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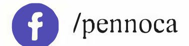

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October 30, 2020

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

Re: Pennsylvania Public Utility Commission
v.
Columbia Gas of Pennsylvania, Inc.
Docket No. R-2020-3018835

Dear Secretary Chiavetta:

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

Copies have been served on the parties as indicated on the enclosed Certificate of Service.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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	v.	:	Docket No. R-2020-3018835
	Columbia Gas of Pennsylvania, Inc.	:	

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

Dated this 30th day of October 2020.

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission, Office of Small Business Advocate, Office of Consumer Advocate v. Columbia Gas Pennsylvania, Inc.	: : : : : : :	Docket Nos. R-2020-3018835 C-2020-3019702 C-2020-3019714

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I. INTRODUCTION

The Office of Consumer Advocate (OCA) submits this Reply Brief in response to the Main Briefs of the other Parties. The OCA's Main Brief contained a comprehensive discussion of the evidence and its position on all issues; thus, the OCA will respond only to those matters raised by the other Parties that were not previously addressed or that require clarification. Nevertheless, the OCA does not waive its position on contested issues because it does not repeat arguments here. Accordingly, the OCA incorporates the arguments and analysis contained in its Main Brief herein by reference.

II. SUMMARY OF REPLY ARGUMENT

In this Reply Brief, the OCA responds primarily to the arguments raised in the Main Brief of Columbia Gas of Pennsylvania, Inc. (Columbia or Company). The OCA notes that many of the arguments raised by the Company were fully addressed in the OCA's Main Brief and will not be repeated here. The OCA further notes that no averments in any of the parties' Main Briefs alter the OCA's position in this proceeding.

The Commission must thoroughly consider the ongoing, serious economic and personal hardships being faced by all Pennsylvanians due to the COVID-19 pandemic in reaching a decision as to a just and reasonable level of rates for Columbia. On April 24, 2020, with full knowledge that COVID-19 was wreaking havoc in its service territory and the Commonwealth at large, Columbia chose to file this rate case. Notwithstanding these facts, the Company would have this Commission believe that this is a business-as-usual rate case. It is not.

Columbia argues that this Commission is powerless to do anything but authorize a rate increase for Columbia. The Company argues that this Commission is legally required to follow a traditional ratemaking approach in this proceeding and, accordingly, is required to authorize a rate

increase for the Company. According to Columbia, whether customers may have trouble paying increased rates is immaterial. Columbia is wrong.

The Commission must engage in a balancing act, based on all the facts, to arrive at rates that meet the just and reasonable standard. The record shows that Columbia is not currently in need of a revenue increase. The record also shows, however, that Columbia's customers are suffering substantial economic and personal hardships due to the continuing COVID-19 pandemic. This Commission has the legal authority to deny any revenue increase for Columbia at this time, which would only serve to increase shareholder wealth, and maintain the Company's current rates, rules and regulations as set out in its existing tariff with no changes.

III. OVERALL POSITION ON RATE INCREASE

A. Introduction.

The Commission has the authority to determine "just and reasonable" rates and that authority includes the ability to deny a utility its requested increase. 66 Pa. C.S. § 1301. Further, the Commission has the authority to set rates at an amount it determines to be just and reasonable so long as that amount is not confiscatory and the utility has the opportunity to obtain a fair rate of return.[1] The OCA submits that Columbia's current rates produce an approximate 7.13% rate of return (CPA Exhibit 2, Schedule 2), and an estimated return on common equity of 9.4% (OCA St. 1 at 23). Based on the FPFTY as adjusted by OCA witness Effron, the Company's current rates are projected to produce a 5.52% overall rate of return through 2021, only about 100 basis points less than the OCA's recommendation under a traditional, business as usual ratemaking approach. But the times are anything but business as usual. As stated in the OCA's Main Brief, raising natural

[1] Duquesne Light Co. v. Barasch, 488 U.S. 299, 310 (1989) (Duquesne).

gas rates on Columbia's customers during this time would not meet the just and reasonable requirement of Section 1301. OCA M.B. at 28-29; 66 Pa.C.S. § 1301.

Every business and consumer in this economy, including regulated utilities, will have to endure the challenges presented by the COVID-19 pandemic. As evidenced by the testimony of OCA witness Scott J. Rubin and discussed at length in the OCA's Main Brief, a large portion of Columbia's customers have suffered and are suffering financially due to the pandemic. OCA M.B. at 14-18; see also, OCA St. 1 and 1-S. The OCA submits that Columbia's revenues are at a reasonable level and the Company would not be harmed, or its constitutional rights violated, if a rate increase is not granted in this case recognizing the economic circumstances we face and recognizing the need to better ensure the financial well-being of Columbia's customers. In addition to its current rates, the Company could continue to utilize the DSIC to support ongoing safety and infrastructure projects as its current DSIC rate is only at 1.69%. OCA St. 4-S at 16.

Under Pennsylvania law, the Commission has the discretion to determine the proper balance between the interests of ratepayers and utilities in determining just and reasonable rates.[2] The Pennsylvania Supreme Court has stated:

> There is ample authority for the proposition that the power to fix "just and reasonable" rates imports a flexibility in the exercise of a complicated regulatory function by a specialized decision-making body and that the term "just and reasonable" was not intended to confine the ambit of regulatory discretion to an absolute or mathematical formulation but rather to confer upon the regulatory body the power to make and apply policy concerning the appropriate balance between prices charged to utility customers and returns on capital to utility investors consonant with constitutional protections applicable to both.[3]

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2 Popowsky v. Pa. PUC (appeal of Metro. Edison Co.), 542 Pa. 99, 107-108 (citing Commission v. Philadelphia Electric Co., 522 Pa. 338, 342-43, 561 A.2d 1224, 1226 (1989)).

3 Pennsylvania Public Utility Commission v. Pennsylvania Gas and Water Co., 492 Pa. 326, 337, (Pa. 1980), cert. denied, 454 U.S. 824, (1981) (Pennsylvania Gas and Water).

As explained in the OCA's Main Brief, Columbia would cover its expenses, pay its debt, and earn a profit for shareholders throughout 2021 at its current rate levels. OCA M.B. at 13; OCA St. 1 at 24. The Commission would be well within its authority and the constitutional requirements of ratemaking if, by balancing the financial hardships faced by Columbia's customers and Columbia's need to earn a fair rate of return during this economic time, the Commission denies Columbia's rate increase.

In its Main Brief, the Company argued that disallowing its rate increase based on affordability concerns for "some group" of consumer during the COVID-19 pandemic-induced economic fallout would be outside of the Commission's authority, unprecedented and unconstitutional. CPA M.B. at 16-17. The Company also argues that, a denial of its rate increase at this time would be "unfair" to Columbia who has been a leader in cast-iron replacement, and even create a disincentive to continue investments to improve the safety of Columbia's facilities, and that long-term effects of such a decision on customers would make it "unwise". Id. at 22-23. According to Columbia, the solution to the economic circumstances faced by Columbia's customers as a result of the pandemic would be to raise rates and, if customers cannot afford them, to reach out for payment assistance. Id. at 16. This action, however, simply creates a downward spiral for all consumers as more customers fall into debt and costs increase for all other consumers who bear the cost of payment assistance.

Although Columbia argues that it is entitled to the rate increase and that this case should be treated as if it were under normal circumstances, the OCA submits that it would not be "just and reasonable" to raise rates and force significantly more than "some customers" to seek payment assistance due to the economic impacts of the COVID-19 pandemic. The OCA's recommendation of no rate increase in this case is not contrary to statute nor the Constitution. OCA M.B. at 22-24.

The OCA's recommendation is also not a punishment for the Company's efforts to replace its aging infrastructure. Rather, it is a necessary and legally viable solution to the social and economic conditions within which Columbia has filed this rate increase request. Therefore, the OCA respectfully requests the Commission not grant Columbia's rate increase as any rate increase would be unjust and unreasonable at this time.

B. The Commission Has The Authority To Disallow Columbia's Requested Rate Increase.

The Company has argued that the Commission does not have the power to deny Columbia a rate increase because disallowing a rate increase would be unprecedented and unconstitutional. CPA M.B. at 16. In support of this contention, the Company cites to its witness, Mr. Cawley, who testified that denying a rate increase simply because Mr. Rubin believes "some group" of customers will have difficulty paying the determined rates is against constitutional and statutory standards. Id. at 16-17. Specifically, the Company argues that the Constitution and statutes require that the Commission determine just and reasonable rates based on a ratemaking formula which provides for recovery of prudently incurred costs and an opportunity to recover a return of, and on, its investments. Id. 16-17. The OCA's proposal, however, complies with the previously mentioned constitutional and statutory requirements because the Company's rates are currently just and reasonable, and not confiscatory, given the economic situation before it. As Mr. Rubin explained, the Company is currently covering its expenses, debt, and making profit for shareholders. OCA St. 1 at 23-24. Simply put, the Company is earning a fair rate of return in these difficult economic times.

The Company further argues that Mr. Rubin used no ratemaking formula and made no attempt to address constitutional standards in his testimony. Id. at 20. Citing to Hope and Bluefield, Columbia also contends that Mr. Rubin's proposal is unconstitutional because it lacks a

standard for determining what rates are "affordable". Id. at 21. On the contrary, a determination of just and reasonable rates does not require a ratemaking formula nor a specific "affordable" rates standard. The Commission is not confined to a rigid mathematic formula in determining just and reasonable rates.[4] Rather, the Commission has the power to make and apply policy when balancing the interests of customers and investors so long as it is cognizant of the constitutional limitations.[5] Moreover, Mr. Rubin's proposal is to keep the rates Columbia charges for service—that are currently just and reasonable—in place until the pandemic situation and the economy improves. Further, Mr. Rubin provided case examples[6] from other periods of pandemic and economic hardship as precedents in his testimony to address constitutional concerns with his recommendation. OCA M.B. at 22-24; see also, OCA St. 1 at 19-20. Indeed, during the Great Depression, this Commission took steps to protect customers by calling on utilities to reduce their rates so they would earn a return of no more than 6% on their rate base.[7]

The Company also contends that, despite the economic circumstances, rejecting Columbia's rate increase would constitute an arbitrary switch from traditional ratemaking to "affordability" ratemaking, contrary to the Supreme Court's statement in Duquesne. CPA M.B. at 20. While the Court discussed that altering ratemaking methodologies arbitrarily would raise some constitutional concerns, the Court followed that statement by providing "[b]ut the instant case does not present this question." Moreover, the Company's claim that the OCA's proposal constitutes an "arbitrary switch" in ratemaking lacks foundation and merit. The OCA has provided substantial

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4 Pennsylvania Gas and Water, 492 Pa at 337.

5 Id.

6 Re Utility Rates During Economic Emergency, 3 P.U.R. NS 123 (Pa. P.S.C. 1934); Donham v. Public Service Commission, 232 Mass. 309, 317 (1919).

7 Re Utility Rates During Economic Emergency, 3 P.U.R. NS 123 (Pa. P.S.C. 1934).

and credible evidence for its position making it far from arbitrary. Further, and in despite of the Company's effort to characterize the OCA's request as an unorthodox ratemaking request, the OCA's request in this matter is simple—keep rates as they are until the economy is stable.

The Constitution requires that rates must be higher than a confiscatory level[8] and the utility should have the opportunity to earn a fair rate of return given the risks under the particular ratesetting system.[9] The Supreme Court has held that, while the due process clause of the Fourteenth Amendment safeguards against confiscation, or the compelling use of property for service without just compensation, "it does not ensure to public utilities the right under all circumstances to have a return upon the value of the property so used."[10] It should further be mentioned that regulation does not ensure a profit.[11] To invoke constitutional protection from confiscatory rates, it is not sufficient for a utility to merely assert in general language that rates are confiscatory.[12] The utility must specifically set forth facts that make clear that the rates would necessarily deny it just compensation and deprive it of its property without due process of law.[13] Thus, the burden of proving confiscation is on the utility alleging it.[14]

In 1985, the Pennsylvania Supreme Court affirmed an order issued by the Commission under 66 Pa. C.S. 1310(d) that reduced the rates that the appellant electric companies could charge

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8 Federal Power Comm'n v. Texaco, Inc., 417 U.S. 380, 392-92 (1974) (citing FPC v. Natural Gas Pipeline Co., 315 U.S., at 585).

9 Duquesne, 488 U.S. at 310.

10 Public Service Com. v. Great Northern Utilities Co., 289 U.S. 130, 135 (1933).

11 Market St. R. Co. v. Railroad Comm'n of California, 324 U.S. 548, 566 (1945) (citing Hope at 590).

12 Public Service Com. v. Great Northern Utilities Co., 289 U.S. at 136-37.

13 Id. (citing Aetna Insurance Co. v. Hyde, 275 U.S. 440, 447. P. 136).

14 Duquesne Light Co. v. Pennsylvania Public Utility Com., 176 Pa. Super. 568, 604 (Pa. Super 1954).

because two nuclear power plants at Three Mile Island were shut down and no longer "used and useful" in service.[15] In its decision the court addressed at length Hope and the balance of consumers and investors interest in determining just and reasonable rates:

> In cases where the balancing of consumer interests against the interests of investors causes rates to be set at a "just and reasonable" level which is insufficient to ensure the continued financial integrity of the utility, it may simply be said that the utility has encountered one of the risks that imperil any business enterprise, namely the risk of financial failure. The express language of the Hope decision weighs against regarding utilities as a protected class of business enterprises which are to be relieved of such normal business risks. Specifically, it was stated in Hope, 320 U.S. at 603, 64 S.Ct. at 288, 88 L.Ed. at 345, that investment returns to utility owners 'should be commensurate with returns on investments in other enterprises having corresponding risks.'[16]
>
> …
>
> In short, Hope sets forth a balancing test, like that which we described in Pennsylvania Gas, supra, for the determination of "just and reasonable" rates, to be applied with the aim of protecting consumers against exploitation at the hands of utility companies while seeking to preserve the financial integrity of utility companies. (citing Federal Power Commission v. Memphis Light, Gas & Water Division, 411 U.S. 458, 465-466, 93 S.Ct. 1723, 1728, 36 L.Ed.2d 426, 433 (1973)).[17]

On the topic of investor interests, the court stated:

> The decision in Hope enumerated certain legitimate areas of concern for investors, these being that a company have sufficient revenue to cover operating and capital costs, that the return on equity be commensurate with returns on enterprises having similar risks, and that the company be able to maintain credit and attract capital. These investor interests are appropriate factors to be weighed in the balancing analysis under Hope, but they are not, in themselves, controlling, for other factors must be taken into account.[18]

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[15] Pa. Elec. Co. v. Pa. Public Util. Com, 509 Pa. 324, 326 (Pa. 1985) (Pennsylvania Electric).

