p. 4.

“The Commission . . . is bound by the due process provisions of constitutional law and by the principles of common fairness. (citation omitted) Among the requirements of due process are notice and an opportunity to be heard on the issues, to be apprised of the evidence submitted, . . . and to offer evidence in explanation or rebuttal.” *Smith,* 162 A.2d at 83. “The allowance of new claims late in a case raises significant due process concerns. Such concerns arise from the lack of adequate time to . . . respond adequately to adverse positions.” *Pa. Pub. Util. Comm’n, et al. v. UGI Utilities*, 1994 Pa. PUC LEXIS 138, \*82-83 (May 23, 1994) (rejecting a claim that was introduced for the first time by a party in the rebuttal phase of the proceeding, rather than in the party’s direct case). A claim that is introduced at such a time when the opposing party would not have an adequate opportunity to respond must be rejected on due process grounds. *Application of PPL Electric Utilities Corp.,* 2009 Pa. PUC LEXIS 2323, \*225-227 (November 12, 2009) (rejecting a claim raised for the first time in reply briefs); *see also* *Pa. Pub. Util. Comm’n. v. Duquesne Light Co.*, 59 Pa. PUC 67 (January 25, 1985) (disallowing the untimely introduction of exhibits); *Pa. Pub. Util. Comm’n v. Pennsylvania-American Water Company*, 1989 Pa. PUC LEXIS 170, \*167-169, 71 Pa. PUC 210 (October 27, 1989) (“late filed updates deny opposing parties an opportunity . . . to respond with countering evidence or testimony.”); Columbia R.B., pp. 4-5.

Columbia contends that the OCA’s proposals are procedurally inappropriate and unjust. Columbia argues that the OCA should not be permitted to resurrect the proposals it introduced for the first time in rebuttal testimony in its reply brief. According to Columbia, reintroducing the proposals at this juncture would deprive Columbia of its due process right to respond to the OCA’s proposals. *See UGI Utilities,* 1994 Pa. PUC LEXIS at \*82-83; *PPL Electric Utilities Corp.,* 2009 Pa. PUC LEXIS at \*225-227; *Pennsylvania-American Water Company*, 1989 Pa. PUC LEXIS at \*167-169. In addition, as the party with the burden of proof on these two proposals, Columbia asserts that the OCA was required to address its proposals in its main brief. 52 Pa.Code § 5.501(a)(3). Therefore, Columbia requests that any argument the OCA attempts to raise in its reply brief on these issues should not be considered.[[14]](#footnote-14) Columbia R.B., pp. 5-6.

2. I&E’s Position-USM Proposed Modification

I&E asserts that its proposed modification set forth below, which is based on Columbia’s alternative methodology presented in Exhibit 16, is the fairest, least arbitrary and most just of the proposed USM methodologies presented in this proceeding.[[15]](#footnote-15)

I&E witness Jeremy B. Hubert summarized the history of Columbia’s USM in his direct testimony.[[16]](#footnote-16) I&E witness Hubert stated, prior to the creation of the USM, capacity release revenues were credited against PGDC costs as capacity costs, and off-system sales revenues were credited against PGCC costs.[[17]](#footnote-17) Columbia’s sharing mechanisms were integrated into a

unified approach in the 2002 Section 1307(f) proceeding at Docket No. R-000272004.[[18]](#footnote-18) In the settlement of the Company’s 2008 1307(f) filing, the parties agreed to a company/customer sharing mechanism which provided, for all net proceeds up to $6 million, customers would receive a 75 percent share and the Company would retain 25 percent.[[19]](#footnote-19) For net proceeds that exceeded the $6 million threshold, the customer/company sharing ratio would be 70 percent/30 percent.[[20]](#footnote-20) Additionally, in that proceeding it was also established that the portion of the USM credited to customers would be allocated 60 percent to the PGCC and 40 percent to the PGDC.[[21]](#footnote-21) This USM was to remain in effect through September 30, 2009, and be revisited in the 2009 Section 1307(f) proceeding.[[22]](#footnote-22) I&E M.B., pp. 6-7.

The present structure of the USM was approved by the Commission in Columbia’s 2009 Section 1307(f) proceeding at Docket No. R-2009-2093219, which established that customers would receive 75 percent of all net proceeds generated from off system sales and capacity release, and Columbia would retain 25 percent; however, the 60 percent/40 percent sharing ratio between commodity and demand credits was not revisited.[[23]](#footnote-23) In Columbia’s 2012 Section 1307(f) proceeding (Docket No. R-2012-2293303), the Commission approved the 75 percent customer/25 percent Company USM to continue unless and until changed by the Commission, but there has been no further elaboration on the 60 percent/40 percent sharing allocation between the PGCC and the PGDC. I&E M.B., p. 7.

In addition to the study results contained in Exhibit 16 of its pre-filing in this proceeding, Columbia has also submitted data showing that over the four-year period from October 2010 through September of 2014 capacity release transactions have generated approximately 19.0 percent of total revenues subject to the USM and off-system sales transactions have generated the balance of approximately 81.0 percent.[[24]](#footnote-24) Currently under the USM, 40 percent of the shared revenues are allocated to the PGDC and 60 percent are allocated to the PGCC.[[25]](#footnote-25) Capacity release utilizes only capacity in the determination of its value.[[26]](#footnote-26) Recognizing the blended nature (demand and capacity values) of the resources used for OSS other than CR (Sales, Options, AMA and Exchanges), Columbia suggested that the allocation procedure could be modified such that the percentage of revenues allocated to the PGDC could be based on two factors, the first being the percentage of CR to total OSS and CR based on a four-year average.[[27]](#footnote-27) The second factor would be calculated based on the current CHOICE participation rate applied to the percentage of revenues derived from Sales, Options, AMA and Exchanges based on a four-year average.[[28]](#footnote-28) The revenues allocated to the PGCC would be the remainder following the calculation of the PGDC percentage.[[29]](#footnote-29) Application of this methodology would allocate a portion of the value of non-capacity release revenue to the CHOICE customers commensurate with levels of CHOICE participation.[[30]](#footnote-30) If CHOICE participation reached 100 percent, then 100 percent of the customers’ share of the CR and OSS would be credited to the PGDC.[[31]](#footnote-31) Columbia has not reflected this alternative calculation in the allocation of USM credits between the PGCC and PGDC in its filing, but offers it as an alternative methodology.[[32]](#footnote-32) Should the Commission determine that Columbia’s proposed treatment of off system sales and capacity release credits as presented on Exhibit 16 is appropriate, the PGDC and PGCC credits

presented on Exhibit 1-A of this filing would require changing consistent with this revised methodology.[[33]](#footnote-33) I&E M.B., pp. 11-12.

I&E witness Hubert reviewed all of Columbia’s pre-filed information, including Exhibit 16, and the Company’s written testimony.[[34]](#footnote-34) Upon completion of his review of Columbia’s analysis and evaluation set forth in Exhibit 16, I&E witness Hubert recommended that the current allocation of the USM credits between the PGCC and the PGDC be modified to reflect the Company’s proposed alternative calculation presented in Exhibit No. 16 and as discussed above, with one modification: the percentage of capacity release to total off system sales and capacity release should be based on the average of the three most recently completed PGC periods for which data are available at the time of the 1307(f) proceeding, as should the percentage of revenue derived from Sales, Options, AMA and Exchanges.[[35]](#footnote-35) Citing to Exhibit 16, I&E witness Hubert reiterated Columbia’s reasoning recognizing that considering the blended nature of the resources utilized for off system sales other than Capacity Release, the allocation procedure could be modified such that the percentage of revenues allocated to the PGDC could be based on two factors.[[36]](#footnote-36) The first, as stated by Columbia, being the percentage of capacity release to total off system sales and capacity release based on a three-year average.[[37]](#footnote-37) The second factor, as stated by Columbia, would be calculated based on the current CHOICE participation rate applied to the percentage of revenues derived from Sales, Options, AMA and Exchanges based on a three-year average.[[38]](#footnote-38) And finally, as also stated by Columbia, the revenues allocated to the PGCC would be the remainder following the calculation of the PGDC percentage.[[39]](#footnote-39) I&E M.B., pp.12-13.

I&E witness Hubert recommends the use of a three-year average, instead of the four-year average proposed by Columbia, asserting that the three-year average is similar to the way that Columbia now determines the retainage rate applied in each calendar year, and, as a result of the partial settlement reached in last year’s proceeding at Docket No. R-2014-2408268, is similar to the way the parties agreed to calculate the projected level of USM revenues to be shared with customers.[[40]](#footnote-40) I&E M.B., p. 13.

The basis for I&E’s recommendation, as set forth by I&E witness Hubert, is that Columbia’s Unified Incentive Program is comprised of off-system sales (Sales, Options, AMA, and Exchanges) and capacity release.[[41]](#footnote-41) Reasoning further, capacity release is the only product that uses only capacity in the determination of its value, and, according to I&E, since capacity is paid for by both PGC and CHOICE customers, both groups of customers should benefit from this product through a credit to the PGDC.[[42]](#footnote-42) The remaining products (Sales, Options, AMA and Exchanges) utilize capacity and natural gas supply. As shown on Sheet 3 of 4 of Columbia Exhibit No. 16, over the past three-year period (October 2011 – September 2014) capacity release transactions have generated on average approximately 19 percent ($1.32 million / $7.07 million) of total USM net revenue, and off-system sales transactions have generated on average approximately 81 percent ($5.75 million / $7.07 million) of total USM net revenue.[[43]](#footnote-43) And finally, application of the methodology recommended by I&E, as also described by Columbia in Exhibit 16, would allocate a portion of the value of non-capacity release revenue to the CHOICE customers commensurate with levels of CHOICE participation.[[44]](#footnote-44) I&E M.B., pp. 13-14.

I&E confidently endorses Columbia’s method of allocating the percentage revenues derived from off-system sales revenue to PGDC based on the current CHOICE participation rate given that it is not possible to predict an exact percentage of Columbia’s off-system sales that do not involve the use of Columbia’s transportation assets.[[45]](#footnote-45) Such a calculation requires specific knowledge of what types of products the counter-parties to off-system sales are seeking or willing to enter into as these product values are constantly changing based on then existing market conditions.[[46]](#footnote-46) I&E M.B., 14.

I&E witness Hubert ran through the calculations in his direct testimony and ultimately concluded and recommended that based on the PGCC and PGDC credit rates projected for the 2015/2016 PGC period the total percentage of USM net revenues that should be allocated to the PGDC is 42.5 percent (19 percent + 23.5 percent) and the revenues allocated to the PGCC would be the remainder of 57.5 percent.[[47]](#footnote-47) Stated in dollars, the portion allocated to the PGCC would be $3,190,968 ($5,549,510 x 57.5 percent) and the portion allocated to the PGDC would be $2,358,542 ($5,549,510 x 42.5 percent). I&E M.B., pp. 14-15.

I&E does not support the proposed modification to the USM submitted in this proceeding by the NGS Parties. In fact, I&E argues against adoption of the NGS Parties proposed modification. I&E M.B., pp. 15-17.

The NGS Parties recommend that the total USM credits be shared equally between Columbia’s gas sales customers and its CHOICE program customers through the PGDC mechanism alone rather than through the PGCC and PGDC, as the practice has been since Columbia’s sharing mechanisms were integrated into a unified approach in the 2002 Section 1307(f) proceeding.[[48]](#footnote-48) I&E witness Hubert points out that this would have the net effect of eliminating any portion of the USM being credited to customers on a commodity basis notwithstanding the fact that a portion of the USM revenues being shared are commodity-related as illustrated on I&E Exhibit No. 1-R, Schedule 3.[[49]](#footnote-49) Furthermore, according to I&E, there are real differences between PGC and CHOICE customers not only in the revenues shared under the USM but also in the customers receiving those revenues which justify a distinction between PGC and CHOICE customers.[[50]](#footnote-50) I&E M.B., p. 15.

According to I&E, the NGS Parties claim that the difference in the CHOICE per customer credit to the PGC per customer credit serves as an artificial limitation on the amount of customers that would be willing to migrate, which in essence, is a hurdle that must be overcome in order for customers to switch from sales service to CHOICE.[[51]](#footnote-51) However, I&E witness Hubert pointed out that at the current shopping level, the share of credits experienced by PGC and CHOICE customers is nearly identical under I&E’s recommended methodology as under the existing methodology.[[52]](#footnote-52) I&E witness Hubert also pointed out, because Columbia uses its upstream PGC assets to provide load balancing services to CHOICE customers and also uses that capacity to make off-system sales, it is reasonable to apply at least some of the USM credit to CHOICE customers.[[53]](#footnote-53) Therefore, I&E asserts that sharing some portion, at present 40 percent, of the capacity release and off system sales revenues through the PGDC is appropriate because both PGC and CHOICE customers pay for, and benefit from, the load balancing services. I&E M.B., pp. 15-16.

According to I&E, the NGS Parties claim that 100 percent of the credits should be refunded through the PGDC, because the revenue generated from the USM transactions is solely attributable to the use of peaking assets, which all customers pay for equally through the PGDC.[[54]](#footnote-54) But, I&E claims its witness, Hubert, made clear, the excess capacity that the Company must retain in order to meet its obligations to PGC and CHOICE customers can either be released to a third-party, or it can be used to transport gas as part of an off-system sale transaction.[[55]](#footnote-55) I&E asserts that Columbia is able to make off-system sales by integrating those sales with the gas purchasing and storage operations that Columbia conducts to serve its gas sales customers.[[56]](#footnote-56) According to I&E, the Company’s ability to earn the USM net proceeds is related, in part, to its transportation and storage contracts, as well as its efforts to procure the gas commodity.[[57]](#footnote-57) Therefore, I&E concludes it is reasonable to apply a portion of the USM to the

PGDC as well as a portion to the PGCC.[[58]](#footnote-58) I&E M.B., pp. 16-17.

I&E asserts that the NGS Parties’ recommendation would simply replace one methodology that the NGS Parties have claimed to be arbitrary and unfair with another methodology that has been demonstrated to be arbitrary and unfair.[[59]](#footnote-59) According to I&E, the OCA has stated that the NGS Parties base their recommendation on their argument that since assets used to meet demand are involved in all off-system sales, the revenues should be returned through the PGDC.[[60]](#footnote-60) Continuing, the OCA stated, the NGS Parties' position is fundamentally flawed and ignores the fact that beyond capacity release transactions, all other transactions generating USM revenue involve the sale of natural gas supply which is paid for only by PGC customers.[[61]](#footnote-61) The OCA added that no other party supported the NGS Parties’ allocation methodology, recognizing the fundamental unreasonableness that would result from this approach.[[62]](#footnote-62) I&E R.B. pp. 6-7.

I&E also does not support the OCA’s position in this proceeding. According to I&E, the OCA argued in its main brief that the existing, fixed, 60 percent/40 percent (PGCC/PGDC) split should be maintained.[[63]](#footnote-63) The OCA reasoned that Columbia did not propose a modification to the 60 percent/40 percent split,[[64]](#footnote-64) the 60 percent/40 percent split has been in place since 2008, and there is no compelling reason on this record to modify the allocation.[[65]](#footnote-65) I&E R.B., p. 6.

I&E is concerned that an acceptance of the OCA proposal will only push the USM issue down the road until next year’s Columbia 1307(f) proceeding. Instead, I&E urges the Commission to accept the USM methodology first proposed by Columbia and then modified by I&E.[[66]](#footnote-66) According to I&E, Columbia provided all of the information requested in the Commission’s 2014 Order and the Cawley Witmer Joint Motion in its Exhibit 16. I&E believes the alternative methodology set forth in Columbia’s Exhibit 16 is workable. I&E opines that the modification it proposed here is the fairest and most just option presented on the record. I&E R.B., pp. 7-8.

