



Thomas J. Sniscak
(717) 236-1300 x224
tjsniscak@hmslegal.com

Christopher M. Arfaa
(717) 236-1300 x231
cmarfaa@hmslegal.com

William E. Lehman
(717) 236-1300 x248
welehman@hmslegal.com

100 North Tenth Street, Harrisburg, PA 17101 Phone: 717.236.1300 Fax: 717.236.4841 www.hmslegal.com

October 23, 2015

BY ELECTRONIC FILING

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

RE: Pennsylvania Public Utility Commission v. Columbia Gas of Pennsylvania, Inc.;
Docket No.: R-2015-2468056; **THE PENNSYLVANIA STATE
UNIVERSITY'S EXCEPTIONS TO THE RECOMMENDED DECISION**

Dear Secretary Chiavetta:

Enclosed you will find The Pennsylvania State University's Exceptions to the Recommended Decision dated September 29, 2015, in the above-referenced proceeding. Copies have been served in accordance with the attached Certificate of Service. Also, courtesy copies are being served on all Commissioners via hand delivery.

If you have any questions regarding this filing, please do not hesitate to contact me.

Very truly yours,

Thomas J. Sniscak
Christopher M. Arfaa
William E. Lehman

Counsel to The Pennsylvania State University

TJS/das

Enclosure

cc: Hon. Gladys M. Brown, Chairman
Hon. John F. Coleman, Jr., Vice Chairman
Hon. Pamela A. Witmer, Commissioner
Hon. Robert F. Powelson, Commissioner
Hon. Andrew G. Place, Commissioner
Hon. Mary D. Long, ALJ
Per Certificate of Service

MAILING ADDRESS: P.O. BOX 1778 HARRISBURG, PA 17105

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission
Office of Consumer Advocate
Office of Small Business Advocate
Pennsylvania State University
Columbia Industrial Intervenors
G. Thomas Smeltzer

v.

Columbia Gas of Pennsylvania, Inc.

R-2015-2468056
C-2015-2473682
C-2015-2477816
C-2015-2476623
C-2015-2477120
C-2015-2484454

**EXCEPTIONS OF
THE PENNSYLVANIA STATE UNIVERSITY**

Thomas J. Sniscak, Attorney ID No. 33891
Christopher M. Arfaa, Attorney ID No. 57047
William E. Lehman, Attorney ID No. 83936
HAWKE MCKEON & SNISCAK LLP
100 North Tenth Street
Harrisburg, PA 17101
tjsniscak@hmslegal.com
cmarfaa@hmslegal.com
welehman@hmslegal.com
Telephone: (717) 236-1300
Facsimile: (717) 236-4841

DATED: October 23, 2015

Counsel for
THE PENNSYLVANIA STATE UNIVERSITY

TABLE OF CONTENTS

| | |
|---|-----------|
| I. Introduction And Summary Of Exceptions | 1 |
| II. Exceptions..... | 5 |
| A. Exception No. 1: Failure To Approve The PSU-Columbia Rate Case Settlement Without Modification Would Harm The Public Interest. | 5 |
| B. Exception No. 2: Approval Of Columbia’s Rates Without Addressing The Inefficiency, Ineffectiveness And Inadequacy Of Columbia’s Transportation Service Would Violate The Public Utility Code And Appellate Decisions. | 11 |
| C. Exception No. 3: Approval Of Columbia’s Rates Without Holding An Evidentiary Hearing On The Allegations Of The Amended Complaint Would Deprive Penn State Of Due Process And Violate Appellate Decisions. | 12 |
| D. Exception No. 4: Failure To Approve The PSU-Columbia Rate Case Settlement Without Modification Would Thwart The Commission’s Policy Of Encouraging Settlements In Rate Cases For No Discernable Reason. | 14 |
| III. Conclusion | 15 |

Pursuant to 52 Pa. Code § 5.533, The Pennsylvania State University (“PSU” or “Penn State”) hereby submits its Exceptions to the Recommended Decision (the “RD”) by Administrative Law Judge Mary D. Long (the “ALJ”) issued in the above-captioned matter on October 13, 2015.

I. INTRODUCTION AND SUMMARY OF EXCEPTIONS

There are two rate case settlement petitions in this consolidated rate proceeding, one between Columbia Gas of Pennsylvania, Inc. (“Columbia” or the “Company”) and a majority of the parties (the “Partial Rate Case Settlement”),¹ and a second between Penn State and Columbia (the “PSU-Columbia Rate Case Settlement”).² Penn State is not a signatory to the Partial Rate Case Settlement but has agreed not to oppose it contingent upon approval of PSU-Columbia Rate Case Settlement.³ No party has opposed the PSU-Columbia Rate Case Settlement.