[16] Id. at 331-32.

[17] Id. at 330.

[18] Id. at 331 (emphasis added).

The court also held that the legitimate investor interests listed in Hope are not of constitutional dimension, but are among the factors to be taken into account in the process of balancing interests to arrive at just and reasonable rates.[19] In Bluefield, the Supreme Court discussed the boundaries within which rates would not be deemed too low as to be confiscatory, but also not too high as to be rates a utilities cannot reasonably be entitled to.[20] The Court explained that this determination "depends upon many circumstances" and must have "regard to all relevant facts."[21] The Court found that the return "should be adequate, under efficient and economical management, to maintain and support its credit and enable it to raise the money necessary for the proper discharge of its public duties."[22] The Court further stated:

> [a] public utility is entitled to such rates as will permit it to earn a return on the value of the property which it employs for the convenience of the public equal to that generally being made at the same time and in the same general part of the country on investments in other business undertakings which are attended by corresponding risks and uncertainties; but it has no constitutional right to profits such as are realized or anticipated in highly profitable enterprises or speculative ventures.[23]

Accordingly, the relevant facts for determining if a rate is just and reasonable include not only the ratesetting environment, but also the performance and decisions of the utility. For example, as stated by Mr. Rubin in testimony, the Company could preserve cash by deferring construction projects, such as growth-related projects or system rehabilitation activities that are longer term in

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19 Id. at 334.

20 Bluefield Water Works & Improvement Co. v. Public Serv. Comm'n, 262 U.S. 679, 692-93 (1923).

21 Id.

22 Id. (emphasis added).

23 Id.

nature, that are not needed to ensure the provision of safe and reliable service to existing customers within the next 6 to 12 months. OCA St. 1 at 26. In summation, the determination of just and reasonable rates in part rests on the efficient and economic management of the utility. The OCA submits that, now, more than ever given the pandemic situation, Columbia's ability to be more efficient during these tough times for customers should be a factor in the determination of just and reasonable rates.

The Company's argument that "both constitutional and statutory law *requires* the Commission to make a determination of the just and reasonable rates based on the ratemaking formula which provides for recovery of prudently incurred costs and provides the utility the opportunity to recover a return of, and on, its investment to provide service to customers," while accurate, is simply applied incorrectly in this case by the Company as the Company elevates its shareholder interests over that of the consumers it serves. CPA M.B. at 16-17 (emphasis added). The Commission is not under any specific directive nor is it required to accept a rigid ratemaking formula or to elevate shareholders' interests when it comes to determining just and reasonable rates.

When setting rates, 66 Pa. C.S. Section 1301 provides that "every rate made, demanded, or received by any public utility, or by any two or more public utilities jointly, shall be just and reasonable, and in conformity with regulations or orders of the Commission." 66 Pa. C.S. § 1301. Although it is not specifically mentioned in the Public Utility Code, it is fully within the Commission's power to deny Columbia's rate increase due to lack of affordability caused by an economic crisis completely outside of the customers' control. The Commission has found that the impact of a rate request on customers "is a relevant factor to be considered in determining what

rate relief should be afforded…"[24] The Company's contention that the Commission is prohibited from taking into account customer affordability in determining just and reasonable rates is simply inaccurate.

Columbia's current rates are just and reasonable, not confiscatory, and Columbia has not presented any evidence to the contrary. Earning a net income of $131.9 million and an estimated 9.4% return on common equity in the pro forma historic test year (ending November 30, 2019), Columbia's rates will remain just and reasonable and not confiscatory for the near future, at least through 2021, while its customers attempt to weather job loss and wage loss due to the economic fallout caused by the COVID-19 pandemic. OCA St. 1 at 23. It is not unprecedented for a regulatory authority to recognize that societal economic conditions affect utility ratemaking and, in response, limit a utility's fair rate of return to provide relief to the public.[25] Columbia and its investors may not agree, but the Pennsylvania Supreme Court made clear that, when balancing customers and investors interests under Hope, the concerns of investors are not "controlling" or "of a constitutional dimension."[26]

C. A Denial Of A Rate Increase, Under Extreme Economic Conditions, Is The Best Solution When Balancing The Interests Of Columbia And Its Customers.

As demonstrated by Mr. Rubin's testimony and the Commission's rapid and drastic actions[27] at the start of the pandemic—including a moratorium on service terminations—there is

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[24] Pa. P.U.C. v. National Fuel Gas Distribution Corp., R-00942991, 1994 Pa. PUC LEXIS 134, 365-66. (Opinion and Order entered Dec. 6, 1994).

[25] Re Utility Rates During Economic Emergency, 3 P.U.R. NS 123 (Pa. P.S.C. 1934).

[26] Pennsylvania Electric, 509 Pa. at 331 and 334.

[27] See Public Utility Service Termination Moratorium; Proclamation of Disaster Emergency – COVID-19; M-2020-3019244 (Emergency Order entered March 13, 2020); see also, Supplier Door-to-Door and In-Person Marketing Moratorium; Proclamation of Disaster Emergency – COVID-19, M-2020-3019254 (Emergency Order entered March 16, 2020).

nothing ordinary about the COVID-19 pandemic and its impacts. OCA St. 1 and 1-S. According to a survey conducted by the U.S. Census Bureau, roughly 50% of Pennsylvania households experienced wage loss from March 13, 2020 through July 21, 2020. OCA St. 1-S, Schedule SJR-6S at 3, Figure 5 (Updated). Based upon the U.S. Census Bureau Household Pulse Survey in mid-July, Mr. Rubin testified:

> Only 56% of Pennsylvanians who lost income said they used their normal source of income to pay bills in the previous week. About 24% cited unemployment benefits and 29% referred to the CARES Act stimulus payments. More people, however, relied on credit card debt or loans (including loans from family or friends) (48%) or money from savings or asset sales (31%) than relied on short-term government benefits.

OCA St. 1 at 15. OCA St. 1-S at 3. In Columbia's service territory, county unemployment rates ranged from 8.8% to 19.2% with a combined average unemployment rate of 13.1% as of July 2020. OCA St. 1-S, Schedule SJR-6S at 6. The total percentage change in the average unemployment rate for all of the counties served by Columbia combined from February 2020 through July 2020 was 186%. Id. In addressing the future uncertainty of the pandemic situation and its further impacts on the economy, Mr. Rubin testified:

> After peaking at more than 1,800 cases per day in early April, Pennsylvania's incidence of COVID-19 declined to fewer than 350 cases per day in early June. In late June, case counts began rising again to 500 or more per day. During July and August, the situation worsened further, with Pennsylvania reporting more than 1,000 new infections per day, resulting in the Secretary of Health and the Governor imposing new restrictions on social gatherings, certain businesses, and requiring the wearing of masks. As I am preparing this testimony, new cases during the past week have been ranging between about 500 and 1,000 per day. It is unclear whether Pennsylvanians will take the actions necessary to control the further spread of the virus (and the resulting loss of life and impacts on the economy).

OCA St. 1-S at 3. These are the conditions under which Columbia seeks a rate increase. In its Main Brief, Columbia claims that it "appreciates and empathizes with the concerns of various parties about the ability of some customers to pay an increase to their utility bills due to the recession brought on by the COVID-19 pandemic" CPA M.B. at 15. But the Company has provided little meaningful response, other than to continue to seek its full rate increase, including a management performance bonus, and suggest that customers simply seek payment assistance.

While downplaying the effects of the pandemic on its customers, Columbia contends that the best response to the economic impacts of the COVID-19 pandemic is to enhance programs to assist customers with payment problems through enhanced outreach and education on collection practices and programs. CPA M.B. at 16 and 26-29. Customer assistance programs are an important safeguard for many customers, but forcing more customers into payment assistance programs simply increases costs for all other customers who bear the costs of payment assistance programs. It is not a sustainable means to address the situation faced by consumers. As Mr. Rubin pointed out in his testimony, other utilities in the U.S. made the determination to forego or postpone rate increases to provide relief to customers who are spending more time at home and experiencing declines in income. OCA St. 1 at 21-22. To list a few examples: Dominion Energy in South Carolina decided to delay the effective date for its rate increase to March 1, 2021, instead of January 1, 2021;[28] Minnesota Power significantly reduced its requested rate increase and is refunding more than $12 million to customers to help alleviate pandemic related financial

[28] Dominion Energy wants rate increase pushed back, trying to help customers during pandemic, NBC - 2 WCBD (Charleston, South Carolina), April 2, 2020; see letter filed by Dominion with the South Carolina Public Service Commission at https://dms.psc.sc.gov/Attachments/Matter/eb126cd9-6804-47de-8b7d-775984d8a4e5.

concerns;[29] and on June 1, 2020, PEPCO, the electric utility serving the District of Columbia and surrounding areas, announced that it would forego a $25 million rate increase scheduled for 2020 in D.C., make a shareholder donation to its low-income assistance fund, and take other actions to assist customers during the pandemic.[30] Id.

Columbia also argues that denying the rate increase will impair its construction and maintenance of a safe utility system and deny Columbia a fair return on investments planned for 2021. CPA M.B. at 15 and 23. The Company further contends that it would hit its DSIC rate cap by the final quarter of DSIC recovery in 2020 since it will be denied the ability to roll into base rates the revenue requirement for plant replacements made in 2020. Id. at 23. Currently, the Company's DSIC rate is at 1.69%. OCA St. 4-S at 16. The OCA submits that the Company can clearly continue supporting its safety initiatives with its current rates and the DSIC it is not fully utilizing at this point. As Mr. Rubin pointed out, not all capital projects—like certain growth-related projects or system rehabilitation activities that are longer term in nature—are safety-related or need to be completed in the near term. OCA St. 1 at 26.

Also, contrary to the Company's claim that Mr. Rubin's proposal of no rate increase requests the Commission to "break the Regulatory Compact", the OCA's proposal of a denial of a rate increase in this case would be directly the opposite. Through denying Columbia's rate increase during this time of generally reduced rate affordability, the Commission would be enforcing Columbia's end of the Regulatory Compact. As OCA witness Mr. Rubin testified, "[a]t its core,

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[29] Minnesota Power Proposes Plan to Resolve Rate Request in Response to Economic Challenges of COVID-19; Customers will receive refund on bills and lower rates under proposal to state regulators, Business Wire, April 23, 2020.

[30] PEPCO press release, PEPCO Proposes to Freeze DC Customer Energy Delivery Rates Until 2022, https://www.pepco.com/News/Pages/PepcoProposestoFreezeDCCustomerEnergyDeliveryRatesUntil2022andAssistCustomerswithPandemicEconomicRecovery.aspx.

regulation is designed to protect utility consumers from what otherwise would be the unfettered power of a monopoly to set prices and the conditions of service." OCA St. 1 at 4. As stated before, denying Columbia's rate increase temporarily would leave Columbia with enough revenue to cover its current operational expenses plus cover its debt and earn a profit, and its customers would not have to face higher utility bills during and after a significant period of job and wage loss due to the pandemic. This solution, if anything, is precisely what the Regulatory Compact was designed to do.

D. Conclusion.

As stated in the OCA's Main Brief, Columbia could continue operations, recover all of its expenses, pay debt, and earn a profit for its shareholders with no revenue increase. OCA M.B. at 13, see also, OCA St. 1 at 23-24. The Commission has full authority, under the Constitution and Pennsylvania statutes, to deny Columbia's rate increase to avoid unjust and unreasonable rates. Therefore, the Commission should, in these extraordinary times, deny Columbia's rate increase as a reasonable outcome of this proceeding. Columbia can file again when the future is more ascertainable for ratemaking. While perhaps not as much profit as Columbia would like, or as much as the Commission may have awarded under normal circumstances, the overall rate of return of 5.52% without any change in rates is more than adequate for the Commission to find Columbia's current rates just and reasonable.

IV. RATE BASE

A. Plant In Service FPFTY Plant Additions.

As stated in the OCA's Main Brief, the Company's 2021 forecasted plant additions expenditures are significantly higher than the Company's historic spending. OCA M.B. at 30. In order to protect customers from paying for plant not in service, the OCA's proposal is reasonable

and would not deprive the Company recovery of the cost of actual plant additions. Id. If the Company in fact spends more in investments than the OCA's proposal, the DSIC is available to recover those additional costs as necessary. Id.

The Company argues that Mr. Effron's adjustments should be rejected as having no merit because (1) the OCA does not challenge the amount as being imprudent or unnecessary, (2) the OCA has not asserted that its adjustment is based upon historic experience that Columbia has underspent its budgeted plant additions, (3) that Columbia has a history of meeting and exceeding its projected capital additions, and (4) that Columbia's LTIIP spending is not flat year to year, but rather, increasing every year. CPA M.B. at 31-32.

As stated in the OCA's Main Brief, the Company's projection of plant additions for the FPFTY is significantly higher than the plant additions in 2018 and 2019 as well as the projected plant additions; i.e. Columbia projected net plant additions (gross plant additions less retirements) of $280,735,000 in 2020 and $338,559,000 in 2021. OCA St. 2 at 5-6; see also, OCA M.B. at 29 and CPA Exhibit 108, Schedule 1. In addition to the abnormally large increase, the Commission should consider the effect of the COVID-19 pandemic on the Company's assumptions and projections in its rate filing as OCA witness Scott J. Rubin testified, "the Commission cannot have any certainty about the appropriate, ongoing level of expenses, interest rates, consumption patterns, and the numerous other factors that affect the determination of an appropriate level of rates." OCA St. 1 at 25. The OCA's proposal—that if the Company in fact spends more in investments than its average spending from actual 2018 through its projection in 2020, the DSIC is available to recover those additional expenses as necessary—is reasonable and protects customers from overpaying for plant not in service if the Company's significant increase in spending does not come to fruition.