3. The OCA’s Position-No Change to Existing Methodology Proposed by Columbia

There is no issue in this proceeding regarding the current allocation of 75 percent of all revenues derived from capacity release and off-system sales to be credited to customers, with 25 percent remaining with Columbia as an incentive to maximize the use of its assets. For the 75 percent retained by customers, the OCA supports the current method (the method proposed by Columbia in its filing) of returning these credits to customers with an allocation of 60 percent to the PGCC (for the commodity cost of natural gas), with 40 percent allocated to the PGDC (for the demand costs). *See*, (OCA St. No. 1, p. 15); OCA M.B., p. 4.

The OCA outlined briefly the alternate proposals made in this proceeding by I&E and the OSBA in its main brief. The proposals by I&E and the OSBA support a mechanism that takes shopping into consideration. The OCA agrees that shopping should be a factor, but disagrees that a change in the current structure or a complex formula is needed at this time. OSBA M.B., p. 8; I&E M.B., pp. 12-15. The OCA contends that the current 60 percent/40 percent split ties the allocation of USM credits to the customers that incurred the costs of the resources used to make such credits possible and it reflects shopping by continuing to credit the PGDC by a substantial amount. OCA R.B., p. 5.

The OCA points out that Columbia’s proposal, which is recommended by the OCA and continues to utilize a 60 percent/40 percent split, produces substantially the same results as both the Company’s alternative and I&E’s recommendation at present shopping rates, and is close to the OSBA proposal.  According to the OCA, at current shopping levels, the parties’ recommendations are as follows:

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
|  | OCA and Columbia[[67]](#footnote-67) | Columbia Alternative | I&E | OSBA | NGS Parties |
| PGCC % | 60 | 58.8 | 59.15 | 50 | 0 |
| PGDC % | 40 | 41.2 | 40.85 | 50 | 100 |

Sources: OCA St. No. 1, p. 15; Columbia St. No. 2-R, Ex. NJDK 3-R & NJDK 4-R; OSBA St. No. 1, p. 9; NGS Parties’ St. No. 1, p. 7.

According to the OCA, the above chart demonstrates that the OCA’s position is not “extreme” as labelled by OSBA but is very close to OSBA’s own position.  OSBA M.B., p. 8.  The OCA opines that the current allocation reflects a reasonable compromise that reflects the fact that only 19 percent of revenues are purely capacity-related and the remaining 80 percent of USM credits include both gas supply and capacity. See OCA M.B. pp. 8-12; OCA R.B., pp. 5-6.

The OCA points out that Columbia explained its current treatment of USM revenues as follows:

The current USM Methodology has been in place since 2002. Prior to that, capacity release and off system sales had separate sharing mechanisms. Currently 75% of net proceeds under the USM are returned to customers through the PGDC and PGCC with CPA retaining the remaining 25%. Consistent with the order in CPA’s 2008 1307(f) settlement, 60% of the amount provided to customers is credited through the PGCC, which is refunded only to PGC customers and 40% of the amount provided to customers is credited through the PGDC, which is refunded to CHOICE and PGC customers.

(Columbia Ex. No. 16, p. 2); OCA M.B., p. 5.

As required under the tariff, 60 percent of revenue generated from off system sales and capacity release is allocated to the PGCC. The PGCC is paid for by PGC, *i.e.* sales, customers. Columbia allocates the remaining 40 percent of revenue generated from off system sales and capacity release to the PGDC. Both CHOICE, *i.e.* shopping, and sales customers pay PGDC rates to Columbia. OCA M.B., p. 5.

The Company did not propose in this proceeding to modify the 60 percent/40 percent split. (Columbia St. No. 2R, p. 6). The OCA submits that the existing, fixed, 60 percent/40 percent (PGCC/PGDC) split should be maintained. The 60 percent/40 percent split has been in place since 2008 and the OCA argues there is no compelling reason on this record to modify the allocation. OCA M.B., p. 5.

The OCA submits that the USM revenues at issue here are driven largely by the ability of Columbia to provide a commodity when needed, to wholesale counterparties in the secondary market. The natural gas used to support these transactions is financed by PGC customers, and, the OCA contends, those customers are entitled to USM revenues that result from their contribution. OCA witness Melissa Whitten explained the types of transactions that make up the USM revenues, and their use of supply and capacity:

Q. Please briefly describe what types of marketing transactions give rise to USM revenue.

A. As described in Exhibit No. 16 to the Filing and quantified in Table 1 therein, the Company markets five types of transactions to generate margin. These are Off system sales, options, exchanges, asset management agreements (AMAs) and capacity release. The Company explains that while each of these transaction types involve the use or assignment of the Company’s pipeline capacity contract assets, the first four transactions all bundle the capacity with gas supply commodity resources, so the realized value for these transaction types is based on demand for gas supply commodity. By contrast, capacity release transactions are based on the value of pipeline capacity by itself. The party to who the capacity is released, the replacement shipper, will determine what supply resources will be paired with it.

(OCA St. No. 1, p. 10); OCA M.B., p. 8.

The Company further explained that, of these transaction types, only capacity release does not contain PGC funded gas:

Capacity Release is the only product that uses only capacity and since capacity is paid for by both CHOICE and PGC customers, both groups of customers should benefit from this product through a credit to the PGDC.

(Columbia Ex. No. 16, p. 3). The Company explained that over the last four years, capacity release revenues have averaged $1.5 million, or 19.1 percent of the total USM revenues. (Columbia Ex. No. 16, p. 4); OCA M.B., p. 8.

OCA witness Whitten agreed that the portion of credits generated from capacity release should be allocated to the PGDC:

The Company evaluates each year whether it has sufficient capacity in total to meet PGC customer design peak day requirements plus its SOLR obligation plus a reserve margin. The Company then goes through a process to determine how much of its capacity, if any, can be released without recall and assigns this capacity to the Capacity Release product to generate USM margins. It seems appropriate for the revenue generated from this assignment to be allocated to the PGDC. As reported in the Company’s USM study, revenue from Capacity Release transactions has averaged $1.50 million per year or 19.1% of the total revenue from all USM products over the last four years.

(OCA St. No. 1-R, p. 12). Based on this review, OCA witness Whitten recommended that the Company consider allowing the amount of net revenues allocated to the PGDC to be based on the four-year average share of USM margins generated from capacity release, which is not inconsistent with a 20 percent allocation factor, as argued by the OCA in last year’s proceeding. (OCA St. No. 1-R, p. 13); OCA M.B., p. 9.

The OCA submits that the integrated nature of off-system sales as requiring both gas supply and capacity cannot be ignored. The OCA further submits, however, that it is the gas supply, funded by PGC customers, that drives the majority of off-system sales transactions. OCA witness Whitten testified that the gas component drives the ability to conduct these transactions:

Having marketed both pipeline capacity by itself as well as pursued AMAs and off-system sales myself, when employed by a local gas utility, I am aware that some pipeline capacity has negligible value on its own because the markets it can serve are already well-supplied. So if the capacity can be bundled with supply, then the ability to complete the transaction and obtain the value in the form of net revenue is attributable to gas supply or primarily to gas supply. More important, the Company appears to concur with my assessment. In rebuttal, Columbia witness Catron confirms that USM products other than Capacity Release involve off-system sales of both supply and capacity and that ‘most of these transactions could not be undertaken without a gas supply component.’

(OCA St. No. 1-S, pp. 3-4); OCA M.B., pp. 9-10.

According to the OCA, Columbia witness Henry A. Catron testified persuasively that the assets used by the Company to complete off-system sales require the gas supply component. Mr. Catron explained:

As I noted previously, an off system sale, like most other USM transactions, generally could not be consummated without pipeline capacity. However, it also could not be undertaken without access to gas supplies. Such supplies can be either purchases that were initially made to serve PGC customers, but later became available for off system sales (for example, due to unanticipated warm weather) or may be purchased incrementally. While Mr. White speculates that Columbia could engage in off system sales transactions regardless of whether it had supply obligations for retail customers, the fact remains that Columbia is purchasing supplies to ensure that gas is available to meet needs of its core customers (PGC and CHOICE) at all times, up to design day conditions and the availability of those supplies, and capacity, is needed to make off-system sales.

(Columbia St. No. 1-R, p. 4); OCA M.B., p. 10.

Furthermore, according to the OCA, the Company explained that it is impossible to define with complete accuracy how a counterparty values gas received through an off-system sale. The Company stated:

While the vast majority of the transactions included in each of these product categories use CPA’s capacity, Sales, Options and Exchanges are products that also involve the use of natural gas supply. AMA value is a combination of capacity release value and commodity values in the market place that may vary from time to time. The relative weighting used by counter-parties is determined solely by the counter-party in coming to a negotiated value for the various products.

(Columbia Ex. No. 16, p. 3). The OCA submits that, while the “relative weighting” of capacity resources and commodity may be at issue here, the substantial evidence in this case supports a finding that PGC funded gas supply is essential to achieve Columbia’s USM results. OCA M.B., p. 10.

The OCA opposes the NGS Parties’ proposal in this proceeding. The OCA submits that it would be unreasonable to disproportionately allocate USM credits derived from the Company’s commodity-related off-system sales to customers that are not purchasing gas from Columbia. OCA M.B., p. 12.

The OCA explains that under the NGS Parties’ proposal, none of the value derived from off-system sales would be credited to the commodity charge. Under the NGS Parties’ proposal, 100 percent of USM credits allocated to customers would be applied to the PGDC, *i.e.*, the demand charge. The OCA contends that, while PGC customers will receive the PGDC credit, the amount of credit received is insufficient to fairly compensate for the natural gas supply costs which PGC customers paid in full. The OCA further explains that under the NGS Parties’ proposal, PGC and CHOICE customers receive the identical PGDC credit despite the fact that CHOICE customers did not contribute to the natural gas supply costs that were used in these transactions. OCA M.B., p. 11.

According to the OCA, NGS witness Matt S. White originally testified that, “the revenue generated from USM transactions is solely attributable to the use of Peaking Assets.” (NGS St. No. 1, p. 7). In Surrebuttal testimony, the OCA contends, NGS witness White hedged in his assessment, and argued that Columbia’s pipeline and storage assets would allow it to “enter into transactions to generate substantially the same amount of revenue, regardless of whether it had retail gas supply obligations.” NGS St. 1-SR at 3. Thus, the OCA contends, even the NGS witness, in his Surrebuttal testimony, acknowledges that at least a portion of the USM credit is achieved through Columbia’s PGC function. OCA M.B., p. 11.

According to the OCA, Columbia witness Catron explained the NGS Parties’ position that gas does not play a substantial role in the transaction is misplaced:

Mr. White asserts that the USM transactions could not be executed without the use of capacity assets. While this is substantially correct, it is also the case that most transactions could not be undertaken without a gas supply component. Columbia is always looking to identify USM transactions that produce the greatest value in margin. Absent a gas supply component, USM transactions other than capacity release that maximize margin revenue could not be completed, to the detriment of all firm customers. That gas supply component is available as a result of Columbia's management of PGC supplies.

(Columbia St. No. 1-R, p. 4). The OCA asserts that Mr. Catron’s testimony shows that the gas supply component paid for by PGC customers allows Columbia to produce “the greatest value in margin” possible. OCA M.B., pp. 11-12.

The OCA argues that, given the weight of the evidence in this proceeding, the allocation of 100 percent of USM credits to the PGDC cannot be supported. According to the OCA, the NGS Parties’ proposal would credit PGC customers (who supplied the gas necessary to complete the transactions) in the same amount that it would credit CHOICE customers. The OCA contends that the NGS Parties would recognize no value from the commodity contributed by sales customers, despite their own witness’s acknowledgement that sales customers are contributing at least some of the value. Further, the OCA contends that the evidence provided by witnesses Whitten and Catron establishes that the value of sales customers’ contributions is greater than CHOICE customers. As such, if 100 percent of the USM credit goes to the PGDC, PGC customer funds will be transferred to CHOICE customers. The OCA submits that such a proposal would be fundamentally unreasonable.

4. The OSBA’s Position-USM Proposed Modification

The OSBA submits that the issue of how to allocate the ratepayer portion of the

credits from Columbia’s USM is a matter best served by a reasonable compromise, rather than by taking an extreme position. The OSBA asserts that the positions taken by I&E, the Company and the OSBA all attempt to (a) reflect the fact that these margins are related to both the availability of capacity assets and the gas purchase activities of the Company, (b) the technical problems associated with the existing mechanism, and (c) reflect the spirit of the settlement of the 2008 Section 1307(f) proceeding in the results. According to the OSBA, its proposal in this proceeding avoids the need for the Commission to adjudicate whether the Company’s mix of capacity release, off-system sales and asset management agreement (AMA) transactions is appropriate, and reflects the changes in shopping rates that have occurred since the 2008 settlement was entered into. However, the OSBA concedes that the proposals offered by the Company and I&E are not outside the range of reasonableness. In this proceeding, OSBA claims the extreme positions have generally been adopted by the NGS Parties and the OCA.

In its main brief, the OSBA quotes the testimony of its witness, Robert D. Knecht, regarding the issue of how to allocate the ratepayer portion of the credits from Columbia’s USM. Mr. Knecht explained the process in his surrebuttal testimony in Columbia’s 2014 Section 1307(f) proceeding, which was attached to his direct testimony in this proceeding as Exhibit IEc‑2.

For purchased gas cost (“PGC”) sales customers, the Company has an obligation to purchase natural gas supplies and to deliver those supplies to the city gate when they [are] needed. In addition, the Company provides load balancing services to retail “Choice” customers.[[68]](#footnote-68) This means that Choice suppliers are obligated to deliver gas to Columbia on a levelized basis, and the Company has the obligation to deliver the gas to the city gate when it is required by the customers. For this load balancing service, Choice customers pay the demand portion of the PGC charge, termed the PGDC, net of the cost of long-haul transportation capacity at 100 percent load factor. PGC customers pay both the commodity (“PGCC”) and PGDC portions of the PGC charge.

To meet the requirements of these customers, the Company actively participates in commodity procurement markets, and it contracts for transportation and storage capacity necessary to meet the peak day and peak season requirements. Because it has this market expertise, and because it must necessarily retain more transportation and load balancing capacity than it needs on most days, the Company is able to earn additional margins by temporarily releasing the capacity to third-parties, or by engaging in other profitable natural gas sale and swap transactions with third-parties. Under long-standing Commission precedent, the margins earned from these transactions are combined into the USM, and are shared 75%/25% between PGC ratepayers and Columbia shareholders.

The USM ratepayer credits are allocated between the PGCC and the PGDC. Those credits which are assigned to the PGCC benefit only PGC sales customers. Those credits which are assigned to the PGDC benefit both PGC sales and Choice customers, on an equal per-Dth basis. Prior to the Company’s 2008 Section 1307(f) proceeding, these margins were split 82 percent to the PGCC, and 18 percent to the PGDC. In the settlement to the 2008 Section 1307(f) proceeding (at Docket No. R-2008-2028039), the parties agreed that this sharing would be modified to be 60 percent to the PGDC and 40 percent to the PGCC.

OSBA M.B., pp. 6-7.

The 60 percent/40 percent sharing of ratepayer credits remains the *status quo*. In last year’s proceeding, the NGS Parties contested that approach as being unduly weighted toward the PGCC, and the OCA submitted rebuttal testimony which concluded that the sharing was unduly weighted toward the PGDC. At that time the Commission deferred a decision on this issue until the current proceeding, and required the Company to respond to a set of questions regarding both the use of assets paid for by both sales and CHOICE customers in earning USM credits and the allocation of the costs of those assets. The Company’s responses to those questions were provided in Exhibit 16 of its pre-filing materials. OSBA M.B., p. 7.