The ALJ erroneously decided not to recommend approval of the unopposed PSU-Columbia Rate Case Settlement and that error plainly (a) denies the public interest benefits of the settlement, including facility improvements important to service to Centre County and the greater State College region, (b) violates Pennsylvania law by stripping from this rate case the issues raised by the allegations of PSU’s rate case complaint (as amended, the “Amended Complaint”),⁴ are clearly permitted under the express terms of the Public Utility Code,⁵ without

¹ Joint Petition for Partial Settlement, Docket No. R-2015-2468056 etc. (filed August 27, 2015).

² Joint Petition for Settlement Removing PSU Amended Complaint Issues from Base Rate Proceeding to a Separate Proceeding to be Consolidated with a Future Columbia Application to Abandon the Snowshoe Lateral in Part and Service To Customers, Docket No. C-2015-2476623 (filed August 27, 2015) (“PSU-Columbia Jt. Pet.”).

³ Pursuant to the PSU-Columbia Rate Case Settlement, Penn State has agreed not to oppose the Partial Rate Case Settlement (see PSU-Columbia Jt. Pet. ¶ 37) and to consent to the removal from this proceeding of the issues raised in the Amended Complaint in exchange for Columbia’s agreement to certain terms intended to mitigate the rate effect of those issues pending their resolution.

⁴ PSU’s original formal complaint was filed on April 10, 2015, and docketed at No. C-2015-2476623 before Columbia announced its plan to sever or close part of the Snowshoe Lateral. PSU raised the issues pertaining to the Snowshoe Lateral in its pre-served direct and rebuttal testimonies, after conducting discovery. The Amended Complaint was filed at the ALJ’s suggestion on July 31, 2015, and served by Secretarial Letter on August 5, 2015.

any hearing and resolution of those issues prior to ruling on Columbia's rate increase, (c) unnecessarily creates major due process and Public Utility Code issues that will render illegal the rate increase approved by the Commission pursuant to the Partial Rate Case Settlement and may cause them to be subject to refund under appellate precedent, and (d) violates this Commission's policy on promoting settlements, particularly in rate cases.

The RD recommends approval of the Partial Rate Case Settlement and severance of the in the Amended Complaint as proposed by the PSU-Columbia Rate Case Settlement, but does not recommend approval of what the ALJ calls the "service-related" terms of the PSU-Columbia Rate Case Settlement, which are designed to mitigate the detrimental effect of the issues issues raised by the Amended Complaint. The RD thus recommends that Columbia's proposed rate increase (as modified by the Partial Rate Case Settlement) be implemented *prior to* resolution of the issues raised in the Amended Complaint. This is an invitation to error which should be rejected. Before approving any rate increase, the Commission is statutorily required by 66 Pa. C.S. §§ 523 and 526 and constitutionally required by the due process clause to hear evidence on and resolve the Amended Complaint's allegations that the Company's inefficient, ineffective and inadequate service and performance or lack thereof before it renders a decision on whether the rate increase is unjust and unreasonable. Otherwise, by deferring these rate case issues to a further proceeding, the Commission would be setting rates while a rate complaint is pending. Such a result would plainly violate the Pennsylvania Supreme Court's decision in *Joseph Horne*

Columbia filed an answer to the Amended Complaint on August 10, 2015; the answer was docketed at No. R-2015-2468056.

⁵ No party challenged PSU's legal right to raise the issues posed in its rate case complaint and amended rate case complaint.

*Co. v. Pennsylvania Public Utility Commission*⁶ and its appellate progeny, which hold that such illegal, due process-deficient rates are subject to refund.

The Commission can avoid this result by approving the terms of the PSU-Columbia Rate Case Settlement without modification, which would allow implementation of the Partial Rate Case Settlement and thus clearly serve the public interest. As argued in the Exceptions set forth below, the RD's contrary recommendation – that the Partial Rate Case Settlement be adopted while the terms of the PSU-Columbia Rate Case Settlement be “held in abeyance” – must be rejected for the following specific reasons:

- **First**, approval of the “service related” terms of the PSU-Columbia Rate Case Settlement is clearly in the public interest. Nothing in the RD or the record suggests, much less supports the ALJ's recommendation that these terms of be held “in abeyance.” The requirement that Columbia keep certain transportation facilities in service for at least eighteen months after any Commission order approving its removal from service provides Penn State and other customers in the State College area with the certainty they require in order to purchase natural gas supply. The requirement that Columbia upgrade certain point-of-delivery facilities so that they can remedy an existing bottleneck or lack of facilities so as to aide in providing service to the requirements of all State College customers will promote both infrastructure redundancy and competition in natural gas supply market.
- **Second**, the RD's recommendation that the Commission implement the rate increase proposed by the Partial Rate Case Settlement without first addressing the issues raised in the Amended Complaint – either by approving the PSU-Columbia Rate Case Settlement without modification or by adjudication after hearing – would violate the Public Utility Code. In considering Columbia's base rate case, “the Commission is **required** to review whether the service rendered by the utility is efficient, effective and adequate.”⁷ Section 523(a) of the Public Utility Code provides that the Company's requested rate increase **must** be judged in light of the efficiency, effectiveness and adequacy of its service.⁸ Section 526(a) provides for

⁶ *Joseph Horne Co. v. Pennsylvania Pub. Util. Comm'n*, 485 A.2d 1105, 506 Pa. 475 (1984) (PUC cannot allow rates to go into effect without due process and hearings; deferring rate case-raised issues into subsequent proceeding produces illegal temporary rates).