The Company misrepresents the OCA's proposal as being one that simply requests that the Company's "FPFTY rate base be set at something less than the test year balances" which, the Company argues, was previously rejected in UGI Electric. CPA M.B. at 33. The relevant part of the UGI Electric decision the Company cites to deal with the year-end rate base versus an average rate base dispute.[31] At no point has the OCA suggested or implied that be done; nor has the OCA advocated for an average rate base in this case, either directly or indirectly.

The UGI Electric case, however, is relevant to the disposition of this issue, although not for the reasons that Columbia cites. The OCA is not challenging the Company's use of a FPFTY, but any projections that the Company makes as to additions to rate base, or increased expense levels as discussed below, must be supported with substantial evidence and cannot be supported with mere speculation.[32] As the Commission found in UGI Electric, use of a FPFTY and projected additions to rate base are not without limit. Id. Columbia has the burden of proof to provide substantial evidence to support its projections, and here, it has failed to do that.

The OCA's proposed adjustment, based on the Company's prior plant additions spending, is a more reasonable proposal, which not only protects customers if the Company's projections are in fact significantly overstated, but also allows the Company to recover any excess plant costs through the DSIC. OCA St. 2-S at 4-5. The Company has not offered substantial evidence to dispute the OCA's reasonable proposal.

B. Cloud-Based Computing.

As noted in the OCA's Main Brief, the OCA is not briefing this issue.

C. Depreciation Reserve.

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[31] Pa. PUC v. UGI Utilities, Inc. – Electric Division, Docket No. R-2017-2640058 (Order entered October 25, 2018) at 21-26 (UGI Electric).

[32] See, UGI Electric at 27-31.

The Company argues that the OCA's plant additions adjustment is improper and, therefore, its corresponding depreciation reserve adjustment is improper as well. CPA M.B. at 36. Consistent with his reasonable plant additions adjustment, Mr. Effron reduced the related test year balances of depreciation reserve. OCA St. 2 at 7. As discussed above in Section IV (A), the OCA's adjustment to plant additions is reasonable and the corresponding depreciations reserve adjustment should also be accepted as reasonable.

D. ADIT.

Similar to the OCA's depreciation reserve adjustment, the Company argues that the OCA's accumulated deferred income taxes (ADIT) adjustment based upon the OCA's plant additions adjustments is improper. CPA M.B. at 36. Consistent with his reasonable plant additions adjustment, Mr. Effron reduced the related test year balances of ADIT. OCA St. 2 at 7. As stated above in reference to the OCA's depreciation reserve calculation, the OCA's adjustment to the plant additions is reasonable and, therefore, its adjustment to ADIT is also reasonable.

V. REVENUE

No reply is necessary.

VI. EXPENSES

A common thread runs throughout the OCA's adjustments to the Company's claimed increased expenses in various areas. In the areas detailed below, the Company has projected substantially increased expense levels for the FPFTY that bear no reasonable relation to the expenses for these areas that were experienced during the HTY or FTY. As OCA witness Effron testified, in many of these areas the Company has failed to provide the necessary level of evidentiary support, in some cases no support, for these substantially increased expenses. As discussed below, Mr. Effron's testimony shows that Columbia's expense claims for the FPFTY in

these areas is overinflated. To be clear, the OCA is not disputing Columbia's right to use a FPFTY, but, the Company has to support these projections with some level of substantial evidence.[33] The OCA submits that for the reasons detailed below, the Company has not carried its burden on these issues.

A. Labor Expense.

1. Annualization Adjustment.

As stated in the OCA's Main Brief, the OCA is not briefing this issue.

2. Employee Complement.

The Company argues that because Columbia's FTE in August, 2020, was 773, more than the 763 at the end of the HTY, the OCA's payroll adjustments would reduce FPFTY payroll below the annualized HTY payroll expense. Columbia M.B. at 41-42. However, the Company fails to note that the employee complement of 773 as of August 2020 is actually lower than the complement of 782 as of April 2020. In Surrebuttal, Mr. Effron testified, "[t]he actual employee complement decreased in June and July and was flat in August. As of August 2020, the employee complement stood at 773. My adjustment reflects an employee complement of 782. That has been the high point of the Company's employee complement in 2020 to date." OCA St. 2-S at 5-6. Thus, the OCA's adjustment is based on an employee complement of 782, which is actually higher than the employee complement of 773 as of August 2020. Id.

The Company's forecast of 59 additional employees in the FTY is unreasonable and unsupported by the historic data relevant to employee complement. OCA Witness Effron is correct in basing the employee complement on actual historic data, which show no significant changes in the number of employees over the course of the FTY. Therefore, the Commission should accept

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33 See, UGI Electric at 27-31.

Mr. Effron's reduction to the FPFTY O&M expenses by $1,144,000, based on adjustments to new employee headcounts and benefits expense as shown in OCA St. 2-S, Schedule C-1.1.

B. Other Employee Benefits.

The Company contends that OCA's derivative adjustment to Other Employee Benefits expense should be rejected. Columbia M.B. at 42. Columbia states that Other Employee Benefits costs are not directly correlated to employee headcount and vary depending on the actual costs associated with the benefits themselves, like insurance premiums, and actual payouts during a given period. Id. Simply because the Company's Other Employee Benefits expense can be affected by factors other than the number of employees does not mean that the Other Employee Benefits expense will not be affected by changes in the number of employees. The OCA adjustment is reasonable and should be approved.

C. Incentive Compensation And Stock Rewards.

1. Incentive Compensation.

As discussed in the OCA's Main Brief, the Company's Incentive Compensation expense represents a 53% increase over the incentive compensation actually incurred in the normalized HTY, with no work papers or documentation to support it. OCA M.B. at 35; see also, OCA St. 2 at 10-11. The Company argues that the OCA's adjustment to its Incentive Compensation expense should be rejected because it is based upon a single year's historic payout ratio that fails to take into account the percentage of payout changes based upon the level of achievement of goals. CPA M.B. at 43-44. The Company further contends that the use of a single year's historic payout ratio in effect replaces the use of the FPFTY with a historic test year. Id. The Company also defends its incentive compensation expense based on data derived from I&E's surrebuttal testimony. I&E St. No. 1-SR, at 17. However, I&E presented the data for the three years as evidence of a declining

trend in the ratio of Incentive Compensation to labor expense. Id. There is no expert testimony that the use of the three-year average, as first presented in the Company's Main Brief, is appropriate or applicable.

The OCA's adjustment of $775,000, using the same ratio of incentive compensation to payroll expense in the FPFTY as in the normalized HTY represents is reasonable and well-supported, in contrast to the complete lack of documentation and work papers supporting the Company's 53% increase in Incentive Compensation expense for the FPFTY. OCA St. 2-S at 7.

2. Stock Rewards.

The OCA has eliminated the Company's claim for a Stock Rewards expense of $2,300,000 because stock rewards are a shareholder-oriented goal and not a customer-oriented goal. OCA M.B. at 36-37. The Company argues that its Stock Rewards expense does benefit customers due to its additional stock compensation metrics introduced in 2018, which include customer value goals of safety, customer, financial, culture and environmental components. CPA M.B. at 45. The Company further argues that the OCA has not argued that the expense is imprudent, unreasonable, or excessive. Id. at 46. Despite the Company's claim that its additional stock compensation metrics take into account some customer value goals, it is unreasonable to classify such an expense as customer-oriented. As testified by OCA witness Mr. Effron:

> …including such incentive compensation in the revenue requirement would, in effect, require customers to reward company management on a contingency basis for getting them to pay higher rates. If the incentive compensation program is successful in increasing earnings and common stock values, the shareholders should be happy to reward management accordingly and absorb the cost of the program. As shareholders are the beneficiaries of increases to common stock valuations, it should be those shareholders, not customers, who bear the cost of the stock rewards.

OCA St. 2 at 12. Stock Rewards are a form of incentive compensation whose ultimate value is based solely on the attainment of financial goals by the parent company. Id. at 11. The Company does not dispute this description of the Company's stock rewards program. This expense should be eliminated from the Company's revenue requirement.

D. PUC, OCA, OSBA Fees.

The OCA is not briefing this issue.

E. Rate Case Expense.

The OCA's recommended 24-month rate case normalization period is in line with the Company's history of rate filings and the Commission's standard method of determining the rate case normalization period.[34] The OCA has recommended a 24-month normalization period given that the Company's three most recent rate cases prior to the current one were filed in March of 2015, March of 2016, and March of 2018. OCA St. 2-S at 10; OCA M.B. at 38. Columbia argues that a 12-month normalization period for its rate case expense is necessary because it plans to file annual rate cases in the foreseeable future due to its main replacement program. CPA M.B. at 48. Citing to an exception due to the utility's major capital improvement program in the 2012 PPL Electric[35] rate case, the Company argues that its 12-month rate case normalization period is necessary because it will be filing another base rate case in 2021. CPA M.B. at 48. In the 2012 PPL Electric case, the Commission selected a 24-month normalization period, compared to a 36-month period based off of its history of filings, because the utility asserted that it seemed more likely than not that it would be filing its next base rate case during or before 2014.[36] PPL Electric

[34] Pa. PUC v. City of Lancaster, Docket No. R-2010-2179103 (Order entered July 14, 2011); Pa. PUC v. Metropolitan Edison Company, Docket No. R-00061366 (Order entered January 4, 2007).

[35] Pa. P.U.C. v. PPL Electric Utilities Corp., Docket No. R-2012-2290597, (Opinion and Order entered Dec. 28, 2012) at 44 and 47-48.

[36] Id.

ultimately filed its next base rate case in 2015.[37] Despite the unique exception made in the 2012 PPL Electric case, the Commission has a practice of examining the utility's history of rate filings to determine the normalization period rather than accepting the utility's intentions. Columbia has not shown any objective evidence to demonstrate its claim for an exception to the Commission's standard practice or its need for a 12-month normalization period in light of its historic frequency of rate filings.

By adjusting the normalization period from 12-months to 24-months and thus reducing the annual rate case expense by $580,000, Columbia's rate case expense will be normalized based on its historic frequency of rate filings. The OCA's adjustment is reasonable and should be accepted by the Commission.

F. Outside Services.

The Company contends that the OCA's recommended adjustment to Outside Services expense should be rejected because it would deny the Company financial resources to conduct important safety initiatives and that the Company does not need to show specific calculations to show its budgets calculations to determine this FPFTY amount. Columbia M.B. at 50. The OCA's adjustment, however, is not based merely on Columbia's lack of specific calculations to support its budget projection. Rather, the OCA's adjustment is based upon the complete lack of *any* calculations to support its budget projections. OCA. M.B. at 40. As testified by OCA witness Mr. Effron:

> [T]here are *no* workpapers or calculations showing how the identified work streams … will increase the outside services expense by $2,221,000 from the FTY to the FPFTY.
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> …

[37] Pa. P.U.C. v. PPL Electric Utilities Corp., Docket No. R-2015-2469275, (Opinion and Order entered Nov. 19, 2015) at 3.

> [T]here is *no* documentation to establish just how [the] "specific needs, plans and the realities of the day to day variability in work and resources" translate into the FPFTY outside services expense that the Company is proposing to include in its revenue requirement."

OCA St. 2-S at 9 (emphasis added). The Company also argues that, with its process in place to review its monthly budget variances, it can increase spending on other projects if it is expected to fall behind on its budget that year. CPA M.B. at 50. The argument that Columbia can simply increase spending on "other projects" if its spending is not aimed to meet its projections, however, should be dismissed as there remains no documentation or support for such spending. The Company cannot prove the reasonableness of this expense without *any* documentation.[38] Therefore, the OCA submits that Columbia's unsupported increases to Outside Service expense should be rejected.

G. Other Adjustments.

1. Adjustments for Safety Initiatives.

As stated in the OCA's Main Brief, the OCA is proposing to eliminate Columbia's claimed increases to expenses for Safety Initiatives to the extent that such increases are not supported. OCA M.B. at 41-42. The Company argues that the OCA's elimination of these expenses is without merit and should be rejected. CPA M.B. at 52.

In the 2016 City of Dubois rate case, the Commission refused to fully accept certain expenses on the basis of lack of support and documentation.[39] For example, on the reduction of City of Dubois's expense for City Building/Computer Parts/Supplies/Software Expenses, the

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[38] See, Pa. P.U.C. v. City of Dubois, R-2016-2554150 (Opinion and Order entered March 16, 2017) (City of Dubois).

[39] City of Dubois at 54-55 and 59-60.

Commission concluded that, based upon its review of the record, it was reasonable and appropriate to normalize the expense because the City of Dubois failed to provide support that the increased level of expense is an ongoing level of expense.[40] In the same case, the Commission also decreased the City of Dubois's allocation factor for the City Manager from 60% to 24% for City of Dubois' failure to provide substantial evidence, such as timesheets or any other verifiable record to support its claim, and not based on actual or measurable costs.[41] The Commission found that basing the City of Dubois's 60% allocation entirely on the City Manager's testimony was insufficient.[42]

As explained in Mr. Effron's testimony and discussed further below, the Commission should accept the OCA's elimination of the Company's various unsupported increases in its Safety Initiatives expenses. The Company's testimony alone, without the proper documentation or support for the claimed increases in expenses, are grounds for disallowance.

a. Cross Bore Identification.

The OCA submits that the Commission should not accept the Company's cross bore identification expense of $1,400,000 for 2021—more than double the amount spent by the Company in 2020. OCA M.B. at 42-43. The Company argues that it recently identified cross bores as high risk in its DIMP program which explains its increase or $1.4 million in spending in order to cut its projected current timeframe for inspections in half. CPA M.B. at 52. The Company also argues that its lack of increased spending from 2019 to 2020 should be disregarded because the Company plans to accelerate spending on cross bore investigations in 2021. Id. at 53.

The Commission has held, "[t]he objective evaluation of reasonableness of an expense is whether the record provides substantial evidence to objectively determine whether the expense is

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40 Id. at 59-60.

41 Id. at 54-55.

42 Id.

just, reasonable, and prudently incurred."[43] To recover an expense as reasonable, the utility must present actual evidence of the expense to sufficiently prove the value.[44] Given the lack of justification for the $1,400,000 increase in the cross bore program in 2021 after a two year period of reduced spending levels, and given the actual spending experience in 2020 compared to 2019, the OCA submits that the Company's proposed adjustment for $1,400,000 increased spending on the cross bore program should be eliminated from the Company's revenue requirement.

b. Gas Qualification Specialists.