The current model assigns fixed percentages of 40 percent of the USM credit to the PGDC and 60 percent to the PGCC. This means that 60 percent of the credit goes directly to PGC sales customers only, while 40 percent goes to both sales and CHOICE customers. As Mr. Knecht testified, this means that, at a shopping level of about 20 percent (which is near the current level), some 92 percent of the credit goes to sales customers and 8 percent goes to CHOICE customers. (OSBA St. No. 1 at Table IEc-1). The essence of this issue boils down to two inter-related questions, both raised by parties in last year’s Section 1307(f). OSBA M.B., p. 7.

The first question is conceptual: Is the Company’s ability to earn USM credits related to (a) the availability of unused capacity which it must retain in order to meet the load balancing needs of both sales and CHOICE customers, (b) the knowledge and skills acquired by the Company in actively procuring gas for PGC sales customers, or (c) both? According to OSBA witness Knecht, not surprisingly, both factors contribute to the Company’s ability to earn these margins. Moreover, Mr. Knecht offered testimony that, because these factors are inter-related, there is no obviously correct mechanism for allocating the credits between the PGCC and the PGDC. (OSBA St. No. 1, pp. 2-5); OSBA M.B., pp. 7-8.

According to the OSBA, the second question, raised by the NGS Parties in last year’s Section 1307(f) proceeding, is technical: Does the existing sharing mechanism reasonably recognize the implications of changes in the overall shopping rate? The OSBA contends that Mr. Knecht’s direct testimony demonstrates that the existing mechanism has a technical flaw, in that the share of credits going to the PGDC does not increase as shopping levels increase. The OSBA opines that, at high levels of shopping, the existing mechanism will produce unreasonably high credits to PGC sales customers, which will provide an unreasonable competitive disadvantage to competitive NGSs. For example, at a shopping rate of 80 percent, the existing mechanism would produce a PGCC credit of 35.6 cents per Dth, compared to a 4.7 cent per Dth PGDC credit. It would be most difficult, according to the OSBA, for NGSs to effectively compete with such a competitive disadvantage. (OSBA St. No. 1, Table IEc-1). In this proceeding, the OSBA believes the extreme positions have generally been adopted by the NGS Parties and the OCA. OSBA M.B., p. 8.

The OSBA opposes the NGS Parties’ proposal in this proceeding. According to the OSBA, the NGS Parties take the position that all of the USM credits should be assigned to the PGDC. In effect, the NGS Parties conclude that none of the USM credits are in any way related to activities undertaken by Columbia solely on behalf of sales customers. (NGS Parties St. No. 1, p. 15). The OSBA submits that this proposal fails to recognize all of the inter-related effects which allow Columbia to earn the margins. The OSBA acknowledges that it is true that “. . . all or virtually all of the transactions in the USM make use of capacity assets which are generally paid for by both sales and CHOICE customers.” (OSBA St. No. 1, p. 2). However, it must also be recognized that Columbia is able to earn these margins as a result of its activities on behalf of PGC sales customers because it is active in the natural gas markets, and that as shopping increases, the absolute level of the margins is likely to decline. (OSBA St. No. 1, p. 5). As such, the OSBA submits that the NGS Parties’ proposal is one-sided and unduly self-serving. OSBA M.B., pp. 8-9.

The OSBA points out that the OCA, on the other hand, takes the position that there is nothing wrong with the existing sharing mechanism, except that it maybe should be modified to reduce the share of credits assigned to the PGDC to 20 percent from 40 percent. (OCA St. No. 1, p. 15). Unfortunately, the OSBA asserts that the OCA testimony offers no position on the technical problems associated with the existing mechanism. The OSBA points out that the OCA does not acknowledge that the PGCC credit will increase as shopping increases, effectively serving as a damper on competition. In fact, the OSBA claims the OCA witness incorrectly asserted that the mechanisms designed to eliminate this problem would be anti-competitive. Mr. Knecht explained, the OCA’s argument is exactly backwards. Any mechanism which increases the credit to sales customers as shopping levels increase, as the current mechanism does, will obviously not be beneficial to competition. (OSBA St. No. 2, pp. 8-9); OSBA M.B., p. 9.

The OSBA, I&E, and the Company adopt conceptually similar positions in that they recognize that some sharing of the credits between the PGCC and the PGDC is reasonable to reflect the dual nature of causation, but that the existing mechanism has a technical flaw which needs be corrected. These three parties all recommend that the current fixed percentage mechanism be modified to an adjustable mechanism, in which there is both a fixed component of the credit assigned to the PGDC, and a variable component which moves with the level of customer shopping. This fixed component represents the credits that are assigned to all customers, regardless of the level of shopping. As shown in Mr. Knecht’s surrebuttal testimony, this fixed component would be 19.1 percent under the Company’s proposal, 19.0 percent under I&E’s proposal, and 30.0 percent under Mr. Knecht’s proposal. (OSBA St. No. 2, Table

IEc-S1). There would then be a sliding scale for the remaining (and larger) portion of the share, based upon the levels of shopping, representing those costs that are incurred only by shopping customers. Each party (OSBA, I&E, and the Company) has certain rationales for their proposals, but the OSBA opines that it is remarkable how similar these proposals are when the observer steps back to see the larger picture. (OSBA St. No. 1, pp. 3-4); OSBA M.B., pp. 9-10.

In addition, at current shopping levels, the OSBA points out that these three mechanisms produce reasonably similar allocation results. The I&E and Company mechanisms would result in 42.5 percent and 41.2 percent, respectively, of the USM credit being assigned to the PGDC, while Mr. Knecht’s approach would assign 51.0 percent to the PGDC. In effect, the I&E and Company mechanisms produce a sharing that is very similar to the existing mechanism (which is based on the settlement of the 2008 Section 1307(f) proceeding), while the OSBA method reflects that settlement as updated for changes in shopping rates since the settlement was agreed upon. (OSBA St. No. 1, pp. 7-8); OSBA M.B., p. 10.

The differences between the Company, I&E and the OSBA positions relate solely to how the “fixed” component of the allocation mechanism would be defined. The I&E and Company methods would set the “fixed” portion of the allocation mechanism on the basis of the share of USM credits that are related to capacity release activities. The OSBA proposal is that the “fixed” portion of the allocation mechanism be set based on judgment, in order to avoid the

possibility of skewing incentives for the Company to engage in one form of off-system

transaction at the expense of another. (OSBA St. No. 1, pp. 7-8), (OSBA St. No. 2, p. 13); OSBA M.B., pp. 10-11.

The OSBA submits that this is a matter best served by a reasonable compromise, rather than by taking an extreme position. The OSBA claims that the positions taken by I&E, the Company and the OSBA witnesses all attempt to (a) reflect the fact that these margins are related to both the availability of capacity assets and the gas purchase activities of the Company, (b) the technical problems associated with the existing mechanism, and (c) reflect the spirit of the settlement of the 2008 Section 1307(f) proceeding in the results. The OSBA submits that Mr. Knecht’s proposal is modestly superior to the I&E and Company proposals, in that it avoids the need for the Commission to adjudicate whether the Company’s mix of capacity release, off-system sales and AMA transactions is appropriate, and it reflects the changes in shopping rates that have occurred since the 2008 settlement was entered into. Nevertheless, the OSBA does not conclude that the proposals offered by the Company and I&E are outside the range of reasonableness. OSBA M.B., p. 11.

5. NGS Parties’ Position-USM Proposed Modification

The NGS Parties contend that the evidence in this case proves that the capacity assets, the costs of which are recovered through the PGDC are the critical asset for each of the five types of transactions Columbia uses to generate USM Revenue, without which USM Revenue would not be possible. According to the NGS Parties, the evidence also proves that all customers, CHOICE and default service, pay for the capacity assets on an equivalent basis. The evidence also shows that it would be inappropriate to assume that any revenue is generated by assets paid for as part of the PGCC. The NGS Parties assert that these facts lead to the inescapable conclusion that the current USM allocation methodology which allocates 60 percent of the USM revenue to only default service customers and 40 percent of the USM revenue to all customers, through the PGDC, is arbitrary, unreasonable, and discriminatory. NGS Parties M.B., p. 5.

The NGS Parties argue that the USM is arbitrary because the allocation percentages do not reflect the facts, particularly the fact that the only necessary assets for all of the transactions described by Columbia are the capacity assets, not PGC gas. The NGS Parties assert that the USM is unreasonable, because the discrepancy in the level of USM Revenue credited, as between default service and CHOICE customers, is so enormous; over 300%. Finally, the NGS Parties assert that the USM is discriminatory because it imposes upon CHOICE customers a subsidy to default service customers, to the tune of about $16 per customer, per year. According to the NGS Parties, this scheme runs contrary to Section 1304 of the Public Utility Code, 66 Pa.C.S. § 1304, which prohibits the granting of an unreasonable advantage to one class to the disadvantage of another. The NGS Parties also contend that it also runs counter to Section 2203(4) which requires that Natural Gas Distribution Companies “shall provide distribution service to all retail gas customers . . . on non-discriminatory rates, terms of access and other conditions.” 66 Pa.C.S. § 2203(4). Clearly, according to the NGS Parties, the current USM fails on both counts and must be modified to be equitable in the only way possible – allocating 100 percent of USM revenue to the PGDC so there is no disadvantage to any group. NGS Parties M.B., p. 6.

Columbia generates revenues shared under the USM in five types of transactions, all of which require Columbia’s retained pipeline and storage assets. (NGS St. No. 1, pp. 4-5). While some of the transactions involve the sale of gas to generate revenue, the NGS Parties believe this is not a meaningful distinction for distribution of USM revenues because it has not been shown that the revenue generated is attributable to the sale of the commodity related to retail consumers. (NGS St. No. 1, p. 8); NGS Parties M.B., p. 7.

The five USM transactions include: capacity releases, asset management arrangements (AMAs), off-system sales, exchange agreements, and options agreements. (Columbia Ex. No. 16, p. 3). Capacity releases do not involve the sale of gas, and according to the NGS Parties, while the other transactions may involve the sale of gas, none of the revenues generated are attributable to the sale of the commodity for default service customers. NGS Parties M.B., p. 7.

According to the NGS Parties, AMA revenues are generated through use of capacity assets and, as confirmed by Columbia, do not involve the sale of natural gas. (NGS St. No. 1, pp. 8-9, citing Columbia Ex. No. 16, p. 3). An AMA is a transaction where Columbia enters into an agreement with a third party who manages the pipeline or storage asset for a set period of time. (*Id.* at 8). The asset manager typically pays Columbia for the right to utilize assets and generate revenue from those assets. (*Id.*). In return the asset manager provides Columbia an option to deliver the maximum daily quantity of gas, as allowed under the contract. (*Id.*). NGS Parties witness White testified, “[e]ffectively an AMA allows Columbia to use pipeline capacity or storage when Columbia needs it for gas deliveries, but otherwise allows the asset manager to generate revenues from the asset when Columbia is not utilizing the assets to deliver gas.” (*Id.*). NGS Parties M.B., p. 8.

The NGS Parties assert that off-system sales revenues are generated through use of capacity assets, as confirmed by Columbia. (NGS St. No. 1, p. 10, citing Columbia Ex. No. 16, p. 3). The NGS Parties argue that, while off-system sales involve wholesale-only gas commodity transactions, the off-system sales revenue is attributable to arbitrage opportunities resulting from Columbia’s capacity assets. (*Id.*).The NGS Parties contend that an off-system sale is a transaction where Columbia purchases wholesale gas, and then resells that gas to a non-end user, resulting in a wholesale only transaction. (*Id.*).For example,

there are times when Columbia has the opportunity to purchase gas at point A on a specific pipeline for a lower price, and use the pipeline to ship the gas to point B on the pipeline where the gas can be resold at a higher price. The price differential between point A and point B is the profit Columbia makes on off-system sales. Columbia is also able to use its storage assets to engage in similar transactions where Columbia can capitalize on the spread between prices differentials during different times of year in order to make a profit.

(*Id.*).According to the NGS Parties, this example shows off-system sales revenue is available because of the arbitrage opportunities created from Columbia retaining its capacity assets – opportunities which exist regardless of whether Columbia is purchasing gas for PGC customers. (*Id.*). The NGS Parties contend that Columbia can engage in the same off-system sales regardless of whether the commodity being used is related to a supply obligation for retail customers. (*Id.*). The NGS Parties conclude that off-system sales revenue cannot reasonably be attributed to the PGC. (*Id.*); NGS Parties M.B., pp. 8-9.

According to the NGS Parties, options transaction revenues are generated through Columbia’s sales of the opportunity at a certain market to purchase gas which requires Columbia’s capacity assets because such option is guaranteed at a certain market area. (NGS St. No. 1, p. 11). The resulting revenue is generated from the buyers’ payment to Columbia for the option. (*Id.*). The NGS Parties contend that Columbia is only able to enter options transactions because it retains firm pipeline and storage – Capacity Assets. (*Id.*). According to the NGS Parties, Columbia could not guarantee a third party the ability to receive gas at a certain location without retained firm pipeline capacity nor without retained storage capacity. (*Id.*); NGS Parties M.B., p. 9.

The NGS Parties argue that revenue from options transactions should not be attributed to the use of PGC gas in the sale of an option purchase gas in storage or an option for the purchase of gas because Columbia can only enter into either of these types of option transactions by retaining capacity assets. Witness White explained:

[E]ven options agreements that involve the option to purchase gas should not be attributable to PGC gas. Columbia is only able to offer this option to third parties because Columbia retains firm capacity that guarantees CPA (Columbia) the ability to make gas available in the event the option is called. Thus an option transaction is a wholesale transaction that Columbia is able to enter into because it retains firm capacity. This opportunity to sell an option would exist for any entity that held the Capacity Assets regardless of whether that entity bought gas for retail customers.

(*Id.*). The NGS Parties argue that options transaction revenue is clearly attributable to capacity assets, not the PGC. NGS Parties M.B., p. 9.

The NGS Parties explain that an exchange transaction occurs when Columbia enters into an agreement with a third party to exchange gas at one market area for gas at another market area. For example, Columbia may own gas at market area A, and a third party owns the same amount of gas in market area B. Under an exchange transaction the third party would pay Columbia a fee to take ownership of gas in market A and Columbia would then take ownership in market area B. The Company is able to enter into this transaction because it retains firm pipeline and storage in market area A that allows Columbia to ship gas to that area. Mr. White testified that exchange transactions should not be attributable to the use of PGC gas because PGC gas is not the *sine qua non* of Columbia’s ability to enter into an exchange transaction. (NGS St. No. 1, 11:1-15). Simply put, the NGS Parties claim that an exchange transaction is a wholesale transaction of gas that Columbia is able to enter into because it retains firm capacity. The NGS Parties reason that the opportunity to enter into an exchange transaction would exist for any entity that held the capacity assets, regardless of whether that entity bought gas for retail customers. Stated differently, the fact that Columbia sells and delivers gas to residential customers is not the basis for the transaction, according to the NGS Parties. (NGS St. No. 1,

8:1-13:14); NGS Parties M.B., p. 10.

NGS Parties witness White points out that any qualified shipper has the opportunity to purchase wholesale gas on the spot market and utilize storage and pipeline assets to engage in off-system sales or otherwise generate revenue with capacity assets. In fact, according to him, wholesale players (with no retail obligations) engage in these transactions quite frequently. (NGS St. 1-SR, 3:2-19). The NGS Parties contend that the driving factor that enables the rights holder to earn off-system sales revenue is the spread value between two points on a pipeline, not whether the rights holder owned gas prior to the off-system sales transaction. NGS Parties M.B., p. 10.

