**BEFORE THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission : R-2015-2468056

Office of Consumer Advocate : C-2015-2473682

Office of Small Business Advocate : C-2015-2477816

Pennsylvania State University : C-2015-2476623

Columbia Industrial Intervenors : C-2015-2477120

G. Thomas Smeltzer : C-2015-2484454

:

v. :

:

Columbia Gas of Pennsylvania, Inc. :

**RECOMMENDED DECISION**

Before

Mary D. Long

Administrative Law Judge

**TABLE OF CONTENTS**

I. HISTORY OF THE PROCEEDING 1

II. DESCRIPTION AND TERMS OF THE SETTLEMENT 2

A. Revenue Requirement (¶¶ 47-57) 4

B. Revenue Allocation and Rate Design (¶¶ 58-63) 7

C. Universal Service and Conservation (¶¶ 64-69) 7

D. Programs to Expand the Availability of Gas Service (¶ 70) 8

E. Natural Gas Supplier Issues (¶¶ 71-80) 9

F. Other (¶¶ 81-84) 11

G. Reserved Issues for Litigation 12

H. Snowshoe Lateral Settlement 12

III. FINDINGS OF FACT 15

IV. DISCUSSION. 16

A. Revenue Requirement (¶¶ 47-57) 17

1. Columbia’s Position 17

a. Distribution System Improvement Charge (DSIC) 20

b. Tax Repair Allowance and Mixed Service

Cost Normalization Treatment 21

c. Amortizations 22

d. Other Post-Employment Benefits (OPEB) Expense 23

e. Future Debt Issuances 24

2. BIE’s Position 24

3. Other Parties’ Positions 27

B. Revenue Allocation and Rate Design (¶¶ 58-63) 28

1. Columbia’s Position 28

a. Revenue Allocation 28

b. Rate Design 29

i. Residential Rate Design 29

ii. Commercial and Industrial Rate Design 30

iii. Other Charges and Riders 31

iv. Conclusions as to Rate Design 32

2. BIE’s Position 33

3. OCA’s Position 33

4. CAUSE-PA’s Position 35

5. OSBA’s Position 35

6. CII’s Position. 37

7. The NGS Parties’ Position 37

8. RESA’s Position 38

C. Universal Service and Conservation (¶¶ 64-69) 39

1. Columbia’s Position 39

2. BIE’s Position 41

3. OCA and CAUSE-PA’s Position 41

D. Programs to Expand the Availability of Gas Service (¶ 70) 43

1. Columbia’s Position 43

2. OCA’s Position 44

3. OSBA’s Position 45

E. Natural Gas Supplier Issues (¶¶ 71-80) 45

1. Columbia’s Position 45

2. BIE’s Position 48

3. NGS Parties’ Position 48

F. Other Issues – Restoration Costs and Leak Repair (¶¶ 81-84) 49

1. Columbia’s Position 49

2. BIE’s Position 50

G. Recommendation…….. 51

H. Issue Reserved for Litigation: The Hardship Fund 53

V. CONCLUSIONS OF LAW 59

VI. ORDER 59

I. HISTORY OF THE PROCEEDING

On March 19, 2015, Columbia Gas of Pennsylvania, Inc. (Columbia or Company) filed Supplement No. 226 to Tariff Gas Pa. P.U.C. No. 9 to become effective May 18, 2015, containing proposed changes in rates, rules, and regulations calculated to produce $46.2 million (8.63%) in additional annual revenues.

On April 9, 2015, the Commission issued an Order suspending Columbia’s filing until December 18, 2015, unless permitted by Commission Order to become effective at an earlier date.

The Commission’s Bureau of Investigation and Enforcement (BIE) entered its appearance in this proceeding. The Office of Consumer Advocate (OCA) the Office of Small Business Advocate (OSBA) and Columbia Industrial Intervenors (CII)[[1]](#footnote-1) and the Pennsylvania State University (PSU) filed complaints. The OCA complaint is filed at Docket No. C‑2015-2473682. The OSBA complaint is filed at Docket No. C-2015-2477816. CII’s complaint is filed at Docket No. C-2015-2477120. PSU’s complaint is filed at Docket C-2015-2476623. All of the complaints are consolidated in this rate proceeding for hearing and disposition. An individual, G. Thomas Smeltzer also filed a complaint at Docket C-2015-2484454.

Petitions to intervene were filed by the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA), joint petitioners Interstate Gas Supply, Inc. d/b/a IGS Energy, Shipley Choice LLC d/b/a Shipley Energy and Dominion Retail, Inc. d/b/a Dominion Energy Solutions (collectively, NGS Parties). The Retail Energy Supply Association (RESA) also filed a petition to intervene.

A prehearing conference was held on Thursday, April 16, 2015. Counsel for Columbia, BIE, OCA, OSBA, CII, PSU, CAUSE-PA, NGS Parties, and RESA attended the conference. The parties agreed to modifications to the discovery rules and a litigation schedule. The petitions to intervene were granted.

The parties engaged in discovery and filed written testimony. By email dated July 31, 2015, counsel for Columbia informed me that the active parties had reached an accord in principle on most of the issues raised in the litigation. The first day of hearing convened on August 4, 2015, as scheduled. The parties agreed to waive cross-examination of all of the witnesses except for those who had testimony related to PSU’s amended complaint concerning the Snowshoe Lateral.

The second day of hearing convened on August 10, 2015. The parties informed me that PSU and Columbia had agreed to defer litigation of the issues related to the Snowshoe Lateral and that neither party would be introducing written testimony or cross-examining witnesses on that subject. Of the remaining issues, only one issue concerning the disposition of the Hardship Fund could not be resolved. The written testimony of the remaining witnesses which did not involve the subject of the Snowshoe Lateral was admitted into the record and the parties waived cross-examination of those witnesses.

On August 27, 2015, Columbia, BIE, OCA, OSBA, CII, the NGS Parties, CAUSE-PA and RESA filed a Joint Petition for Partial Settlement. This settlement was also served on the lone individual complainant, G. Thomas Smeltzer. By interim order dated August 28, 2015, any party wishing to object to the settlement was directed to file those objections on or before September 8, 2015. No objections were received.

II. DESCRIPTION AND TERMS OF THE SETTLEMENT

The 24-page Joint Petition for Partial Settlement (Settlement) includes 11 appendices attached as Appendix A through and including Appendix K. Appendix A is a one-page table of the proposed revenue increase by rate class. Appendix B is an 8-page schedule of annual revenues by rate schedule based on the revenue requirement for the 12 months ending December 31, 2016. Appendix C is Columbia’s Supplement to Tariff Gas – Pa. P.U.C. No. 9, which includes rate increases and changes to the existing tariff.[[2]](#footnote-2) Appendices D through and including Appendix K are the Joint Petitioners’ Statements in Support of the Settlement.

On August 27, 2015, Columbia and PSU also filed a Joint Petition for Settlement Removing PSU Amended Complaint Issues from Base Rate Proceedings to a Separate Proceeding to be Consolidated with a Future Columbia Application to Abandon the Snowshoe Lateral in part and Service to Certain Customers (Snowshoe Settlement). This settlement was amended on September 15, 2015 to extend the date for Columbia to file an abandonment petition.

In the Settlement, the Joint Petitioners have proposed that rates be designed to produce an additional $28 million in annual base rate operating revenues instead of the Company’s filed increase request of approximately $46.2 million. Upon approval of the Settlement, Columbia will receive an increase in existing base rate operating revenues of approximately 5.18%, instead of the 8.63% increase proposed in Columbia’s filing. A typical residential sales customer using 73 therms of gas per month will see an increase in their monthly bill from $94.28 to $98.42, or by 4.4%, instead of the monthly increase to $ 101.94, or 8.1%, that was originally proposed in the filing.

According to the Joint Petitioners, the terms of this Settlement reflect a carefully balanced compromise of the interests of all the Joint Petitioners in this proceeding. The Joint Petitioners unanimously agree that the Settlement, which resolves all but the one issue regarding the Hardship Fund/USP Rider, is in the public interest. The Joint Petitioners respectfully request that the 2015 Base Rate Filing, including those tariff changes included in Supplement No. 226 and specifically identified in Appendix C as corrected, be approved subject to the terms and conditions set forth in the Settlement.

A. Revenue Requirement (¶¶ 47-57)

Rates will be designed to produce an increase in operating revenues of $28 million based upon residential throughput level of 34,500,000 Dth and throughput levels for all other classes as proposed by the Company for the twelve months ended December 31, 2016.

As of the effective date of rates in this proceeding, December 18, 2015, Columbia will be eligible to include plant additions in the distribution system improvement charge (DSIC), once eligible account balances exceed the levels projected by Columbia at December 31, 2016. The foregoing provision is included solely for purposes of calculating the DSIC, and is not determinative for future ratemaking purposes of the projected additions to be included in rate base in a fully projected future test year (FPFTY) filing. For purposes of calculating its DSIC, Columbia shall use the equity return rate for gas utilities contained in the Commission’s most recent Quarterly Report on the Earnings of Jurisdictional Utilities and shall update the equity return rate each quarter consistent with any changes to the equity return rate for gas utilities contained in the most recent Quarterly Earnings Report, consistent with 66 Pa.C.S. § 1357(b)(3), until such time as the DSIC is reset pursuant to the provisions of 66 Pa.C.S. § 1358(b)(1).

Columbia will continue to use normalization accounting with respect to the benefits of the tax repairs deduction. In addition, with regard to the $37.4 million tax refund previously received by Columbia that is attributable to the change in method for the repairs deduction, commencing with the effective date of rates in this proceeding, the remaining amount of $681,571 shall be amortized over 12 months commencing January 1, 2016. The amortization shall continue to be without interest and without a deduction of the unamortized balance from rate base. Changes in the refund amount, above or below the $37.4 million, shall be reflected in accumulated deferred income taxes to be created under the normalization method of accounting. Columbia also will be permitted to continue to use normalization accounting with respect to the tax treatment of Section 263A mixed service costs.

Columbia will amortize the following expenditures:

(i) NIFIT[[3]](#footnote-3) – Amortization of non-Company labor start-up costs of the new financial software of $1,260,764, over a three-year period commencing with the effective date of rates in this proceeding.

(ii) Blackhawk Storage – Continuation of the previously-approved 24.5 year amortization of the total amount of $398,865 to be included on books and in rate base as a regulatory asset to reflect the total original cost that began on October 28, 2008.

(iii) Tax Credit – Amortization of the unamortized portion of the $37,487,634 total tax credit of $681,571 over 12 months commencing January 1, 2016.

(iv) Corporate Services OPEB-Related Costs – Continuation of the previously-approved amortization of the regulatory asset of $903,131 associated with the transition of NiSource Corporate Services Company from a cash to accrual basis for OPEBs, over a ten-year period that began July 1, 2013.

(v) Columbia OPEB Deferral Passback – Rates reflect a 12 month amortization of the estimated deferred OPEB balance of $(114,640) commencing January 1, 2016.

As established in the settlement of Columbia’s base rate proceeding at R-2012-2321748, Columbia will be permitted to continue to defer the difference between the annual other post-employment benefits (OPEB) expense calculated pursuant to Financial Accounting Standards Board (FASB) Accounting Standards Codification (ASC) 715, Compensation – Retirement Benefits (SFAS No. 106) and the annual OPEB expense allowance in rates of $0. Only those amounts attributable to operation and maintenance would be deferred and recognized as a regulatory asset or liability. To the extent the cumulative balance recorded reflects a regulatory asset, such amount will be collected from customers in the next rate proceeding over a period to be determined in that rate proceeding. To the extent the cumulative balance recorded reflects a regulatory liability, there will be no amortization of the (non-cash) negative expense, and the cumulative balance will continue to be maintained.

Commencing with the effective date of rates, Columbia will deposit amounts in the OPEB trusts when the cumulative gross annual accruals calculated by its actuary pursuant to ASC 715 are greater than $0. If annual amounts deposited into OPEB trusts, pursuant to this Settlement, exceed allowable income tax deduction limits, any income taxes paid will be recorded as negative deferred income taxes, to be added to rate base in future proceedings.

On or before April 1, 2016, Columbia will provide the Commission’s Bureau of Technical Utility Services (TUS), BIE, OCA and OSBA an update to Columbia Exhibit No. 108, Schedule 1, which will include actual capital expenditures, plant additions, and retirements by month for the 12 months ending December 31, 2015. On or before April 1, 2017, Columbia will update Exhibit No. 108, Schedule 1 filed in this proceeding for the 12 months ending December 31, 2016. In Columbia’s next base rate proceeding, the Company will prepare a comparison of its actual revenue, expenses and rate base additions for the twelve months ended December 31, 2016. However, it is recognized by the Joint Petitioners that this is a black box settlement that is a compromise of Joint Petitioners’ positions on various issues.

For all future debt issuances during the twelve month periods ending December 31, 2015 and December 31, 2016, Columbia will provide to TUS, BIE, OCA and OSBA, within 60 days of issuance, all loan documentation filed with the Commission in compliance with orders in filings submitted by Columbia pursuant to Chapter 19 of the Pennsylvania Public Utility Code. In addition, Columbia will preserve and provide to BIE, OCA and OSBA as a part of its next base rate case the following: (1) all documentation supporting debt issued between this base rate case and the next base rate case; and (2) the Treasury yield as reported in the Federal Reserve Statistical Release, H.15 Selected Interest Rates and the yield spread as reported by Reuters Corporate spreads as of the dates of each issuance.

Tariff rates are to go into effect on December 18, 2015.

B. Revenue Allocation and Rate Design. (¶¶ 58-63)

The Joint Petitioners agree that the residential customer charge will remain at the current $16.75/month. Small General Service customer charges will remain at the current $21.25/month (≤6440 therms) and $48.00/month (>6440 therms). Revenue allocation to the classes is set forth in Appendix A of the Settlement. Rate design for all classes shall be as set forth in Appendix B of the Settlement. Revenue allocation and rate design reflect a compromise and do not endorse any particular cost of service study.

Columbia will agree to withdraw its Choice Administrative Charge (CAC) proposal in this proceeding. Further, Columbia will not propose a CAC for a period of two base rate cases, or five years, whichever occurs first.