The Company claims to have a need for two Gas Qualification Specialist to train its new employees who are replacing those employees retiring. CPA M.B. at 54-55. The Company does not, however, address the OCA's concern that the Company has not demonstrated any movement towards hiring for the referenced positions. As testified by OCA witness Mr. Effron, the Company had not hired any of the incremental employees related to the workforce transition program as of September 2020, and has not provided any evidence that it has commenced the process of filling these incremental positions. OCA St. 2-S at 11. Therefore, the OCA submits that the Company's projected Gas Qualification Specialists expense be rejected.

c. Legacy Service Line Records.

The Company argues that this expense represents seven new employees in 2021 to do the work of "temporary employees" who are currently performing the work. CPA M.B. at 55-56. The Company does not provide a valid reason as to why these employees have not been hired at this point. OCA M.B. at 44; see also, OCA St. 2-S at 11. In addition, the Company's actual employee headcount, which is well below its currently authorized headcount, suggests that this extra expense is not necessary to cover these positions if the Company in fact hires individuals for them. OCA

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43 UGI Electric at 41 (citing Popowsky v. Pa. PUC, 674 A.2d 1149, 1153-54 (Pa. Cmwlth. 1996)).

44 Popowsky v. Pa. PUC, 674 A.2d 1149, 1153-54 (Pa. Cmwlth. 1996).

St. 2-S at 5-6. Similar to the Company's claimed expense for Gas Qualification Specialists, it is not simply that the Company has not yet hired these employees; there is no evidence that is has even commenced the process of filling these positions. Therefore, the Company's Legacy Service Line Records program expense should be rejected.

d. Customer-owned Field Assembled Riser Replacement.

The OCA proposes that the Company's expense for customer-owned field assembled riser replacements program be rejected because the Company has not demonstrated that this expense of $1.7 million is incremental given that the Company did not budget amounts for this program in prior years and the Company replaced 1,279 customer-owned assembled risers in the HTY. OCA St. 2-S at 13-14. The OCA submits that because the Company's projected replacement of customer-owned field assembled risers in 2020 are not projected to exceed 2019 replacements, the Company has not demonstrated that FPFTY replacements will be increased. OCA St. No. 2 at 17.

In response to the OCA's non-incremental expense argument, the Company contends that, although no amounts were budgeted for this program in 2019, 2020, and 2021, the funds used were shifted from other programs. Columbia M.B. at 57. Id. There is, however, no statement to that effect in Columbia St. No. 9-R at 16, which the Company cites in support of this assertion. In order for the Commission to objectively evaluate the reasonableness of an expense, the record must provide substantial evidence for it to objectively determine whether the expense is prudently incurred.[45] Without such evidence to support the Company's expense claims regarding this program, the Commission cannot deem it to be reasonable or prudent.

The Company further contends that: "the OCA's argument is another example of OCA's efforts to reject the use of the FPFTY and to instead rely upon the FTY or HTY as the basis for

[45] Popowsky v. Pa. PUC, 674 A.2d 1149, 1153-54 (Pa. Cmwlth. 1996).

setting rates." CPA M.B. at 57. First, the Company is mistaken as to the OCA's basis for eliminating this expense. The OCA disputes this expense because, even if the FPFTY budget does not include incremental funding for this expense, there is some amount for it implicitly included in the O&M expenses for the FPFTY even before the Company's pro forma adjustments and the Company also has not established the extent to which the expense for the replacement of customer-owned field assembled risers in the FPFTY will be greater than that expense in the HTY. OCA M.B. at 46; see also, OCA St. 2-S at 13-14. Second, it is Columbia who is proposing to depart from the use of the FPFTY, as the proposed adjustment for customer-owned field-assembled riser replacement expense is incremental to the FPFTY budget. OCA St, 2-S at 14. For these reasons, the Company's increased FPFTY expense for its customer-owned field assembled risers replacement programs should be rejected as recommended by the OCA.

2. Compensation Adjustments.

Columbia argues that the reason it has not yet made these pay adjustments is that it is a FPFTY cost. Columbia M.B. at 58-59. The OCA submits, however, that this expense should be rejected for, not only has it not yet been incurred, but also because the Company has not presented any evidence that the compensation adjustments are in the process of being implemented or that such implementation is imminent. OCA M.B. at 47; see also, OCA St, 2-S at 16. As stated before, the Company must provide evidence or documentation for the Commission to determine the reasonableness of an expense.[46] Therefore, the OCA's elimination of the Company's proposed compensation adjustment of $432,000 from the FPFTY O&M expense should be accepted because the Company has not affirmatively established that the adjustment is anything more than speculation.

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[46] Popowsky v. Pa. PUC, 674 A.2d at 1153-54.

H. Depreciation Expense.

As stated in the OCA's Main Brief and discussed further above in Section IV(A), the OCA's reduced plant additions projection and corresponding reduced depreciation expense are reasonable in light of the Company's unsupported significant increase in FPFTY plant addition spending. OCA M.B. at 47.

VII. TAXES

A. Taxes Other Than Income Taxes.

The Company argues that, just as the OCA's payroll adjustment should be denied, its adjustments to payroll tax should also be denied. CPA M.B. at 59-60. As stated in the Company's Main Brief and in Section IV (A) above, the OCA's adjustment of $111,000 to non-income payroll taxes is consistent with its appropriate FPFTY labor expense adjustment above. OCA M.B. at 47-48; see also, OCA St. 2 at 20 and Schedule C-3. The OCA submits that this adjustment of $111,000 should be accepted by the Commission as it coincides with Mr. Effron's appropriate labor expense adjustments described in Section VI (A) above.

B. Income Taxes.

As stated in the OCA's Main Brief, the OCA's witness Mr. Effron proposed to modify the Company's method of calculating the Pennsylvania Corporate Net Income Tax (CNIT or state income tax) to be included in the calculation of pro forma operating income under present rates and the revenue deficiency. OCA M.B. at 48; see also, OCA St. 2 at 21-23. While the resulting calculation does not produce an end result different from that of the Company, Mr. Effron offers a simpler method of calculation that avoids the necessity of having to recalculate a new "State Income Tax Effect Tax Rate" and a new Revenue Conversion Factor for changes in the revenue requirement. Id. The OCA submits that the Commission should adopt Mr. Effron's simplified

method of utilizing a CNIT of 5.994% in the calculation of the Revenue Conversion Factor to reflect the statutory CNIT rate of 9.999% and the Net Operating Loss Deduction which decreases the effective CNIT tax rate. Id.

VIII. RATE OF RETURN

A. Introduction.

1. Overview of the Cost of Capital Recommendation.

The Company's request for a 10.95% return on equity and overall cost of capital of 8.00% is overstated. The Company's cost of equity request is based upon flawed cost of equity analyses. By choice, the Company's updated DCF analysis is not based upon the most recent 12 months of available financial market data. The Company's cost of equity request is further inflated by a claim of 20 additional basis points for management performance, which is not warranted and is completely unreasonable in this time of the COVID-19 pandemic. The Company's estimated end of the FPFTY capital structure ratios are not supported by substantial evidence.[47]

The Company's cost of equity and overall cost of capital claim is not appropriate to establish just and reasonable rates in this proceeding. Since Columbia's 2018 base rate case, which also included a 10.95% return on equity request, long-term interest rates have fallen, a benefit to Columbia.[48] More importantly, the impact of the COVID-19 pandemic has negatively impacted Columbia's consumers and communities, as described by OCA witnesses Rubin and O'Donnell.[49]

If the Commission uses a traditional ratemaking approach, the OCA recommends that Columbia be allowed the opportunity to earn a 8.50% return on equity applied to a common equity

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47 OCA M.B. at 55-61.

48 OCA M.B. at 51.

49 OCA M.B. at 14-18 51, 58, 62.

ratio of 50%, resulting in an overall allowed return of 6.51% that is based upon recent financial market data and appropriate to establish a fair cost of capital for Columbia in the context of this proceeding.[50]

2. The Legal Framework for Determining What Rate of Return is Fair to Columbia Gas Consumers and the Company's Investors.

The OCA addressed the legal framework for review of the Company's rate of return request in the OCA Main Brief.[51] The OCA Main Brief also addressed the Company's affirmative burden of proof under Section 315, requirements which extend to the Company's cost of capital request based upon a FPFTY.[52] Section 523(a) and (b) provide the Commission with discretion and guidance as to a proper record to evaluate a request for an adjustment for management performance.[53] The end goal of such an evaluation is the establishment of just and reasonable rates.

The Company Main Brief discusses some of the same legal standards, such as Hope and Bluefield.[54] Absent from the Company's review is recognition that the Commission must consider the interests of Columbia's ratepayers, as well as investors.[55]

B. Capital Structure Ratios.

The OCA has contested the Company's position that the Commission should establish just and reasonable rates based upon the Company's estimated end of the FPFTY capital structure

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50 OCA M.B. at 4, 48, 50, 52, 78-95.

51 OCA M.B. at 52-55, 61.

52 OCA M.B. at 9-10, 27, 61; 66 Pa.C.S. § 315(a), (e).

53 OCA M.B. at 97-98; 66 Pa.C.S. § 523(a), (b).

54 CPA M.B. at 62-64.

55 OCA M.B. at 21, 53-55. "The rate-making process …, i.e., the fixing of 'just and reasonable rates, involves a balancing of the investor and consumer interests…." Hope, 320 U.S. at 603.

comprised of 54.19% common equity, 42.22% long-term debt, and 3.59% short-term debt.[56] Columbia states that its estimated capital structure is tied to the Company's planned FTY and FPFTY net rate base additions.[57] The Company describes its estimated December 31, 2021 capital structure as within a zone of reasonableness and so appropriate to set rates in this proceeding.[58] The OCA disagrees.

1. <u>The Company's Estimated Capital Structure for the FPFTY Is Not Supported by Substantial Evidence</u>.

The OCA submits that the Company's proposed end of the FPFTY capital structure is a forecast supplied to Company witness Moul in anticipation of the Company's original planned March 2020 base rate filing.[59] It is the Company's estimate of what its capital structure, with a common equity ratio of 54.19%, might be *if* the Company's planned capital changes for the FTY and FPFTY occur and *if* the Company's management follows through on its planned FPFTY plant additions. The Company confirmed that the planned March 2020 debt issuance occurred.[60] The Company *has not* confirmed that the planned $55 million equity infusion in March 2020 has occurred.[61] OCA witness O'Donnell testified that the Company's estimated December 31, 2021 capital structure ratios are just that -- projections.[62] The Company did not provide updated

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[56] OCA M.B. at 55-61.

[57] CPA M.B. at 65.

[58] CPA M.B. at 65-69.

[59] OCA M.B. at 57-58.

[60] CPA M.B. at 65; <u>see</u>, OCA M.B. at 61.

[61] Contrast CPA St. 8 at 16, li. 7; CPA M.B. at 65.

[62] OCA M.B. at 56.

information or support to counter Mr. O'Donnell's concern that common equity ratios projected by the utility for ratemaking tend to be too high and uncertain as to the actual outcome.[63]

The Company's linkage of its projected end of FPFTY capital structure with the Company's planned net rate base investments for the FPFTY does not justify adoption of the estimated capital structure and 54.19% common equity ratio.[64] In rebuttal, Company witness Moul considered the COVID-19 pandemic "recession" only in relation to the Company's cost of equity.[65] OCA witness Effron asked the Company to provide updates and assessments of the impact of the COVID-19 pandemic on capital spending, plant additions, and other elements of the Company's FPFTY projections.[66] As Mr. Effron testified:

> In OCA Data Request V-3, the Company was asked to describe the expected impact of COVID-19 on capital spending and plant additions for the remaining months of 2020 and for 2021. The Company stated that it "anticipates completing this year's construction projects prior to year's end" but made no representation regarding the impact of COVID-19 on capital spending and plant additions for 2021, the Fully Projected Future Test Year ("FPFTY") in this case. [67]

OCA witness O'Donnell properly opposed the Company's estimated capital structure ratio as not supported by substantial evidence.[68]

The Company's position that the Commission should respect Columbia's managerial discretion to estimate its end of FPFTY capital structure should not be accepted as a substitute for

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63 OCA M.B. at 55-60.

64 OCA M.B. at 3, 55-56; see, CPA M.B. at 60, 65.

65 OCA M.B. at 62; see CPA St. 8R at 7.

66 OCA M.B. at 3-4.

67 OCA M.B. at 3, quoting OCA St. 2 at 3-4.

68 OCA M.B. at 55-61.

the need to support its ratemaking position with substantial evidence.[69] The Company's exercise of its managerial "discretion" in the future test year could result in different outcomes than forecast, as Mr. O'Donnell testified based on his experience.[70] Indeed, the Company acknowledges that this has occurred in the recent past, with regard to the difference between its forecast and actual 2018 pipeline replacements.[71] The Company's ability to scale back plant additions in one year, to address an affiliate's unanticipated need for mutual aid, is at odds with the Company's position in this case that its FPFTY plans to add capital investment tied to forecast plant additions should be accepted for ratemaking, without consideration of the impacts of the COVID-19 pandemic.

Pursuant to Section 315(e), Columbia may use a FPFTY.[72] Yet, the Company's estimates must be supported by substantial evidence and the Commission may disallow those which are not.[73] Given that the Company is seeking a significant increase in base rates during the COVID-19 pandemic, when many consumers are already challenged to cover basic necessities, the Commission should not adopt a capital structure that is not supported by substantial evidence and would increase costs to ratepayers.[74]

2. The Commission Should Adopt a Capital Structure of 50% Common Equity and 50% Total Debt to Set Rates for Columbia.

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69 See, CPA M.B. at 68.

70 OCA M.B. at 56, 58; OCA St. 3 at 36-37.

71 See, CPA M.B. at 32, fn. 9.

72 OCA M.B. at 9, 27, 56-58, 60-61; 66 Pa.C.S. § 315(a), (e).

73 66 Pa.C.S. § 315(a), (e). In UGI Electric, the Commission denied the inclusion of an estimated FPFTY plant addition (Operations Center), based on the absence of substantial evidence to support the Company's claim. UGI Electric, at 31. On appeal of a different, but still FPFTY- related issue, the Commonwealth Court took note that the Commission had reviewed the record evidence to determine what facility additions should be included in the FPFTY. McCloskey v. Pa. P.U.C., 225 A.3d 192, 208, fn. 9 (Pa. Commw. 2020). The substantial evidence requirement of Section 315(a) still applies to FPFTY estimates.