According to the NGS Parties, it is obvious that none of these transaction types depends upon the use of PGC gas. Accordingly, the NGS Parties contend there is no basis upon which to conclude that allocating any USM revenue to the PGCC is reasonable, let alone, 60 percent. Likewise, it also is obvious, according to the NGS Parties, that each of these transactions depends entirely upon the use of the capacity assets. Similarly, therefore, the NGS Parties claim it is irrational and arbitrary to not allocate all USM revenue to the PGDC. The NGS Parties submit that, even ignoring the anti-competitive subsidy that is imposed by the current USM method, the simple facts of how the revenue is generated make clear that the current method is illegal and unwarranted. NGS Parties M.B., pp. 10-11.

The NGS Parties opine that, for all of the transactions classified as capacity release or off-system sales, the basis of transaction is the capacity assets, i.e. storage and pipeline capacity, that Columbia holds and that default service and CHOICE customers pay for on the same basis. The capacity assets are retained by Columbia in part for meeting customer’s demand during periods of above average usage. However, not all of the capacity assets are being utilized 365 days a year, like the baseload assets assigned to NGSs. Thus, there are times when Columbia can, and does, utilize the capacity assets to engage in transactions that generate revenue. According to the NGS Parties, NGSs are unable to engage in these transactions with their baseload capacity because those assets are being utilized for deliveries year round. (NGS St. No. 1, 14:8-15:11); NGS Parties M.B., p. 11.

It is also important to consider, according to the NGS Parties, that NGSs deliver natural gas into the Columbia system every day of the year in 1/365th slices that over the course of the year add up to 100 percent of the annual usage for each CHOICE customer. (*Id.*). The NGS Parties claim that this gas, particularly in the summer months, is often injected into the storage assets that Columbia retains. According to the NGS Parties, when NGSs deliver gas into the system the gas is co-mingled with any gas that may be used to supply PGC customers. (*Id*.). Thus the NGS Parties contend that the gas Columbia uses to make wholesale transactions cannot be said to be solely PGC gas. The NGS Parties assert that this is simply one more reason why any attempt to make a distinction between CHOICE gas and PGC gas that Columbia may use to make a wholesale transaction is simply arbitrary. Rather, the driving factor that allows Columbia to enter into wholesale transactions described in the USM Study is the fact that Columbia retains capacity assets. NGS Parties M.B., pp. 11-12.

The Public Utility Code prohibits a utility from subjecting any person to an “unreasonable prejudice or disadvantage”. 66 Pa.C.S. § 1304. The premise of the existing 60 percent/40 percent split in the USM was that assets attributable to the PGC were the source of most of the USM Revenue and that the capacity assets, recovered through the PGDC, were the source of a far smaller percentage of the revenue. In Columbia’s previous 1307(f) proceeding, the Commission ordered that this issue be studied to determine the real driver of USM revenues. According to the NGS Parties, the evidence adduced in this proceeding makes it clear that this premise, for the existing sharing mechanism, is factually flawed. (Columbia, Ex. No. 16). In truth, all of the transactions have one common necessary element – they depend entirely on the use of the capacity assets. The NGS Parties contend that the involvement of PGC gas, if present at all, is not the driver of the transactions. According to the NGS Parties, what this means is that the only method of allocating USM Revenue that is fair, and in keeping with the facts, is to allocate 100% of the revenue to the PGDC so that all customers share in the revenue equally, since they equally pay for all of the assets that make the transactions possible. NGS Parties M.B., p. 12.

According to the NGS Parties, Mr. White’s testimony, NGS St. No. 1, 7:16-15:11, and Columbia Ex. No. 16 both make clear that all customers, default service and CHOICE, pay an equivalent PGDC rate. Recall that it is the PGDC that recovers the expense associated with the capacity assets. OCA witness, Ms. Whitten, testified that because the rate paid for the PGDC for CHOICE customers is different from that of default service customers, the underlying expense is not being recovered from both groups of customers on an equivalent basis. (OCA St. No. 1-R, 7:1-8:4). The NGS Parties claim Ms. Whitten’s testimony is incorrect. NGS Parties M.B., p. 12.

It is true that Columbia does credit CHOICE customers for the capacity costs of two interstate pipelines that are assigned to NGSs; but, according to the NGS Parties, those costs are paid directly to the pipelines by the NGSs that serve the CHOICE customer. Thus, the NGS Parties contend that the cost of the pipeline capacity assigned to NGSs is reflected in the charges paid by the CHOICE customers. According to the NGS Parties, the net effect is that all customers pay for the cost of the pipeline capacity that Columbia procures equally. The NGS Parties claim that Columbia confirms this fact in the USM study submitted in this proceeding as (Columbia Ex. No. 16); NGS Parties M.B., p. 13.

The NGS Parties assert that the alternative USM sharing mechanisms presented by Columbia, the OSBA and I&E are not reasonable and should not be adopted. In the USM Study, Columbia presented a potential alternative USM sharing mechanism in which all capacity release revenues could be assigned to the PGDC, and the remaining USM revenue would be shared between the PGCC and PGDC based on the percentage of shopping. (Columbia Ex. No. 16). The NGS parties point out that Columbia did not endorse this approach, but merely presented it as one potential alternative. Both I&E and the OSBA advocated for a variant of the USM sharing mechanism presented by Columbia, in that both proposals would establish a fixed amount that is always assigned to the PGDC, and the remaining amount of the USM revenues are shared between the PGCC and PGDC based on the percentage of shopping. (OSBA St. No. 1, 7:4-9:6, I&E St. No. 1, 15:1-20:2). The NGS Parties argue that these so-called formulaic approaches, while well-intentioned, suffer from two major problems and thus should not be adopted. NGS Parties M.B., p. 13.

First and foremost, according to the NGS Parties, neither proposal meaningfully alters the amount of revenue allocated to PGDC, so the inequity of under-allocation of USM revenues to CHOICE customers still remains. For instance, under Mr. Knecht’s (OSBA’s witness) example set forth in Table IEc-3 at a 30% shopping level (which is close to the shopping levels currently in the Columbia territory) PGC customers would receive a 14.3 cents/DTH credit and CHOICE customers would only receive a 6 cents/DTH credit. This results in CHOICE customers receiving over 240% higher credit than PGC customers [*sic*.] (NGS Parties St. No. 1-R, 5:13-17); NGS Parties M.B., pp. 13-14.

According to the NGS Parties, under the I&E proposal and the proposal set forth in Columbia’s study, the revenue allocation to CHOICE customers would be even less. For instance, under the allocation methodology set forth in Columbia’s study at 30% shopping PGC customers would receive a 14.7 cent per DTH credit and CHOICE customers would only receive a 5.1 cent per DTH credit which is nearly a 300 percent higher credit for PGC customers. (NGS Parties St. No. 1-R, 4:17-19); NGS Parties M.B., p. 14.

Second, the NGS Parties claim that neither proposal actually remedies the problem they are attempting to correct; under both proposals, the level of USM revenue allocation would still vary based on the level of shopping. In fact, under the Company’s, I&E’s and the OSBA’s proposals, the NGS Parties contend the revenue allocation methodology would actually have the potential to worsen as shopping decreased. For instance, when there is only 10 percent shopping in the Columbia territory, according to the Company’s CHOICE customers would receive only a 3.2 cent per DTH credit, and PGC customers would receive a 12.8 cent per DTH credit. This results in PGC customers receiving a 400 percent higher credit than CHOICE customers. (NGS Parties St. No. 1-R, 4:10-19); NGS Parties M.B., p. 14.

The NGS Parties contend that the level of shopping has little to do with the disparity caused by the arbitrary USM Revenue allocation, and does not address the source of the problem – that CHOICE customers and default service customers pay the same costs for the same assets that generate USM Revenue, whether there are five hundred CHOICE customers or five hundred thousand. NGS Parties M.B., p. 14.

The NGS Parties submit that the formulistic approaches presented by other parties in this proceeding do not materially improve upon the current inequitable USM allocation methodology. According to the NGS Parties, the permanent fixed allocation percentage to the PGDC suggested by parties seems to be based upon arbitrary numbers, not selected on any basis of cost causation. Further, while the formulistic methodologies do prevent a scenario where the per DTH credit to PGC customers increases as shopping increases the proposal has the practical outcome of trading one negative component of a proposal for another. Under the formulistic approaches, as shopping declines, the per DTH credit allocates an even higher percentage of USM Revenue to PGC customers on a per DTH basis. (NGS Parties St. No. 1-R, 6:14); NGS Parties M.B., pp. 14-15.

The NGS Parties conclude these formulaic approaches do not address the cause of the problem and have the potential to further exacerbate the problem over time. They are not “fixes”. The NGS Parties argue that the only fix is to adjust the USM so that 100 percent of the USM Revenue is returned to customers through the PGDC, so shopping levels don’t matter, and no self-defeating and complex formula is required. NGS Parties M.B., p. 15.

The NGS Parties contend that USM Revenue must be shared equally by all customers who pay for the assets that are used to generate the revenue. The NGS Parties believe there is no meaningful way to distinguish the types of transactions that Columbia is able to employ to generate revenues from the capacity assets. (Columbia Ex. No. 16). Under the present USM, of the 75 percent of revenue that is returned to customers, 60 percent of that is refunded as a credit to the PGCC, and 40 percent is refunded as a credit to the PGDC. The PGCC credit is refunded to default service customers only, while the credit for PGDC is refunded to all customers (CHOICE and default service) on a pro-rata basis based on throughput used by the customers; excluding larger customers that do not pay the PGDC. According to the NGS Parties, this results in a significant disparity in the way the credit is actually applied that discriminates against CHOICE customers. NGS Parties M.B., p. 15.

According to the NGS Parties, Mr. White’s testimony provides an illustration of this disparity, by assuming that there would be approximately $10 million of revenues generated from the capacity assets during an average year. (NGS Parties Ex. No. 1). Mr. White then assumed that Columbia has approximately 415,000 refund eligible customers with 125,000 being CHOICE and the remaining 290,000 being PGC.[[69]](#footnote-69) Finally, he assumes that Columbia retains 25 percent of the revenues and customers are refunded 75 percent of the revenues. Under his example, which does not differ greatly from reality, the USM would allocate default service and CHOICE customers vastly different amounts. The calculation would be as follows:

$10,000,000 \* 75% = $7,500,000 Total credit to customers

$7,500,000 \* 60% = $4,500,000 PGCC credit to Default Service customers only

$7,500,000 \* 40% = $3,000,000 PGDC credit to all customers

$4,500,000 / 290,000 = $15.52 Per customer PGCC credit

$3,000,000 / 415,000 = $7.23 Per customer PGDC credit

PGCC + PGDC = $22.75 Total Default Service customer credit

PGDC credit = $7.23 Total CHOICE customer credit

Under the above example, default service customers receive approximately $23 credit and CHOICE customers receive a $7 credit, which represents a 315 percent larger credit for default service customers. The NGS Parties contend that this is an unreasonable way of allocating USM costs because it requires that CHOICE customers subsidize default service customers and because both groups of customers pay equally for the assets that produce the revenue. (NGS Parties Ex. No. NGS-1); NGS Parties M.B., pp. 15-16.

According to the NGS Parties, the USM is also flawed because as customers migrate away from default service and onto CHOICE the inequity of the allocation is exacerbated. PGC customers retain 100% of the PGCC credit regardless of the level of migration; therefore, as there are fewer customers to allocate the PGCC credit to, the per PGC customer credit increases. In the above example, if migration to CHOICE were to increase to 250,000 customers, PGC per customer credit would increase to approximately $35 per customer and the CHOICE customer would still receive the $7 per customer credit representing and approximately 500% higher credit for PGC customers. If migration to CHOICE were to increase to 350,000 customers, the allocation would be even more disparate, with approximately $76 going to PGC customers and CHOICE customers still receiving only the $7 credit. NGS Parties Ex. No. NGS-1); NGS Parties M.B., p. 16.

The NGS Parties contend that, as customers migrate to CHOICE, the USM has the effect of subsidizing the PGC price more and more. The NGS Parties opine this serves as an artificial limitation on the amount of customers that would be willing to migrate. Ultimately as shopping increases the credit would get so large that it would not make rational economic sense for customers to leave PGC because the substantial subsidy flowing to the PGC rate. NGS Parties M.B., p. 17.

As discussed above, several parties introduced mechanisms that would adjust the allocation as between the PGDC and PGCC going forward as shopping increases or decreases. According to the NGS Parties, those mechanisms are flawed because the starting point of the present disparate allocation would be retained, and because shopping levels, standing alone, have nothing to do with what assets produce revenue, who pays for those assets and therefore who should receive credit for revenue produced by those assets. While the increasing disparity in credits as shopping increases are a symptom of the current USM, addressing only the symptom will not fix the real problem. NGS Parties M.B., p. 17.

According to the NGS Parties, all of these problems led Mr. White to propose that the only long term solution that solves the USM issues that he has identified is to allocate the entire amount of USM Revenue to the PGDC which is shared on a volumetric basis by all customers. This addresses the fact that all customers pay equally for the assets that actually produce the revenue, it eliminates the subsidy currently provided by CHOICE customers to default service customers, and eliminates the need for a complex adjustment mechanism. No other witness has refuted Columbia’s Exhibit No. 16, and its conclusion that there is no reasonable means to segregate the types of revenue producing transactions from a PGCC versus a PGDC perspective. This means that the current methodology is clearly broken and discriminatory because it provides a USM credit to default service customers that is three times larger than that provided to CHOICE customers, with no reasonable or other basis for doing so.

6. Analysis and Recommendation

Pursuant to Section 332(a) of the Public Utility Code, 66 Pa.C.S. § 332(a), Columbia has the burden of proof in this proceeding as to the rates and modifications included in its original filing. The burden of proof, also known as the burden of persuasion, means a duty to establish a fact by a preponderance of the evidence. *Se-Ling Hosiery v. Margulies,* 364 Pa. 45, 70 A.2d 854 (1950). However, a party that offers a proposal not included in the Applicant’s filing bears the burden of proof for such proposal. *See, e.g., Pa. Pub. Util. Comm’n v. Philadelphia Gas Works,* Docket No. R-00061931, 2007 Pa. PUC LEXIS 45 at \*165-68 (Sept. 28, 2007); *Pa. Pub. Util. Comm’n v. Metropolitan Edison Company,* Docket No. R‑00061366, 2007 Pa. PUC LEXIS 5 at \*111-12 (Jan. 11, 2007). If the proponents and the parties in opposition to the proposals present evidence found to be of precisely equal weight, then the proponents will not have carried their burden of proof. Otherwise, the side that presented evidence found to be more persuasive, even by the slightest amount, will prevail. *Morrissey v. Commonwealth of Pennsylvania,* 424 Pa. 87, 225 A.2d 895 (1986); *Burleson v. Pa. Pub. Util. Comm’n,* 501 Pa. 433, 436, 641 A.2d 1234, 1236 (1983); *V.J.R. Bar Corp. v. P.L.C.B.,* 480 Pa. 322, 390 A.2d 163 (1978); *Milkie v. Pa. Pub. Util. Comm’n,* 768 A.2d 1217, 1220 (Pa.Cmwlth. 2001).

Columbia is not the proponent with respect to the two issues remaining in this proceeding. The first issue, which is analyzed here, concerns the allocation of the customer share of Unified Sharing Mechanism (USM) net margins between the Purchased Gas Demand Charge (PGDC) and the Purchased Gas Commodity Charge (PGCC).

In the settlement of the Company’s 2008 1307(f) filing, the parties agreed to a company/customer sharing mechanism which provided, for all net proceeds up to $6 million, customers would receive a 75 percent share and the Company would retain 25 percent.[[70]](#footnote-70) For net proceeds that exceeded the $6 million threshold, the customer/company sharing ratio would be 70 percent/30 percent.[[71]](#footnote-71) Additionally, in that proceeding it was also established that the portion of the USM credited to customers would be allocated 60 percent to the PGCC and 40 percent to the PGDC.[[72]](#footnote-72) This USM was to remain in effect through September 30, 2009, and be revisited in the 2009 Section 1307(f) proceeding.[[73]](#footnote-73) I&E M.B., pp. 6-7.