⁷ *Pennsylvania Pub. Util. Comm'n v. Deer Haven, LLC d/b/a Deer Haven Sewer Co.*, C-2010-2201891, 2011 WL 2530243, at *13 (May 19, 2011) (emphasis added).

⁸ 66 Pa. C.S. § 523(a) (“The commission shall consider, in addition to all other relevant evidence of record, the efficiency, effectiveness and adequacy of service of each utility when determining just and reasonable rates under this title. On the basis of the commission's consideration of such evidence, it shall give effect to this section by

rejection of a utility's requested rate increase due to inadequate quality or quantity of service.⁹ By recommending approval of the Partial Rate Case Settlement without resolving Penn State's allegations with respect to Columbia's service (either by settlement or by adjudication after hearing), the ALJ has invited the Commission to *gut* the statutory requirement that the efficiency, effectiveness and adequacy quality of a utility's service be reviewed before approving a rate increase.

- **Third**, Penn State's agreement to the severance of its Amended Complaint from this proceeding and its non-opposition to the Partial Rate Case Settlement are expressly conditioned on the Commission's approval of *all* of the terms and conditions of the PSU-Columbia Rate Case Settlement without modification. (PSU-Columbia Jt. Pet. ¶ 40.) If the Commission severs the Amended Complaint from this proceeding over Penn State's objection and approves Columbia's rates (as modified by the Partial Rate Case Settlement) without addressing Penn State's allegations, it will unlawfully deprive Penn State of "its due process right to an evidentiary hearing prior to the implementation of these rates"¹⁰ and violate appellate law prohibiting a general rate increase when the allegations of a rate complaint, as the RD suggests here, have been deferred and thus not resolved.
- **Fourth**, the RD contravenes the Commission's policy favoring settlement of rate cases. Failure to approve the PSU-Columbia Rate Case Settlement without modification would leave unresolved Penn State's allegations that Columbia's inefficient, ineffective and inadequate transportation service renders any rate increase unjust and unreasonable. This, in turn, would preclude implementation of the rate increase proposed by the Partial Rate Case Settlement.

The foregoing atypical defects preclude adoption of an otherwise thorough and well-reasoned RD. Fortunately, they can be easily cured by approving the PSU-Columbia Rate Case Settlement without modification. Therefore, Penn State respectfully requests that the Commission reject the RD in part, modify it to approve the terms of the PSU-Columbia Rate

making such adjustments to specific components of the utility's claimed cost of service as it may determine to be proper and appropriate. Any adjustment made under this section shall be made on the basis of specific findings upon evidence of record, which findings shall be set forth explicitly, together with their underlying rationale, in the final order of the commission.").

⁹ 66 Pa. C.S. § 526(a) ("The commission may reject, in whole or in part, a public utility's request to increase its rates where the commission concludes, after hearing, that the service rendered by the public utility is inadequate in that it fails to meet quantity or quality for the type of service provided.").

¹⁰ *Masthope Rapids Prop. Owners Council v. Pennsylvania Pub. Util. Comm'n*, 135 Pa. Cmwlt. 437, 448, 581 A.2d 994, 1000 (1990); see *Pennsylvania Pub. Util. Comm'n v. Mill Creek Co.*, R-00943087, 1994 WL 776951 (Oct. 28, 1994) ("when a complaint has been filed which challenges the implementation of those rates, the Commission must accord the party who challenged the request its due process right to an evidentiary hearing prior to said implementation").

Case Settlement without modification, and adopt it as so modified.

II. EXCEPTIONS

A. **Exception No. 1: Failure To Approve The PSU-Columbia Rate Case Settlement Without Modification Would Harm The Public Interest.**

The service related terms of the PSU-Columbia Rate Case Settlement are in the public interest because they mitigate the adverse effects of what PSU has alleged in its Amended Complaint to be Columbia's inefficient, ineffective and inadequate service to customers in the State College area. In any event, as described below, Columbia's agreement to make improvements necessary to remove a bottleneck reflects sound business judgment, prudent management, and the kind of proactive approach that the Commission should promote, as opposed to the uncertainty and reduction in service quality that approval of the RD would invite. Failure to approve those terms as part of the PSU-Columbia Rate Case Settlement would therefore harm the public interest.