74 OCA M.B. at 14-18.

The Company has not provided substantial evidence to support its position that it will add capital investment tied to FPFTY plant additions to arrive at the estimated end of FPFTY capital structure ratios, including a 54.19% common equity ratio. As an alternative way to convince the Commission to set rates based upon the Company's proposed capital structure ratios, Columbia witness Moul stated that the Company's "capital structure ratios are fairly comparable to the companies in the comparison group …."[75] Columbia's Main Brief states that its estimated capital structure ratios fall within a range of reasonableness and so the Commission should approve the Company's proposed end of FPFTY capital structure for ratemaking.[76] In support, Columbia cites to the case of PPL Electric 2012 and other earlier cases, in which one or more parties opposed use of the utility's actual capital structure.[77]

The OCA disagrees that the Commission should adopt Columbia's estimated end of FPFTY capital structure in this proceeding on these grounds. First, the cases cited by Columbia do not involve the setting of rates based upon a FPFTY, subject to Section 315(e). The cases cited by Columbia also did not involve the extraordinary circumstances of a pandemic, statewide disaster proclamation, and a period of a Commission-imposed moratorium on disconnections to protect the public.

Second, Mr. Moul identified the range of equity ratios for the companies in the OCA proxy group as "39.80% to 62.30%."[78] To reflect Mr. Moul's Gas Group and 2019 equity ratios,

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[75] See, CPA St. 8R at 3. But see, OCA M.B. at 60.

[76] CPA M.B. at 65.

[77] See, CPA M.B. at 66-67, citing Pa. P.U.C. v. PPL Electric Utilities Corp., Docket No. R-2012-2290597, 2012 Pa. PUC LEXIS 1757 (PPL Electric 2012).

[78] See, CPA St. 8R at 4-5, citing OCA St. 3 at 30.

the low end of the range would need to be adjusted downward to 36.90%.[79] The OCA submits that the Company's "range of reasonableness" approach does not explain why Columbia's estimated end of FPFTY capital ratio of 54.19% – which is not supported by substantial evidence – should be adopted for ratemaking. The Company's actual and estimated common equity ratios for March and November 2020 are lower values and also within the broad "range of reasonableness" referenced by Mr. Moul.[80] Mr. O'Donnell was not convinced that those lower 2020 common equity ratios justified setting rates using the Company's higher, estimated end of FPFTY common equity ratio, based upon the lack of record support for the Company's estimate and his experience.[81]

The Commission should consider what capital structure is appropriate to set just and reasonable rates, specific to current economic conditions, including the low cost of debt, as well as the extensive adverse economic impact of the COVID-19 pandemic on Columbia's customer base.[82] To protect consumers from being overburdened by rates set based upon a top heavy and unsupported 54.19% common equity ratio, OCA witness O'Donnell has recommended the adoption of a 50% common equity / 50% total debt capital structure.[83] Mr. O'Donnell's recommendation is based upon consideration of the average equity ratios for his proxy group and

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[79] See, OCA St. 3 at 30, Table 4: Proxy Group Equity Ratio. OCA St. 3, Table 4 includes the ratios for all companies in Mr. Moul's Gas Group. NiSource, Inc.' 2019 common equity ratio was 36.90% and is in Mr. Moul's Gas Group.

[80] OCA M.B. at 59; see OCA St. 3 at 35-36. The Company's March 2020 actual common equity ratio is 53.31% and estimated November 30, 2020 (end of FTY) common equity ratio is 53.00%. See also, CPA St. 8, Exh. 400, Sch. 5, p. 10; CPA St. 8R, Exh. PRM-1R.

[81] OCA M.B. at 59-61; see OCA St. 3 at 35-36.

[82] OCA M.B. at 55-60.

[83] OCA M.B. at 55-56, 58-59.

average annual common equity ratio presented by state regulators in past years.[84] Additionally, Mr. O'Donnell noted that while Columbia's consumer and business customers are hard hit by the pandemic economic crisis, interest rates for borrowing are very low and expected to remain low, and utility stocks have been favored by investors during recent periods of market turmoil.[85] An overstated, estimated common equity capital structure ratio will cost consumers more, if adopted by the Commission, in part because revenues to pay equity must be grossed up for taxes, unlike debt.[86]

The OCA submits that the 50% common equity / 50% total debt capital structure recommended by Mr. O'Donnell is supported by substantial record evidence and is best suited to set just and reasonable rates based upon the specific record developed in this proceeding.

C. Debt Cost Rate.

The OCA has accepted the Company's embedded long term cost of debt of 4.73%, based upon information provided by Company witness Moul in rebuttal testimony.[87] See OCA M.B. at 50, 61. In its Main Brief, Columbia twice refers to its revised long term cost of debt as "4.75%."[88] This two basis point increase by Columbia to its long term debt cost rate appears to be a repeated typographical error. Columbia Table I(A) attached to the Company's Main Brief applies "4.73%" as the "Long-term Debt" cost rate.[89] The Commission should apply 4.73% as Columbia's embedded long term cost of debt.

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84 OCA M.B. at 58; see also, OCA St. 3 at 30-34; OCA St. 3S at 7-8.

85 OCA M.B. at 58; OCA St. 3 at 14-16; OCA St. 3S at 10-11, 13.

86 OCA M.B. at 55-56, 58-59.

87 OCA M.B. at 50, 61.

88 CPA M.B. at 64, 69.

89 CPA M.B., App. B, Table I(A).

D. Return On Common Equity.

The OCA recommends a DCF-derived cost of equity of 8.50%.[90] The OCA recommendation is based upon financial data through July 2020.[91] This cost rate is consistent with investor expectations and current market conditions and thus is appropriate in today's financial market. Moreover, as discussed in the OCA's Main Brief, the Company's 10.95% equity cost rate is overstated, is derived from the application of multiple flawed models, flawed upward adjustments, and flawed analyses, and the Company's proposed cost of equity should be rejected.[92] Finally, the record does not contain sufficient evidence to support Columbia's adjustment for management performance.[93] The OCA's common equity cost rate of 8.50% should be adopted.

1. Columbia Proposal.

Company witness Moul arrived at his recommended 10.95% return on equity recommendation through a combination of analyses, including a DCF model with a leverage adjustment, a CAPM method including a size adjustment, a Risk Premium approach, and a Comparable Earnings (CE) analysis.[94] In addition, Mr. Moul increased his recommendation by 20 basis points to recognize "management performance."[95] Mr. Moul prepared his analyses based upon financial and market data through 2019. Mr. Moul's update in rebuttal was limited to some mix of three months of "recession data" after February 2020 and other data points.[96]

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[90] OCA M.B. at 78-95.

[91] OCA M.B. at 79.

[92] OCA M.B. at 61-78.

[93] OCA M.B. at 95-111.

[94] CPA M.B. at 70; OCA M.B. at 48-52, 61-63, 65-78.

[95] CPA M.B. at 70; OCA M.B. at 95-111.

[96] CPA M.B. at 70-72; OCA M.B. at 62-63, 65-78; see OCA St. 3S at 17-18.

The OCA Main Brief presents a comprehensive review of the Company's cost of equity presentation. Two themes are important. First, the Company's presentation is not based upon the most recent observations of financial and capital market data possible, for a continuous 12 month period.[97] The Company's cost of equity presentation does not reasonably capture and reflect the economic developments of 2020 which include a decline in the cost of debt financing, recovery of the Dow Jones Utility Index Average (DJUA) which is indicative of investors accepting a lower cost of capital on their investments, and the Federal Reserve Chairman's expectation of a slow recovery from impacts of the COVID-19 pandemic.[98]

Second, the Company's analytical framework does not provide a sound basis to adopt the Company's overall 10.95% cost of equity request, or 10.75% since 20 basis points depends on the Company's management performance claim. As part of his DCF analysis, Mr. Moul made unsupported upward adjustments to the average dividend yield for his Gas Group, which increased his dividend yield in his DCF analysis.[99] Mr. Moul utilized only forecasted growth rates in his DCF analysis, although the accuracy of earnings predictions and forecasts is questionable and may tend to be overly optimistic.[100] Mr. Moul's inclusion of a "leverage adjustment" to increase his DCF results is conceptually unsound, as explained by OCA witness O'Donnell, and has been properly rejected by the Commission in numerous cases since 2008.[101] The record in this

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[97] OCA M.B. at 48-52, 61-63, 65-78. For example, in UGI Electric, the Commission highlighted the importance of a dividend yield in a DCF analysis "based upon the most recent available observations in the record." UGI Electric at 92.

[98] OCA M.B. at 62-63, 79; see OCA St. 3S at 11, 13, 17-20.

[99] OCA M.B. at 67-68.

[100] OCA M.B. at 68-69.

[101] OCA M.B. at 70-72; see, OCA St. 3S at 24-26; Exh. KWO-3S, KWO-4S.

proceeding does not support the Company's 172 basis point increase to its DCF results as reasonable and in the public interest.[102] The Company has not met its burden of showing that the Commission should exercise its informed judgment to approve this significant increase to Columbia's DCF-based cost of equity results.[103]

The Company's DCF results, without this leverage adjustment, of a 2.69% dividend yield plus a 7.50% growth rate totaling 10.19% is still overstated and not reasonable.[104] Mr. Moul's updated dividend yield of 3.39%, based upon his atypical 3 month average, is similarly flawed and unsuited to consideration as an input in the Commission's final determination.[105]

The OCA Main Brief similarly describes how Mr. Moul's other cost of equity analyses are flawed and rely upon improper inputs.[106] In particular, the OCA has opposed Mr. Moul's CAPM analysis which includes a 102 point size adjustment which is conceptually unnecessary and, as noted by I&E witness Keller, is not supported by technical literature.[107] OCA witness O'Donnell also testified that Mr. Moul's approach to determining a risk free rate (2.75%) to use in Mr. Moul's CAPM analysis has been proven unreliable.[108] The Company's Risk Premium and Comparable Earnings analyses do not provide useful information for the Commission's consideration.[109]

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102 OCA M.B. at 72, *citing* UGI Electric, at 93-94.

103 OCA M.B. at 61-63, 65-67, 70-72; see, OCA St. 3S at 21 (opposing Mr. Moul's updated 203 basis point leverage adjustment).

104 OCA M.B. at 68-69; see, CPA M.B. at 74.

105 OCA M.B. at 68-69; see, CPA M.B. at 74.

106 OCA M.B. at 72-78.

107 OCA M.B. at 62, 72-76; see OCA St. 3S at 31, Exh. KWO-3S, KWO-4S.

108 OCA M.B. at 72, 74.

109 OCA M.B. at 72-77.

2. Other Parties' Proposals.

a. The OCA's Cost of Equity Recommendation Is Soundly Based.

The Company's Main Brief raises criticisms of OCA witness O'Donnell's cost of equity analyses.[110] The Company's criticisms are not well founded.

As explained in the OCA's Main Brief, Mr. O'Donnell derived his recommended equity cost rate from consideration of the full ten companies included in *Value Line*'s gas industry, including UGI Corp.[111] Of the ten, Mr. O'Donnell conducted separate cost of equity analyses for Columbia's parent NiSource, Inc. Mr. O'Donnell's approach provides a sound basis for his cost of equity recommendation, based upon observations for more gas industry participants.[112] Mr. O'Donnell's cost of equity analyses also cover more current observations, based upon available data through June and July 2020.[113]

As part of his DCF analysis, Mr. O'Donnell determined his dividend yield range of 3.3% to 3.5%, based in part upon averaging of forecasted dividend yields available from *Value Line* for all companies in Mr. O'Donnell's proxy group and NiSource, in order to minimize the possibility of an isolated event skewing the DCF results.[114] The Company's Main Brief does not contest Mr. O'Donnell's dividend yield approach or resulting range.[115]

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110 CPA M.B. at 88-91.

111 OCA M.B. at 65.

112 OCA M.B. at 82-84.

113 OCA M.B. at 78-80; see, CPA M.B. at 74.

114 OCA M.B. at 85-87; see OCA St. 3 at 46; OCA St. 3R at 7.

115 See, CPA M.B. at 88.

Mr. O'Donnell used several methods to identify a measure of growth in dividends that investors expect, with consideration of the full scope of growth rates available for investors and analysts to consider. Mr. O'Donnell's approach avoids the flaws and risk of Company's witness Moul's sole reliance on forecasted earnings per share growth rates that produce unsustainable high return on equity estimates.[116] Mr. O'Donnell also considered trends in the gas industry and the impact of the Coronavirus pandemic on equity markets. Mr. O'Donnell's DCF growth rate range of 4.0% to 6.0% is the result of a comprehensive review of available data and factors, in contrast to Mr. Moul's narrow reliance on just forecasted growth rates. Mr. O'Donnell's 8.50% recommended cost of equity for Columbia is based upon the middle of the 7.50% to 9.50% range that he determined based upon his DCF analyses of data through June and July 2020 for the nine gas companies and NiSource, Inc.[117]

Mr. O'Donnell conducted a CAPM analysis, including consideration of data through July 2020, and identified a risk free rate averaging 1.89%, and an equity risk premium range of 4.00% to 6.00%, and an average beta value for his ten gas companies over the most recent quarter of 0.85%.[118] Contrary to the Company's Main Brief assertion, Mr. O'Donnell did not rely only on the geometric mean returns and exclude consideration of arithmetic mean returns, to identify market return expectations.[119] Mr. O'Donnell considered his final CAPM range of 5.50% to 7.50% as a check on his DCF results range of 7.50% to 9.50%.[120]

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[116] OCA M.B. at 89; see, OCA St. 3S at 23.

[117] OCA M.B. at 87-90.

[118] OCA M.B. at 91-93.

[119] CPA M.B. at 91; OCA M.B. at 91-92; see, OCA St. 3S at 28-29.

[120] OCA M.B. at 93.

The Company's criticisms of Mr. O'Donnell's approach and overall cost of capital recommendation do not overcome the fact that Mr. O'Donnell gave full consideration of the breadth of information available to investors, reviewed his results in the context of economic and industry developments in the past ten years, as well as the impact of the COVID-19 pandemic on current and near future financial markets, costs of capital, and the interests of Columbia's consumers.[121] If the Commission reviews the Company's cost of capital request based upon traditional ratemaking, the Commission should adopt the OCA's recommended 8.50% cost of equity for Columbia based upon the specific record in this proceeding.

b. The 9.86% Cost of Equity Recommended by I&E Witness Keller is Overstated.