The present structure of the USM was approved by the Commission in Columbia’s 2009 Section 1307(f) proceeding at Docket No. R-2009-2093219, which established that customers would receive 75 percent of all net proceeds generated from off system sales and capacity release, and Columbia would retain 25 percent; however, the 60 percent/40 percent sharing ratio between commodity and demand credits was not revisited.[[74]](#footnote-74) In Columbia’s 2012 Section 1307(f) proceeding (Docket No. R-2012-2293303), the Commission approved the 75% customer/25% Company USM to continue unless and until changed by the Commission, but there has been no further elaboration on the 60 percent/40 percent sharing allocation between the PGCC and the PGDC. I&E M.B., p. 7.

Columbia’s filing proposed no change to the existing 60 percent PGCC/40 percent PGDC allocation, although Columbia did present an alternative calculation that would increase the allocated share to the PGDC as CHOICE participation increases. (Columbia Ex. No. 16, p. 4).[[75]](#footnote-75) Proposals to modify the USM allocation of the customer share between the PGDC and PGCC were made by OCA, I&E and the NGS Parties. Columbia has taken no position as to the most appropriate proposal to allocate the customer share of USM net proceeds. Although Columbia did not offer any new proposal for allocating the customer share of net proceeds between the PGCC and the PGDC, it did recognize that if CHOICE participation increased, the use of fixed allocation percentages between the PGDC and PGCC would increase the per therm PGCC credit. (Columbia St. No. 1-R, pp. 2, 7). To address this situation, Columbia presented an alternative USM calculation. The alternative calculation would base the allocation to the PGDC on two factors: (1) the percentage of capacity release to total off system sales and capacity release based on a four-year average; and (2) the current CHOICE participation rate applied to the percentage of revenues derived from sales, options, AMAs, and exchanges based on a four-year average. Following the calculation of the PGDC percentage, the remainder of the customer share of net margins would be allocated to the PGCC. (Columbia St. No. 2, p. 28); Columbia M.B., p. 10.

According to Columbia, under this alternative calculation, the share of USM credits allocated to the PGDC revenue would change in direct relation to CHOICE participation levels. (*Id.*). Under this alternative calculation, at a 100 percent CHOICE participation rate, 100 percent of the customers’ share of USM credits would be credited to the PGDC. (Columbia St. No. 2, pp. 28-29); Columbia M.B., p. 10.

The OCA supports the current 60 percent/40 percent split or, alternatively, to reduce the PGDC portion of net margins to approximately 20 percent, based upon a four-year average of capacity release net margins. (OCA St. No. 1-R, p. 13).

I&E contends that the current allocation of the USM credits between the PGCC and the PGDC be modified to reflect the Company’s proposed alternative calculation presented in Exhibit No. 16, with one modification: the percentage of capacity release to total off system sales and capacity release should be based on the average of the three most recently completed PGC periods for which data are available at the time of the 1307(f) proceeding, as should the percentage of revenue derived from Sales, Options, AMA and Exchanges.[[76]](#footnote-76) Citing to Exhibit 16, I&E witness Hubert reiterated Columbia’s reasoning recognizing that considering the blended nature of the resources utilized for off system sales other than Capacity Release, the allocation procedure could be modified such that the percentage of revenues allocated to the PGDC could be based on two factors.[[77]](#footnote-77) The first, as stated by Columbia, being the percentage of capacity release to total off system sales and capacity release based on a three-year average.[[78]](#footnote-78) The second factor, as stated by Columbia, would be calculated based on the current CHOICE participation rate applied to the percentage of revenues derived from Sales, Options, AMA and Exchanges based on a three-year average.[[79]](#footnote-79) And finally, as also stated by Columbia, the revenues allocated to the PGCC would be the remainder following the calculation of the PGDC percentage.[[80]](#footnote-80) I&E M.B., pp. 12-13.

I&E recommends the use of a three-year average, instead of the four-year average proposed by Columbia, asserting that the three-year average is similar to the way that Columbia now determines the retainage rate applied in each calendar year, and, as a result of the partial settlement reached in last year’s proceeding at Docket No. R-2014-2408268, is similar to the way the parties agreed to calculate the projected level of USM revenues to be shared with customers.[[81]](#footnote-81) I&E M.B., p. 13.

The OSBA proposed to “fix” a portion of the PGDC credit at a specific percentage rather than fixing a portion of the PGDC based on average capacity release credits. The OSBA also proposed to reflect changes in the percentage of shopping that had occurred since the current 60 percent/40 percent split was established. (OSBA St. No. 1, pp. 7-8). Specifically, the OSBA proposed to recognize the increase in percentage of shopping customers – from approximately 15 percent in 2008 to the current rate of almost 30 percent – by setting the fixed share of the credit assigned to the PGDC such that the mechanism produces an overall PGDC share of 40 percent based upon shopping rates in place in 2008. At current shopping levels, the OSBA’s changes to the mechanism produce a PGDC share of approximately 50 percent. (OSBA St. No. 1, pp. 8-9).

The NGS Parties recommend that the total USM credits be shared equally between Columbia’s gas sales customers and its CHOICE program customers through the PGDC mechanism alone rather than through the PGCC and PGDC, as the practice has been since Columbia’s sharing mechanisms were integrated into a unified approach in the 2002 Section 1307(f) proceeding.[[82]](#footnote-82)

The undersigned ALJ first concludes that the existing 60 percent/40 percent split contained in Columbia’s filing and supported by the OCA in this proceeding is not reasonable in light of the USM study conducted by Columbia. The OCA takes the position that there is nothing wrong with the existing sharing mechanism. The OCA testimony offers no position on the technical problems associated with the existing mechanism. The OCA does not acknowledge that the PGCC credit will increase as shopping increases, effectively serving as a damper on competition. Any mechanism which increases the credit to sales customers as shopping levels increase, as the current mechanism does, will obviously not be beneficial to competition. (OSBA St. No. 2, pp. 8-9); OSBA M.B., p. 9. Accordingly, the undersigned ALJ concludes that the Company and OCA have failed to meet their respective burdens of proof regarding the 60 percent/40 percent USM which is currently in place.

The undersigned ALJ next concludes that the NGS Parties’ position that total USM credits be shared equally between Columbia’s gas sales customers and its CHOICE program customers through the PGDC mechanism alone is fundamentally flawed and ignores the fact that beyond capacity release transactions, all other transactions generating USM revenue involve the sale of natural gas supply which is paid for only by PGC customers.[[83]](#footnote-83)

In effect, the NGS Parties conclude that none of the USM credits are in any way related to activities undertaken by Columbia solely on behalf of sales customers. (NGS Parties St. No. 1, p. 15). This proposal fails to recognize all of the inter-related effects which allow Columbia to earn the margins. It is true that “. . . all or virtually all of the transactions in the USM make use of capacity assets which are generally paid for by both sales and CHOICE customers.” (OSBA St. No. 1, p. 2). However, it must also be recognized that Columbia is able to earn these margins as a result of its activities on behalf of PGC sales customers because it is active in the natural gas markets, and that as shopping increases, the absolute level of the margins is likely to decline. (OSBA St. No. 1, p. 5).

The NGS Parties’ proposal is one-sided. Columbia is able to make off-system sales by integrating those sales with the gas purchasing and storage operations that Columbia conducts to serve its gas sales customers.[[84]](#footnote-84) The Company’s ability to earn the USM net proceeds is related, in part, to its transportation and storage contracts, as well as its efforts to procure the gas commodity.[[85]](#footnote-85)

The undersigned ALJ concludes that the proposal for sharing net proceeds associated with off-system sales and capacity releases made by I&E, which closely models the alternate proposal described by Columbia, is the most fair and reasonable proposal here. The undersigned ALJ concludes it is better than the model proposed by the OSBA, which happens to be the only remaining proposal not yet discussed, because it is so similar to the Company’s suggested alternative, the only difference being the number of years used for the average. The Company’s alternative proposed using a four-year average and I&E proposed using a three-year average. I&E’s explanation for using a three-year average (similar to the way that Columbia now determines the retainage rate applied in each calendar year, and, as a result of the partial settlement reached in last year’s proceeding at Docket No. R-2014-2408268, is similar to the way the parties agreed to calculate the projected level of USM revenues to be shared with customers) makes practical sense. Neither Columbia nor the OSBA opposes the allocation method proposed by I&E.

I&E’s proposal would allocate a portion of the value of non-capacity release revenue to the CHOICE customers commensurate with levels of CHOICE participation. If CHOICE participation reached 100 percent, then 100 percent of the customers’ share of the CR and OSS would be credited to the PGDC.[[86]](#footnote-86) This seems fair and reasonable. The undersigned ALJ recommends that the Commission adopt the proposal made in this proceeding by I&E.

Columbia opposed two proposals raised by the OCA for the first time in its rebuttal testimony: (1) that Columbia redo its USM study to account for capacity assigned to marketers on behalf of CHOICE customers, including capacity for standby and balancing service; and (2) that Columbia bid capacity and supply products in an AMA separately.[[87]](#footnote-87) Columbia M.B., pp. 10-11.

The undersigned ALJ agrees with Columbia. Due process requires that a party be afforded a fair opportunity to respond to adverse claims. *Smith v. Pa. Pub. Util. Comm’n*, 162 A.2d 80, 83 (Pa. Super. 1960). The OCA failed to mention either proposal in its main brief and, consequently, the OCA has deprived Columbia of an opportunity to address the OCA’s proposals in the Company’s reply brief. Columbia R.B., p. 4.

“The Commission . . . is bound by the due process provisions of constitutional law and by the principles of common fairness. (citation omitted). Among the requirements of due process are notice and an opportunity to be heard on the issues, to be apprised of the evidence submitted, . . . and to offer evidence in explanation or rebuttal.” *Smith,* 162 A.2d at 83. “The allowance of new claims late in a case raises significant due process concerns. Such concerns arise from the lack of adequate time to . . . respond adequately to adverse positions.” *Pa. Pub. Util. Comm’n, et al. v. UGI Utilities*, 1994 Pa. PUC LEXIS 138, \*82-83 (May 23, 1994) (rejecting a claim that was introduced for the first time by a party in the rebuttal phase of the proceeding, rather than in the party’s direct case). A claim that is introduced at such a time when the opposing party would not have an adequate opportunity to respond must be rejected on due process grounds. *Application of PPL Electric Utilities Corp.,* 2009 Pa. PUC LEXIS 2323, \*225-227 (November 12, 2009) (rejecting a claim raised for the first time in reply briefs); *see also* *Pa. Pub. Util. Comm’n v. Duquesne Light Co.*, 59 Pa. PUC 67 (January 25, 1985) (disallowing the untimely introduction of exhibits); *Pa. Pub. Util. Comm’n v. Pennsylvania-American Water Company*, 1989 Pa. PUC LEXIS 170, \*167-169, 71 Pa. PUC 210 (October 27, 1989) (“late filed updates deny opposing parties an opportunity . . . to respond with countering evidence or testimony.”); Columbia R.B., pp. 4-5.

The OCA’s two proposals are procedurally inappropriate and unjust. As the party with the burden of proof on these two proposals, the OCA was required to address its proposals in its main brief. 52 Pa.Code § 5.501(a)(3). It is recommended that both proposals be denied.

C. The NGS Parties’ Request that Columbia Conduct a Study on How Columbia’s Retained Pipeline Capacity is Utilized

1. The NGS Parties’ Position

In Columbia’s filing, Exhibit No. 16, it states that the total cost of capacity that it retains is split between CHOICE and PGC customers and recovered through the PGDC. According to the NGS Parties, Columbia goes on to state, however, that the cost of the capacity assigned to NGSs is deducted from the PGDC costs paid for by CHOICE customers. The NGS asserts that the reason CHOICE customers do not pay for these costs directly is because when the capacity is assigned to NGSs, NGSs pay for those costs directly to the pipeline company. It also is true, according to the NGS Parties, that neither CHOICE NGSs, nor their customers have the opportunity to benefit from revenue enhancing transactions based on these assets in a fashion because the assets assigned to CHOICE NGSs are required for baseload delivery 365 days a year. (NGS St. No. 1, 13:16-16:2); NGS Parties M.B., p. 18.

It is true, however, that just like CHOICE customers, PGC customers have daily demand which requires that Columbia deliver gas into its system on a year-round basis, solely for PGC customers. According to the NGS Parties, the USM study states that the total cost of firm capacity retained by Columbia is recovered through the PGDC. (Columbia Ex. No. 16). The NGS Parties assert that, while CHOICE suppliers pay directly for pipeline costs for the capacity assigned to them, the cost of pipeline capacity Columbia uses to meet PGC year round delivery needs is being recovered through the PGDC which is paid for by both CHOICE and PGC customers. NGS Parties M.B., p. 18.

According to the NGS Parties, while NGSs are paying the costs of the pipeline assets to make baseload deliveries for CHOICE customers, Columbia does not assign the costs of the slice of assets used solely to make baseload deliveries to default service customers to the PGCC so they are paid for on the same basis as CHOICE customers. (NGS. St. No. 1, 15:14‑17:17). The NGS Parties contend that it appears that both CHOICE customers and PGC customers are paying the costs for the pipeline assets to make year round deliveries for PGC customers through the PGDC. (*Id*.). The NGS Parties further contend that CHOICE customers are paying for the cost of pipeline assets that are being utilized to serve the PGC year round delivery needs. (*Id*.). The NGS Parties submit that this is an inequitable cost allocation. PGC customers should be paying for the cost of pipeline assets that Columbia utilizes to bring their gas into the system, and CHOICE customers should not be required to contribute to paying those costs. NGS Parties M.B., pp. 18-19.

The NGS Parties explain that this is not to suggest that all of the costs of the capacity assets be paid for by PGC customers. According to the NGS Parties, it is reasonable for CHOICE customers to share in some of the costs of the capacity assets. For one, the storage assets Columbia retains should be shared by all customers equally. Storage is used to balance the system and otherwise maintain reliability on colder-than-normal days and thus the NGS Parties concede that it is appropriate for CHOICE customers to share in those costs. (NGS St. No. 1, 16:21-17:6). Further, the peaking pipeline assets Columbia retains should be paid for by CHOICE and PGC customers equally. (*Id.*). Peaking pipeline assets are needed to maintain reliability on the system. However, the NGS Parties argue that any pipeline assets Columbia is utilizing to make daily deliveries for PGC customers only should be paid for by PGC customers only and should not be recovered through the PGDC. NGS Parties M.B., p. 19.

The NGS Parties submit that, in order to gather sufficient evidence to determine the scope and scale of this issue, the Commission should require that Columbia:

[S]ubmit in its next 1307(F) proceeding an analysis on how the pipeline capacity it retains is being utilized. In the analysis Columbia should be required to calculate A) the portion of the pipeline assets it retains that is being utilized for system peaking needs and B) the portion of the pipeline assets it retains that it utilizes for PGC delivery needs. Once the portion of pipeline assets used to serve only the PGC deliveries is identified, in the next 1307(F) proceeding the Commission should then require that those pipeline costs be allocated to the PGCC.

(NGS St. No. 1, 17:10-17); NGS Parties M.B., p. 19.