Columbia’s Gas Procurement Charge (GPC) rate shall continue at the current rate of $0.00695/therm. The Joint Petitioners further agree not to propose a change to Columbia’s GPC rate for a period of two base rate cases, or five years, whichever occurs first. Provided, however, that if any non-party to this settlement, during this stayout period, proposes changes to the GPC, all parties to this agreement reserve the right to propose either a CAC or other changes to the GPC in rebuttal testimony.

C. Universal Service and Conservation (¶¶ 64-69)

Columbia’s proposals to: (a) increase the Emergency Repair Program (ERP) annual budget to $600,000; (b) raise the eligibility guidelines for ERP to 200% of the Federal Poverty Level (FPL); and (c) recover ERP program costs through Rider Universal Service Program (Rider USP), are approved. The portion of ERP funds available for individuals between 151% and 200% of the FPL will be limited to 10% of the total ERP budget.

The Joint Petitioners also agreed to Columbia’s proposal to recover third party costs to administer its Customer Assistance Program (CAP) through its Rider USP. Columbia will establish a Universal Service Advisory Committee, and will invite participants of interested parties, community partners, and representatives of other public utilities in the region. Columbia agrees to hold two Universal Service Advisory Committee meetings per year.

Columbia also agreed to track all cancelled or denied referrals by reason for the ERP and the Low Income Usage Reduction Program (LIURP). Columbia will report the data to the Universal Service Advisory Committee. Columbia will continue its efforts to coordinate between low income and energy conservation programs, while recognizing participant qualification differences among the programs and the intent of the programs to address different needs among customers served under Customer Assistance Referral and Evaluation Services, Customer Assistance Program, Low Income Usage Reduction Program and ERP. In addition, Columbia will reach out to the Pennsylvania Department of Community and Economic Development (DCED) and to other public utilities within its service territory to explore ways to further enhance Columbia’s coordination of energy efficiency programming. Columbia will inform the Universal Service Advisory Committee of the results of these efforts, and will provide an opportunity for Committee members to offer feedback and recommendations for improvement.

Finally, Columbia will continue its extensive low income customer outreach efforts, and will continue to consult with other entities that assist low income customers to identify additional, cost-effective outreach efforts. Columbia will explore ways to engage in joint advertising efforts with other public utilities within Columbia’s service territory to promote the availability of universal service program assistance. Columbia will inform the Universal Service Advisory Committee of the results of these efforts, and will provide an opportunity for Committee members to offer feedback and recommendations for improvement.

D. Programs to Expand the Availability of Gas Service (¶ 70)

The Joint Petitioners agreed to the following programs to expand availability of natural gas service in Columbia’s service territory: (a) footage allowance of 150 feet of main per residential applicant in normal situations; (b) allowance of 150 feet of Company-owned service line in normal situations; and (c) up to $1,000.00 reimbursement per residential conversion customer toward the cost of house piping for projects that generate a net positive present value greater than $1,000.00 per customer. Columbia agrees to provide the following information related to Columbia’s service expansion proposals:

a. Main and service investment per project;

b. Net Present Value (NPV) model results for each project, inclusive of the main and service allowances;

c. Required New Area Service (NAS) deposit by project;

d. House piping reimbursement by project;

e. Number of customers connected by each project and number of subsequent connections;

f. Annual non-gas revenues received by project, separated into base rate and NAS revenues (principle and interest stated separately);

g. Annual usage by project;

h. Average investment cost per customer by project; and

i. Number of new service requests for projects in which the NPV model is run, but the project does not proceed to construction.

E. Natural Gas Supplier Issues (¶¶ 71-80)

The current penalty for failure to deliver in accordance with the Choice Daily Delivery requirement on non-Operational Flow Order days is reduced from $23.30 per Dth, to $20.80 per Dth. The current penalty for failure to deliver in accordance with the Choice Daily Delivery requirement on Operational Flow Order (OFO) days is reduced from $46.60 per Dth to $41.60 per Dth.

In addition, Columbia will develop and implement a notice in its Aviator system to notify an NGS if its scheduled nomination for its CHOICE deliveries does not comply with its daily delivery requirement in 2016. While the NGS will be able to proceed with its scheduled nomination, the NGS will need to affirmatively elect to proceed before submitting the nomination.

The Joint Petitioners further agreed to modify the current Elective Balancing Service (EBS) under-deliveries and over-deliveries tariff language to the following:

a) Consumption in Excess of Deliveries (under-deliveries):

The price for such imbalance gas shall be sold by the Company at the higher of:

i. a price equal to 120% of the average of the Daily Index prices for each day of the applicable month as reported in the PLATTS GAS DAILY publication, in the Daily price survey section under the heading “Appalachia” for “Columbia Gas, App.” Midpoint, plus the 100% load factor TCO FTS costs (including demand, commodity and retainage), or

ii. the highest commodity cost of purchases by the Company during the calendar month, including the delivered cost of purchases at the city gate, if any excluding any purchases under fixed price commodity contracts for which the price was determined more than thirty days before the beginning of the calendar month.

In addition, applicable taxes and Company transportation shall apply. Furthermore, if, in any month, Company incurs other charges, including gas costs, penalty charges or cash-outs caused by excess monthly under deliveries, the Customer or NGS shall be charged its pro rata share of such charges.

b) Deliveries in Excess of Consumption (over-deliveries):

The price for such imbalance gas shall be purchased by the Company at the lower of:

i. a price shall be equal to 80% of the average of the Daily Index prices for each day of the applicable month as reported in the PLATTS GAS DAILY publication, in the Daily price survey section under the heading “Appalachia” for “Columbia Gas, App.” Midpoint, or

ii. the lowest commodity cost of purchases by the Company during the calendar month, including the delivered cost of purchases at the City Gate, if any excluding any purchases under fixed price commodity contracts for which the price was determined more than thirty (30) days before the beginning of the calendar month.

In addition, if, in any month, Company incurs other charges, including gas costs, penalty charges or cash-outs caused by excess monthly over deliveries, the Customer or NGS shall be charged its pro rata share of such charges.

The Joint Petitioners also agreed to other rules related to natural gas suppliers NGSs. The current OFO/Operational Matching Order (OMO) penalty is reduced from $23.30 per Dth, to $20.80 per Dth. Columbia will allow Priority 1 and non-Priority 1 customers to be in the same nomination group within the same market area. Columbia shall continue its current practice that allows General Distribution Service (GDS) Customers and/or GDS NGS’ to transfer gas across contiguous, non-constrained market areas. Columbia will change the deadline for bank balance transfers from the first business day following the last day of the calendar month in which the trade is to apply, to the third business day following the last day of the calendar month in which the trade is to apply. Columbia will update the Customer Information List before the start of the effective month.

Finally, Columbia will review its training and processes for managing instances in which it becomes aware of discrepancies between a name on a customer account and a different customer name provided to the Company, with the intent to minimize any potential delay in switching a customer to an NGS, recognizing the Company’s authority to require security deposits in appropriate circumstances. The Company shall discuss the results of its review with the NGS Parties.

F. Other (¶¶ 81-84)

Columbia will continue its efforts to reduce restoration costs, through efforts including, but not limited to, coordinating pipe replacement projects with other street projects, and replacing pipe using trenchless construction techniques where technically and economically feasible. Columbia agrees to meet with the Commission’s Gas Safety Division, and any other interested parties, within 30 days of the final order in this proceeding, to discuss strategies that seek to reduce construction and restoration costs associated with all pipeline replacement projects.

In addition to the meeting proposed above, prior to October 31, 2015, Columbia will meet with the Commission’s Gas Safety Division and other parties to identify increasing state, county and municipal requirements that exceed the Pennsylvania Department of Transportation restoration standards and add to the cost of pipeline replacements in an effort to develop coordinated potential responses to such requirements. In furtherance of such meetings, Columbia will discuss the results of the audits of the restoration costs for its 10 largest projects that were provided in Exhibit MJD – 1R in the prior year, identifying costs incurred in excess of the Pennsylvania Department of Transportation restoration standards for paving, sidewalk repair and permitting fees.

Columbia will continue its efforts to reduce its number of Type 2 leaks, pursuant to its current target of repairing Type 2 leaks within 12 months, and not to exceed 15 months, and will also continue its efforts to reduce the backlog of Type 3 leaks.

G. Reserved Issues for Litigation

Joint Petitioners have reserved for litigation the issue of whether Columbia should end immediately its recovery of $375,000 through its Rider USP that is used as part of the funding of its Hardship Fund. This issue is discussed below.

H. Snowshoe Lateral Settlement

Columbia and PSU filed a separate petition for settlement in which the parties agreed to sever the issues related to Columbia’s proposed abandonment of a portion of pipeline that serves State College known as the Snowshoe Lateral. Columbia agrees to file, no later than October 30, 2015, an application for abandonment of service for certain customers, Columbia and Penn State shall agree to jointly request consolidation of the application for abandonment with the separated proceeding (“consolidated proceeding”). Columbia confirms that as the applicant for abandonment, it shall bear the burden to demonstrate that the removal from service of the center portion of the Snowshoe Lateral, the abandonment of service, and its April 2015 acquisition of capacity from Dominion Transmission Inc. is in the public interest.

The proposed settlement also includes service-related provisions in addition to the severance of the issues raised in PSU’s amended complaint:

35. Columbia agreed that, absent an emergency or a directive to Columbia by either the Federal Pipeline and Hazardous Materials Safety Administration or the Pennsylvania Public Utility Commission’s Gas Safety Division to shut down, cease to operate temporarily or permanently or reduce pressure on the Snowshoe Lateral or any portion thereof, it shall continue to operate the Snowshoe Lateral pending a decision in the consolidated proceeding. Columbia will not prevent General Distribution Service (“GDS”) customers from scheduling deliveries to the Columbia Pipeline Group (“TCO”) Market Area 36 pending a final decision in the consolidated proceeding. During the period explained below permitting deliveries, Columbia shall allow Penn State to deliver 3000 Dth Maximum Daily Quantity (“MDQ”) on TCO with the ability to request annually in writing an adjustment with a written response by Columbia. If the Commission authorizes abandonment of service to certain customers and thus any part of the Snowshoe Lateral that would prevent deliveries of gas from TCO to Penn State, Columbia agrees that it will not permanently sever the connection between the Snowshoe Point of Delivery (“POD”) and the State College market until the longer of June 30, 2017 or until it has given notice to Columbia’s GDS customers, including Penn State, that is at least six (6) months prior to the next June 30 (the “June 30 Notice Date”), to be effective one year after the June 30 Notice Date. (For avoidance of doubt, if Columbia were to receive approval to abandon service to certain customers on December 31, 2015, Columbia could provide notice on December 31, 2015 that it intends to sever the connection to the Snowshoe POD effective July 1, 2017). If a final non-appealable order concludes that service to certain customers may not be abandoned and the center portion of the Snowshoe Lateral must remain in service, then Columbia shall rebuild the Snowshoe Lateral. Penn State will support inclusion of such costs in Columbia’s rate base.

36. If Columbia receives authority to abandon service to certain customers on any part of the Snowshoe Lateral that would prevent deliveries of gas from TCO to the State College market, Columbia will not sever the connection between the Snowshoe POD and the State College market until Columbia confirms and commits to Penn State that Columbia can and will permit Penn State to deliver 100% of Penn State’s load at its Texas Eastern Transmission Corporation (“TETCO”) POD. To fulfill this commitment, Columbia agrees to make improvements to the TETCO POD in order to accommodate the provision of service to the State College market, including Penn State’s load. Such improvements will be paid by Columbia, and Penn State will support inclusion of such costs in Columbia’s rate base. Such improvements will be constructed and operational at or before the time the Snowshoe line is severed if approved by the Commission. Any upgrade installation shall take place during the months of April through October. During the period of construction Columbia will balance PSU’s scheduled deliveries on TETCO pursuant to the terms of its Rider EBS – Elective Balancing Service using its portfolio of capacity assets.

37. Penn State agrees not to oppose the revenue settlement and allocation and other terms and conditions of settlement in the base rate proceeding at Docket No. R-2015-2468056 with all or a majority of parties, and Columbia agrees such non-opposition shall not be used as a defense against or waiver of any claims in Penn State’s Amended Complaint. However, PSU agrees that it will not propose in the consolidated proceeding any claims that Columbia’s settled rates or other terms of the base rate settlement should be changed or reduced. All base rate claims by PSU are withdrawn.

During the course of the litigation of the base rate proceeding, no other party raised any issues related to the Snowshoe Lateral. Similarly, no other party took a position on the agreement between Columbia and PSU to defer resolution of the Snowshoe Lateral dispute until Columbia files a formal abandonment application with the Commission.

Columbia and PSU agree that the issues raised in PSU’s Amended Complaint and the issue of abandonment of the Snowshoe Lateral in part and future abandonment of service to certain customers shall be separated from the base rate proceeding at Docket No. R-2015-2468056 and continued in a separate complaint docket for separate hearing and decision (the

“separated proceeding”).[[4]](#footnote-4) All testimony and exhibits concerning the Snowshoe Lateral shall be excluded from the base rate proceeding at Docket No. R-2015-2468056.[[5]](#footnote-5) PSU agreed to the withdrawal of all base rate claims made in its original complaint contingent upon the Commission’s approval of the Snowshoe Lateral Settlement.[[6]](#footnote-6)

III. FINDINGS OF FACT

1. Columbia’s Hardship Fund provides financial assistance to qualified low-income residential customers. (Columbia St. No. 112-RJ, p. 2.)
2. Company shareholders, employees, and customers are the primary contributors to Columbia’s Hardship Fund, and Columbia contributes a dollar for dollar match for voluntary ratepayer contributions. In addition to these contributions, Columbia conducts fundraising efforts to increase ratepayer contributions up to $150,000. (USECP Order, p. 36.)
3. As a result of the settlement of Columbia’s 2012 base rate case, Columbia recovers $375,000 in Hardship Fund funding through Rider USP. (Columbia St. No. 112-RJ, pp. 1-3.)
4. Rider USP is paid for by all non-CAP residential customers. (Columbia St. No. 112-RJ, p. 1.)
5. In the Settlement of Columbia’s 2012 base rate proceeding, at Docket No. R-2012-2321748, all parties to the Settlement agreed to cancellation of a previous Commission-approved contract with Citizens Energy, and to replace the Hardship Fund proceeds from that contract through a $375,000 increase to Rider USP, with all of the funds dedicated to the Hardship Fund. (Columbia St. No. 112-RJ, pp. 1, 3.)
6. The Commission issued its USECP Order on July 8, 2015. Columbia Gas of Pennsylvania, Inc. Universal Service and Energy Conservation Plan for 2015-2018 Submitted in Compliance with 52 Pa.Code § 62.4, Docket No. M-2014-2424462, Final Order (July 8, 2015).
7. Columbia needs time to increase fundraising efforts and to fully develop additional voluntary sources of funding that can be in place in the event that the entire $375,000 currently recovered through Rider USP is ended. (Columbia St. No. 112-RJ, pp. 3-4.)
8. Columbia intends to immediately examine additional fundraising efforts to seek funding for the Hardship Fund. (Columbia St. No. 112-RJ, p. 4.)
9. Columbia has a substantial number of households in its service territory that are considered below a self-sufficiency standard. (OCA St. 4, pp. 30-31.)
10. Many customers who access Hardship Fund assistance do not qualify for LIHEAP or are unable to obtain LIHEAP without the additional assistance of Hardship Funds. (CAUSE-PA St. 1-SR, pp 9-10.)
11. Columbia continues to experience an increase in fuel fund utilization. The immediate removal of the $375,000 contribution to the Hardship Fund from Rider USP could negatively impact customers who rely on the services provided by the Hardship Fund. (Columbia St. No. 112-RJ, p. 3; OCA St. No. 4-S, p. 11; CAUSE-PA St.1-SR, p. 10.)