The rapidly growing State College area is served by three interstate pipelines: a Columbia Pipeline Group ("TCO 1711") pipeline, a Dominion Transmission Inc. ("DTI") pipeline, and a Texas Eastern ("TETCO") pipeline.¹¹ The three pipelines deliver gas at three separate points of delivery ("PODs"): the Snowshoe POD, the DTI POD and the TETCO POD, respectively. Historically, nearly all of the gas supplied by Columbia to the State College area has flowed from the TCO 1711 line, through the Snowshoe POD, and then down a Company line called the "Snowshoe Lateral." Access to the TCO 1711 pipeline via the Snowshoe Lateral allows retail customers and natural gas suppliers in the State College area (including Columbia itself) to purchase or obtain local Marcellus Shale gas and other low-priced Pennsylvania gas.¹²

¹¹ The TETCO pipeline has bottleneck issues presently and cannot serve the entirety of the State College area.

¹² See Amended Complaint ¶¶ 9-18.

The Snowshoe Lateral is approximately 21 miles long. Until recently, Columbia had planned to rebuild and replace the Snowshoe Lateral facilities. At some point within the last year (perhaps less), Columbia reversed course and decided to abandon approximately 3 of the 21 miles of the line rather than invest the capital necessary to maintain it in its entirety. Then, in or about April 2015, Columbia bought up a very large amount of long-term firm capacity rights on the DTI pipeline, one of the two other interstate pipeline facilities serving the State College area.¹³ It was only after securing this DTI capacity that the Company, on May 5, 2015 when this rate case was well underway, informed PSU and other affected customers for the first time of its decision to abandon the Snowshoe Lateral, explaining that its condition had deteriorated to a substantial degree. The third pipeline servicing the State College Region, TETCO, cannot handle PSU and the existing State College areas needs due to bottleneck issues. When the Snowshoe Lateral is abandoned, customers and natural gas marketers in the State College area will be unable to purchase the inexpensive Marcellus Shale gas that had been available on the TCO 1711 pipeline and the Snowshoe Lateral.¹⁴

PSU's Amended Complaint requests that Columbia's rate increase and/or allocation be rejected, in large part because the Company's service has been rendered "inefficient, ineffective and inadequate" by (a) Columbia's failure to keep the Snowshoe Lateral in good repair, (b) its decision to abandon the Snowshoe Lateral, (c) its failure to give timely, adequate and sufficient notice to customers served by the Snowshoe Lateral of that decision, and (d) its surreptitious buying up of a huge swath of firm capacity on one of the two other interstate pipelines serving

¹³ To serve the State College area Columbia will have to do a major upgrade to its Point of Delivery (POD) at the DTI pipeline.

¹⁴ See Amended Complaint ¶¶ 9-18.

the State College area based on its inside information and prior to announcing its decision to abandon the Snowshoe Lateral.¹⁵

Columbia and several parties other than Penn State filed a joint petition for approval of the Partial Rate Case Settlement on August 27, 2015. Simultaneously, Penn State and Columbia filed a separate joint petition for settlement in the same rate case in order to resolve the *rate* issues raised by PSU's Amended Complaint. Pursuant to the PSU-Columbia Rate Case Settlement, Penn State agreed not to oppose the Partial Rate Case Settlement (see PSU-Columbia Jt. Pet. ¶ 37) and to the removal from this proceeding of the issues raised in the Amended Complaint *in exchange for* Columbia's agreement to the following terms:

- The issues raised in the Amended Complaint pertaining to Columbia's removal of the Snowshoe Lateral from service, its abandonment of service, and its April 2015 acquisition of capacity from DTI will be separated from this base rate proceeding, continued in a separate complaint docket, and consolidated with Columbia's anticipated abandonment proceeding, in which Columbia will retain the burden of proof on those issues (PSU-Columbia Jt. Pet. ¶ 34);
- Columbia shall continue to operate the Snowshoe Lateral and permit General Distribution Service ("GDS") customers to schedule deliveries on the TCO pipeline pending a final decision in the consolidated proceeding; in the event the Commission grants Columbia's application to abandon service, Columbia will not sever the Snowshoe Lateral until it gives what amounts to 18 months' notice to PSU and Columbia's other GDS customers; in the event the Commission denies Columbia's application to abandon service and determines that the Snowshoe Lateral must remain in service, Columbia will rebuild the Snowshoe Lateral (PSU-Columbia Jt. Pet. ¶ 35);
- If Columbia receives permission to remove the portion of the Snowshoe Lateral that delivers gas from TCO to the State College market, Columbia will permit PSU to deliver 100% of PSU's load at Columbia's TETCO POD; to fulfill this commitment, Columbia will make improvements to the TETCO POD in order to accommodate service to the State College market, including PSU's load (PSU-Columbia Jt. Pet. ¶ 36).