In short, according to the NGS Parties, there should no longer be a subsidy in the way the PGDC is calculated or in the way USM revenue is returned to customers. The NGS Parties believe Columbia will likely say that the Company simply recovers the cost of all baseload assets though the PGDC without regard to the type or location of the asset and that it does not make any effort to distinguish and assign which portion of which asset is used to serve a default service or CHOICE customers. The NGS Parties concede that, to a certain extent, Columbia’s explanation is true. But, according to the NGS Parties, Columbia does extract the costs of two specific assets (baseload pipeline capacity on two interstate pipelines) from the PGDC and charge those directly to the CHOICE suppliers and does not extract the charges for those same assets when used to make baseload deliveries to default service customers and charge them directly to default service customers. So it appears that, in the NGS Parties’ view, that CHOICE customers are contributing toward some portion of the costs of those assets that are used to provide year-round baseload delivery to default service customers. The NGS Parties opine that the suggested study will show the magnitude of the issue and aid the Commission in deciding whether and what kind of fix is needed. NGS Parties M.B., pp. 19-20.

In their reply brief, the NGS Parties added as follows:

Columbia’s response is to suggest somehow that the NGS Parties are demanding that there be a study so that each customer pays the cost of the capacity used to deliver gas to that customer. (Columbia MB, p. 14). This simply is a red herring promoted by Columbia. Nowhere have the suppliers requested a by-customer asset allocation methodology be worked up so that each customer pays their exact cost. Nor have the NGS Parties suggested that peaking assets or assets used to balance the system be specifically allocated to customers or even on a group basis because those assets benefit all customers. However, in gross, as between Choice customers and sales customers, Columbia should be able to determine the capacity assets that are used to serve each of these customer groups and allocate the costs appropriately. That is the study that was requested, the basis of which Columbia has yet to refute.

If circumstances are as Mr. White believes and shopping customers are subsidizing sales customers -- that is not acceptable. Columbia states in its Main Brief that “it is impossible for Columbia to conduct such a study, because there is no way for Columbia to determine which capacity is used to physically serve Choice versus sales customers.” (Columbia Main Brief at p. 14). This statement by Columbia, however, is pure sophistry. If Columbia is able to extract the costs of the two pipeline assets that are assigned to Choice customers and charges those suppliers the costs of those assets directly then Columbia clearly is able to determine the costs of the assets used to physically serve Choice customers. Columbia speculates that there may be some Choice customers who are served on pipelines other than the two assets which are assigned to NGSs, but it fails to make any further factual allegations with regard to the use of that capacity or if whether any actual Choice customers are receiving such service. (Columbia MB. P. 15).

As Mr. White stated, he is not discussing the assets that are used for balancing the system or for peak-day deliveries. He is merely talking about the fact that the NGSs are required to deliver 1/365th of the total amount gas our customers expect to use over the course of the year every single day, and that baseline capacity is assigned to NGSs. (NGS St. No. 1, 16:20-16:6). Further, it is clear that Mr. White only suggested that Columbia be required to analyze the costs of capacity and to show that there is no subsidy, or if there is a subsidy to quantify the amount of the subsidy.

NGS Parties R.B., pp. 6-7.

2. Columbia’s Position-Requested Study Should Be Denied

In this proceeding, the NGS Parties have proposed that Columbia be required to submit in its next 1307(f) proceeding an “analysis on how the pipeline capacity it retains is being utilized.” (NGS Parties St. No. 1, p. 17). The analysis proposed by the NGS Parties would require Columbia to calculate: (1) the portion of pipeline assets retained for system peaking needs; and (2) the portion of pipeline assets utilized for PGC delivery needs. (NGS Parties St. No. 1, p. 17). The stated purpose of this proposed study is to identify pipeline capacity costs to “be allocated to the PGCC”. (NGS Parties St. No. 1, p. 17). The effect could be to charge sales and CHOICE customers different capacity costs. Columbia M.B., pp. 13-14.

The NGS Parties assert that “the peaking pipeline assets Columbia retains should be paid for by CHOICE and PGC customers equally.”[[88]](#footnote-88) (NGS Parties St. No. 1, p. 17). According to the NGS Parties, the study is necessary to ensure that this result is achieved. (NGS Parties St. No. 1, p. 17). However, according to Columbia, CHOICE and PGC customers already pay the same unit rates for the cost of capacity and should continue to pay an equal amount for the cost of capacity because all of Columbia’s contracted pipeline capacity is utilized to serve both PGC and CHOICE customers. (Columbia St. No. 1-R, p. 9). Columbia contends that the NGS Parties’ proposal is unnecessary as it is improper to charge sales and CHOICE customers different amounts for pipeline capacity that is reserved to meet the service requirements of all firm customers, sales and CHOICE. Not only is an allocation study unnecessary as all firm sales and CHOICE customers properly pay the same cost for pipeline capacity, according to Columbia, it is impossible to conduct such a study because there is no way for Columbia to determine which capacity is used to physically serve CHOICE versus sales customers. Columbia argues that the NGS Parties’ proposal should be denied. Columbia M.B., p. 14.

According to Columbia, in order to understand why the NGS Parties’ proposal for a study regarding cost recovery of capacity assets is improper, it is first necessary to briefly explain Columbia’s CHOICE program and the recovery of capacity costs incurred to serve sales and CHOICE customers. Columbia M.B., p. 15.

Under Columbia’s average day CHOICE program, each CHOICE NGS must deliver every day of the year an amount of gas equal to 1/365th of the NGS customer group’s annual normalized consumption. (Columbia St. No. 2, p. 8). In accordance with the provisions of Section 2204(d) of the Public Utility Code, 66 Pa.C.S. § 2204(d), and Columbia’s approved restructuring, Columbia assigns Columbia Gas Transmission (TCO) firm transportation (FT) capacity to NGSs and, if the NGS elects, upstream Columbia Gulf (Gulf) FT capacity to meet the average day requirements of CHOICE customers. (Columbia St. No. 2, p. 11). CHOICE NGSs pay for the released capacity at its full contract rate. (Columbia St. No. 2-R, p. 12). Because average day deliveries would be inadequate to meet peak day needs and may be either more or less than the daily requirements of a CHOICE NGS’s customers, Columbia manages daily imbalances and meets peak needs through retained FT capacity and storage. (Columbia St. No. 2, p. 8); Columbia M.B., p. 15.

Although CHOICE NGSs are assigned TCO and Gulf capacity, and schedule supplies for delivery on those pipelines, their CHOICE customers physically may be served by gas supplies scheduled by Columbia via other pipelines.[[89]](#footnote-89) This is because some of Columbia’s local distribution markets are directly connected to other pipelines. (Columbia St. No. 1-R, p. 6). As Columbia’s witness Mr. Catron explained:

For example, a residential customer located in the market area connected to National Fuel who elects Choice physically does not receive gas from TCO, but instead receives gas obtained via upstream Tennessee Gas Pipeline Capacity. Columbia manages this situation by scheduling gas supplies into the market served by National Fuel and adjusting its receipts into markets served by TCO.

(Columbia St. No. 1-R, p. 7). As a result, Columbia must use its retained capacity to deliver gas to these customers. (*Id.*); Columbia M.B., pp. 15-16.

Columbia’s CHOICE program is structured so that CHOICE and PGC sales customers pay the same amount for capacity costs. (Columbia St. No. 2-R, p. 11). Columbia accomplishes this in two steps. First, Columbia determines the PGDC rate by dividing total demand costs by the sum of sales and CHOICE throughput. (Columbia Ex. 1-E). PGC sales customers pay that demand rate. (*Id.*). CHOICE customers pay that demand rate net of a Capacity Assignment Factor credit[[90]](#footnote-90) for the cost of capacity assigned to NGSs to meet their average day delivery requirements. (Columbia St. No. 2-R, p. 12). Thus, the PGDC rate paid by CHOICE customers is approximately 3.5 cents per therm (35 cents/Dth) less than the PGDC rate charged to PGC sales customers. (*Id.*). The NGSs pay for the cost of their assigned capacity and, presumably, pass the cost to CHOICE customers through rates. (*Id.*). Therefore, according to Columbia, both CHOICE and PGC sales customers effectively pay the same per unit demand charge. Columbia M.B., p. 16.

The NGS Parties contend that CHOICE customers are paying for assets that are being utilized to serve the delivery needs of sales customers. (NGS Parties St. 1, p. 16 at 9-18). According to Columbia, the NGS Parties appear to contend that certain capacity held by Columbia can be delineated as used to serve CHOICE customers while other capacity is used to meet the needs of PGC customers. Columbia argues that such contention is erroneous from an operational perspective. Columbia M.B., p. 17.

Columbia explains that it does not reserve certain capacity to meet the design day needs of only PGC customers, nor does it reserve certain capacity to meet the design day needs of only CHOICE customers. Columbia contracts for pipeline capacity to meet its obligation to serve the total design day needs of its firm sales and CHOICE customers. (Columbia St. No. 1, p. 12; Columbia Ex. No. 5, p. 10). Columbia makes no distinction between sales or CHOICE service in acquiring capacity, as Columbia has the Supplier of Last Resort responsibility to hold sufficient capacity to serve these customers without regard to whether they select sales or CHOICE service. 66 Pa.C.S. § 2207(a). In total, all of the capacity contracted for by Columbia is needed to serve the peak demand requirements of both sales and CHOICE customers across Columbia’s system. (Columbia St. No. 2-SR, p. 5); Columbia M.B., p. 17.

The physical use of all of Columbia’s diverse pipeline assets to serve the requirements of sales and CHOICE customers is not limited to design day conditions. Throughout the year, Columbia uses its retained pipeline assets, including FT and storage, to balance the system and maintain reliability. (Columbia St. No. 1-R, p. 2). As explained above, under the CHOICE average day program, NGSs are required to deliver an equal amount of supply into the system every day of the year. (Columbia St. No. 2, p. 8). The total amount each CHOICE NGS delivers into the system over a year’s time is the amount needed to satisfy the normalized consumption for the year of CHOICE customers served by that supplier. (*Id*.). The amount an NGS delivers into the system on a given day oftentimes will not equal the total demand of the NGS customers on that day. When a NGS’s daily deliveries into the system are insufficient to meet the daily requirements of its CHOICE customers, Columbia will use its retained FT and FSS/SST capacity to ensure that an adequate amount of supply is delivered to CHOICE customers on that day. (Columbia Exh. No. 5, p. 19). Conversely, when an NGS’s deliveries into the system are in excess of its customers’ requirements on a given day, Columbia will adjust its use of retained capacity to balance the system. (*Id.*); Columbia M.B., pp. 17-18.

Thus, Columbia submits that CHOICE and PGC customers properly should pay the same amount for retained capacity because Columbia has acquired and uses all of its retained capacity to fulfill its responsibility of serving both PGC and CHOICE customers under both design day and actual day conditions. (Columbia St. 1-R, p. 6); Columbia M.B., p. 18.

According to Columbia, another operational reason why it is improper to segregate retained pipeline capacity as serving PGC or CHOICE customers is because retained capacity is needed to offer CHOICE to all eligible customers across Columbia’s diverse distribution system. Columbia M.B., p. 18.

While CHOICE NGSs are required to deliver supply into Columbia’s system that is adequate to meet the normalized yearly consumption of their CHOICE customers, NGSs do not necessarily schedule delivery that is capable of physically supplying gas to all CHOICE customers. (Columbia St. No. 2, p. 8). Under Columbia’s CHOICE program, suppliers are required to schedule delivery on only TCO and Gulf. (Columbia St. No. 2-R, p. 11). However, CHOICE participation is not limited to where TCO and Gulf interconnects exist, and not all CHOICE customers on Columbia’s complex, widespread distribution system are located in local distributions markets capable of receiving gas from TCO or Gulf. (Columbia St. No. 1-R, p. 7). As a result, Columbia must use its retained capacity to physically serve CHOICE customers wherever they are located on the system. (*Id.*); Columbia M.B., pp. 18-19.

Columbia’s system is a collection of over 70 separate local distribution systems serving in total over 419,000 customers in 26 counties through approximately 240 interstate pipeline delivery points. (Columbia Ex. 10; Columbia St. No. 2, p. 3). Columbia’s distribution system is highly fragmented, including numerous distribution systems that are isolated or have limited interconnectivity. (Columbia St. No. 1, pp. 12-13). This system configuration requires Columbia to exercise considerable effort to manage the supplies scheduled for delivery to Columbia each day. (*Id.*). On a daily basis, Columbia receives supplies nominated by Columbia for its sales customers, as well as supplies nominated for delivery by NGSs to serve CHOICE customers. Columbia M.B., p. 19.

The vast majority of gas supplies received by Columbia, both for sales and CHOICE customers, are delivered to Columbia’s city gates by interstate pipelines. Columbia has interconnections with seven interstate pipelines: TCO; Columbia Gulf; Texas Eastern Transmission, LP; Tennessee Gas Pipeline Company, LLC; Dominion Transmission Inc.; Equitrans L.P.; and National Fuel Gas Supply Corporation. (Columbia St. No. 1, p. 11); Columbia M.B., p. 19.

While most of Columbia’s customers are located in distribution markets that receive gas from TCO, some market areas within Columbia’s distribution system are directly connected to other pipelines or are capable of accepting gas from multiple pipelines. (Columbia St. No. 1-R, p. 6). For example, the Warren, Pennsylvania market is served only by National Fuel and is not capable of accepting deliveries from TCO. (Columbia St. No. 1, p. 16 at 11-13). If not for the capacity Columbia retains to deliver supplies to CHOICE customers located in distribution markets that are not connected to TCO or Gulf, customers in Warren would be physically incapable of being eligible for CHOICE service. Columbia M.B., pp. 19-20.

Columbia explains that the CHOICE program works for customers who are located in distribution systems not physically connected to TCO because of the availability of other pipeline assets. Columbia argues that any contention that CHOICE customers do not “use” certain capacity is contrary to physical fact. Columbia M.B., p. 20.

Despite receiving gas supply from multiple pipelines, Columbia’s firm service customers are not charged different demand rates based on the interstate pipeline that serves them. (Columbia St. No. 2, p. 10). Rather, all firm customers pay the same amount per Dth for the cost of capacity. (Columbia St. No. 2, p. 11). According to Columbia, this practice is consistent with the operational use of all capacity to serve design day needs. Columbia asserts that this practice further supports a conclusion that capacity costs should not be segregated between sales and CHOICE customers, but should be paid equally. Columbia M.B., p. 20.

Columbia explains that a number of practical reasons support a single demand rate rather than attempting to “stream” demand charges to individual customers. First, certain local distribution systems in Columbia’s system are served by multiple pipelines. (Columbia St. No. 2-R, p. 11). In an area fed by multiple pipelines, Columbia would be unable to define the cost of capacity used to serve those customers as the capacity in use at any time may vary. (*Id.*). Columbia M.B., pp. 20-21.

Second, according to Columbia, it would be impracticable to distinguish FT capacity used to deliver supplies to serve sales customers daily needs from FT capacity used to facilitate storage. FT capacity can serve different purposes. (*Id.*). FT capacity may be used at one time to manage storage and at other times to deliver flowing gas to customers. (*Id.*). For instance, when supply delivered directly to a market cannot be absorbed by that market, Columbia can divert that supply to secondary delivery points or inject it into storage. (*Id.*). The amount of Columbia’s available capacity may vary depending on the time of year, which would add further difficulty in defining the cost of capacity used to serve each customer. (Columbia St. No. 2-R, p. 11). TCO SST capacity, for example, is halved during the months of April through October. (*Id.*); Columbia M.B., p. 21.

Columbia argues that another reason to charge all customers a single demand rate is that charging separate demand rates based on actual physical capacity serving a local market could result in significant confusion when customers in nearby, but physically separate, market areas received different bills for the same usage, based solely upon the charges of the interstate pipelines serving each market. (Columbia St. No. 2, p. 11). Since each pipeline sets its own rates, subject to FERC approval, significant price differentials could arise. (*Id.*). Columbia submits that a single demand rate for all firm customers eliminates the problems associated with charging different demand rates based on location. (*Id.*); Columbia M.B., p. 21.