Although the OCA has agreed with a number of I&E witness Keller's criticisms of the Company's cost of equity analyses, the OCA has opposed I&E's proposed 9.86% cost of equity for Columbia as overstated.[122] I&E witness Keller's recommendation is based on a smaller proxy group of just seven companies, reducing the number and variety of data points. Mr. O'Donnell disagreed with I&E witness Keller's approach to development of the I&E 3.34% dividend yield and average growth rate of 6.52%, for use in the I&E DCF model. Mr. O'Donnell also disagreed with I&E witness Keller's development of CAPM inputs. In particular, I&E's 10.35% overall market return measure, based upon Value Line forecasts for 1700 stocks, is not realistic given current economic conditions. The Commission should not adopt I&E's cost of equity recommendation, which is overstated and not in the public interest.

c. The OSBA's Criticisms of the OCA's Cost of Equity Recommendation, Under a Traditional Ratemaking Approach, Are Not Supported.

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[121] OCA M.B. at 48-52, 55-61, 78-95.

[122] OCA M.B. at 49, 51; see OCA St. 3R at 5-11.

As set out in its Main Brief, the OSBA is opposed to the Company's requested 10.95% cost of equity return as overstated, due in part to the fundamental economic changes between the Company's 2018 base rate request and this proceeding.[123] In the 2018 and 2020 base rate cases, the Company has requested the same 10.95% return on equity.[124] OCA witness O'Donnell made a similar, more detailed review and reached the same conclusion that the Company's current 10.95% cost of equity request is overstated and unreasonable, even before consideration of the impact of the pandemic. [125]

With regard to the appropriate cost of common equity for Columbia in this proceeding, the OSBA criticizes the OCA's 8.50% cost of equity recommendation (if the Commission applies a traditional ratemaking review). The OSBA faults OCA witness O'Donnell's DCF analysis, CAPM analysis, and Comparable Earnings analyses. Based on an adjustment, OSBA suggests that Mr. O'Donnell's CAPM result should be lower and so supportive of the OSBA's proposed 7.63% cost of equity for Columbia.[126]

OCA witness O'Donnell refuted and corrected the OSBA's criticisms and certain assumptions in surrebuttal.[127] The OCA cost of equity recommendation, under a traditional ratemaking approach, is based primarily upon the DCF model, which Mr. O'Donnell considers superior and widely used.[128] Mr. O'Donnell countered the OSBA's concern that the DCF model is subject to circularity and that a risk premium over current capital market interest may be better,

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[123] OSBA M.B. at 6-7.

[124] OSBA M.B. at 6-7.

[125] OCA M.B. at 51; see OCA St. 3 at 6, 12; OCA St. 3R at 3-4.

[126] OSBA M.B. at 7-9.

[127] See, OCA St. 3S at 32-37.

[128] OCA M.B. at 82.

stating "every cost of equity model in use today is based upon inputs that can be evaluated from both a historical and forecasted perspective. The key … is to maintain a balance between how much weight is placed upon such historical and projected inputs as I have exhibited within my testimony." [129] Mr. O'Donnell explained that the OSBA's CAPM adjustment and comparison incorrectly imputed to Mr. O'Donnell the use of a risk premium of "785-basis points" in the OCA CAPM analysis.[130] Mr. O'Donnell justified his use of the yield on the 30-Year T-Bond over a 12-month period to identify his risk free rate, over the OSBA's use of the 10-Year T-Bond as of August 2020.[131] Mr. O'Donnell also clarified and refuted the OSBA concern that Mr. O'Donnell had included a "Blume adjustment" to his beta.[132]

If the Commission reviews the Company's cost of equity request from a traditional ratemaking perspective, the OCA's cost of equity recommendation of 8.50% is soundly based and in the public interest, notwithstanding the OSBA criticisms.

3. Increment for Management Effectiveness.

Columbia has requested that the Commission grant a 20-basis point addition to the allowed cost of equity in recognition of the Company's strong performance in the area of management effectiveness.[133] The Company's summary kicks off with mention of its 2007 initiative to increase pipeline replacements.[134] Columbia states that it has met or exceeded its LTIIP goals, with the

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[129] OCA St. 3S at 32-33.

[130] OCA St. 3S at 34-35.

[131] OSBA M.B. at 9; see, OCA St. 3S at 34-35.

[132] OSBA M.B. at 6-7.91-93.

[133] CPA M.B. at 92-97.

[134] CPA M.B. at 93.

exception of 2018.[135] The Company cites the altruism of its employees who have volunteered numerous hours of time.[136] In sum, Columbia has claimed it is entitled to 20 additional basis points for exemplary management, based upon these and other factors. I&E witness Keller valued the Company's request at about $2.6 million in additional annual revenues.[137]

The OCA Main Brief contains a detailed review of the legal framework and record evidence which counters the Company's exemplary management claim.[138] The OCA reply is focused on two issues which demonstrate that the Company should not be awarded any increment of cost of equity basis points for management performance. The OCA does not concede that other elements of the Company's claim support the Company's request.

a. Columbia's Collections Performance is not Exemplary.

In its Main Brief, Columbia argued that OCA witness Colton's analysis of the Company's collections performance is flawed because Mr. Colton only considered raw data that was unadjusted for the size of the utility. CPA M.B. at 97. Columbia argued that the adjusted data showed a different picture of its performance. CPA M.B. at 97; CPA St. 1-R at 29-31. OCA witness Colton found the data presented by Columbia showed only a limited picture of Columbia's performance and does not show that the Company has exemplary performance. See, OCA M.B. at 100-108.

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[135] CPA M.B. at 95. But see, OCA M.B. at 98, fn. 32. Basic regulatory compliance alone does support a Section 523 adjustment. See, Pa. P.U.C. v. Columbia Water Co., Docket No. R-2008-2045157, Order at 91, 93 (June 10, 2009) (Compliance with safe drinking water standards did not support an upward cost of equity adjustment).

[136] CPA M.B. at 93.

[137] CPA M.B. at 95. See, OCA M.B. at 95, *citing* I&E St. 2 at 48.

[138] OCA M.B. at 4, 95-111.

In its Main Brief, Columbia argued that OCA witness Colton's testimony did not "present a full or accurate description." CPA M.B. at 97. It is the Company, however, that has not presented the full or accurate description of its performance. For example, Columbia's Main Brief and testimony does not even address the June 2020 Management Audit findings that reached a similar conclusion to Mr. Colton. As Mr. Colton explained:

> What Tubbs does *not* address, however, is the June 2020 PUC Management Audit which, after comparing Columbia's performance "to a panel of Pennsylvania natural gas distribution companies (NGDCs) for the years 2014-2018, found that "CPA's overall average arrearages were substantially higher than the panel average over the period." (Management Audit, quoted at OCA St. 5, at 82). Nor did Mr. Tubbs respond to the PUC's own Management Audit report which referred to the Company's "less than average level of performance." (Id.). Nor did Mr. Tubbs respond to the PUC's own Management Audit report which reported that the Company's management action "resulted in excessive arrearage levels CPA experienced throughout the audit period." (Id.)

OCA St. 5-S at 5 (emphasis in original).

Columbia argued that Mr. Colton did not consider four important aspects of adjusted collections data. First, Columbia stated that it has the lowest percentage of customers in debt. CPA M.B. at 97; CPA St. 1-R at 29. OCA witness Mr. Colton pointed out the flaw in Columbia's claim. Mr. Colton testified:

> [Company witness Tubbs] fails to acknowledge, however, that it has a much higher level of *total dollars* overdue than would be merited by the number of customers in arrears. (OCA St. 5, at 90). He does not dispute my Direct Testimony that "the fact that it is ranked higher in the number of dollars overdue than it is ranked in the number of accounts overdue means that CGPA's customers owe, on average, more than is owed by other Pennsylvania utilities. In fact, the data…shows this as well. The data shows that the average arrears (of accounts having arrears) is ranked third highest amongst Pennsylvania's gas utilities."

OCA St. 5-S at 6 (emphasis in original). Critically, the amount that each Columbia customer owes is among the highest in Pennsylvania, a data point that is not impacted by the size of the territory.

Second, the Company argued that Columbia has the "highest percentage of debt on payment agreements than any other Pennsylvania utility" and that this demonstrated that the Company is "actively and effectively working with customers that are behind and making payment arrangements." CPA M.B. at 97; CPA St. 1-R at 31. As OCA witness Colton explained, however, this data point is not complete. Mr. Colton testified:

> However, while Mr. Tubbs cites data on how often the Company is "*making* payment arrangements," he failed to acknowledge how frequently those payment arrangements are failing. According to the BCS, for example, "A payment troubled customer is a customer who has failed to maintain one or more payment arrangements, PGW is the only Pennsylvania natural gas utility with more "payment-troubled customers" (again, defined to be "a customer who has failed to maintain one or more payment arrangements…"). Moreover, Mr. Tubbs fails to acknowledge that the degree to which Columbia has been making payment arrangements has been trending downward in recent years.

OCA St. 5-S at 6-7 (footnotes omitted) (emphasis in original).

Third, Columbia stated that the Company has the "lowest termination per customer rate of any utility." CPA M.B. at 97; CPA St. 1-R at 31. The OCA submits, however, that the termination rate is not the most important metric by which to measure shutoffs. OCA witness Colton explained that it is the number of customers, and not the percentage of customers, who have lost service due to nonpayment that is the important number. OCA St. 5-S at 7. Company witness Tubbs did not dispute that Columbia "disconnects service to a disproportionate number of overdue accounts." OCA St. 5-S at 7. Although Columbia has the fourth highest number of overdue accounts in Pennsylvania, the Company "consistently has either the second or third highest number of nonpayment service disconnections." OCA St. 5-S at 7; OCA St. 5 at 81. The OCA notes that

Mr. Tubbs has not disputed that, of those customers disconnected, Columbia ranked the lowest in the percentage of customers who are reconnected. OCA St. 5-S at 8; OCA St. 5 at 81-82.

Finally, Columbia argued that the Company has the lowest "gross write-off ratio" of any Pennsylvania natural gas utility in 2019. CPA M.B. at 7. OCA witness Colton testified:

> The 2018 annual BCS report on collections performance, however, reveals that Columbia Gas has not distinguished itself on this metric in recent years…The data certainly does not show exemplary management in terms of the control of write-offs. Columbia routinely has higher write-offs than PECO-Gas. It routinely has a performance that is clustered with itself, NFG, Peoples, Peoples-Equitable, UGI South and UGI North.

OCA St. 5-S at 7-8, Table 1S. The OCA notes that Mr. Tubbs has not disputed that, of those customers that are disconnected, Columbia ranked the lowest in the percentage of customers who are reconnected. OCA St. 5-S at 8; OCA St. 5 at 81-82.

OCA witness Colton has responded to each of the critiques identified in the Company's Main Brief. Columbia has also failed to acknowledge similar findings raised in its June 2020 Management Audit. For the reasons set forth in the OCA's Main Brief, and for the reasons identified by OCA witnesses O'Donnell and Colton, Columbia's performance is not exemplary, and Columbia is not deserving of a management bonus to its rate of return.

b. The Company's Performance in the Area of Gas Safety Is Not Superior, as Initially Identified by Mr. Culbertson's Public Input Hearing Testimony.

Based in part on the public input hearing testimony and exhibits introduced by Mr. Richard Culbertson, the OCA Main Brief describes a July 31, 2019 gas explosion in Columbia's service territory which resulted in the destruction of a home, injuries, and damage to some 60 other

homes.[139] The Company accepted responsibility for the event. Two financial analysts considered the house explosion event significant enough to warrant a downgrade to NiSource's stock rating.[140]

The Company's Main Brief contains at most an oblique reference, asking the Commission to award it 20 basis points, regardless of some "suboptimal performance" or not "top in class" performance.[141] The Commission should recognize that this significant gas safety event, which the Company has not addressed in testimony, weighs against the Company's position that it has demonstrated exemplary management in general and in the area of gas safety and pipeline replacement efforts in particular.[142]

c. Conclusion.

The Commission should deny in its entirety the Company's request for an addition of 20 basis points to the allowed cost of equity for Columbia for the reasons set forth in this Reply Brief, the OCA Main Brief and supporting testimony.[143]

IX. MISCELLANEOUS ISSUES

A. Low-Income Customer Issues.

1. Customer Assistance Program.

a. Introduction.

In its Main Brief, Columbia addressed the OCA's recommendations regarding the Company's CAP collections performance and low-income customer outreach. CPA M.B. at 99-101; 107-110. As discussed in the OCA's Main Brief, OCA witness Colton recommended that

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139 OCA M.B. at 108-111.

140 OCA M.B. at 110-111.

141 CPA M.B. at 96-97.

142 OCA M.B. at 108-111.

143 OCA M.B. at 111.

Columbia address apparent deficiencies in its CAP collections by submitting to its Universal Service Advisory Committee, within six months of a final order in this proceeding, the question of how customer payments on CAP bills can be pursued through a reasonable collections process. OCA M.B. at 112-119; OCA St. 5 at 11. OCA witness Colton also found that the Company's CAP outreach does not appear to be reaching a significant segment of the Confirmed Low-Income population that could benefit from CAP, those customers at or below 50% of the Federal Poverty Level. Mr. Colton recommended additional steps that the Company should take to improve its community-based, grass-roots outreach in order to better reach low-income customers in its communities. OCA M.B. at 122-130; OCA St. 5 at 28. Mr. Colton also agreed with the recommendation of Columbia witness Davis that Columbia's energy burdens should not be changed as a part of this base rate proceeding. OCA M.B. at 119-122; CPA St. 13-R at 15-18; OCA St. 5-S at 19-21.

b. CAP Collections Issues.