Penn State decided to settle in such a manner in recognition of the fact that Columbia is

¹⁵ Amended Complaint ¶¶ 21-25.

in the process of upgrading facilities which have degraded or aged in various parts of its service territory and needs money for such infrastructure improvement. In that spirit, PSU was willing to accept the Partial Rate Case Settlement in exchange for additional certainty and some other improvements that mitigate in part the loss of access to the TCO 1711 pipeline resulting from the removal or degradation of the Snowshoe Lateral. The RD frustrates and discourages such compromises and settlement.

The ALJ recommends approval of the Partial Rate Case Settlement without modification (RD at 52), based in part on Penn State's agreement (a) not to oppose that settlement and (b) to have the service issues raised in the Amended Complaint considered by the Commission in conjunction with Columbia's application for permission to abandon the Snowshoe Lateral. However, the ALJ erroneously recommends that the Commission *withhold* approval of the material terms of the PSU-Columbia Rate Case Settlement Agreement by holding them in "abeyance" pending consideration of Columbia's abandonment and removal of the Snowshoe Lateral in an upcoming application proceeding:

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. (RD at 52-53.)

The RD's reasoning is fundamentally flawed because it fails to recognize that what it characterizes as "service related matters" in fact comprise, pursuant to Sections 523 and 526 of the Public Utility Code, 66 Pa. C.S. §§ 523, 526, *issues that are to be decided in a rate case.*

Legal issues aside, the ALJ's recommendation that the Commission withhold approval of the PSU-Columbia Rate Settlement without modification is not in the public interest; conversely, there are obvious public interest reasons for approving the settlement as filed. Therefore, this aspect of the RD should be rejected.

The "remaining, service-related terms" consist of (a) Columbia's commitment to keep the Snowshoe Lateral in service until at least 18 months after receiving PUC approval of its removal and providing notice to PSU and the other customers, and (b) Columbia's commitment to allow PSU to deliver 100% of its load to the TETCO POD and to upgrade the TETCO POD in order to accommodate service to the State College market, including PSU's load. (PSU-Columbia Jt. Pet. ¶ 36.) These measures promote the public interest by providing certainty with respect to available pipeline capacity, which is lacking under the status quo that the RD would perpetuate. Certainty is necessary to customers such as PSU and natural gas suppliers ("NGSs") when entering into term natural gas supply contracts. By failing to approve all of the terms of the PSU-Columbia Rate Case Settlement, the RD would leave Penn State and similarly-situated customers in the limbo Columbia created when it bought up all available DTI capacity and then announced its decision to remove the Snowshoe Lateral, subject to Commission approval. Until the Commission determines whether Columbia may remove the facility and, if so, under what conditions, State College area customers who buy gas directly from NGSs will not know whether, or for how long, they will be able to receive gas at the Snowshoe POD or at the unimproved TETCO POD. Given such uncertainty, how are these customers supposed to contract for natural gas supply, and for what period? How would a NGS know how long it can ship gas over TCO and the Snowshoe Lateral and thus how to price its bid to a customer? The answer is they would not. That result does not promote the competition this Commission worked

so hard to achieve. This uncertainty is mitigated in part by the term of the PSU-Columbia Rate Case Settlement requiring Columbia to keep the Snowshoe Lateral in service for at least 18 months following the Commission's decision on its abandonment application.

The PSU-Columbia Rate Case Settlement further mitigates the adverse effects of Columbia's actions by addressing a bottleneck at the TETCO POD. Assuming *arguendo* that the Snowshoe Lateral is subject to problems and that Columbia is thus putting all its delivery eggs for the general State College market into one DTI basket (which itself needs POD upgrades), upgrading the TETCO POD to ensure capacity to serve the needs of State College area customers clearly is in the public interest. *If the Snowshoe Lateral is unavailable and the DTI line were to go down for whatever reason, the harm to the public in general and State College area customers in particular would be substantial.* Thus, the term of the PSU-Columbia Rate Case Settlement providing that Columbia will take *proactive* steps at the TETCO POD to relieve the bottleneck and provide some back-up is plainly in the public interest.

The RD discloses no countervailing public policy reason against approval of the settlement. The ALJ attempted to explain her recommendation to hold the "service related" terms of the PSU-Columbia Rate Case Settlement "in abeyance" (in other words, to withhold approval of the settlement) by asserting that "[i]t is not in the public interest for the Commission to have the appearance of prejudging that application and any related filing to that proceeding." (RD at 52-53.) This assertion is simply incorrect. First, it ignores the express provision of the PSU-Columbia Rate Case Settlement that "[t]he Commission's approval of the Settlement shall not be construed to represent approval of any Party's position on any issue, except to the extent required to effectuate the terms and agreements of the Settlement in this and future proceedings

involving Columbia.”¹⁶ Second, approval of the terms described above would not create the appearance of prejudging anything: the issue of whether Snowshoe is abandoned or rebuilt is open and not dictated by the PSU-Columbia Rate Case Settlement in any way. Commission should approve the settlement terms the RD passed upon and encourage the certainty and proactive service enhancements they provide.