IV. DISCUSSION

The Commission encourages parties in contested on-the-record proceedings to settle cases.[[7]](#footnote-7) Settlements eliminate the time, effort and expense of litigating a matter to its ultimate conclusion, which may entail review of the Commission’s decision by the appellate courts of Pennsylvania. Such savings benefit not only the individual parties, but also the Commission and all ratepayers of a utility, who otherwise may have to bear the financial burden such litigation necessarily entails.

By definition, a “settlement” reflects a compromise of the parties’ positions, which arguably fosters and promotes the public interest. When parties in a proceeding reach a settlement, the principal issue for Commission consideration is whether the agreement reached suits the public interest.[[8]](#footnote-8) In their supporting statements, Columbia, BIE, OCA, OSBA, CII, CAUSE-PA, and the NGS Parties conclude, after extensive discovery, the filing of testimony, and discussion, that this Settlement resolves all contested issues in this case and unanimously agree that the Settlement is in the public interest. The Joint Petitioners claim that acceptance of the Settlement will avoid the necessity of further administrative and possibly appellate proceedings regarding the settled issues at what would have been a substantial cost to the Joint Petitioners and Columbia’s customers.

All of the active parties filed statements in support of the partial settlement, but not every party took a position on every issue or addressed every issue in equal detail. Generally the Joint Petitioners agreed that the Settlement was in the interests of the stakeholders whom they represent and represented a reasonable outcome of their various disputes.

A. Revenue Requirement (¶¶ 47-57)

1. Columbia’s Position

The Settlement provides for rates to be designed to produce an increase in operating revenues of $28 million based upon a residential throughput level of 34,500,000 Dth and throughput levels for all other classes as proposed by the Company for the twelve months ended December 31, 2016. The $28 million increase in tariff rates will go into effect on December 18, 2015, which is the effective date of rates under the Commission’s April 9, 2015

suspension order. The Settlement increase is approximately 60% of Columbia’s original request of $46.2 million. (Columbia Exhibit 102, Sch. 3, p. 3.) In Columbia’s view, the $28 million increase, although less than that requested by the Company, will enable the Company to continue to provide safe and reliable service to its customers.

As explained by Mark R. Kempic, President of Columbia, one primary reason in support of the revenue increase is to provide the Company with an opportunity to earn a return on the significant capital investments made to its distribution system. (Columbia Statement No. 1, pp. 5-7.) Columbia has made, and continues to make, unprecedented and substantial capital investments in its system. (Columbia Statement No. 1, pp. 6-9.) Indeed, since Columbia started its accelerated pipeline replacement program in 2007, Columbia has replaced nearly 647 miles of cast iron and bare steel (CIBS) pipe. (Columbia Statement No. 1, p. 8.) In 2014 alone, Columbia replaced over 78 miles of CIBS pipe. (Columbia Statement No. 1, p. 8.) Columbia plans to maintain or increase its capital expenditures in the 2014 to 2018 timeframe, with a planned spending program ranging between $145 and $170 million budgeted annually for line replacement over the 5-year period. (Columbia Statement No. 15, p. 17; Standard Data request GAS-ROR-014.) As detailed in the direct testimony of Columbia witness Michael J. Davidson, Columbia’s capital budgets for age and condition replacement of CIBS are $148 million in 2014, $145 million in 2015 and $147 million in 2016. (Columbia Statement No. 15, pp. 17-18.)

In addition to capital costs associated with Columbia’s accelerated pipeline replacement effort, the Company is incurring operating and maintenance costs associated with enhancing pipeline safety on its system. These costs further contribute to the level of the revenue increase in this case. (Columbia Statement No. 15, pp. 32-44.) These initiatives include: a formal employee training and qualification program to address the Distribution Integrity Management Program (DIMP) and system risks associated with human error in the field; construction and operation of a new training center that will provide the facilities needed to conduct classroom and enhanced hands on employee training; the addition of four frontline leader positions to manage the current and anticipated entry of new employees to the Company’s workforce; the addition of four damage prevention coordinators; and a program to address the risk of field assembled riser failures. (Columbia Statement No. 15, pp. 32-37.)

In order to provide ongoing information concerning Columbia’s capital investments, Columbia has agreed that on or before April 1, 2016, it will provide the Commission’s Bureau of Technical Utility Services (TUS), BIE, OCA and OSBA with an update to Columbia Exhibit No. 108, Schedule 1, which will include actual capital expenditures, plant additions, and retirements by month for the twelve months ending December 31, 2015. On or before April 1, 2017, Columbia will update Exhibit No. 108, Schedule 1 for the twelve months ending December 31, 2016. Also, as part of the Company’s next base rate proceeding, the Company will prepare a comparison of its actual revenue, expenses and rate base additions for the twelve months ended December 31, 2016. However, and as described more fully below, it is recognized by the Joint Petitioners that this is a black box settlement that is a compromise of Joint Petitioners’ positions on various issues.

In this proceeding, Columbia, BIE and OCA presented testimony on Columbia’s overall revenue requirement and related issues. The Settlement revenue increase of $28 million reflects a reasonable compromise of Joint Petitioners’ positions in this proceeding. The amount of the increase falls within the range of outcomes bounded by Columbia’s proposed increase and the revenue requirements contained in the direct testimonies of BIE and OCA. Columbia notes that in its rebuttal testimony, it took issue with virtually all of the proposed adjustments advanced by BIE and OCA. The Joint Petitioners, while supporting their revenue requirement positions for litigation purposes, recognized that the Commission likely would have accepted certain adjustments proposed by Joint Petitioners, but would not have accepted all of the adjustments.

Under the Settlement, with only a few select exceptions further explained herein, the settlement revenue requirement is a “black box” amount. Under a “black box” settlement, parties do not specifically identify revenues, expenses and return that are allowed or disallowed. Columbia believes that “black box” settlements facilitate agreements, as parties are not required to identify a specific return on equity or identify specific revenues and/or expenses that are allowed or disallowed.

Given the entire Settlement, Columbia believes that the revenue requirement is reasonable and will provide the Company with the additional revenues that are necessary to provide reliable service to customers. In addition, Columbia believes that the Settlement appropriately balances the need of the Company to have an opportunity to earn a reasonable rate of return with its customers’ need for reasonable rates. Finally, Columbia notes that the Commission’s resolution of the issue reserved for litigation does not affect or otherwise alter the agreed upon revenue requirement amount identified in the Settlement. This is because the reserved issue concerns recovery of certain costs in Rider Universal Service Program (Rider USP) and does not affect base rates.

a. Distribution System Improvement Charge (DSIC)

The Commission approved Columbia’s DSIC by Order entered May 22, 2014, at Docket No. P-2012-2338282. With the DSIC, plant additions not included in base rates may be reflected in the DSIC calculation. Therefore, for future DSIC purposes, it is necessary to establish relevant plant balances for the Company out of this proceeding.

The Settlement provides that following the effective date of rates in this proceeding, Columbia will be eligible to include plant additions in the DSIC once eligible account balances exceed the levels projected by Columbia at December 31, 2016. The Joint Petitioners agree that this provision is included solely for purposes of calculating the DSIC, and is not determinative for future ratemaking purposes of the projected additions to be included in rate base in a fully-projected future test year filing.

The Settlement also provides that, for purposes of calculating its DSIC, Columbia shall use the equity return rate for gas utilities contained in the Commission’s most recent Quarterly Report on the Earnings of Jurisdictional Utilities and shall update the equity return rate each quarter consistent with any changes to the equity return rate for gas utilities contained in the most recent Quarterly Earnings Report, consistent with 66 Pa.C.S. § 1357(b)(3), until such time as the DSIC is reset pursuant to the provisions of 66 Pa.C.S. § 1358(b)(1). (Settlement ¶ 49.)

b. Tax Repair Allowance and Mixed Service Cost Normalization Treatment

In 2008, Columbia sought and obtained permission from the Internal Revenue Service to change its definition of “unit of property” for tax purposes. This enabled Columbia to deduct certain expenditures on its tax return rather than capitalize them and resulted in a tax refund of $37,487,634 for Columbia’s customers. As agreed in the settlement of Columbia’s 2010 rate case at Docket No. R-2009-2149262, a refund of the $37,487,634 is being made to customers, which reflects the cash benefit received in 2009 for the tax year 2008 method change. (Columbia Statement No. 10, p. 4.) The remaining unamortized balance of the tax refund is projected to be $681,571 at December 31, 2015. (Columbia Statement No. 10, p. 4.) Columbia proposed a one-year amortization of this remaining balance, and no party opposed the amortization.

Under the Settlement, Columbia will continue to use normalization accounting with respect to the benefits of the tax repairs deduction. In addition, with regard to the $37.4 million tax refund previously received by Columbia that is attributable to the change in method for the repairs deduction, commencing with the effective date of rates in this proceeding, the remaining amount of $681,571 shall be amortized over 12 months commencing January 1, 2016. Consistent with prior settlements, the amortization will be without interest and without a deduction of the unamortized balance from rate base. The Settlement also continues prior agreements that subsequent changes in the refund amount, above or below the $37.4 million, shall be reflected in accumulated deferred income taxes to be created under the normalization method of accounting. It is anticipated this will be the final year of this amortization. As this provision continues the previously approved rate treatment of this refund, it is in the public interest and should be approved.

The Joint Petitioners have also agreed that Columbia will continue to use normalization accounting with respect to the tax treatment of Internal Revenue Code Section 263A mixed service costs (MSC). This is similar to the treatment of book versus tax time differences for the repairs deduction. (Columbia Statement No. 10, p. 4.) This treatment was established in the settlement of Columbia’s 2012 rate case at Docket No. R-2012-2321748, and was unopposed in this proceeding. The Parties have agreed that such treatment will continue.

c. Amortizations

The Settlement in Columbia’s 2012 rate case established an amortization for non-labor costs associated with the NiSource NiFiT project.[[9]](#footnote-9) Per the Settlement approved at Docket No. R-2012-2321748, Columbia was allowed amortization recovery of the then-estimated non-labor NiFit expenses over a four year period. (Columbia Statement No. 4, p. 23.) Columbia calculated its remaining unamortized balance at December 31, 2015, reflecting actual data through December 31, 2014 and projected amortizations through December 31, 2015. The remaining unamortized balance at December 31, 2015 is projected to be $1,260,764. (Columbia Statement No. 4, p. 43.) Columbia proposed a three-year amortization of this balance. (Columbia Statement No. 4, p. 43.) No party opposed this amortization. The Settlement in this case includes amortization of $1,260,764 for NiFit costs over a three-year period commencing with the effective date of rates in this proceeding. The Settlement specifies the continued amortization of costs related to Blackhawk Storage. This amortization was established in Columbia’s 2008 rate case settlement at Docket No. R-2008-2011621 and will continue. No party objected to the Company’s inclusion of this amortization amount in its rate filing.

As noted in the preceding section of this Statement in Support, Columbia is currently amortizing a $37.4 million tax refund received as a result of the tax repair allowance change. The Joint Petitioners have agreed to amortize the remaining refund in the amount of $681,571 over twelve months commencing on January 1, 2016.

These three amortizations are continuations of previously approved amortizations, and were unopposed by any party. The amortizations are in the public interest and should be approved.

d. Other Post-Employment Benefits (OPEB) Expense

The Settlement includes provisions concerning accounting for Columbia’s ongoing contributions to trusts for OPEBs which were established in the settlement of Columbia’s 2012 base rate case at Docket No. R-2012-2321748. (Columbia Statement No. 4, pp. 37-38.) These provisions were unopposed by any party, and are in the public interest as they confirm the ongoing treatment of OPEB expense. Columbia will continue to defer the difference between the annual OPEB expense calculated pursuant to FASB Accounting Standards Codification (ASC) 715, “Compensation – Retirement Benefits” (SFAS No. 106) and the annual OPEB expense allowance in rates of $0. Only those amounts attributable to operation and maintenance would be deferred and recognized as a regulatory asset or liability. To the extent the cumulative balance recorded commencing with the effective date of rates reflects a regulatory asset, such amount will be collected from customers in the next rate proceeding over a period to be determined in that rate proceeding. In addition, to the extent the cumulative balance recorded commencing with the effective date of rates reflects a regulatory liability, there will be no amortization of the (non-cash) negative expense, and the cumulative balance will continue to be maintained. The Settlement provides that Columbia will deposit amounts in the OPEB trusts when the cumulative gross annual accruals calculated by its actuary pursuant to ASC 715 are greater than $0. If annual amounts deposited into OPEB trusts, pursuant to this Settlement, exceed allowable income tax deduction limits, any income taxes paid will be recorded as negative deferred income taxes, to be added to rate base in future proceedings.

Pursuant to the Opinion and Order entered on May 24, 2012, at Docket No.