OCA witness Colton identified concerns that Columbia's collections policies may not be consistent with the Commission's Final CAP Policy Statement Order and recommended that the collections policies be reviewed by the Universal Services Advisory Committee. OCA M.B. at 112-119.[144] In its Main Brief, Columbia argued that the Company's collections policies are exemplary, consistent with the CAP Policy Statement and do not need to be reviewed by the Universal Services Advisory Council. CPA M.B. at 99-101. Columbia opined that OCA witness Colton offered no support for his concerns regarding the Company's collections policy other than comparing the total number of CAP bills issued to the number of full payments received and the

[144] See, 2019 Amendments to Policy Statement on Customer Assistance Program, 52 Pa. Code §§ 69.261-69.267, Docket No. M-2010-3012599, Order at 72-73 (Order entered Nov. 5, 2019) (Final CAP Policy Statement Order).

percentage of CAP customer service terminations to the percentage of CAP bill collections. CPA M.B. at 100. The OCA submits that Mr. Colton's conclusions are rooted in the fact the Company could not provide a satisfactory explanation for why each month there is such a significant gap between the number of CAP bills issued and the number of full CAP payments received. OCA St. 5-S at 14-15.

Columbia argued that the data used by Mr. Colton, the annual Universal Services Reporting Requirements, only reflect the receipt of payments excluding Low Income Home Energy Assistance Program (LIHEAP) grant credits and Hardship Funds. CPA M.B. at 100. In particular, the Company argued that OCA witness Colton did not account for the fact that a customer may be current on their CAP bill without having made 12 on-time and in full payments because of the receipt of a LIHEAP grant. CPA M.B. at 100, citing CPA St. 13-R at 2. Columbia argued that more customers are current on their CAP bill than is represented in OCA witness Colton's analysis. Id.

The OCA submits that the LIHEAP data does not explain the gap in the number of payments presented. In order to complete his analysis, OCA witness Colton requested by month, for the period of October 2018 to May 2020 the number of CAP customers that received a LIHEAP grant who had a bill credit on their account each month. Mr. Colton also requested that the Company provide by month the number of CAP accounts not receiving LIHEAP and had a bill credit. OCA St. 5-S at 12-13. OCA witness Colton found:

> Simply to illustrate, in May 2019, CGPA issued 25,575 CAP bills and received 14,013 full payments. However, only 754 CAP accounts (who had received a LIHEAP payment) had a bill credit, and only 816 CAP accounts (who had not received a LIHEAP payment) had a bill credit. Contrary to what Ms. Davis asserts, the presence of bill credits does not explain the difference between the number of full payments and the number of CAP bills.

OCA St. 5-S at 12-13, Table 1S.

As a result of the unexplained gap in the data, OCA witness Colton concluded:

> The Pennsylvania PUC provides in its CAP Policy Statement that, while utilities should be diligent in offering affordable bills to low-income CAP participants, Pennsylvania utilities should also be diligent in collecting from those CAP participants once an affordable bill has been rendered. With Columbia Gas, from October 2018 through December 2019, while the Company has, on average, issued roughly 22,800 CAP bills each month, it has received, on average, fewer than 12,723 on-time payments. More than 10,000 customers receiving a CAP bill each month, in other words, do make an on-time payment. The Company's rebuttal witness asserts that the difference can be attributed to customers who receive LIHEAP and, as a result, have a bill credit thus rendering a bill payment unnecessary. However, the data provided to OCA demonstrates that fewer than 550 CAP participants, on average, who also receive LIHEAP have a bill credit in any given month. Roughly the same number of CAP participants do not receive a LIHEAP benefit but have a bill credit in any given month.

OCA St. 5-S at 14-15.

In its Main Brief, Columbia cited to other possible reasons such as the presence of disputes, the existence of medical certificates, and the presence of winter shutoff restrictions. CPA M.B. 100-101. These other reasons, however, do not explain the significant gap in the number of bills tendered and the number of bills paid. OCA witness Colton testified:

> These "other reasons," however, simply do not explain the large difference between the number of CAP bills rendered each month and the number of timely payments that are made by CAP participants. On average, there is a difference of more than 10,000 CAP accounts receiving a bill and CAP accounts making a timely payment. While there is some seasonal variation, that seasonal variation does not explain the extensive differences that exist.

OCA St. 5-S at 15.

The OCA submits that Columbia should work to improve its collections policy. As the Final CAP Policy Statement Order provided, "the rationale for timely collection for CAP

participants is that a low-income CAP participant is more likely to be able to pay a catch-up amount if the utility pursues collections in a prompt manner." Final CAP Policy Statement Order at 72. While much attention is often devoted to ensuring that Columbia enrolls eligible customers in CAP, insufficient attention appears to be devoted to ensuring that CAP customers are paying their bills consistently. OCA witness Colton recommended that Columbia submit to its Universal Services Advisory Committee the question of how customer payments on CAP bills can be pursued through a reasonable collections process. OCA St. 5 at 11. The stakeholders with the Universal Services Advisory Committee could be a valuable resource to assist with potential changes to the Company's collections policies.

c. Energy Burdens.

In its Main Brief, CAUSE-PA argued that Columbia's energy burdens for CAP customers be reduced in this proceeding to the energy burdens identified in the Commission's Final CAP Policy Statement Order. See, CAUSE-PA M.B. at 11-20: CAUSE-PA St. 1 at 25-27; Final CAP Policy Statement Order at 9-32. CAUSE-PA witness Miller recommended that the Company's energy burdens be reduced to 4% for customers at or below 0-50% of the Federal Poverty Level and to 6% for customers from 51-150% of the Federal Poverty Level for the Percentage of Income Program. CAUSE-PA St. 1 at 26; see, Final CAP Policy Statement Order at 9-32. Columbia argued that the energy burdens should not be changed. CPA M.B. at 105-107. The OCA agrees with Columbia that a decrease to the energy burdens should not be approved in this base rate proceeding, particularly as such a change is not required by the Final CAP Policy Statement Order and Columbia's USECP was just approved, effective January 2020. See, OCA M.B. at 119-122.

In its Main Brief, CAUSE-PA argued that the "Commission has already concluded that Columbia's CAP rates are categorically unreasonable and unaffordable." CAUSE-PA M.B. at 15.

The OCA submits that CAUSE-PA misinterprets the Commission's CAP Policy Statement language. As noted above, the Final CAP Policy Statement Order provided that the energy burdens included "are recommendations, not iron-clad limits on what a utility can charge a CAP household."[145] The next line of the Final CAP Policy Statement specifically directs that issues related to the energy burdens are to be addressed in the utility's Universal Service and Energy Conservation proceeding.

In its Main Brief, Columbia also pointed out that there would be a significant cost impact for customers from CAUSE-PA's recommendation. Columbia explained in its Main Brief that:

> The cost to reduce the Percent of Income payment plan option to 4%-6% would be more than $1 million per year in CAP credits (the "shortfall" amount). This cost is paid for by non-CAP customers and would result in an approximate 5% annual increase to non-CAP customers. Importantly, non-CAP customers include low-income customers who do not participate in CAP and those who are slightly above the CAP income guidelines.

CPA M.B. at 106-107. The OCA submits that the cost components of the energy burden changes must be evaluated in the full context of the Company's Universal Service and Energy Conservation Plan so that the need for additional cost controls can also be evaluated. An evaluation of whether additional cost controls such as minimum payment terms, consumptions limits, high usage treatments, and maximum CAP credits -- to name a few-- are needed as well. OCA St. 5-S at 20; see 52 Pa. Code § 69.265(3).

The OCA Reconsideration Order[146] provided that changes to the energy burdens should be considered as a part of the utility-specific Universal Service and Energy Conservation Plan. OCA Reconsideration Order at 10-11. The OCA submits that the Commission should not approve the

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145 Final CAP Policy Statement Order at 10-11 (emphasis added).

146 2019 Amendments to Policy Statement on Customer Assistance Program, 52 Pa. Code §§ 69.261-69.267, Docket No. M-2010-301259, Order at 10-11 (Feb. 6, 2020) (OCA Reconsideration Order) (Feb. 6, 2020).

proposed changes to the energy burdens in this proceeding. Any proposed changes to the energy burdens should be evaluated along with any necessary cost control measures as a part of Columbia's Universal Service and Energy Conservation Plan.

2. <u>Low-Income Customer Outreach</u>.

In its Main Brief, Columbia argued that OCA witness Colton's recommendations for low-income customer outreach are unnecessary because the Company is already implementing the strategies identified by OCA witness Colton in its Outreach Strategy and Communication Plan. CPA M.B. at 107-110. OCA witness Colton found that the Company's CAP outreach does not appear to be reaching a significant segment of the Confirmed Low-Income population that could benefit from CAP, those customers at or below 50% of the Federal Poverty Level. OCA witness Colton recommended that the "Outreach Strategy and Communication Plan" incorporate principles to engage the community in outreach. <u>See</u>, OCA St. 5 at 26-27. The OCA submits that the Company's conclusions that the Company has incorporated the OCA's recommendations fails to acknowledge the current deficiency in the Company's communications strategy found by Columbia's June 2020 Management and Operations Audit and Mr. Colton. For the reasons set forth in the OCA's Main Brief and in the testimony of OCA witness Colton, the OCA does not agree that the Company has sufficiently addressed the OCA's recommendations because the problems identified by the Management Audit and OCA witness Colton's independent analysis persist. <u>See</u>, OCA M.B. at 122-130.

In Columbia's June 2020 Management and Operations Audit, the Commission specifically addressed the relationship between low-income payment difficulties and participation rates in the Company's universal service programs, most specifically in CAP. OCA witness Colton testified:

> The Management Audit specifically included, as one of its major recommendations[,] the recommendation that CGPA "implement

> various strategies to reduce arrearage levels such as increasing CAP enrollment…" (Management Audit, at 5, 8, 59). In its "Implementation Plan" in response to the Management Audit, CGPA accepted the Audit's recommendation and indicated that the steps to respond to that recommendation were "in progress." (CGPA, "2020 Implementation Plan in Response to the 2019 Focused Management and Operations Audit, Docket No. D-2019-3011582, at 17). CGPA indicates that the steps that were "in progress" included "implementation action steps" to "Develop and document an Outreach Strategy and Communication plan to increase enrollment in Universal Programs, including CAP, with input from the Universal Service Advisory Committee." (Id.)

OCA St. 5 at 12-13.

As noted, OCA witness Colton agreed with the concerns raised by the June 2020 Management Audit. Mr. Colton also performed his own analysis and examined the extent to which Columbia's low-income population is in debt. See, OCA St. 5-S at 16; OCA St. 5 at 17-18. OCA witness Colton testified:

> CGPA witness Davis responds to my recommendations simply by asserting that "many of these outreach strategies will be included in the Company's overall draft plan, but others have been deemed unsuccessful and not as efficient as other methods." (CGPA St. 13-R, at 8). She does not specifically identify which of my recommended strategies "will be included" and which of my recommended strategies "have been deemed unsuccessful and not as efficient as other methods." Columbia does, however, appear to overly rely on Company-driven outreach strategies, with a further reliance on Company-provided outreach materials."

OCA St. 5-S at 16-17. The Company's outreach "does not involve grassroots outreach to the extent which it should" nor does it rely upon "trusted messengers." OCA St. 5-S at 17.

Ms. Davis's testimony also does not address the Commission's June 2020 Management Audit's recommendation that Columbia Gas "implement various strategies to reduce arrearage levels such as increasing CAP enrollment." <u>See</u>, OCA St. 5-S at 17; OCA St. 4 at 12, citing and quoting Commission's June 2020 Management Audit at 5, 8, 59. She also does not dispute the

fact that the Commission's Management Audit explicitly cited an increased enrollment in CAP as a way for Columbia to reduce the Company's arrearages. OCA St. 5-S at 17. As OCA witness Colton testified:

> Despite Ms. Davis' provision of a list of outreach activities which she asserts that the Company pursues, none of those listed items was identified as an outreach activity that is being undertaken in response to the Management Audit's critique. Moreover, none of Ms. Davis' listed items is identified as specifically directed toward increasing the enrollment of houses at the lowest level of Poverty, that level of Poverty which is currently under-represented in CGPA's CAP participant population.

OCA St. 5-S at 17-18.

The OCA submits that the Commission should adopt the outreach recommendations of OCA witness Colton. The recommendations support the Commission's June 2020 Management Audit. Mr. Colton's recommendations seek to leverage trusted resources in the community in order to reach otherwise hard-to-reach low-income customer populations, and in both its testimony and its Main Brief, Columbia has not identified how it is using those trusted resources to reach otherwise hard-to-reach low-income populations. The OCA submits that the additional outreach efforts will help to increase enrollment in CAP, but the true purpose of such enrollment, as set forth in the Commission's Management Audit, is to help Columbia reduce its residential arrears.

3. Health and Safety Pilot.

No reply is necessary.

4. LIURP.

No reply is necessary.

5. Hardship Fund.

No reply is necessary.

B. Pipeline Replacement Issues.

1. DIMP.

No reply is necessary.

2. Pipeline Replacement.

No reply is necessary.

3. Pipeline Replacement Costs.

No reply is necessary.

4. Risk Reduction.

No reply is necessary.

X. RATE STRUCTURE

A. Introduction.

The OCA submits that the Commission should leave Columbia's current tariff in place, with no change to its existing rates, rules or regulations. The COVID-19 pandemic looms large over this proceeding, and the Commission must recognize the severe economic and personal hardships being faced by Columbia's customers. There is simply no justifiable reason to increase the Company's revenues at this time.

Alternatively, should the Commission decide that some increase is warranted at this time, Mr. Mierzwa recommended the following approach:

> If the Commission determines that a base rate increase for CPA is warranted, that increase should be assigned to each customer class through proportionate system average increases to the base rates applicable for each customer class.

OCA St. 4 at 3. As OCA witness Mierzwa testified, if some minimal increase is warranted at this time it should be applied to each classes' existing base rates with no other tariff changes. Should the Commission decide, however, to go forward with a traditional ratemaking approach, the OCA submits the following:

1. The OCA's Peak & Average COSS should be used to assign the cost of distribution mains to the various classes.

2. The OCA's Peak & Average COSS should be viewed as a useful guide to revenue allocation.

3. Based on Mr. Colton's thorough and well-reasoned testimony, the OCA's proposal to allocate universal service costs to all classes should be accepted.

4. Columbia's proposal to substantially increase the residential customer service charge should be rejected.

5. Columbia's proposal to eliminate the 3% deadband from the Weather Normalization Adjustment should be rejected.

6. Columbia's proposal to implement a Revenue Normalization Adjustment rider should be rejected.

The OCA presents the following in support of its Rate Structure positions.