B. Exception No. 2: Approval Of Columbia’s Rates Without Addressing The Inefficiency, Ineffectiveness And Inadequacy Of Columbia’s Transportation Service Would Violate The Public Utility Code And Appellate Decisions.

The ALJ’s assertion that consideration of the issues raised in the Amended Complaint is somehow “premature” ignores the fundamental principle that, in utility rate cases, “[p]rice and performance are inextricably intertwined. . . . Superior service commands a higher rate of return as a reward for managerial efficiency, but inferior service deserves less return than normally would be forthcoming.”¹⁷ Thus it is well-settled that, pursuant to the express provisions of the Public Utility Code, “[w]hen considering a utility’s rate claims, the Commission is *required* to review whether the service rendered by the utility is efficient, effective and adequate.”¹⁸ Indeed, Section 523(a) of the Code provides:

The commission *shall consider*, in addition to all other relevant evidence of record, *the efficiency, effectiveness and adequacy of service of each utility when determining just and reasonable rates* under this title. On the basis of the commission’s consideration of such evidence, it shall give effect to this section by making such adjustments to specific components of the utility’s claimed cost of service as it may determine to be proper and appropriate. Any adjustment made under this section shall be made on the basis of specific findings upon evidence of record, which findings shall be

¹⁶ PSU-Columbia Jt. Pet. ¶ 42.

¹⁷ *Nat’l Utilities, Inc. v. Pennsylvania Pub. Util. Comm’n*, 709 A.2d 972, 978 (Pa. Cmwlth. 1998) (quoting *Petition of Valley Road Sewerage Company*, 285 N.J. Super. 202, 208, 666 A.2d 992, 995 (1995)); accord *American Tel. & Tel. Co. v. Central Office Tel., Inc.*, 524 U.S. 214, 223 (1998) (“Rates . . . do not exist in isolation. They have meaning only when one knows the services to which they are attached. Any claim for excessive rates can be couched as a claim for inadequate services and vice versa.”).

¹⁸ *Pennsylvania Pub. Util. Comm’n v. Deer Haven, LLC d/b/a Deer Haven Sewer Co.*, C-2010-2201891, 2011 WL 2530243, at *13 (May 19, 2011) (emphasis added).

set forth explicitly, together with their underlying rationale, in the final order of the commission.¹⁹

Section 526(a) provides:

The commission may *reject*, in whole or in part, a public utility's request to increase its rates where the commission concludes, after hearing, that the service rendered by the public utility is *inadequate* in that it fails to meet quantity or quality for the type of service provided.²⁰

Accordingly, consideration of the issues raised by Penn State in the Amended Complaint would not be “premature” as asserted by the ALJ. To the contrary, the Commission is *required* by the Public Utility Code to review whether the service rendered by the utility is “efficient, effective and adequate” *before* approving any rate increase.²¹ The recommendation that the Commission approve Columbia’s rates without resolving the rate case service issues raised by Penn State in the Amended Complaint – either by litigation or by adopting the PSU-Columbia Rate Case Settlement without modification – would flout the Legislature’s unambiguous command produce illegal rates subject to challenge and potential refund pursuant to *Joseph Horne Co.*²² and its appellate progeny and therefore should be rejected.

C. Exception No. 3: Approval Of Columbia’s Rates Without Holding An Evidentiary Hearing On The Allegations Of The Amended Complaint Would Deprive Penn State Of Due Process And Violate Appellate Decisions.

The ALJ’s recommendation that the Commission approve Columbia’s rates (as modified by the Partial Rate Case Settlement) without approving the terms of the PSU-Columbia Rate Case Settlement without modification, if adopted, would deprive Penn State of its due process

¹⁹ 66 Pa. C.S. §523(a) (emphasis added).

²⁰ 66 Pa. C.S. §526(a) (emphasis added).

²¹ *Pennsylvania Pub. Util. Comm’n v. Deer Haven, LLC d/b/a Deer Haven Sewer Co.*, C-2010-2201891, 2011 WL 2530243, at *13 (May 19, 2011).

²² *Joseph Horne Co. v. Pa. Pub. Util. Comm’n*, 485 A.2d 1105, 506 Pa. 475 (1984) (PUC cannot allow rates without due process and hearings; deferring rate case-raised issues into subsequent proceeding amounts to illegal temporary rates).

right to be heard on the allegations of the Amended Complaint and similarly would violate *Joseph Horne* and its progeny. Therefore, they should be rejected.