Finally, Columbia asserts that charging customers different demand rates based on the pipeline that serves them would be contrary to historical practice. (Columbia St. No. 2-R, pp. 1, 11). For at least the past thirty years, Columbia has charged all firm service customers the same demand rate. (*Id.*). This practice is consistent with the practice of other utilities in Pennsylvania. Columbia argues that the institution of CHOICE as an option for residential and small commercial customers is not a reason to change this historical practice. Columbia contends that continuing to charge all firm customers the same demand rate following the institution of the CHOICE program preserves historical practice and maintains consistency in rates. Columbia M.B., pp. 21-22.

The NGS Parties assert that CHOICE suppliers are assigned TCO/Gulf capacity, and thus should not pay for capacity used to meet sales customers’ requirements. (NGS Parties St. No. 1-SR, p. 7). However, Columbia submits that the assignment of TCO/Gulf capacity is not a basis for charging CHOICE and sales customers different demand rates. Columbia M.B., p. 22.

Columbia explains that its distribution systems are widespread and dispersed across Pennsylvania, with a large number of physical supply receipt points, and the use of seven interstate pipelines to receive supplies. (Columbia St. No. 1, pp. 11-13). Although TCO points of delivery represent the overwhelming majorityof all of Columbia’s interstate pipeline receipt points, some local distribution systems are served solely by other pipelines, and others may have multiple pipeline interconnections. (Columbia St. No. 1-R, pp. 6-7). Columbia M.B., p. 22.

Given this situation, Columbia explains that its CHOICE program assigns TCO and Gulf capacity to CHOICE NGSs, rather than assigning capacity to CHOICE NGSs on a pro rata basis,[[91]](#footnote-91) to make nominations simpler for NGSs and, ultimately, to encourage CHOICE participation. (*Id.*). Columbia asserts that pro rata assignment would add complexity to the delivery process for CHOICE NGSs by requiring them to make very small nominations on several pipelines in which Columbia has capacity, in addition to larger nominations on TCO and Gulf. (*Id.*); Columbia M.B., pp. 22-23.

Columbia contends that, while a pro rata assignment of FT capacity would complicate Columbia’s CHOICE program for suppliers, it would still result in CHOICE customers paying the same demand costs as sales customers. According to Columbia, the Capacity Assignment Factor credit calculation could differ slightly to reflect the weighted average cost of all assigned FT capacity rather than just the cost of TCO/Gulf capacity, but the sum of (1) assigned capacity costs and (2) the PGDC rate net of the Capacity Assignment Factor credit would still result in CHOICE customers paying the same demand charges as sales customers. (Columbia St. No. 1-R, pp. 7-8); Columbia M.B., p. 23.

Columbia contends that assignment of TCO/Gulf capacity to CHOICE suppliers is done as a convenience, to encourage CHOICE supplier participation through simplicity. Columbia further contends that it is not a basis to assert that sales and CHOICE customers should ultimately pay different capacity charges. Columbia M.B., p. 23.

In its reply brief, Columbia addresses the NGS Parties assertion that CHIOCE customers are subsidizing sales customers cost of capacity as follows:

Choice customers do not “subsidize” the cost of capacity used to serve sales customers because both customer groups pay the same per unit demand costs. (Columbia St. No. 2-R, p. 11). Crucial to the understanding that Choice customers do not subsidize sales customers’ capacity costs is the NGS Parties unequivocal admission that “all customers, Choice and default service, pay for Capacity Assets on an equivalent basis.” (NGS Parties’ M.B., p. 5). In order for a “subsidy” to exist, one customer group must pay for the cost of capacity assets used to benefit another customer group. No subsidy could exist when both customer groups pay an equal amount for the cost of capacity assets used to serve them. (Columbia St. No. 2-R, p. 11). As Columbia explained in its Main Brief, all PGC capacity is retained to serve the needs of sales and Choice customers. (Columbia M.B., pp. 17-18). Therefore, the NGS Parties’ assertion of a “subsidy” is unfounded.

Choice customers do not pay for the cost of capacity to serve sales customers under the current demand cost formula. The NGS Parties incorrectly assert that Choice customers pay for the capacity used to serve sales customers’ year round delivery needs which results in the alleged “subsidy.” (NGS Parties’ M.B., pp. 18-19). Such a contention would have merit if the cost of capacity assigned to NGSs were deducted from total demand costs and the remainder was then allocated equally to sales and Choice customers. However, that is not the case. Instead, under the current formula, the total demand cost is first spread across all sales and Choice volumes. (Columbia St. No. 2-R, pp. 11-12). A Capacity Assignment Factor credit is then applied only to Choice customers to remove the cost of capacity assigned to NGSs. (*Id.*). As a result, sales and Choice customers pay different PGDC rates, with the Choice rate being about 35¢/ Dth less out of a total demand rate of $1.2904/ Dth, exclusive of the USM credit. (*Id.*). The cost of capacity assigned to Choice NGSs is presumably recovered by the rates charged by the NGSs to their Choice customers, and Columbia’s Price to Compare (“PTC”) anticipates this by adding the Capacity Assignment Factor credit in the PTC.

Under the present formula, the only way in which a subsidy could occur would be if sales customers should be required to pay higher demand costs. However, at no point in the NGS Parties’ Main Brief did they contend that sales and Choice customers should pay different total demand costs. The NGS Parties have offered no evidence on the record in support of such a position, nor would the proposed study produce any such evidence because all of Columbia’s retained capacity assets are used to serve the design day needs of all firm customers—sales and Choice. (Columbia St. No. 1, p. 12; Columbia Ex. No. 5, p. 10). Thus, sales and Choice customers properly pay the same average cost of capacity. As Columbia fully explained in its Main Brief, charging sales and Choice customers different demand rates would be inappropriate

from both an operational and ratemaking perspective. (Columbia M.B., pp. 17-23).

Columbia R.B., pp. 6-8.

According to Columbia, “extracting” demand costs from the PGDC and moving them into PGCC would serve no purpose because the result would still be that sales and CHOICE customers pay the same per unit demand cost. “Extracting” demand costs from the PGDC for sales customers to be recovered through the PGCC is unnecessary because sales and CHOICE customers pay an equal share of demand costs, and the PTC includes not only the current cost of gas but also the cost of capacity assigned to NGSs on behalf of CHOICE customers. (Columbia St. No. 2-R, pp. 11-12). Furthermore, Columbia contends that it would be impossible for it to identify an amount of capacity costs attributable solely to sales customers for purposes of extraction. (Columbia St. 1-R, pp. 6-7); Columbia R.B., p. 8.

Columbia argues that the requested “extraction” of demand costs from the PGDC would be a fruitless exercise because the result would remain that CHOICE and sales customers pay the same total demand costs. So long as all sales and CHOICE customers pay an equal amount in total demand costs, there is no reason to move any costs out of the PGDC into the PGCC for recovery. According to Columbia, the PTC takes into account capacity assigned to NGSs by including the amount of the Capacity Assignment Factor credit[[92]](#footnote-92) as part of avoided gas costs in the event a customer shops. (Columbia St. No. 2-R, pp. 11-12). Including the cost of capacity assigned to NGSs in the PTC ensures that CHOICE customers are not disadvantaged. (*Id.*); Columbia R.B., pp. 8-9.

In addition to being unnecessary, Columbia contends there is no basis on which the Company can delineate sales customers’ capacity costs from total capacity costs because all

of Columbia’s retained capacity assets are used to serve sales and CHOICE customers alike.[[93]](#footnote-93) (Columbia St. 1-R, pp. 6-7). The NGS Parties assert that if Columbia can extract the cost of capacity assigned to NGSs from the PGDC rate charged to CHOICE customers, the Company should be able to determine capacity costs for sales customers. (NGS Parties’ M.B., pp. 19-20). However, Columbia is able to identify and remove the cost of capacity assigned to NGSs from CHOICE customers’ PGDC rate because NGSs receive a fixed amount of Columbia Gas Transmission (TCO) and/or Columbia Gulf (Gulf) capacity sufficient to meet their delivery requirements under the average day program.[[94]](#footnote-94) (Columbia St. No. 2-R, pp. 11-12). The assignment of TCO and/or Gulf capacity to NGSs is intended as a convenience to encourage suppliers’ participation in the CHOICE program, and has no effect on the actual capacity used to physically serve a CHOICE customer. (Columbia St. No. 1-R, pp. 6-7). To illustrate, if a CHOICE customer reverts back to sales, that customer physically would be served by all of the same capacity that physically was used to serve the customer while shopping. Columbia R.B., pp. 9-19.

3. Recommendation-Requested Study Should Be Denied

Pursuant to Section 332(a) of the Public Utility Code, 66 Pa.C.S. § 332(a), Columbia has the burden of proof in this proceeding as to the rates and modifications included in its original filing. The burden of proof, also known as the burden of persuasion, means a duty to establish a fact by a preponderance of the evidence. *Se-Ling Hosiery v. Margulies,* 364 Pa. 45, 70 A.2d 854 (1950). However, a party that offers a proposal not included in the Applicant’s filing bears the burden of proof for such proposal. *See, e.g., Pa. Pub. Util. Comm’n v. Philadelphia Gas Works,* Docket No. R-00061931, 2007 Pa. PUC LEXIS 45 at \*165-68 (Sept. 28, 2007); *Pa. Pub. Util. Comm’n v. Metropolitan Edison Company,* Docket No.

R-00061366, 2007 Pa. PUC LEXIS 5 at \*111-12 (Jan. 11, 2007). As the party proposing that a study be undertaken, the NGS Parties have the burden of proof with respect to this issue.

The undersigned ALJ concludes that the study requested by the NGS Parties is unreasonable and unnecessary. The undersigned ALJ agrees with Columbia that it is impossible to conduct because Columbia cannot identify capacity used to serve sales customers versus capacity used to serve CHOICE customers. Since all of Columbia’s retained capacity is used to serve the design day needs of both CHOICE and sales customers, there is no way to distinguish between the cost of capacity used to serve either sales or CHOICE customers. (Columbia St. 1-R, p. 6). For this primary reason and for the other reasons set forth by Columbia in its main brief and reply brief, the undersigned ALJ concludes it is proper that all CHOICE and sales customers pay the same per unit rate of demand costs.

An analysis of the use of Columbia’s retained pipeline capacity would reveal no additional information that the parties do not currently have at their disposal because Columbia already has explained that *all* of its pipeline capacity is used to meet its obligation of providing firm service to CHOICE and PGC sales customers and to ensure system reliability. (Columbia St. 1-R, p. 6). The undersigned ALJ finds that the NGS Parties have failed to meet their burden of proof with respect to the study proposal. Therefore, the undersigned ALJ recommends that the NGS Parties’ proposal for a study should be denied.

IV. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and the parties to this proceeding. 66 Pa.C.S. §§ 501, *et seq*.
2. Columbia Gas of Pennsylvania, Inc. is pursuing a least cost fuel procurement policy during the relevant time period consistent with its obligation to provide safe, adequate and reliable service to its customers in compliance with Section 1318 of the Public Utility Code, 66 Pa.C.S. § 1318.
3. Columbia Gas of Pennsylvania, Inc.’s rates for purchased gas costs, as the Settlement Parties have agreed upon in this proceeding, during the relevant time period are just and reasonable and in compliance with Section 1318 of the Public Utility Code, 66 Pa.C.S. § 1318.
4. Columbia Gas of Pennsylvania, Inc. has fully and vigorously represented the interests of its ratepayers in proceedings before the FERC and other relevant non-PUC proceedings during the relevant time period in compliance with Section 1318(a)(1) of the Public Utility Code, 66 Pa.C.S. § 1318(a)(1).
5. Columbia Gas of Pennsylvania, Inc. has taken all prudent steps necessary to negotiate favorable gas supply contracts and to relieve itself from terms in existing contracts with its gas suppliers, which are or may be adverse to the interests of its ratepayers, during the relevant time period in compliance with Section 1318(a)(2) of the Public Utility Code, 66 Pa.C.S. § 1318(a)(2).
6. Columbia Gas of Pennsylvania, Inc. has taken all prudent steps necessary during the relevant time period to obtain lower cost gas supplies on both short-term and long-term bases both within and outside the Commonwealth, including the use of gas transportation arrangements with pipelines and other distribution companies in compliance with Section 1318(a)(3) of the Public Utility Code, 66 Pa.C.S. § 1318(a)(3).
7. Columbia Gas of Pennsylvania, Inc. has not withheld from the market or caused to be withheld from the market during the relevant time period any gas supplies, which should have been used as part of a least cost fuel procurement policy in compliance with Section 1318(a)(4) of the Public Utility Code, 66 Pa.C.S. § 1318(a)(4).
8. Columbia Gas of Pennsylvania, Inc. has fully and vigorously attempted to obtain less costly gas supplies on both short-term and long-term bases from nonaffiliated interests during the relevant time period in compliance with Section 1318(b)(1) of the Public Utility Code, 66 Pa.C.S. § 1318(b)(1).
9. Columbia Gas of Pennsylvania, Inc.’s contracts for the purchase of gas from any affiliated interest during the relevant time period are consistent with a least cost fuel procurement policy in compliance with Section 1318(b)(2) of the Public Utility Code, 66 Pa.C.S. § 1318(b)(2).
10. Neither Columbia Gas of Pennsylvania, Inc. nor any affiliated interest during the relevant time period has withheld from the market any gas supplies, which should have been used as part of a least cost fuel procurement policy in compliance with Section 1318(b)(3) of the Public Utility Code, 66 Pa.C.S. § 1318(b)(3).
11. The Joint Petition for Partial Settlement that Columbia Gas of Pennsylvania, Inc., the Commission’s Bureau of Investigation and Enforcement, the Office of Consumer Advocate and the Office of Small Business Advocate have executed and submitted at this docket is in the public interest.
12. A party that offers a proposal not included in the Applicant’s filing bears the burden of proof for such proposal. *See, e.g., Pa. Pub. Util. Comm’n v. Philadelphia Gas Works,* Docket No. R-00061931, 2007 Pa. PUC LEXIS 45 at \*165-68 (Sept. 28, 2007); *Pa. Pub. Util. Comm’n v. Metropolitan Edison Company,* Docket No. R-00061366, 2007 Pa. PUC LEXIS 5 at \*111-12 (Jan. 11, 2007).

13. The side that presented evidence found to be more persuasive, even by the slightest amount, will prevail. *Morrissey v. Commonwealth of Pennsylvania,* 424 Pa. 87, 225 A.2d 895 (1986); *Burleson v. Pa. Pub. Util. Comm’n,* 501 Pa. 433, 436, 641 A.2d 1234, 1236 (1983); *V.J.R. Bar Corp. v. P.L.C.B.,* 480 Pa. 322, 390 A.2d 163 (1978); *Milkie v. Pa. Pub. Util. Comm’n,* 768 A.2d 1217, 1220 (Pa.Cmwlth. 2001).

14. The NGS Parties have not met their burden of proof in this proceeding with respect to their proposal to require Columbia Gas of Pennsylvania, Inc. to undertake a study of the use of Purchase Gas Cost (PGC) assets.

15. The Office of Consumer Advocate has not met its burden of proof in this proceeding with respect to its proposal to require Columbia to redo its Unified Sharing Mechanism study to account for all capacity assigned to third party marketers on behalf of CHOICE customers, including for standby and balancing services.

16. The Office of Consumer Advocate has not met its burden of proof in this proceeding with respect to its proposal to require Columbia to bid capacity and supply products in AMAs separately.

17. The Office of Consumer Advocate was required to address its proposal that Columbia Gas of Pennsylvania, Inc. redo its Unified Sharing Mechanism study and its proposal to require Columbia Gas of Pennsylvania, Inc. to bid capacity supply products in Asset Management Agreements separately in its main brief and therefore these two proposals are procedurally inappropriate in the proceeding. 52 Pa.Code § 5.501(a)(3).