P-2011-2275383, Columbia deferred, for accounting and financial reporting purposes, the one-time expense of $903,131 associated with its allocated share of NiSource Corporate Services Company’s (NCSC) OPEB regulatory asset resulting from NCSC’s transition from cash basis to accrual. In the settlement of the 2012 Columbia base rate case at Docket No. R-2012-2321748, Columbia was allowed to recover the total deferred amount of $903,131 over a ten-year period that began on July 1, 2013. This Settlement continues the ten-year amortization established in the 2012 rate proceeding.

In the settlement of Columbia’s 2012 rate case, Columbia agreed to an amortization of a deferred OPEB refund in the total amount of $(607,393). The estimated remaining balance of that refund amount at January 1, 2016 is $(114,640). (Columbia Statement No. 4, p. 42.) Under the Settlement, the Joint Petitioners have agreed that rates will reflect the twelve month amortization of the deferred OPEB balance of $(114,640). This provision continues the passback to customers of this deferred balance and is in the public interest.

e. Future Debt Issuances

BIE proposed that certain information be provided to the statutory parties following the actual issuances of debt projected for the Future Test Year and Fully Projected Future Test Year (FPFTY). Under the Settlement, Columbia agrees that, for all future debt issuances during the twelve month periods ending December 31, 2015 and December 31, 2016, Columbia will provide to TUS, BIE, OCA and OSBA, within 60 days of issuance, all loan documentation filed with the Commission in compliance with orders in filings submitted by Columbia pursuant to Chapter 19 of the Pennsylvania Public Utility Code. In addition, Columbia will preserve and provide to BIE, OCA and OSBA as a part of its next base rate case the following: (1) all documentation supporting debt issued between this base rate case and the next base rate case; and (2) the Treasury yield as reported in the Federal Reserve Statistical Release, H.15 Selected Interest Rates and the yield spread as reported by Reuters Corporate spreads as of the dates of each issuance. (Settlement ¶ 56.)

2. BIE’s Position

BIE supports the revenue requirement of the Settlement. As proposed, Columbia requested an increase in revenues of approximately $46.2 million which represented an 8.63% increase in operating revenues based upon a pro forma FPFTY ending December 31, 2016. In its

direct case, BIE recommended a revenue increase of $11,749,592[[10]](#footnote-10) based upon a residential throughput level of 25,409,026 Dth.[[11]](#footnote-11) In the Settlement the Joint Petitioners agreed that rates will be designed to produce an increase in operating revenues of $28 million based upon residential throughput level of 34,500,000 Dth and throughput levels for all other classes as proposed by the Company for the twelve months ended December 31, 2016.

BIE analyzed the ratemaking claims contained in the Company's filing including operating and maintenance expenses, rate case expense, labor and related taxes, NCSC – shared services, rate base, rate structure, cost of service, capital structure, the cost of common equity, cost rate of long-term debt, cost rate of short term debt, and risk analysis. After this review and engaging in extensive discovery and settlement discussions, BIE fully supports the revenue level compromised upon in the Settlement. Due to the "black box" nature of the Settlement, the Settlement does not reflect agreement upon individual issues; rather, the parties have agreed to an overall increase to base rates that is substantially less than what was requested by the Company. BIE explained that line-by-line identification and ultimate resolution of every issue raised in the proceeding is not necessary to find that the Settlement is in the public interest nor could such a result be achieved as part of a settlement. Black box settlements benefit ratepayers because they allow for the resolution of a contested proceeding at a level of increase that is below the amount requested by the regulated entity and in a manner that avoids the significant expenditure of time and resources related to further litigation.

Black box settlements are not uncommon in Commission practice. Indeed, the Commission has endorsed the use of black box settlements, as discussed in a recent Order approving such a settlement:

We have historically permitted the use of "black box" settlements as a means of promoting settlement among the parties in contentious base rate proceedings. See, Pa. PUC v. Wellsboro Electric Co., Docket No. R-2010-2172662 (Final Order entered January 13, 2011); Pa. PUC v. Citizens' Electric Co. of Lewisburg, PA, Docket No. R-2010-2172665 (Final Order entered January 13, 2011). Settlement of rate cases saves a significant amount of time and expense for customers, companies, and the Commission and often results in alternatives that may not have been realized during the litigation process. Determining a company's revenue requirement is a calculation involving many complex and interrelated adjustments that affect expenses, depreciation, rate base, taxes and the company's cost of capital. Reaching an agreement between various parties on each component of a rate increase can be difficult and impractical in many cases. For these reasons, we support the use of a "black box" settlement in this proceeding and, accordingly, deny this Exception.[[12]](#footnote-12)

BIE individually, and the Joint Petitioners collectively, considered, discussed, and negotiated all issues of import in this Settlement. From a holistic perspective, each party has agreed that the Settlement benefits its particular interest. The Settlement in this proceeding promotes the public interest because a review of the testimony submitted by all parties demonstrates that the terms of the settlement reflect a compromise of the litigation positions held by those parties. Therefore, BIE submits that the Settlement balances the interests of Columbia and its customers in a fair and equitable manner and presents a resolution for the Commission's adoption that best serves the public interest.

Furthermore, public utility regulation allows for the recovery of prudently incurred expenses as well as the opportunity to earn a reasonable return on the value of assets used and useful in public service. The increase proposed in this Settlement respects this principle. Ratepayers will continue to receive safe and reliable service at just and reasonable rates while allowing the Company sufficient additional revenues to meet its operating and capital expenses and providing the opportunity to earn a reasonable return on its investment. As shown above, the Settlement represents a substantial reduction of the increase in revenue initially proposed by the Company, and, BIE believes, properly balances the interests of all parties. Accordingly, BIE submits that the proposed Settlement is in the public interest and requests that it be approved by the Commission without modification.

3. Other Parties’ Positions

OCA observes that the rate increase agreed to by the Joint Petitioners reflects an increase in overall revenues of approximately 5.18% as compared to the Company’s original request for an 8.63% increase in overall revenues.

Based on the OCA’s analysis of the Company’s filings, testimony by all parties, and discovery responses received, the rate increase under the proposed Settlement represents a result that would be within the range of likely outcomes in the event of full litigation of the case. The OCA submits that the increase is appropriate and, when accompanied by other important conditions contained in the Settlement, yields a result that is just and reasonable. OSBA shares this view.

OCA also states that, as of the effective date of rates in this proceeding, Columbia will be eligible to include plant additions in the DSIC once eligible account balances exceed the levels projected by Columbia at December 31, 2016, the end of the fully forecasted future test year. The foregoing provision is included solely for purposes of calculating the DSIC, and is not determinative for future ratemaking purposes of the projected additions to be included in rate base in a Fully Projected Future Test Year filing.

According to OCA, because the revenue requirement was settled, ratepayers benefit from using the year-end balance because the Company must realize a higher level of plant investment before any incremental expenditures can be recovered through a DSIC.

CII states that the Settlement specifically satisfies the concerns of CII raised in its complaint by lowering the revenue increase amount by approximately 39.4%.

B. Revenue Allocation and Rate Design (¶¶ 58-63)

1. Columbia’s Position

Appendices A and B to the Settlement set forth the agreed to revenue allocation and rate design to the classes. As described below, these items were the subject of extensive litigation and negotiation, and reflect a compromise of the positions of all the Parties to this proceeding. The Settlement strikes a balance that is in the best interest of all of Columbia’s customers, and should be approved.

a. Revenue Allocation

As in many base rate cases, the revenue allocation issues were among the most contentious issues in this proceeding. The Joint Petitioners proposed a variety of class cost of service studies and cost allocation methodologies. Moreover, even to the extent certain Joint Petitioners agreed on the basic overall methodology, i.e. the Design Day Demand Allocation versus the Peak & Average methodology, the Joint Petitioners still disagreed on how to allocate certain other costs to the different rate classes, as well as how much movement toward cost of service was appropriate. Despite the fact that the Joint Petitioners were not able to agree on a specific class “cost of service” in the Settlement, they were able to agree to a revenue allocation that is within the range of revenue allocations proposed by the parties in this proceeding, and Columbia believes that this revenue allocation meets the “cost of service” standards adopted by the courts and the Commission.

The Joint Petitioners supported their respective cost of service studies for litigation purposes. However, the parties were willing to compromise in order to achieve a settlement of the revenue allocation issues. Therefore, the revenue allocation set forth in the Settlement is not based upon a specific agreed to formulaic approach. Moreover, the Settlement rates are not based upon any specific cost of service study results. Instead, the Settlement reflects a compromise of the Parties’ revenue allocation and rate design proposals. (Settlement Appendices A and B.) The resulting class increases, as compared to Columbia’s as-filed increases, are as follows:

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Customer Group** | **As Filed** | **Percentage of Proposed Increase[[13]](#footnote-13)** | **As Settled** | **Percentage of Settled Increase** |
| Residential (RS/RDS) | $35,809,793 | 78% | $20,376,887 | 73% |
| Small General Service  (SGSS/SGDS/SCD) | $6,137,865 | 13% | $4,516,619 | 16% |
| Small Distribution Service (SDS/LGSS) | $1,763,076 | 4% | $1,928,619 | 7% |
| Large Distribution Service (LDS/LGSS) | $2,381,961 | 5% | $1,177,705 | 4% |
| Mainline Distribution Service (MLDS/NSS) | ($649) | 0% | $170 | 0% |
| Total | $46,092,046 | 100% | $28,000,000 | 100% |

As noted above, the revenue allocation under the Settlement represents a compromise and falls within the litigation positions of the Joint Petitioners. Columbia notes that because of the disagreement over cost allocation studies and the “black box” nature of the Settlement, it is not possible to precisely calculate the extent to which the Settlement moves rates closer to cost of service for all Joint Petitioners. However, Columbia believes that the Settlement achieves progress in the movement toward cost-based rates.

b. Rate Design

i. Residential Rate Design

One issue in this proceeding concerned the pro forma throughput volume to be reflected for the residential class. BIE proposed a higher level of average use per residential customer than proposed by Columbia. (BIE Statement No. 3, pp. 23-24; Columbia Statement No. 102-R, pp. 1-7.) OCA also proposed changes to projected throughput. (OCA Statement No. 1, pp. 8-9.) The Settlement reflects a compromise of the issue, and rates are designed to reflect total pro forma throughput of 34,500,000 Dth for the residential class for the FPFTY. The compromise of parties’ positions on this issue is in the public interest.

In this proceeding, Columbia proposed to increase the customer charges for residential customers from $16.75 to $20.60. (Columbia Statement No. 11, p. 14.) This increase was opposed by OCA and BIE. (OCA Statement No. 3, pp. 35-37; BIE Statement No. 3, p. 48.) As part of the Settlement, the Joint Petitioners have agreed that the residential customer charge will remain at the current rate of $16.75/month.

ii. Commercial and Industrial Rate Design

In this proceeding, Columbia proposed to increase the customer charges for small commercial and industrial customers. Specifically, Columbia proposed to increase the customer charge for customers under Rates Small General Sales Service (SGSS), Small Commercial Distribution (SCD), and Small General Distribution Service (SGDS) using up to 6,440 therms annually from $21.25 to $27.75. (Columbia Statement No. 11, p. 14.) The OSBA and BIE objected to the proposed increase to the customer charge for customers under Rates SGSS, SCD, and SGDS using up to 6,440 therms annually. BIE recommended that the customer charge for these customers be $23.36, and the OSBA recommended that customer charge for these customers be $24.00. (BIE Statement No. 3, p. 52; OSBA Statement No. 1, p. 27.)

In addition, the Company proposed that the customer charge for customers under these rate schedules that use more than 6,440 therms annually be increased to $55.50. (Columbia Statement No. 11, p. 14.) The OSBA and BIE objected to the proposed increase to the customer charge for customers under Rates SGSS, SCD, and SGDS using more than 6,440 therms annually. Instead, both the OSBA and BIE recommended that the customer charge for these customers remain at the current $48.00. (OSBA Statement No. 1, p. 27; BIE Statement No. 3, p. 52.)

Under the Settlement, the Joint Petitioners have agreed that the customer charge shall remain at the current $21.25 per month for customers under Rates SGSS, SCD, and SGDS using up to 6,440 therms annually. In addition, the Joint Petitioners have agreed that the customer charge shall remain at the current $48.00 per month for customers under Rates SGSS, SCD, and SGDS using more than 6,440 therms annually. This is consistent with BIE’s and OSBA’s proposals in this case, and should be approved.

In this proceeding, Columbia initially proposed a 5.17% rate increase for the Large Distribution Service (LDS)/ Large General Sales Service (LGSS) class. (Columbia Statement No. 11, p. 9.) Witnesses for CII testified that the LDS rate increase, as proposed, was burdensome, in part because the LDS rate class includes customers who are on flex rates, and therefore are not subject to the increase. (CII Statement No. 1, pp. 6-7.) As a result of negotiations, the Parties agreed to reduce the total increase to the LDS/LGSS class from the Company’s proposal of $2,381,961 to $1,177,705, which represents a slightly lower percentage (4.2%) of the total Settlement increase than originally proposed by Columbia. (Settlement Appendix A.)

iii. Other Charges and Riders

Consistent with the Commission’s June 23, 2011 Final Rulemaking Order at Docket No. L-2008-2069114, Columbia designed a gas procurement charge (GPC) in order to remove natural gas procurement costs from base rates and to recover those fuel acquisition costs as part of the “price to compare,” on a revenue neutral basis via an automatic adjustment charge only to be recalculated in a base rate case. As proposed by Columbia, the GPC included the labor and benefits costs associated with gas procurement activities, including external legal costs. (Columbia Statement No. 12, p. 4.) Columbia proposed a GPC of $0.00166 per therm. (Columbia Ex. NJDK-2).

The NGS Parties presented testimony in support of a higher GPC that included additional costs. (NGS Parties Statement No. 3, pp. 14-18.) Under the Settlement, the Joint Petitioners were able to reach an amicable resolution relative to the level of the GPC, which provides that the Company’s GPC shall continue at the current rate of $0.00695 per therm. (Settlement ¶ 62.)

The Joint Petitioners have also agreed that one of Columbia’s proposed charges, the Choice Administrative Charge (CAC) will not be adopted in this proceeding. (Settlement ¶ 61.) Columbia had proposed the CAC to recover costs incurred to administer and maintain the Choice Program and Gas Distribution Service Program on Columbia’s system. (Columbia Statement No. 12, pp. 4-5.) The NGS Parties, PSU and BIE opposed the charge. (NGS Parties Statement No. 3, pp. 8-12; PSU Statement No. 1, pp. 9-14; BIE Statement No. 3, pp. 56-57.) In order to reach a settlement in this proceeding, Columbia agreed to not adopt the charge at this time.