The basic protections of procedural due process – adequate notice, opportunity to be heard, and the chance to defend oneself – are “fully applicable to adjudicative hearings involving substantial property rights.”²³ “[W]ith regard to the opportunity to be heard the ‘fundamental requirement of due process is the *opportunity* to be heard at a *meaningful* time and in a *meaningful* manner.’”²⁴ Thus, in the context of a utility’s request for a general rate increase, “when a complaint has been filed which challenges the implementation of those rates, the Commission must accord the party who challenged the request its due process right to an evidentiary hearing prior to said implementation.”²⁵ Clearly, the ALJ’s deferral recommendation would deprive Penn State of its right to be heard on the allegations of its Amended Complaint prior to implementation of Columbia’s rate increase.

This due process violation cannot be remedied by consideration of the allegations of the Amended Complaint in Columbia’s future abandonment application proceeding. By permitting Columbia’s rate increase to be implemented prior to an investigation and hearing on Penn State’s unsettled claims, the Commission will have “failed to accord [Penn State] due process of law by

²³ *Lyness v. State Board of Medicine*, 529 Pa. 535, 542, 605 A.2d 1204, 1207 (1992) (quoting *Soja v. Pa. State Police*, 500 Pa. 188, 193, 455 A.2d 613, 615 (1982)); *Cresco, Inc. v. Pennsylvania Pub. Util. Comm’n*, 154 Pa. Cmwlth. 27, 32, 622 A.2d 997, 1000 (1993) (quoting *Lyness*), petition for allowance of appeal denied, 536 Pa. 633, 637 A.2d 292 (1993).

²⁴ *Cresco, Inc. v. Pennsylvania Pub. Util. Comm’n*, 154 Pa. Cmwlth. 27, 32, 622 A.2d 997, 1000 (1993) (quoting *Barasch v. Pennsylvania Pub. Util. Comm’n*, 104 Pa. Cmwlth. 52, 81, 521 A.2d 482, 496 (1987) (emphases added by *Cresco* court)), petition for allowance of appeal denied, 536 Pa. 633, 637 A.2d 292 (1993).

²⁵ *Pennsylvania Pub. Util. Comm’n v. Mill Creek Co.*, R-00943087, 1994 WL 776951 (Oct. 28, 1994) (citing *Masthope Rapids Prop. Owners Council v. Pennsylvania Pub. Util. Comm’n*, 135 Pa. Cmwlth. 437, 448, 581 A.2d 994, 1000 (1990); further citation omitted).

denying [Penn State] a *meaningful* opportunity to be heard.”²⁶

Simply put, the RD cannot have it both ways. The Commission cannot approve the rate increase imposed by the Partial Rate Case Settlement by relying on Penn State’s agreement in the PSU-Columbia Rate Case Settlement to withdraw its opposition to any rate increase on the basis of inadequate service, while at the same time holding the rate case “service-related” terms of the settlement – that is, those terms that mitigate the rate effects of such inadequate service – “in abeyance” (RD at 52). To do so would foreclose PSU from advancing its claims *in this rate case* and thus deprive it of its right to be heard *before* Columbia’s rates are increased. If OCA, I&E or OSBA raised a claim or adjustment in a rate proceeding permitted by the Public Utility Code,²⁷ an ALJ could not simply say we are not going to deal with it here and instead it will be decided down the road in a separate proceeding. Such a procedural device, like the one the RD proposes, would violate simple and fundamental due process and could result in the Commission setting illegal rates, which would create a whole parade of unnecessary complications, rate challenges, and potential refunds.

D. Exception No. 4: Failure To Approve The PSU-Columbia Rate Case Settlement Without Modification Would Thwart The Commission’s Policy Of Encouraging Settlements In Rate Cases For No Discernable Reason.

It is the Commission’s policy to encourage settlements in general²⁸ and to encourage negotiated settlements of major rate cases in particular.²⁹ The recommendation to sever the Amended Complaint from this proceeding without approving the remaining terms and conditions

²⁶ *Green Mountain Energy Co. v. Pennsylvania Pub. Util. Comm’n*, No. 246 C.D. 2002 (Pa. Cmwlth. February 8, 2002) (Kelley, S.J.) (**unpublished**) (emphasis in original) (citing *Masthope Rapids Prop. Owners Council v. Pennsylvania Pub. Util. Comm’n*, 135 Pa. Cmwlth. 437, 448, 581 A.2d 994, 1000 (1990)).

²⁷ The Public Utility Code clearly permits the claims asserted in the Amended Complaint to be raised in this proceeding, and neither any party nor the ALJ has contested Penn State’s legal ability to raise such claims.

²⁸ 52 Pa. Code § 5.231.

²⁹ 52 Pa. Code § 69.401.

of the PSU-Columbia Rate Case Settlement obviously contravenes this policy, but the consequences of the recommendation are not limited to the PSU-Columbia Rate Case Settlement.