18. The OSBA has not met its burden of proving that the Unified Sharing Mechanism it proposed in this proceeding is reasonable and in the public interest.

19. Columbia Gas of Pennsylvania, Inc. has not met its burden of proving that the Unified Sharing Mechanism it proposed in this proceeding is reasonable and in the public interest.

20. The NGS Parties have not met their burden of proving that the Unified Sharing Mechanism they proposed in this proceeding is reasonable and in the public interest.

21. The Commission’s Bureau of Investigation and Enforcement has met its burden of proving that the Unified Sharing Mechanism it proposed in this proceeding is reasonable and in the public interest.

V. ORDER

THEREFORE,

IT IS RECOMMENDED:

1. That the Joint Petition for Partial Settlement that Columbia Gas of Pennsylvania, Inc., the Commission’s Bureau of Investigation and Enforcement, the Office of Consumer Advocate and the Office of Small Business Advocate have executed and filed at Docket No. R-2015-2469665 be approved.
2. That Columbia Gas of Pennsylvania, Inc. be permitted to file a tariff supplement, on at least one day’s notice to the Commission, containing changes in rates to provide for the recovery of its costs of purchased gas, consistent with the terms and conditions of the Joint Petition for Partial Settlement; that incorporates the Unified Sharing Mechanism proposal of the Commission’s Bureau of Investigation and Enforcement in this proceeding.
3. That the formal complaints of the Office of Small Business Advocate at Docket No. C-2015-2475969 and the Office of Consumer Advocate at Docket No. C-2015-2474515, be dismissed.
4. That the NGS Parties’ proposal to require Columbia Gas of Pennsylvania, Inc. to undertake a study of the use of purchased gas cost assets is denied.
5. That Columbia Gas of Pennsylvania, Inc., the Commission’s Bureau of Investigation and Enforcement, the Office of Consumer Advocate and the Office of Small Business Advocate, the Columbia Industrial Intervenors and the NGS Parties be ordered to comply with the terms and conditions of the Joint Petition for Partial Settlement executed and submitted in this proceeding as though each term and condition stated therein had been the subject of an individual ordering paragraph.
6. That upon the filing of a tariff supplement by Columbia Gas of Pennsylvania, Inc., acceptable to the Commission as conforming with this Order and the Joint Petition for Partial Settlement, and the Commission’s approval thereof, the purchased gas cost rates established therein become effective for service rendered on and after October 1, 2015.
7. That upon acceptance and approval by the Commission of the tariff supplement and supporting data filed by Columbia Gas of Pennsylvania, Inc., as being consistent with this Order and the Joint Petition for Partial Settlement, the inquiry and investigation at

Docket No. R-2015-2469665 be terminated and the docket marked closed; and that the dockets be marked closed at Docket No. C-2015-2475969 and Docket No. C-2015-2474515.

Date: July 28, 2015 /s/

Mark A. Hoyer

Administrative Law Judge

1. CII includes Glen-Gary Corporation and Knouse Foods Cooperative, Inc. [↑](#footnote-ref-1)
2. *Pa. Pub. Util. Comm’n. v. Columbia Gas of Pennsylvania, Inc.*, Docket No. R-00061355, (Order entered September 19, 2006) (approving settlement that included a $7 million projected USM credit). [↑](#footnote-ref-2)
3. The question of the inclusion of actual USM credits for the twelve months ended September 30, 2014 was deferred to this case because actual credits for the twelve months ended September 30, 2014 would not be included in the three-year average until this PGC case. [↑](#footnote-ref-3)
4. *Pa. Pub. Util. Comm’n v. Philadelphia Electric Company*, 60 Pa. PUC 1, 22 (1985). [↑](#footnote-ref-4)
5. 66 Pa.C.S. §1318. [↑](#footnote-ref-5)
6. Partial Settlement, ¶¶12-31. [↑](#footnote-ref-6)
7. The question of the inclusion of actual USM credits for the twelve months ended September 30, 2014 was deferred to this case because actual credits for the twelve months ended September 30, 2014 would not be included in the three-year average until this PGC case. [↑](#footnote-ref-7)
8. Under the USM, Columbia retains 25% and customers receive 75% of all net proceeds as a PGC credit. The issue in this case concerns the way in which that PGC credit is provided. Columbia’s share of net proceeds was not at issue in this case. (Columbia St. No. 2, p. 5).

   [↑](#footnote-ref-8)
9. CHOICE NGS suppliers provide the gas supply for their customers pursuant to Columbia’s CHOICE average day program. [↑](#footnote-ref-9)
10. Under the terms of Columbia’s USM tariff provisions (Supplement No. 200 to Tariff Gas-Pa. PUC No. 9, Twelfth Revised Page No. 156) the commodity cost of gas supply in an off-system sale transaction is deducted from gross proceeds before the remaining net proceeds are shared between the Company and customers. [↑](#footnote-ref-10)
11. Columbia contends it was improper for the OCA to raise these proposals directed to Columbia for the first time in rebuttal testimony. (OCA St. No. 1-R, p. 13). Because of this timing, Columbia claims it had less than one week to prepare a response. [↑](#footnote-ref-11)
12. No GDS customers currently have elected EBS Option 2, which is an intra month balancing service. (Columbia St. No. 1, p. 29). [↑](#footnote-ref-12)
13. A condition that effectively eliminates AMAs as a USM option will reduce total USM proceeds where AMAs would produce the greatest margins. [↑](#footnote-ref-13)
14. Columbia’s main brief argues that the OCA’s proposals are unnecessary and fundamentally flawed (Columbia M.B., pp. 11-13). As the proponent of these proposals, the OCA has failed to meet its burden of proof. *See Pa. Pub. Util. Comm’n v. Philadelphia Gas Works*, Docket No. R-00061931, 2007 Pa. PUC LEXIS 45 at

    \*165-68 (Sept. 28, 2007); *Pa. Pub. Util. Comm’n v. Metropolitan Edison Company*, Docket No. R-00061366, 2007 Pa. PUC LEXIS 5 at \*111-12 (Jan. 11, 2007). [↑](#footnote-ref-14)
15. I&E M.B. p. 18. [↑](#footnote-ref-15)
16. I&E St. No. 1, pp. 4-5. [↑](#footnote-ref-16)
17. I&E St. No. 1, p. 4. [↑](#footnote-ref-17)
18. *Id.*

    [↑](#footnote-ref-18)
19. I&E St. No. 1, p. 4. [↑](#footnote-ref-19)
20. *Id.* [↑](#footnote-ref-20)
21. *Id.*  [↑](#footnote-ref-21)
22. *Id.*  [↑](#footnote-ref-22)
23. *Id.*  [↑](#footnote-ref-23)
24. Columbia St. No. 2, p. 28. See *also* Columbia Ex. No. 16, p. 4.

    [↑](#footnote-ref-24)
25. Columbia St. No. 2, p. 28. [↑](#footnote-ref-25)
26. *Id.*  [↑](#footnote-ref-26)
27. Columbia St. No. 2, p. 28. *See also* Columbia Ex. No. 16, p. 4. [↑](#footnote-ref-27)
28. Columbia St. No. 2, p. 28. *See also* Columbia Ex. No. 16, p. 4.

    [↑](#footnote-ref-28)
29. *Id.* [↑](#footnote-ref-29)
30. *Id.*  [↑](#footnote-ref-30)
31. Columbia St. No. 2, p. 28. *Accord* I&E St. No. 1-R, p. 7. *See also* Columbia Ex. No. 16, p. 4.

    [↑](#footnote-ref-31)
32. Columbia St. No. 2, p. 29. [↑](#footnote-ref-32)
33. Columbia Ex. No. 16, p. 4. [↑](#footnote-ref-33)
34. *See* I&E St. No. 1, pp. 14-21.

    [↑](#footnote-ref-34)
35. I&E St. No. 1, p. 15. *See also* I&E St. No. 1-R, p. 3. [↑](#footnote-ref-35)
36. I&E St. No. 1, p. 15. *See also* Columbia Ex. No. 16, p. 4.

    [↑](#footnote-ref-36)
37. *Id.* [↑](#footnote-ref-37)
38. *Id.*  [↑](#footnote-ref-38)
39. *Id.*  [↑](#footnote-ref-39)
40. I&E St. No. 1, p. 16.

    [↑](#footnote-ref-40)
41. I&E Statement No. 1, p. 16. [↑](#footnote-ref-41)
42. *Id.* [↑](#footnote-ref-42)
43. I&E St. No. 1, p. 16. *See also* Exhibit 16, Sheet 3 of 4.  [↑](#footnote-ref-43)
44. I&E St. No. 1, pp. 16-17.  [↑](#footnote-ref-44)
45. I&E St. No. 1, p. 17. [↑](#footnote-ref-45)
46. I&E St. No. 1, p. 17. [↑](#footnote-ref-46)
47. I&E St. No. 1, pp. 17-19. [↑](#footnote-ref-47)
48. NGS Parties St. No. 1, p. 3. [↑](#footnote-ref-48)
49. I&E St. No. 1-R, p. 8. *See also* I&E Ex. No. 1-R, Schedule 3. [↑](#footnote-ref-49)
50. *See* I&E St. No. 1-R, pp. 8-9. [↑](#footnote-ref-50)
51. NGS Parties St. No. 1, p. 7. [↑](#footnote-ref-51)
52. I&E St. No. 1-R, p. 11. *See also* I&E Ex. No. 1-R, Schedules 1-2. [↑](#footnote-ref-52)
53. I&E St. No. 1-R, p. 11.

    [↑](#footnote-ref-53)
54. NGS Parties St. No. 1, p. 15.

    [↑](#footnote-ref-54)
55. I&E St. No. 1-R, p. 13. [↑](#footnote-ref-55)
56. *Id.*

    [↑](#footnote-ref-56)
57. *Id.*  [↑](#footnote-ref-57)
58. *Id.*  [↑](#footnote-ref-58)
59. *See* I&E M.B., pp. 15-17. [↑](#footnote-ref-59)
60. OCA M.B., p. 3. [↑](#footnote-ref-60)
61. *Id.* [↑](#footnote-ref-61)
62. *Id.*  [↑](#footnote-ref-62)
63. OCA M.B., p. 5. [↑](#footnote-ref-63)
64. I&E points out that the OCA is correct. Columbia did not propose a modification to the 60 percent/40 percent split in its case in chief. However, Columbia did set forth an alternative USM mechanism in its Exhibit 16, which I&E recommends with only a minor modification. [↑](#footnote-ref-64)
65. OCA M.B., p. 5. [↑](#footnote-ref-65)
66. I&E M.B., pp. 12-15. [↑](#footnote-ref-66)
67. In its definitive filing, the Company proposed to continue using the existing 60 percent/40 percent split. See Columbia St. No. 2-R, p. 6. Columbia witness Krajovic testified that, “Columbia does not take a specific position on the allocation of the customer share of USM credits between the PGCC and the PGDC.” *Id.*  [↑](#footnote-ref-67)
68. PGC sales customers are customers who take gas sales service from the Company, either by affirmatively choosing the Company as the supplier or by not affirmatively choosing a competitive natural gas supplier (NGS). CHOICE customers are residential and smaller general customers who take gas supply service from an NGS under the Company’s retail CHOICE program. Larger customers who choose to take sales service from an NGS tend to do so under the Company’s transportation service option, called General Distribution Service or GDS. These customers may purchase some load balancing from the Company under the Elective Balancing Service (EBS) options. GDS customers are unaffected by the allocation of the USM credits. [↑](#footnote-ref-68)
69. The NGS Parties explain that these numbers are not precise, because they fluctuate. The NGS Parties claim that Mr. White’s testimony clearly identified these as assumptions. [↑](#footnote-ref-69)
70. I&E St. No. 1, p. 4. [↑](#footnote-ref-70)
71. *Id.* [↑](#footnote-ref-71)
72. *Id.*  [↑](#footnote-ref-72)
73. *Id.*  [↑](#footnote-ref-73)
74. *Id.*  [↑](#footnote-ref-74)
75. CHOICE customers are residential and small commercial customers served under Columbia’s RDS (Residential Distribution Service) and SCD (Small Commercial Distribution) rate schedules. These customers purchase their gas supply from Natural Gas Suppliers (NGSs), and are subject to the PGDC less a credit for capacity assigned to their NGS. Columbia maintains firm capacity to serve these customers. The term CHOICE does not include larger volume transportation service customers. (Columbia St. 2SR, p. 4; Columbia Ex. No. 5, pp. 10, 21). [↑](#footnote-ref-75)
76. I&E St. No. 1, p. 15. *See also* I&E St. No. 1-R, p. 3. [↑](#footnote-ref-76)
77. I&E St. No. 1, p. 15. *See also* Columbia Ex. No. 16, p. 4. [↑](#footnote-ref-77)
78. *Id.* [↑](#footnote-ref-78)
79. *Id.*  [↑](#footnote-ref-79)
80. *Id.*  [↑](#footnote-ref-80)
81. I&E St. No. 1, p. 16. [↑](#footnote-ref-81)
82. NGS Parties St. No. 1, p. 3. [↑](#footnote-ref-82)
83. *Id.* [↑](#footnote-ref-83)
84. *Id.*  [↑](#footnote-ref-84)
85. *Id.*  [↑](#footnote-ref-85)
86. Columbia St. No. 2, p. 28. *Accord* I&E St. No. 1-R, p. 7. *See also* Columbia Ex. No. 16, p. 4.  [↑](#footnote-ref-86)
87. Columbia contends it was improper for the OCA to raise these proposals directed to Columbia for the first time in rebuttal testimony. (OCA St. No. 1-R, p. 13). Because of this timing, Columbia claims it had less than one week to prepare a response. [↑](#footnote-ref-87)
88. Columbia contends that the NGS Parties incorrectly use the term “peaking assets” to refer to “pipeline and storage assets that allow Columbia to serve PGC customers, balance the system and otherwise maintain reliability during periods of high gas usage.” (NGS Parties St. No. 1, p. 4). According to Columbia, it uses all retained pipeline assets throughout the year, not just during periods of high usage, to balance the system and maintain reliability for both CHOICE and sales customers. (Columbia St. No. 1-R, p. 2). [↑](#footnote-ref-88)
89. According to Columbia, NGSs are assigned TCO and Gulf capacity in order to make participation in the CHOICE program more convenient for NGSs. [↑](#footnote-ref-89)
90. The published Price to Compare accounts for the CHOICE credit so that CHOICE customers are not disadvantaged with respect to the capacity costs that NGSs include in the charge to their customers. (Columbia St. No. 2-R, p. 12 at 8-11). [↑](#footnote-ref-90)
91. Although Columbia has elected to assign NGSs TCO and Gulf capacity to make participation in the CHOICE program easier for NGSs, Sections 4.10 and 4.10.1.1 of Columbia’s tariff authorizes it to assign a pro rata share of all FT capacity to CHOICE NGSs. (Columbia St. No. 1-R, p. 8). [↑](#footnote-ref-91)
92. The Capacity Assignment Factor credit deducts the cost of capacity assigned to NGSs from CHOICE customers’ PGDC rate. (Columbia St. No. 2-R, p. 12). [↑](#footnote-ref-92)
93. Columbia has the Supplier of Last Resort responsibility to hold sufficient capacity to serve all firm customers regardless of whether they receive CHOICE or sales service. 66 Pa.C.S. § 2207(a). [↑](#footnote-ref-93)
94. Under the average day program, each CHOICE NGS must deliver every day of the year an amount of gas equal to 1/365th of the NGS customer group’s annual normalized consumption. (Columbia St. No. 2, p. 8). [↑](#footnote-ref-94)