As part of the settlement of the CAC and GPC issues, the Parties also agreed to a stayout period suspending the ability of the Parties to introduce proposals regarding the CAC and GPC. Specifically, Columbia agreed that it would not propose a CAC for a period of two base rate cases, or five years, whichever occurs first. (Settlement ¶ 63.) The Parties further agreed not to propose a change to Columbia’s GPC rate for a period of two base rate cases, or five years, whichever occurs first. Recognizing that the Settlement cannot bind non-parties, the Settlement provides that if any non-party to the Settlement, during this stayout period, proposes changes to the GPC, all parties to the Settlement shall have the right to propose either a CAC or other changes to the GPC in rebuttal testimony. (Settlement ¶ 63.)

The CAC and GPC have been highly contentious issues over several cases. According to Columbia, the limited stayout term for these issues is intended to reduce controversy for the next several rate cases and therefore is in the public interest.

iv. Conclusions as to Rate Design

The proposed changes to the rate design for all customer classes, as set forth in Appendix B to the Settlement, reflect an accord reached between the Joint Petitioners as to the rate design to be used to recover the rate increases allocated under the Settlement to the Company’s customers. Columbia submits that the Settlement reflects an acceptable compromise of the competing litigation positions of the Joint Petitioners relative to rate design.

2. BIE’s Position

Like Columbia, BIE notes that terms of the Settlement related to customer charges reflect a compromise and do not endorse any particular cost of service study. In its direct case, BIE recommended that the Residential customer charge be increased slightly to $16.93 and that the Small General Services customer charge be increased slightly to $23.36. However, as a result of the settlement negotiations, both the Residential and the Small General Services customer charges will remain at their current levels. BIE fully supports the agreed to customer charges and BIE maintains that the settlement is just, reasonable and non-discriminatory.

The agreed upon revenue allocation the rate design set forth in the Settlement are a result of extensive settlement negotiations. BIE believes that the settled upon revenue allocations and rate design are consistent with prior Commission decisions; provide stability to Columbia; represent a fair and reasonable rate increase to Columbia customers; are non-discriminatory; and provide protection from volatility; all of which are consistent with protecting the public interest.

Regarding the CAC Rider, in its direct case, BIE opposed Columbia’s proposed CAC Rider. BIE witness Hubert noted that the CAC Rider was an illogical unbundling of costs designed to make Choice products available to customers that would have the undesirable effect of increasing the costs of transportation customers thereby providing a disincentive to Choice. Therefore, BIE fully supports the withdrawal of the CAC and the maintaining of the GPC at current rate. BIE agrees that this settlement provision is just, reasonable, non-discriminatory, and in the public interest.

3. OCA’s Position

In its filing, Columbia proposed to increase the residential customer charge from $16.75 to $20.60 per month. Since 2010, Columbia’s residential customer charge has increased from $11.50 to $16.75, which is a 46% increase. (OCA St. 3 at 34-35.) The OCA opposed any additional increase to the residential customer charge and submitted evidence that demonstrated that the cost of connecting and maintaining a residential customer’s account does not support increasing the monthly residential customer charge. (See OCA St. 3 at 36-37.)

Consistent with the OCA’s position, under the terms of the proposed Settlement, the residential customer charge will remain at the current level of $16.75 per month. Applying 100% of the rate increase to the volumetric charges is in the interest of residential customers because it allows customers – and low income customers, particularly – to control the volumetric portion of their distribution bill through usage reduction measures. (OCA St. 4 at 17-22.)

OCA further takes the position that applying the entire rate increase to the volumetric charges promotes the Commission’s general goal of encouraging energy conservation because higher volumetric charges provide an incentive to all residential customers to use less energy. (OCA St. 3 at 37.) Maintaining the current customer charge also recognizes that Columbia has other mechanisms to address risk, in particular, the Weather Normalization Adjustment. (See OCA St. 3 at 35.)

OCA also observes that in its filing, Columbia proposed to allocate approximately $35.7 million of its proposed $46 million revenue increase to residential customers. Under the revenue allocation agreed to by the Joint Petitioners, the residential class would receive approximately $20.34 million of the $28 million increase. (See Settlement Appendix A.) Under the Settlement, the revenue increase allocated to the residential class is approximately $15 million less than that proposed by the Company. If the Settlement is approved, the average total monthly bill for a residential customer using 73 therms per month would be $98.42, as opposed to $101.94, which would be the average bill under Columbia’s proposal.

Based on the OCA’s analysis of the Company’s filing and discovery responses received, the revenue allocation under the proposed Settlement represents a result that would be within the range of likely outcomes in the event of full litigation of the case. Several parties, including the OCA, BIE, OSBA, PSU and the Company, provided proposed varied revenue allocations, and the revenue allocation provided in Appendix A represents a compromise of a contentious issue. The revenue allocation yields a result that is just and reasonable under the circumstances of this case.

4. CAUSE-PA’s Position

CAUSE-PA also supports the proposed customer charge. This provision of the Settlement, in CAUSE-PA’s view, is critical to ensure that the burden of a rate increase does not disproportionately fall on low income residents, who use less energy on average than their non-low income counterparts. (CAUSE-PA St. 1, Miller, at 16-17). It also ensures that the rate structure does not undermine ratepayer investments in energy efficiency and weatherization through the Low Income Usage Reduction Program (LIURP), which is designed to reduce low income household usage and, in turn, reduce the energy burden for low income customers. Mitchell Miller explained in his direct testimony:

Increasing the costs recovered through a fixed charge – as opposed to a volumetric based charge – undermines the ability for customers to reduce bills through conservation and consumption reduction. This is particularly problematic for low-income customers, given that low income households have significantly less budget elasticity than non-low-income households. … [I]ncreasing the fixed charge that a residential customer must pay, without any link to customer’s usage, … blatantly undermine[s] the goals of the Low Income Usage Reduction Program (LIURP), which is designed to lower consumption and increase energy affordability for low income customers.

(CAUSE-PA St. 1, Miller, at 16).

5. OSBA’s Position

In its statement in support of the settlement, OSBA also describes the discussion of the parties regarding cost allocation. In its filing, Columbia presented three allocated cost of service studies (ACOSS), a CD (Customer Demand) ACOSS, a P&A (Peak and Average)

ACOSS, and a third ACOSS averaging the previous two studies.[[14]](#footnote-14) The OSBA recommended that the Company further refine its cost allocation methodology in future rate cases,[[15]](#footnote-15) and that it correct certain errors in its studies.[[16]](#footnote-16) In OSBA’s view, these errors were corrected by the Company.

The OSBA expressed certain concerns regarding the Company’s proposed increases to the SGSS/SCD/SGDS customer charges with respect to (a) the calculation methodology for customer-related costs in the Company’s cost allocation study that includes a customer component of mains costs, and (b) the fact that an increase to the customer charge is not justified if the Commission approves a cost allocation methodology in which no customer component is applied to mains costs. As Commission precedent generally rejects the inclusion of a customer component for mains costs for gas utility cost allocation, and because the settlement revenue allocation for the SGS classes is more consistent with such a cost allocation method, the settlement reasonably imposes no increase to the customer charges for that class.

The Settlement represents a reasonable balancing of the positions of the various parties, including a recognition that customers subject to negotiated rates cannot contribute to the rate increase. The OSBA also notes that the shortfall from negotiated rate customers continues to be exacerbated by the Commission’s failure to get rid of the “gas on gas competition” policy, which continues to unfairly push costs on smaller firm service ratepayers.

Finally, the company proposed and the OSBA agreed that it was reasonable to bifurcate both the customer charge and the commodity charge for the SGSS/SCD/SGDS classes between smaller and larger customers within the class. The OSBA testimony recommended that

this approach suggests that costs should be separately allocated to the two sub-classes of

customer,[[17]](#footnote-17) and, in its rebuttal testimony, the Company agreed to evaluate such an approach.[[18]](#footnote-18)

6. CII’s Position

CII states that the Joint Petition satisfies the concerns raised in CII’s complaint by reasonably allocating the proposed increase among the customer classes and eliminating the proposed CAC.

7. NGS Parties’ Position

Initially the NGS Parties challenged several charges and riders proposed by Columbia in its tariff filing. The Joint Petition for Settlement proposes to retain the same GPC of $.0695 per dekatherm that was approved by the Commission in Columbia’s last rate case. (Settlement, ¶ 62). While the settlement GPC amount is significantly less than the amount proposed in the testimony of the NGS Parties’ witness, it nonetheless is acceptable to the NGS Parties. This is particularly true, because as part of the Settlement, there is agreement that neither Columbia, the NGSs, nor any other party will propose a different GPC amount for the next two rate cases, or five years, whichever comes first. This “stayout” provision also applies to the CAC that is addressed in the subsequent paragraph.

The NGS Parties believe and therefore, submit that this settlement is reasonable and in the public interest because it presents a stable, if not ideal GPC, one that continues to represent a closer estimate of the portion of the gas procurement charges incurred by the company in the provision of supplier of last resort service to customers who choose not to shop. The GPC, even though less robust than that proposed by the NGS Parties, appropriately assigns costs required to procure the natural gas commodity for bundled Sales customers to the Price-to-Compare (PTC), thus allowing for a default service rate that more accurately reflects the costs of providing a retail natural gas service in the marketplace. Competitive parity is essential for robust natural gas competition to develop in Pennsylvania and for customers to receive the full benefits of competition.

The Joint Petition for Settlement does not include a CAC. (Settlement, ¶ 61). NGS Parties strongly opposed introduction of a CAC through testimony, and the absence of a CAC is satisfactory to the NGS Parties. As noted above, Columbia has agreed to not propose a CAC in its next two base rate cases, or 5 years, whichever comes first. The NGS Parties states that the continued absence of a CAC charge for now and the foreseeable future is in the public interest because it does not further distort competition.

8. RESA’s Position

RESA echoes many of the same concerns expressed by the NGS Parties. RESA intervened in this proceeding primarily due to its concerns with Columbia’s proposal to institute a new CAC. The CAC was intended to be a per therm rate charged to Choice customers and included in the Pass-through Charge line item on customer bills. CAC costs were also to be charged to General Distribution Service (GDS) customers as a fixed charge. These charges were described as a carve out of costs Columbia incurs to administer, enhance and maintain gas transportation programs.

The CAC was opposed in testimony by the BIE, the NGS Parties and the Pennsylvania State University. Had this proceeding been fully litigated, RESA intended to oppose the CAC charges in brief, based on the record of this proceeding, legal arguments and ratemaking policy. The Settlement requires withdrawal of the current CAC proposal and bars Columbia for a period of two base rate cases or five years, whichever occurs first, from proposing a CAC. This term of the Settlement essentially sustains RESA’s litigation position, therefore it finds the Settlement to be in the public interest.

The costs of maintaining the availability of Columbia’s system for the conduct of competition are part of the system-wide costs incurred to maintain a distribution system. Therefore costs such as those proposed to be collected through the CAC are more properly charged to all customers through distribution rates and not carved out for payment by shopping customers in the form of a CAC. The Settlement provides a proper resolution of the CAC issue without incurrence of full litigation costs. And the withdrawal of the CAC is supported by substantial evidence in the record of this proceeding.

C. Universal Service and Conservation (¶¶ 64-69)

1. Columbia’s Position

The Settlement includes several provisions related to Columbia’s Universal Service Programs. In direct testimony, Columbia proposed to modify the funding levels and eligibility requirements for its Emergency Repair Program (ERP) as well as its method of recovering these costs. (Columbia Statement No. 12, pp. 9-10; pp. 11-12.) Columbia also proposed to recover the administrative costs associated with its Customer Assistance Program (CAP) through its Rider Universal Service Program (“Rider USP”) rather than through base rates. (Columbia Statement No. 12, p. 10; p. 14.)

The Settlement adopts Columbia’s Universal Service proposals. Specifically, the Settlement, if approved, would increase the ERP annual budget to $600,000; raise the eligibility guidelines for ERP to 200% of the Federal Poverty Level (FPL); and recover ERP program costs through Rider USP. Further, the portion of ERP funds available for individuals between 151% and 200% of the FPL will be limited to 10% of the total ERP budget. The Settlement also provides for the recovery of third party costs to administer its Customer Assistance Program (CAP) through its Rider USP. This is consistent with treatment of CAP administrative cost recovery by other Pennsylvania utilities as approved by the Commission. (Columbia Statement No. 12, p. 14.)

In direct testimony, CAUSE-PA expressed concern with the effect of a rate increase on low-income customers and proposed a number of efforts Columbia could undertake to mitigate the effects of a rate increase upon low income customers. (CAUSE-PA Statement No. 1, pp. 14-16.) In the Settlement, Columbia has agreed to undertake several initiatives to address CAUSE-PA’s concerns.

As part of the Settlement, Columbia agrees to establish a Universal Service Advisory Committee, and will invite participants of interested parties, community partners, and representatives of other public utilities in the region. Columbia will hold two Universal Service Advisory Committee meetings per year. Columbia also agrees to track all cancelled or denied referrals by reason for the ERP and the Low Income Usage Reduction Program (LIURP). Columbia will report the data to the Universal Service Advisory Committee.

Columbia currently has in place a number of programs for low income customers that are designed to reduce energy usage. (Columbia St. No. 112-R, pp. 64-65.) Energy conservation is an important component to Columbia’s efforts to make bills affordable for low income customers. (Columbia St. No. 112-R, p. 67.) As part of the Settlement, Columbia reaffirms that it will continue its efforts to coordinate low income and energy conservation programs. In so doing, the Settlement recognizes that there are participant qualification differences among the various programs offered by Columbia, and that the various programs are intended to address different needs among customers served under Customer Assistance Referral and Evaluation Services, CAP, LIURP and ERP. Columbia also agrees to reach out to the Pennsylvania Department of Community and Economic Development and to other public utilities within its service territory to explore ways to further enhance Columbia’s coordination of energy efficiency programming. Columbia will inform the Universal Service Advisory Committee of the results of these efforts, and will provide an opportunity for Committee members to offer feedback and recommendations for improvement.