The terms of the PSU-Columbia Rate Case Settlement reflect a carefully-studied, balanced, and extensively negotiated compromise of the parties' interests *in the rate case*. The parties' agreement to its terms – and, in particular, Penn State's agreement to cease its opposition to Columbia's rate increase (as modified pursuant to the base rate case partial settlement) and to consent to the litigation of the issues pertaining to the Snowshoe Lateral in a separate proceeding – is expressly conditioned upon the Commission's approval of the settlement's terms and conditions *without modification*. (PSU-Columbia Jt. Pet. ¶ 40.) Otherwise, as argued above, those issues remain in the rate case and must be resolved by the Commission *before* it can lawfully set new rates. Thus, failure to resolve the issues raised by the Amended Complaint by approving the PSU-Columbia Rate Case Settlement *without modification* would invalidate the Partial Rate Case Settlement – a settlement that otherwise is in the public interest – and thus contravene the Commission's policy of encouraging the settlement of major rate cases.

III. CONCLUSION

For all of the foregoing reasons, Penn State respectfully requests that the Commission enter an Order providing:

1. That these Exceptions are granted;
2. That the PSU-Columbia Rate Case Settlement is approved without modification; and
3. That the Recommended Decision is adopted in part, rejected in part, and modified in part to reflect the approval of the PSU-Columbia Rate Case Settlement without modification.

Dated: October 23, 2015

Respectfully submitted,



Thomas J. Sniscak, Attorney I.D. 33891
Christopher M. Arfaa, Attorney I.D. 57047
William E. Lehman, Attorney I.D. 83936
HAWKE MCKEON & SNISCAK LLP
100 North Tenth Street
Harrisburg, PA 17101
tjsniscak@hmslegal.com
cmarfaa@hmslegal.com
welehman@hmslegal.com
Telephone: (717) 236 1300
Facsimile: (717) 236-4841

Counsel for
THE PENNSYLVANIA STATE UNIVERSITY

CERTIFICATE OF SERVICE

**Docket Nos. R-2015-2468056, C-2015-2473682,
C-2015-2477816; C-2015-2477120 and C-2015-2476623**

I hereby certify that I have this day served a true copy of the foregoing document upon the parties, listed below, in the manner indicated below, and in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

Via Electronic and First Class U.S. Mail

Michael W. Hassell, Esquire
Lindsay A. Berkstresser, Esquire
Michael W. Gang, Esquire
Devon T. Ryan, Esquire
Post & Schell, P.C.
17 North Second Street
12th Floor
Harrisburg, PA 17101
mhassell@postschell.com
lberkstresser@postschell.com
mgang@postschell.com
dryan@postschell.com
Counsel for Columbia Gas of Pennsylvania, Inc.

Theodore J. Gallagher, Esquire
Columbia Gas of Pennsylvania, Inc.
121 Champion Way, Suite 100
Canonsburg, PA 15317
tjgallagher@nisource.com
Counsel for Columbia Gas of Pennsylvania, Inc.

Andrew S. Tubbs, Esquire
NiSource Corporate Services Company
800 N. Third Street, Suite 204
Harrisburg, PA 17102
astubbs@nisource.com
Counsel for Columbia Gas of Pennsylvania, Inc.

John F. Povilaitis, Esquire
Karen O. Moury, Esquire
Buchanan Ingersoll & Rooney PC
409 North Second Street, Suite 500
Harrisburg, PA 17101-1357
john.povilaitis@bipc.com
karen.moury@bipc.com
Counsel for Retail Energy Supply Association

Erin L. Gannon, Esquire
Amy E. Hirakis, Esquire
Office of Consumer Advocate
555 Walnut St., 5th Floor Forum Place
Harrisburg, PA 17101-1923
egannon@paoca.org
ahirakis@paoca.org

Scott B. Granger, Esquire
PA Public Utility Commission
Bureau of Investigation and Enforcement
P.O. Box 3265
Harrisburg, Pa 17105-3265
sgranger@pa.gov


Daniel G. Asmus, Esquire
Assistant Small Business Advocate
Office of Small Business Advocate
300 North Second St., Ste. 202
Harrisburg, PA 17101
dasmus@pa.gov

Charis Mincavage, Esquire
Elizabeth P. Trinkle, Esquire
McNees Wallace & Nurick LLC
100 Pine Street
P.O. Box 1166
Harrisburg, PA 17108-1166
cmincavage@mwn.com
etrinkle@mwn.com
Counsel for Columbia Industrial Intervenors

Certificate of Service
October 23, 2015
Page 2

Todd S. Stewart, Esquire
Hawke McKeon & Sniscak LLP
100 North 10th Street
P.O. Box 1778
Harrisburg, PA 17101
tsstewart@hmslegal.com
Counsel for The NGS Parties

Harry S. Geller, Esquire
Elizabeth R. Marx, Esquire
Pennsylvania Utility Law Project
118 Locust Street
Harrisburg, PA 17101
pulp@palegalaid.net
emarxpulp@palegalaid.net
Counsel for CAUSE-PA



Thomas J. Sniscak
Christopher M. Arfaa
William E. Lehman

Dated: October 23, 2015