Finally, Columbia has agreed to continue its extensive low income customer outreach efforts, and will continue to consult with other entities that assist low income customers to identify additional, cost-effective outreach efforts. Columbia will explore ways to engage in joint advertising efforts with other public utilities within Columbia’s service territory to promote the availability of universal service program assistance. Columbia will inform the Universal Service Advisory Committee of the results of these efforts, and will provide an opportunity for Committee members to offer feedback and recommendations for improvement.

Columbia states that it is an industry leader in programs to assist low income customers including, but not limited to, energy conservation programs. The commitments to Universal Service and Energy Conservation contained in the Settlement reflect the Company’s continued support for these programs, are in the public interest and should be approved.

2. BIE’s Position

BIE did not oppose Columbia’s stated universal service and conservation proposals during litigation or during settlement negotiations. BIE now supports the settled upon proposals as fair, reasonable, and in the public interest.

3. OCA and CAUSE-PA’s Position

In its statement in support, OCA draws particular attention to Columbia’s ERP and the creation of the Universal Service Advisory Committee. The OCA supported the Company’s proposals regarding the ERP in this proceeding. (See OCA St. 4 at 28-31.) OCA witness Roger D. Colton testified to the dangers associated with broken and inoperable natural gas equipment, and to the need for and benefit of Columbia’s ERP. (See OCA St. 4 at 27-32.) Specifically, Mr. Colton testified that house fires and deaths are often associated with inoperable heating systems. (Id. at 30.) Mr. Colton also explained that low-income customers with broken heating systems often turn to portable electric heaters to heat their homes, which in turn affects their ability to afford and maintain electric service. (Id, at 28.) Mr. Colton testified that households with incomes between 150% and 200% of the FPL have need for such programs as the ERP, and that it is appropriate to extend the income eligibility from 150% to 200% of the FPL. (See OCA St. 4 at 30-31.)

CAUSE-PA concurs. Paragraph 64 approves Columbia’s proposal to increase the ERP annual budget to $600,000, and provides that up to 10% of the ERP funds will be available for household between 151% and 200% FPL. As explained at length by Mr. Miller, many households in Columbia’s service territory have income that is below the Self Sufficiency standard, meaning their income is insufficient to meet their basic needs, but are ineligible for assistance through traditional Universal Service programs. (CAUSE-PA St. 1, Miller, at 9-10). Expanding the eligibility for a portion of the ERP budgeted funds, while also expanding the overall budget for the program, will help families that fall within this penumbra without detracting from the assistance available to those at the bottom of the income scale (0-150% FPL) who are at the greatest risk of financial instability. Because the consequences of a home having an inoperable heating system are severe, expanding the ERP pursuant to the terms of the Settlement is in the interest of the public interest, and in the interests of low-income residential customers in particular.

In this proceeding, OCA witness Roger D. Colton testified that he shares the concern of CAUSE-PA witness Mr. Miller that Columbia’s outreach for its universal service programs is inadequate. (OCA St. 4-R at 4-5.) CAUSE-PA also raised concerns with Columbia’s coordination between the Company’s universal service programs. (See CAUSE-PA St. 1 at 14-16.) In part to address these concerns, the Settlement establishes a Universal Service Advisory Committee and commits the Company to holding two meetings each year. The Universal Service Advisory Committee will be open to all interested parties, community partners, and representatives of other public utilities in the region. Id. The OCA submits that a Universal Service Advisory Committee should promote the success of the universal service programs by creating the opportunity for interested parties and community agencies to provide guidance and feedback to Columbia regarding its universal service programs, including outreach efforts and coordination between programs.

While CAUSE-PA notes again that its positions have not been fully adopted, the Settlement was arrived at through good faith negotiation by all parties and represents a fair and balanced resolution of a number of important issues. Thus, when taken together, the provisions of this settlement are in the public interest, and should be approved by the Commission in full.

D. Programs to Expand the Availability of Gas Service (¶70)

1. Columbia’s Position

In direct testimony, Columbia presented three new proposals designed to expand the availability of natural gas service in Columbia’s service territory: (1) a footage allowance of 150 feet of main line per applicant without the need for a net present value (NPV) analysis in normal situations; (2) an allowance of 150 feet of service line in normal situations for customers served in those portions of Columbia’s service territory where the Company owns the service line; and (3) reimbursement of up to $1,000 for the installation of house piping on projects when projected revenues exceed projected costs by a certain threshold. (Columbia Statement No. 14, pp. 3-15.)

Columbia’s proposals to expand the availability of natural gas service are responsive to encouragement from BIE (in Columbia’s 2012 base rate proceeding at Docket No. R-2012-2321748), OCA (in the 2014 Pilot Rider New Area Service (NAS) Proceeding at Docket No. R-2014-2407345) and the Commission (in a Statement issued by Commissioner Witmer on the approval of Pilot Rider NAS) that the Company do more to expand the availability of natural gas service. (Columbia Statement No. 14, p. 15.) Further, these programs will complement the currently effective Pilot Rider NAS, which was established at Docket No. R-2014-2407345. (Columbia Statement No. 14, p. 3.) The up-front deposit presents one of the largest barriers for customers to convert to natural gas. (Columbia Statement No. 14, p. 3.) While Pilot Rider NAS spreads the cost of a customers’ deposit over time, it does not reduce the total cost of the deposit. (Columbia Statement No. 14, p. 3.) Therefore, Columbia’s proposals will enable more individuals in Columbia’s service territory to receive natural gas service. (Columbia Statement No. 14, p. 3.) Efforts to increase the availability of low cost natural gas service throughout Columbia service territory are consistent with Commission goals and are in the public interest.

The OCA and OSBA submitted testimony regarding Columbia’s proposals to expand the availability of natural gas service. The OCA recommended that Columbia’s service expansion proposals be approved and also suggested that the programs be accompanied by several reporting requirements, many of which were adopted in the Settlement. (OCA Statement No. 3, pp. 40-41; Settlement ¶ 70(a)-(i).) The OSBA did not oppose Columbia’s service expansion proposals. (OSBA Statement No. 1, p. 32.) The Joint Petitioners agreed that the following programs as proposed by Columbia should be approved: (a) footage allowance of 150 feet of main per residential applicant in normal situations; (b) allowance of 150 feet of Company-owned service line in normal situations; and (c) up to $1,000.00 reimbursement per residential conversion customer toward the cost of house piping for projects that generate a net positive present value greater than $1,000.00 per customer. As part of the Settlement, Columbia agreed to provide the following information related to the service expansions proposals: (a) main and service investment per project; (b) NPV model results for each project, inclusive of the main and service allowances; (c) required Pilot Rider NAS deposit by project; (d) house piping reimbursement by project; (e) number of customers connected by each project and number of subsequent connections; (f) annual non-gas revenues received by project, separated into base rate and Pilot Rider NAS revenues (principle and interest stated separately); (g) annual usage by project; (h) average investment cost per customer by project; and (i) number of new service requests for projects in which the NPV model is run, but the project does not proceed to construction. (Settlement ¶ 70(a)-(i).) The information to be provided will assist other parties and the Commission in assessing the impact of Columbia’s new service initiatives and should be approved.

2. OCA’s Position

The Settlement adopts Columbia’s proposed modifications to its extension tariff. In the OCA’s view, these modifications will help to reduce the cost barrier that prevents many residential customers from extending natural gas mains to their homes. (See OCA St. 3 at 40-41.) The OCA recommended, however, that the Company collect and compare data under the existing tariff and new tariff in order to assess the effectiveness of the modified tariff. (Id. at 41-42.) The OCA identified ten reporting requirements that it recommended that Columbia provide to the OCA, BIE, OSBA and other interested parties on an annual basis. (Id.) The Settlement adopts nine of the OCA’s recommended reporting requirements. The data collected by the Company should provide Columbia and other parties with information that can be used to continue to refine main extension programs and tariffs that best encourage consumers to extend natural gas service to their homes and businesses throughout Pennsylvania.

3. OSBA’s Position

OSBA generally does not oppose Columbia’s proposals regarding the extension of mains. The Company proposes to abandon its economic test for certain new residential attachments and to generally shift cost responsibility for attaching new residential customers from those customers to all existing customers, including both residential and non-residential customers. The settlement accepts the Company’s proposal, subject to detailed reporting requirements. While the OSBA retains significant concerns regarding the fairness of this policy on both an “existing versus new customer” basis and on an inter-class basis, the OSBA concludes that the reporting requirements will allow OSBA to evaluate the impact of this proposal on small business customers in the Company’s next base rates case. The OSBA therefore agreed to this provision in order to achieve settlement.

E. Natural Gas Supplier Issues (¶¶ 71-80)

1. Columbia’s Position

The Settlement contains several terms intended to address concerns raised by the NGS Parties. One of the primary areas of concern for the NGS Parties concerned penalties and imbalance charges. The Settlement includes various changes to Columbia’s tariff rules to reduce penalties and imbalance charges, while continuing to maintain provisions to encourage compliance with Columbia’s delivery requirements. In order to understand the Settlement terms related to penalties and imbalance charges, it is necessary to briefly explain Columbia’s delivery requirements for CHOICE and General Delivery Service (GDS).

Columbia’s CHOICE program is referred to as an average day program. CHOICE suppliers are required to schedule and deliver each day 1/365th of customers’ average annual requirements. (Columbia St. No. 112-R, p. 3.) Columbia manages daily differences between deliveries and actual requirements through retained capacity, chiefly storage. (Columbia St. No. 112-R, p. 4.) Because the CHOICE program is structured around average day deliveries, any deviation from the required daily delivery results in imposition of a penalty. The penalty amount is doubled on critical Operational Flow Order (OFO) days. (Columbia St. No. 112-R, p. 32.) Currently, CHOICE suppliers have been very effective in meeting daily delivery requirements. (Columbia St. No. 112-R, pp. 49-50.)

Different rules are applicable to GDS suppliers. GDS deliveries are not required to meet daily delivery requirements, except in the event an OFO or Operational Matching Order (OMO) is in effect. Failure to comply with an OFO or OMO will result in the imposition of a penalty. (Columbia St. No. 112-R, p. 39.) GDS customers are provided with generous banking and balancing tolerances. For a small GDS customer, the customer/supplier may bank up to 10% of the customer’s annual delivery quantity, and the bank may be used to meet delivery deficits in any month (subject to OFO/OMO requirements). (Columbia St. No. 112-R, p. 41.) For a large GDS customer, the banking tolerance is 5% of the customer’s annual delivery quantity. (Columbia St. No. 112-R, p. 41.)

Columbia provides additional services, including trading and transfers of gas supplies/banks between suppliers, to remain within bank tolerances. (Columbia St. No. 112-R, p. 42.) Only if a customer exceeds its allowed bank tolerance in a month, or depletes its bank and underdelivers for the month, resulting in a gas purchase from Columbia, are imbalance charges imposed. (Columbia St. No. 112-R, p. 40.) Imbalance charges are based upon stated index prices.

Under the Settlement, the current penalty for failure to deliver in accordance with the CHOICE Daily Delivery requirement on non-OFO days is reduced by over 10%, from $23.30 per Dth, to $20.80 per Dth. Columbia also agreed to change the current penalty for failure to deliver in accordance with the Choice Daily Delivery requirement on OFO days from $46.60 per Dth to $41.60 per Dth. In addition, in order to avoid the possibility that a CHOICE supplier might inadvertently fail to schedule the proper supplies to comply with CHOICE requirements, in 2016, Columbia will develop and implement a notice in its Aviator gas supply nomination system to notify an NGS if its scheduled nomination for CHOICE deliveries does not comply with its daily delivery requirement. The NGS may decide to disregard the notice and proceed to schedule an incorrect nomination amount; however, the NGS will need to affirmatively elect to proceed before finally submitting the nomination. (Settlement ¶ 73.)

As part of the Settlement, Columbia will modify its elective balancing service (EBS) under-deliveries and over-delivery tariff language with respect to the index price. (Settlement ¶ 74.) These changes reflect various revisions from the currently effective imbalance charges. Specifically, the Columbia Appalachia index is a substitute for the current index price of the average of highest City Gate price for ten consecutive days during the month under the “Texas Eastern M-3” index. Second, the Settlement removes the tiered layers of multipliers, which currently go as high as ±30% applied to the price for under or over deliveries. (Supplement No. 200 to Tariff Gas—Pa. P.U.C. No. 9, Ninth Revised Page No. 209.) In addition, Columbia will change the current OFO/ OMO penalty from $23.30 per Dth, to $20.80 per Dth.

In direct testimony, the NGS Parties expressed additional concerns related to the GDS service. Specifically, the NGS Parties proposed the following changes to Columbia’s General Transportation rules, among others: (1) make GTS meter reads available sooner; (2) eliminate the splitting of nomination groups between Priority 1 and non-Priority 1 by market area; and (3) adopt additional accommodations to ease bank and imbalance trading. (NGS Parties Statement No. 1, pp. 18-19.) The NGS Parties offered two additional operational suggestions in direct testimony: (1) that the Maximum Daily Quantity (MDQ) report be distributed sooner and (2) that Columbia address the customer name discrepancy that can occur when enrolling a new account. (NGS Parties Statement No. 2, pp. 2-5.)

In an effort to resolve these issues through Settlement, Columbia has also agreed to undertake additional commitments that address these concerns. Specifically, Columbia will: (1) allow Priority 1 and non-Priority 1 customers to be in the same nomination group within the same market area; (2) change the deadline for bank balance transfers from the first business day following the last day of the calendar month in which the trade is to apply, to the third business day following the last day of the calendar month in which the trade is to apply; and (3) update the Customer Information List before the start of the effective month. Columbia shall continue its current practice that allows GDS Customers and/or GDS NGS’ to transfer gas across contiguous, non-constrained market areas. These commitments will further reduce the potential for application of imbalance charges, and should be approved. To address the customer name discrepancy issue, Columbia agrees to review its training and processes for managing instances in which it becomes aware of discrepancies between a name on a customer account and a different customer name provided to the Company, with the intent to minimize any potential delay in switching a customer to an NGS, recognizing the Company’s authority to require security deposits in appropriate circumstances. The Company shall discuss the results of its review with the NGS Parties.

2. BIE’s Position

BIE did not oppose the above stated resolutions of the natural gas supplier issues during litigation or during settlement negotiations. BIE now supports the settled upon proposals as fair, reasonable, and in the public interest.

3. NGS Parties’ Position

The NGS Parties agree that the Settlement addresses the NGS Parties’ concerns over the penalties for transportation and CHOICE under/over deliveries. As part of the Settlement, Columbia has agreed to modify the certain penalties and practices which make NGS operations on the Columbia system more efficient.

The NGS Parties state that the many changes to the various penalties is something that the NGS Parties had advocated last year and failed to achieve. The changes are significant, in particular the movement to market based charges for certain electric balancing service over and under deliveries is vital in continuing to allow those charges to incentivize appropriate behavior while at the same time not imposing undue risk on suppliers. The other penalty reductions, while marginal, when coupled with other operational changes, will serve to further reduce the risk of unintentional mis-deliveries. Moreover, the changes to the various business practices will reduce the complexity and associated costs of serving customers on the Columbia system and will allow suppliers to provide better value for customers.

For all of these reasons, and because this case has been resolved in an acceptable fashion without the need for litigation and the expenditure of additional costs, the NGS Parties believe that this Settlement is in the best interest of all the Parties, is in the public interest, and is just and reasonable. The NGS Parties accordingly submit that it should be approved as presented.

F. Other Issues – Restoration Costs and Leak Repair (¶¶ 81-84)

1. Columbia’s Position

BIE Witness Kline identified in direct testimony that Columbia’s replacement cost per mile has increased. (BIE Statement No. 4, pp. 16-17.) Paving costs represent a significant portion of Columbia’s replacement costs. (BIE Statement No. 4, pp. 16-17.) As explained by Columbia Witness Davidson, municipalities are expanding restoration requirements on utilities, which has played a major role in Columbia’s increased restoration costs. (Columbia Statement No. 15, pp. 12-13.) Columbia is working to manage cost increases by engaging local governments to balance municipal restoration requirements with Columbia’s goal of delivering the best value to its customers. (Columbia Statement No. 15, pp. 14-15.)

In an effort to address the concern of costs being imposed by municipalities, particularly in light of Columbia’s ongoing, aggressive main replacement program, the Joint Petitioners to the Settlement have agreed that Columbia will meet with the Commission’s Gas Safety Division, and any other interested parties, within 30 days of the final order in this proceeding, to discuss strategies that seek to reduce construction and restoration costs associated with all pipeline replacement projects. In addition to the aforementioned meeting, Columbia agreed that prior to October 31, 2015, Columbia will meet with the Commission’s Gas Safety Division and other parties to identify increasing state, county and municipal requirements that exceed the Pennsylvania Department of Transportation restoration standards and add to the cost of pipeline replacements in an effort to develop coordinated potential responses to such requirements. In furtherance of such meetings, Columbia will discuss the results of the audits of the restoration costs for its 10 largest projects that were provided in Columbia Exhibit MJD – 1R in the prior year, identifying costs incurred in excess of the Pennsylvania Department of Transportation restoration standards for paving, sidewalk repair and permitting fees.

Under the Settlement, Columbia agrees to continue its efforts to reduce its number of Type 2 leaks, pursuant to its current target of repairing Type 2 leaks within 12 months, and not to exceed 15 months, and will also continue its efforts to reduce the backlog of Type 3 leaks. This provision reaffirms Columbia’s commitment to effective and proper leak repairs and should be approved.

Finally, Columbia will continue its efforts to reduce restoration costs, through efforts including, but not limited to, coordinating pipe replacement projects with other street projects, and replacing pipe using trenchless construction techniques where technically and economically feasible.

These Settlement provisions will provide Columbia, BIE and other interested parties with the opportunity to more closely examine the factors resulting in increased restoration costs associated with the Company’s main replacement program.

2. BIE’s Position

In its direct case, BIE raised several issues regarding pipeline replacement and pipeline replacement costs, as well as issues regarding Columbia’s ongoing efforts to reduce its number of Type 2 leaks and to reduce its backlog of Type 3 leak repairs. These issues were the subject of extensive negotiations between BIE and Columbia. BIE is encouraged by Columbia’s willingness to meet with BIE to develop strategies to address BIE’s concerns going forward. Therefore, based on Columbia’s renewed commitment in this Settlement to address these issues, BIE fully supports the agreed to settlement provisions. BIE believes the settlement provisions are just, reasonable, and in the public interest.

G. Recommendation

The proposed settlement is reasonable, it is in the public interest and I therefore recommend its approval with modification. It represents a just and fair compromise of the serious issues raised in this proceeding. After substantial investigation and discovery the parties have achieved a reasoned accord on a broad array of issues resulting in just and reasonable rates for natural gas service rendered by Columbia.

The reduction in proposed revenue requirement increase, the revenue allocation, the reduction in the proposed residential customer charge, along with all of the other terms and conditions of the Settlement together represent a fair and reasonable settlement of this proceeding. Resolution of this proceeding by negotiated settlement removes the uncertainties of litigation. In addition, all parties obviously benefit by the reduction in rate case expense and the conservation of resources made possible by adoption of the proposed Settlement in lieu of litigation. Specifically, acceptance of the settlement will negate the need for the filing of additional testimony by all parties, participation at in-person hearings, the filing of main and reply briefs, exceptions and reply exceptions, and potential appeals. This savings in rate case expense serves the interests of Columbia and its ratepayers, as well as the parties themselves.

Importantly, the settlement finds support from a broad range of parties with diverse interests. The public advocates, BIE, OCA and OSBA, each maintain that the interests of their respective constituencies have been adequately protected and they further represent that the terms of the settlement are in the public interest. Other interests were also represented and support the settlement. These interests include natural gas suppliers and other natural gas-related interests, public interest groups representing low-income customers (CAUSE-PA), and large gas users (PSU and CII). These parties, the Joint Petitioners, all have reached agreement on a broad array of issues, demonstrating that the settlement is in the public interest and should be approved.

The individual complainant was served with a copy of the Joint Petition and offered an opportunity to comment or object to its terms and demonstrate why the case should be litigated rather than settled. No objections were filed. Therefore, his due process rights have been fully protected and his formal complaint must be dismissed for lack of prosecution.[[19]](#footnote-19)

For all of the foregoing reasons, I find the settlement embodied in the Joint Petition for Partial Settlement is both just and reasonable and its approval is in the public interest. I recommend that the Commission approve the Joint Petition.

As to the Snowshoe Lateral Settlement, I recommend that the Commission approve the severance of the issues raised in PSU’s amended complaint, and hold ruling on the remaining, service-related terms in abeyance.

The severance of the issues raised in PSU’s amended complaint related to the Snowshoe Lateral to be reasonable and in the public interest. This proposal by PSU and Columbia is a sensible resolution to the dispute. By deferring the litigation of PSU’s claims, both parties have the opportunity to thoroughly explore the facts which may be necessary to develop a thorough record for adjudication without the pressure of the compressed litigation schedule of a base rate proceeding. Further, the issues raised by PSU are better addressed in the context of an abandonment petition. Other customers who may be affected by the pending abandonment may also raise similar concerns and will have an opportunity to participate in the future proceeding. The partial settlement is in the interests of Columbia, PSU and other potentially affected State College customers and is in the public interest.

The remaining terms of the Snowshoe Lateral Settlement go well beyond the base rate related issues of this proceeding and address service-related matters which either do not require the approval of the Commission or are premature for the Commission’s consideration. Because PSU and Columbia have requested that the amended complaint be severed from this proceeding and consolidated with a yet to be filed application, it would be premature for the Commission to consider the remaining terms of the Snowshoe Lateral Settlement. It is not in the public interest for the Commission to have the appearance of prejudging that application and any related filing to that proceeding. Therefore the amended complaint, settlement and any related filings will be held in abeyance pending Columbia’s filing of an application for abandonment.

H. Issue Reserved for Litigation: The Hardship Fund

A public utility seeking a general rate increase has the burden of proof to establish the justness and reasonableness of every element of the rate increase request.[[20]](#footnote-20) However, a public utility, in proving that its proposed rates are just and reasonable, does not have the burden to affirmatively defend claims made in its filing that no other party has questioned. As the Commonwealth Court has explained:

While it is axiomatic that a utility has the burden of proving the justness and reasonableness of its proposed rates, it cannot be called upon to account for every action absent prior notice that such action is to be challenged.[[21]](#footnote-21)

Although the ultimate burden of proof does not shift from the utility seeking a rate increase, a party proposing an adjustment to a ratemaking claim of a utility bears the burden of presenting some evidence or analysis tending to demonstrate the reasonableness of the adjustment.[[22]](#footnote-22)

Since the settlement achieved in Columbia’s 2012 base rate proceeding, Columbia has recovered $375,000 in Hardship Fund funding through Rider USP.[[23]](#footnote-23) Previously, the funds were derived from a Commission-approved contract with Citizens Energy Corporation. (Columbia St. No. 112-RJ, pp. 1-2.) Initially, under the agreement with Citizens Energy, Columbia purchased gas from Citizens Energy at a benchmark rate set at the pipeline price of gas. Purchases at the benchmark price were recovered through purchased gas cost rates. Citizens Energy then donated the difference between the benchmark price and the current spot market price to Dollar Energy Fund for distribution to low-income customers. (Columbia St. No. 112-RJ, p. 2.) Following adoption of FERC Order No. 636, gas purchasing was unbundled at the interstate pipeline level, and thus the “pipeline price of gas” was eliminated. The contract between Columbia and Citizens Energy was amended to provide a fixed contribution amount of $375,000, minus a $13,125 administrative fee charged by Citizens Energy to cover its costs for administering the program. (Columbia St. No. 112-RJ, pp. 2-3.)

The $13,125 administrative fee charged by Citizens Energy did not benefit Columbia’s Hardship Fund. The total contribution to the Hardship Fund under the agreement with Citizens Energy was $361,875. (Columbia St. No. 112-RJ, p. 3.) The amended purchase arrangement between Columbia and Citizens Energy was approved by the Commission in 1994. (Columbia St. No. 112-RJ, p. 2.) Columbia’s customers paid for the $375,000 fixed contribution amount under the Citizens Energy agreement through PGC rates. Only customers who purchased gas from Columbia were responsible for these costs. (Columbia St. No. 112-RJ, p. 1.) At the inception of Columbia’s agreement with Citizens Energy in 1984, all residential customers purchased their gas supply from Columbia. Over time, residential customers became eligible to purchase gas from alternative suppliers. (Columbia St. No. 112-RJ, pp. 2-3.)

The parties to the 2012 base rate, which included OCA, retained the right to challenge the recovery of the Hardship Fund via Rider USP. However, no party raised this issue in this proceeding. The Commission raised concerns regarding the Hardship Fund in the context of Columbia’s Universal Service and Energy Conservation Plan for 2015-2018, in its Tentative Order seeking comments on the Plan:

Although we are not seeking to amend Columbia’s funding mechanism for its Hardship Fund program at this time and would not do so in this proceeding, the Commission invites comments from interested parties on whether monies for Hardship Fund grants should be recovered, and if so, how.[[24]](#footnote-24)

In response to the Commission’s invitation, OCA filed comments which recommended that the parties in this base rate proceeding address the issue. Accordingly, on July 8, 2015, in resolution of the question concerning the cost recovery of the Hardship Fund, the Commission stated:

Although funding a Hardship Fund program through employee, customer and stockholder contributions is less consistent than a flat charge added to Columbia’s USP Rider, other [natural gas distribution companies] and the [electric distribution companies] are able to fund their programs using only voluntary resources. We are not persuaded that Columbia cannot do so as well.

We agree with OCA that the Commission and relevant parties should address this issue through Columbia’s current base rate proceeding at Docket No. R-2015-2468056.[[25]](#footnote-25)

Relying solely on the language of the USECP Order, BIE contends that the Commission has directed Columbia to immediately remove the $375,000 from the Rider USP. Columbia, OCA and CAUSE-PA strenuously disagree. Instead, Columbia proposes to adopt OCA’s recommendation and to enhance its efforts to find voluntary sources to replace the funding so that it is prepared to remove funding from Rider USP in its next rate case without negatively impacting the resources available in the Hardship Fund. CAUSE-PA concurs that this is a reasonable proposal.[[26]](#footnote-26) Witnesses for OCA and CAUSE-PA both opined that to remove the funding from Rider USP without having alternate funding in place would negatively jeopardize the availability of resources to those who need it and therefore would not be in the public interest.

As explained more fully below, I agree with Columbia, OCA and CAUSE-PA. The Commission did not clearly mandate the removal of $375,000 from Rider USP immediately. Further, OCA and CAUSE-PA offered witness testimony regarding the negative impact of the immediate removal from Rider USP. BIE offered no evidence to rebut this testimony.

First, read in context, I do not believe the Commission mandated the immediate removal of the hardship funding from Rider USP. The Commission simply directed that the parties “address” the issue in this proceeding. Read in context with the language of the Tentative Order that “we are *not seeking to amend Columbia’s funding mechanism* for its Hardship Fund program at this time . . . .”[[27]](#footnote-27) the Commission was instead directing the parties to discuss other ways to secure funding and develop a plan for the removal of the hardship funding from Rider USP. This interpretation is further bolstered by the fact that the funding mechanism issue was not among the list of amendments that the Commission directed Columbia make to its universal service plan,[[28]](#footnote-28) nor was Columbia directed to remove the hardship funding from Rider USP in the ordering paragraphs of the USECP Order.[[29]](#footnote-29) Had the Commission intended for the immediate removal of the hardship funding from Rider USP, it would not have directed the parties to the base rate proceeding to “address” the issue, it would have directed Columbia to remove the funding from its tariff.

Second, both OCA and CAUSE-PA provided testimony that to remove the hardship funding from Rider USP without having other sources of funding in place would negatively impact customers who rely on the services provided by the Hardship Fund. While OCA, in particular, advocated the position that the $375,000 should be removed from Rider USP and replaced with voluntary contributions, OCA’s witness conceded that it was more prudent to permit Columbia the time to enhance its fundraising efforts to replace the funding in the future.[[30]](#footnote-30) CAUSE-PA’s witness, Mr. Miller, stated his opinion that the temporary increased cost to ratepayers was justified by the importance of ensuring continued access to sufficient hardship funding while a more long-term funding solution is established.[[31]](#footnote-31)

BIE provided no evidence which rebutted this testimony. Nor did BIE offer testimony which demonstrated that temporarily continuing the recovery of the funding through Rider USP was an undue burden on ratepayers and not in the public interest. BIE’s witness testimony simply echoed BIE’s legal argument that language in the USECP Order mandated the immediate removal of the hardship funding from Rider USP. It is well-settled that an expert is not permitted to give an opinion on a question of law. An expert witness may not be offered to testify “as to the governing law” or “what the law required.”[[32]](#footnote-32) Rather, it is the role of the adjudicator, not a witness, to draw conclusions as to the meaning of the law.[[33]](#footnote-33)

BIE seems to suggest that Columbia could immediately use voluntary contributions to replace the $375,000 that should no longer be recovered, in BIE’s view, via

Rider USP, based on its interpretation of Mr. Miller’s testimony. Columbia responds:

Initially, Columbia observes that at no point in testimony or in its Main Brief does CAUSE-PA assert that Columbia should be ordered to increase its voluntary contribution to the Hardship Fund. Therefore, on this basis alone, I&E’s speculation that this may have been CAUSE-PA’s intent should be disregarded. In any event, I&E’s position that it would not oppose a recommendation that Columbia be directed to “volunteer” a $375,000 contribution to the Hardship Fund should be rejected because it violates established Commonwealth Court precedent, which provides that a utility cannot be required to absorb a prudent cost validly incurred as a result of complying with a Commission order. *Columbia Gas of Pennsylvania, Inc.* *v. Pa. P.U.C.,* 613 A.2d 74 (Pa.Cmwlth. 1992); *Butler Township Water Co. v. Pa. P.U.C.*, 473 A.2d 219 (Pa. Cmwlth. 1982).

If a utility incurs a prudent expense as a direct result of abiding by a Commission order, the utility must be permitted to recover that expense at the first reasonable opportunity. *Columbia Gas*, 613 A.2d at 79-80. In *Columbia Gas of Pennsylvania, Inc. v. Pa. P.U.C.*, Columbia incurred $4.5 million in uncollectible accounts expense as a result of a Commission directive that Columbia and other gas and electric utilities offer budget plus payment plans to payment troubled customers as a means to reduce the risk of termination of utility service. (Id. at 79). . . . . Columbia proposed to recover the $4.5 million in bad debts. (Id.). The Commission held that Columbia was entitled to recover as an expense only the prospective arrearages of budget plus customers, or $1.125 million. (Id. at 79-80). The Commonwealth Court reversed, holding that Columbia could not be denied recovery of the full $4.5 million in bad debts that were accrued as a result of Columbia’s compliance with the Commission’s directive to establish a budget plus program. (Id. at 80).

Like the uncollectible accounts expense incurred by the utility as a result of the Commission’s mandate that the utility implement a budget plus program in *Columbia Gas of Pennsylvania, Inc.,* Columbia must be permitted recovery of any contribution to the Hardship Fund that it is required to provide. . . . If Columbia were directed to provide a $375,000 Hardship Fund contribution, or to make up the difference between the $375,000 contribution currently recovered through Rider USP and the amount of additional Hardship Funding it secures through increased fundraising efforts, the contribution would no longer be “voluntary,” and Columbia should be entitled to recover the full amount of the contribution. See *Columbia Gas*, 613 A.2d at

79-80.[[34]](#footnote-34)

While CAUSE-PA agrees that Columbia *could* choose to voluntarily provide $375,000 in hardship funding, CAUSE-PA also agrees that Columbia cannot be ordered to do so by the Commission.

In sum, I recommend that the Commission adopt the proposal of OCA to temporarily allow the continued recovery of $375,000 in Hardship Fund funding through Columbia’s Rider USP while Columbia undertakes efforts to secure additional sources of voluntary funding for its Hardship Fund. Columbia should have a plan in place to replace the funding from voluntary sources and should address the alternative recovery of the funding in its next base rate proceeding. BIE’s proposal to immediately end recovery of the $375,000 in hardship funding through Columbia’s Rider USP should be rejected.

V. 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. To determine whether a settlement should be approved, the Commission must decide whether the settlement promotes the public interest. *Pa. Pub. Util. Comm’n v. CS Water & Sewer Assoc.*, 74 Pa. PUC 767 (1991); *Pa. Pub. Util. Comm’n v. Philadelphia Electric Co*., 60 Pa. PUC 1 (1985).

3. The Joint Petition for Partial Settlement is in the public interest and is consistent with the requirements contained in *Lloyd v. Pa. Pub. Util. Comm’n*, 904 A.2d 1010 (Pa.Cmwlth. 2006).

VI. ORDER

THEREFORE,

IT IS RECOMMENDED:

1. That the Joint Petition for Partial Settlement filed August 27, 2015, by Columbia Gas of Pennsylvania, Inc., the Commission’s Bureau of Investigation and Enforcement, the Office of Consumer Advocate, the Office of Small Business Advocate, Columbia Industrial Intervenors, the NGS Parties, the Pennsylvania State University, and the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania, is approved as modified.

2. That Columbia shall be temporarily allowed to continue to recover $375,000 in Hardship Fund funding through Rider USP while Columbia undertakes enhanced efforts to secure additional sources of voluntary funding for its Hardship Fund.

3. That Columbia shall have a plan in place to replace the funding from voluntary sources and should address the alternative recovery of the hardship funding in its next base rate proceeding.

4. That Columbia Gas of Pennsylvania, Inc. shall be permitted to file a tariff supplement incorporating the terms of the Joint Petition for Partial Settlement and changes to rates, rules and regulations as set forth in Appendix C of the Joint Petition for Partial Settlement, to become effective upon at least one (1) days’ notice after entry of the Commission’s Order approving the Joint Petition for Partial Settlement, for service rendered on and after December 18, 2015, which tariff supplement increases Columbia Gas of Pennsylvania, Inc.’s rates so as to produce an annual increase in base rate operating revenues of not more than $28 million.

5 That the Formal Complaint filed by the Office of Consumer Advocate at Docket No. C-2015-2473682, is sustained as it relates to the disposition of the Hardship Fund. The formal complaint is otherwise satisfied as it relates to all other issues and shall be marked closed.

6. That the Formal Complaint filed by the Office of Small Business Advocate at Docket No. C-2015-2477816, be marked satisfied and closed.

7. That the Formal Complaint filed by Columbia Industrial Intervenors at Docket No. C-2015-2477120, be marked satisfied and closed.

8. That the Formal Complaint filed by G. Thomas Smeltzer at Docket No.

C-2015-2484454, is dismissed.

9. That the Joint Petition for Settlement Removing PSU Amended Complaint Issues from Base Rate Proceeding is approved in part as to the severance of the issues raised in PSU’s amended complaint, and held in abeyance in part as to the service-related terms of the settlement.

10. That the Formal Complaint of the Pennsylvania State University at Docket No. C-2015-2476623 be marked closed with respect to the settled issues related to Columbia’s base rate issues.

11. That the issues related to the Snowshoe Lateral raised in the Amended Formal Complaint of the Pennsylvania State University filed on July 31, 2015 be severed from Docket No. C-2015-2476623.

12. That the Secretary’s Bureau shall assign a new complaint docket number to the Amended Complaint filed on July 31, 2015. Columbia’s answer to the Amended Formal Complaint filed on August 7, 2015, shall be posted to the new docket.

13. That consideration of the remaining terms of the Joint Petition for Settlement Removing PSU Amended Complaint Issues from Base Rate Proceeding be held in abeyance.

14. That, upon Commission approval of the tariff supplement filed by Columbia Gas of Pennsylvania, Inc. in compliance with the Commission’s Order, the investigation at Docket No. R-2014-2468056, shall be marked closed.

Date: September 29, 2015 /s/

Mary D. Long

Administrative Law Judge

1. Members of the CII include the following: Glen-Gery Corporation and Knouse Foods Cooperative, Inc. [↑](#footnote-ref-1)
2. By letter dated September 1, 2015, Columbia filed a corrected Appendix C which corrected errors discovered on pages 16-21c. [↑](#footnote-ref-2)
3. NiFit is a project designed to upgrade financial process and information systems across all of the NiSource companies, including Columbia. *See Pa. Pub. Util. Comm’n v. Columbia Gas of Pennsylvania, Inc.*, R-2014-2406274 (Recommended Decision served October 17, 2014), at p. 17, *approved with modifications,* (Opinion and Order entered December 12, 2014). [↑](#footnote-ref-3)
4. As of this writing, Columbia has not filed its application for abandonment with the Commission. [↑](#footnote-ref-4)
5. None of this written testimony was admitted into the record on August 4, 2015 or August 10, 2015. [↑](#footnote-ref-5)
6. Joint Petition for Partial Settlement at p. 21, ¶ 2 of the Wherefore Clause. [↑](#footnote-ref-6)
7. *See* 52 Pa.Code § 5.231. [↑](#footnote-ref-7)
8. *Pa. Pub. Util. Comm’n v. CS Water and Sewer Associates*, 74 Pa. PUC 767, 771 (1991). [↑](#footnote-ref-8)
9. NiFit is a project designed to upgrade financial process and information systems across all of the NiSource companies, including Columbia. *See Pa. Pub. Util. Comm’n v. Columbia Gas of Pennsylvania, Inc.*, R-2014-2406274 (Recommended Decision served October 17, 2014), at p. 17, *approved with modifications,* (Opinion and Order entered December 12, 2014). [↑](#footnote-ref-9)
10. BIE does not tabulate the sum of its adjustments in testimony. For record support of I&E’s litigation position with respect to overall revenue requirement, the following record sources apply: I&E St. No. 1, pp. 5-71 (Rate of Return); I&E St. No. 2, pp. 2-17 (Revenue and Expense; Rate Base); and I&E St. No. 3, pp. 7-58 (Rate Base, Revenues, Cost of Service, and Customer Charges). [↑](#footnote-ref-10)
11. *See* BIE St. No. 3, pp. 25-26. [↑](#footnote-ref-11)
12. *Pa. Pub. Util. Comm’n v. Peoples TWP LLC*, Docket No. R-2013-2355886 (Opinion and Order entered December 19, 2013), at p. 28. [↑](#footnote-ref-12)
13. Columbia St. No. 11, p. 9. [↑](#footnote-ref-13)
14. Company Exhibit 111, Schedules 1, 2, 3. [↑](#footnote-ref-14)
15. OSBA Statement No. 1, Direct Testimony of Robert D. Knecht at 13-15. [↑](#footnote-ref-15)
16. OSBA Statement No. 1, Direct Testimony of Robert D. Knecht at 24-27; OSBA Statement No. 3, Surrebuttal Testimony of Robert D. Knecht at 4. [↑](#footnote-ref-16)
17. OSBA Statement No. 1, Direct Testimony of Robert D. Knecht at 21-27. [↑](#footnote-ref-17)
18. Columbia Statement No. 111-R, Rebuttal Testimony of Mark Balmert at 37. [↑](#footnote-ref-18)
19. *See*  *Schneider v. Pa. Pub. Util. Comm’n*, 479 A.2d 10 (Pa.Cmwlth. 1984) (Commission is required to provide due process to the parties; when parties are afforded notice and an opportunity to be heard, Commission requirement to provide due process is satisfied). [↑](#footnote-ref-19)
20. 66 Pa.C.S. § 315(a); *Pa. Pub. Util. Comm’n v. Aqua Pennsylvania, Inc.,* Docket No. R-00038805, 236 PUR 4th 218, 2004 Pa. PUC LEXIS 39 (August 5, 2004). [↑](#footnote-ref-20)
21. *Allegheny Center Assocs. v. Pa. Publ. Util. Comm’n*, 570 A.2d 149, 153 (Pa.Cmwlth. 1990). [↑](#footnote-ref-21)
22. *See, e.g., Pa. Pub .Util. Comm’n v. PECO*, Docket No. R-891364, et al., 1990 Pa. PUC LEXIS 155 (Opinion and Order entered May 16, 1990); *Pa. Pub. Util. Comm’n v. Breezewood Telephone Company*, Docket No. R-901666, 1991 Pa. PUC LEXIS 45 (Opinion and Order entered January 31, 1991). [↑](#footnote-ref-22)
23. Docket No. R-2012-2321748. [↑](#footnote-ref-23)
24. Columbia Gas of Pennsylvania, Inc. Universal Service and Energy Conservation Plan for 2015-2018, Docket No. M-2014-2424462 (Tentative Order entered March 26, 2015), at p. 28. [↑](#footnote-ref-24)
25. Columbia Gas of Pennsylvania, Inc. Universal Service and Energy Conservation Plan for 2015-2018, Docket No. M-2014-2424462 (Final Order entered July 8, 2015) (USECP Order), at p. 39-40. [↑](#footnote-ref-25)
26. No other party has taken a position on this issue. [↑](#footnote-ref-26)
27. Tentative Order at p. 28 (emphasis added). [↑](#footnote-ref-27)
28. *See* USECP Order at p. 53-54. [↑](#footnote-ref-28)
29. USECP Order at p. 55-56. [↑](#footnote-ref-29)
30. OCA St. 4-S at p. 11. [↑](#footnote-ref-30)
31. CAUSE-PA St. 1-SR at p. 10. [↑](#footnote-ref-31)
32. *United States v. Leo*, 941 F.2d 181, 196-197 (3d Cir.1991); *see also Browne v. Commonwealth*, 843 A.2d 429, 433 (Pa.Cmwlth. 2004) (explaining that an expert's legal opinion testimony, such as whether a party has violated an ordinance, is not admissible); *Kosey v. City of Washington Police Pension Bd*., 459 A.2d 432, 434 (Pa.Cmwlth. 1983) (stating that an expert witness may not testify as to issues of law, which are for a court to decide). [↑](#footnote-ref-32)
33. *Waters v. State Employment Retirement* Bd., 955 A.2d 466, 471 n.7 (Pa.Cmwlth. 2008). *See also Schwartz v. Delaware and Hudson Railway Company, Inc.* Docket No. P-2011-2241780 (Recommended Decision Upon Remand, August 2, 2013), adopted by, (Opinion and Order dated December 5, 2013). [↑](#footnote-ref-33)
34. Columbia, Reply brief at pp. 4-5. [↑](#footnote-ref-34)