B. Cost Of Service.

As set out in the OCA's Main Brief, the OCA's Peak & Average COSS should be used to allocate the cost of distribution mains in this proceeding.[147] The Peak & Average method more accurately identifies the costs to serve the various classes, is consistent with how the distribution system is used throughout the year, and is consistent with past Commission precedent on this issue. See, OCA St. 4 at 25. Other Parties who addressed the Cost of Service issue in their main briefs included Columbia, I&E, OSBA, PSU and CII.[148] Not surprisingly, the Parties have differing views on the COSS that should be adopted in this matter.

Columbia argues for the use of its Average Study, which uses an equal weighting of its Customer Demand study and its Peak & Average study.[149] PSU agrees with Columbia that the

[147] OCA M.B. at 134-150.

[148] Columbia M.B. at 127-137; I&E M.B. at 85-95; OSBA M.B. at 11-14; PSU M.B. at 5-14; CII M.B. at 9-15.

[149] Columbia M.B. at 130.

Average Study should be adopted here.[150] CII argues for the use of the Company's Customer Demand study.[151] OSBA argues for a modified version of the Average Study, where instead of a 50/50 weighting of the Company's Customer Demand and Peak & Average studies, the OSBA recommends a 75% weighting be assigned to the Peak & Average study and a 25% weighting be assigned to the Customer Demand study.[152]

Columbia, OSBA, PSU and CII all argue that the Company's Customer Demand study should be used, in some fashion, to arrive at the COSS that the Commission should approve here. As discussed by OCA witness Mierzwa, however, the Customer Demand study allocates a portion of mains costs based on the number of customers, a method that has been previously rejected by the Commission. OCA St. 4 at 13-15.[153] In its Main Brief, Columbia attempts to provide support for the use of a customer component by citing to the Commission's decision in the 2012 PPL Electric case.[154] This is an apples-to-oranges comparison, as Mr. Mierzwa explained, cost causation for EDCs and NGDCs are different. OCA St. 4-S at 17-18.

I&E and OCA both agree that a Peak & Average method should be used for the allocation of distribution mains costs in this proceeding.[155] I&E supports the use of the Company's Peak & Average COSS, without modification.[156] OCA witness Mierzwa, however, found several flaws with the Company's Peak & Average COSS, as follows:

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150 PSU M.B. at 14.

151 CII M.B. at 10.

152 OSBA M.B. at 14-15.

153 See also, OCA M.B. at 139-150.

154 Columbia M.B. at 133.

155 I&E M.B. at 93; OCA M.B. at 150-155.

156 I&E M.B. at 92-93.

> in CPA's Peak & Average ACOS Study, distribution mains investment is separately assigned to one of three categories, and each category is separately allocated to each rate class. As previously explained, this assignment is unreasonable. In addition, the Company has not appropriately assigned the costs associated with the major account representatives that manage large Industrial and Commercial customer accounts.

OCA St. 4 at 28. The OCA's Peak & Average COSS corrects these errors and more accurately identifies and allocates the mains costs in this proceeding.

Columbia makes several arguments as to why Mr. Mierzwa's corrections to the Company's Peak & Average COSS should not be accepted.[157] As Mr. Mierzwa explained, Columbia has failed to accurately identify the net investment costs for its low-pressure system, which is primarily used to serve residential customers, and, as such, has over-allocated the costs to the residential class in its COSSs. OCA St. 4 at 8-9. In its Main Brief, Columbia argues that Mr. Mierzwa's arguments here are misplaced, as the OCA's Peak & Average COSS also relies on original cost, and not net investment.[158] In surrebuttal, Mr. Mierzwa responded:

> To account for this difference in my Peak & Average cost study, net plant investment information for steel and plastic pipe is required. Columbia has indicated that this information is not available.

OCA St. 4-S at 10. As discussed, Columbia does not have accurate property records to reflect the actual net investment for steel pipe or plastic pipe. As Mr. Mierzwa testified, however, the majority of the low-pressure system is steel and that pipe is much older, and as such, should have significantly lower net investment costs than the Company has assigned to it. OCA St. 4 at 9. The OCA notes that Columbia has not rebutted these facts.

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[157] Columbia M.B. at 134-136. I&E also disagrees with Mr. Mierzwa as to any corrections needed to the Company's Peak & Average COSS. I&E M.B. at 92-93. As I&E's arguments mirror those of Columbia, they will not be separately addressed here.

[158] Columbia M.B. at 136.

The Company's other major disagreement with the OCA's corrections relate to the assignment of major account representative costs. Columbia argues that residential customers use the Company's call center, but a portion of call center costs are assigned to the large customer classes. To accept Mr. Mierzwa's recommendation to assign the costs of major account representatives only to the larger classes, Columbia argues it would only be fair to then assign those large classes a credit for call center costs.[159] Columbia's argument here is without merit, as Mr. Mierzwa testified:

> Mr. Notestone fails to acknowledge, however, that the Company has assigned the Residential class more than 90 percent of the Major Account Representative costs, compared to the assigning of only 0.02 percent to the larger customer classes for the costs associated with the Company's call center. As I stated in my Direct Testimony, this discrepancy is a result of the Company allocating these costs based on the number of customers. This method of allocation unreasonably places the overwhelming majority of these costs on the Residential class. **Further, while large customers have account representatives, these customers may use the call center and emergency numbers for other purposes such as odors and leaks.**

OCA St. 4-S at 10-11 (emphasis added). As shown, Columbia's proposed allocation of major account representative costs is not reasonable. The OCA's Peak & Average COSS corrects this and other errors in the Company's Peak & Average study.

The Commission has consistently found in numerous NGDC cases that the allocation of mains costs should be done by recognizing both annual and peak demands. <u>See</u>, OCA St. 4 at 25. The Commission has also rejected the use of a customer component in allocating the cost of mains.[160] Accordingly, any use of the Company's Customer Demand study must be rejected. The

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159 Columbia M.B. at 134-135.

160 I&E M.B. at 87.

Commission should reaffirm its long-held positions that for the allocation of NGDC mains costs, there is no customer component, and the Peak & Average method should be used.

C. Revenue Allocation.

1. Proposed Revenue Allocation and Alternatives.

The OCA's Peak & Average COSS should be used to allocate any revenue increase in this matter. Columbia's Peak & Average COSS produces results that are unreliable due to the flaws identified by OCA witness Mierzwa, and its Customer Demand COSS is inconsistent with Commission precedent and also contains serious flaws. Averaging these two COSSs together, as Columbia has done, only serves to create an "Average Study" that incorporates these flawed methods.

In their main respective briefs Columbia, I&E, OSBA, PSU and CII each addressed the issue of Revenue Allocation.[161] CII did not offer a specific revenue allocation proposal, but argued that Rate LDS should receive no more than the system average increase.[162] PSU supports Columbia's proposed revenue allocation based on its Average Study.[163] I&E did not present a specific revenue allocation proposal.[164] As discussed in the previous section, OSBA generally agrees that Columbia's Average Study with some modifications is suitable for allocating the cost of distribution mains. As to revenue allocation, however, OSBA argued that Columbia's revenue allocation proposal has serious flaws.[165]

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[161] Columbia M.B. at 137-141; I&E M.B. at 95; OSBA M.B. at 15-19; PSU M.B. at 14; CII M.B. at 15-17.

[162] CII M.B. at 17.

[163] PSU M.B. at 14.

[164] I&E M.B. at 95.

[165] OSBA M.B. at 17-19.

In its Main Brief, OSBA argued that the Company failed to follow its own Average COSS in presenting its revenue allocation proposal.[166] OSBA witness Knecht provided a chart to show Columbia's allocation proposal using the Average COSS, Mr. Knecht's corrected allocation using the Average Study weighted at 50/50, and also the OSBA's proposed allocation using the Average Study but weighted 75% based on the Company's Peak & Average COSS and only 25% based on its Customer Demand COSS.[167] As shown, the results vary widely.[168]

The OCA agrees with OSBA that Columbia's proposed revenue allocation is deeply flawed. OSBA's proposed 75/25 proposal is a step in the right direction as it relies more on the Peak & Average method, but the inclusion of the Customer Demand portion, which includes a customer component to the distribution of mains costs makes OSBA's COSS unsuitable for use as a revenue allocation method.

In its Main Brief, Columbia argued that the OCA's proposed revenue allocation based solely on the Peak & Average method is flawed because it fails to take into account the customer component as set out in Columbia's Customer Demand COSS.[169] The OCA submits that Columbia's revenue allocation, based partially on its Customer Demand COSS which includes a customer component, must be rejected. Further, as OSBA argued, Columbia's revenue allocation proposal is arbitrary and does not even conform to its own Average COSS results.

As presented by OCA witness Mierzwa, the results of the OCA's Peak & Average COSS should be adopted for revenue allocation. Mr. Mierzwa recommended the following allocation of the increase based on the OCA's Peak & Average COSS:

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166 OSBA M.B. at 16.

167 OSBA M.B. at 18.

168 Id.

169 Columbia M.B. at 141.

Table 1.
OCA Proposed Revenue Distribution

Class	Present Rates	Proposed Rates	Increase	Percent	Index
RSS/RDS	$292,185,976	$354,799,715	$62,613,739	21.4%	1.24
SGSS1/SCD1/SGDS1	33,641,932	43,732,252	10,090,320	30.0	1.05
SGSS2/SCD2/SGDS2	38,608,596	50,188,581	11,579,985	30.0	1.10
SDS/LGSS	21,768,524	29,603,438	7,834,914	36.0	0.98
LDS/LGSS	15,319,132	20,832,785	5,513,653	36.0	0.33
MLDS	550,482	550,482	0	0.3	9.94
FLEX	4,877,848	4,891,965	14,117	0.3	(0.55)
Total:	**$406,952,490**	**$504,599,218**	**$97,646,728**	**24.0%**	**1.00**

OCA St. 4 at 35-36. Further, if less than the full revenue increase is granted,[170] then a proportional scale back should be used to implement the increase for each rate class. OCA St. 4 at 36.

2. Flex Customers.

The OCA is not providing a reply on this issue.

3. Allocation of Universal Service Costs.

a. Introduction.

As discussed in the OCA's and CAUSE-PA's Main Briefs and in the testimonies of OCA witness Colton and CAUSE-PA witness Miller, the Commission should allocate the universal service costs to all customers.[171] Columbia, OSBA, CII and PSU oppose allocating costs of universal service to all of Columbia's ratepayers and recommend that only residential customers bear these costs. CPA M.B. at 147-149; OSBA M.B. at 20-21; CII M.B. at 17-20; PSU M.B. at 15-20. The OCA submits that the costs of universal service programs should be allocated to all customer classes on a competitively neutral basis. The allocation of universal service costs among

[170] Importantly, the OCA's proportional scale back approach should only be used if the Commission decides to follow a traditional ratemaking approach based on the revenue allocation presented here.

[171] See, OCA M.B. at 159-185; OCA St. 5 at 28-58; OCA St. 1-S at 2-5, 21-35; CAUSE-PA M.B. at 29-38; CAUSE-PA St. 1 at 38-43; CAUSE-PA St. 1-SR at 15-21.

customer classes should be based on the percentage of revenue provided by each customer class at base rates as proposed in Schedule RDC-4. See, OCA St. 5 at Sch. RDC-4. OCA witness Colton's proposal would allocate 55.7% of the costs to residential customers and the remaining 44.3% of costs across fourteen of the commercial and industrial customer rate classes.[172] Id.

b. There is no legal prohibition against allocating universal service costs to all customer classes.

In its Main Brief, Columbia argued that precedent holds that universal service program costs should not be allocated outside of the residential class. CPA M.B. at 147, citing Met-Ed Indus. Users Group v. Pa. PUC, 960 A.2d 189 (Pa. Cmwlth. 2008) (MEIUG). CII and PSU also stated that the proposal would violate cost causation principles. CII M.B. at 18 and PSU M.B. at 15, citing Lloyd v. Pa. PUC, 904 A.2d 1010, 1016, 1020-1021 (Pa. Cmwlth. 2006). Contrary to the arguments of Columbia, CII, and PSU, the OCA submits that the OCA and CAUSE-PA proposal does not violate cost causation principles nor does it violate the Commonwealth Court's determinations in MEIUG or Lloyd.

The Commission directly responded to these same arguments in the CAP Policy Statement proceeding. In its Final CAP Policy Statement Order, the Commission provided:

> We note there is no statutory or appellate prohibition that limits the recovery of CAP costs, whether specifically calculated or as part of total universal service costs, to funding from the residential class, while not mandatory, is permissible:
>
>> Thus, under *Lloyd*, there is no statutory requirement that the funding for special programs come only from those who benefit from the programs. However, the lack of such a requirement does not mean that funding for special programs must come from those who do not benefit.

[172] OCA witness Colton does not propose to allocate any percentage of costs to the Main Line Distribution Service Class 1 as identified on Schedule RDC-4. OCA St. 5 at Sch. RDC-4.

> *MEIUG v. Pa. PUC*, 960 A. 2d. 189, 202 (2008), citing *Lloyd v. Pa. PUC*, 904 A.2d 1010 (Pa. Cmwlth. 2006).[173]

The Commission then provided:

> This Order amends the CAP Policy Statement as indicated in Annex A to address recovery of CAP costs. Consistent with the discussion above, the Commission finds it appropriate to consider recovery of the costs of CAP costs [sic] from all ratepayer classes. Utilities and stakeholders are advised to be prepared to address CAP cost recovery in utility-specific rate cases consistent with the understanding that the Commission will no longer routinely exempt non-residential classes from universal service obligations.[174]

The OCA and CAUSE-PA recommended the allocation of universal service costs to all customers in this proceeding pursuant to the CAP Policy Statement.

PSU and CII do not correctly apply the Lloyd case. Both PSU and CII argue that Lloyd stands for the proposition that cost causation is the polestar of ratemaking. PSU M.B. at 15; CII M.B. at 17-18. PSU and CII then conclude that since only residential customers can participate in the programs, only residential customers can be assessed these costs under Lloyd. The OCA submits, however, that these arguments regarding Lloyd prove too much.[175] Taken to the logical conclusion, only low-income customers would pay for CAP since only low-income customers can participate in CAP programs. More to the point, as will be discussed in more detail below, CAP program costs are not caused by any one customer class and the benefits of this program are widespread as they benefit businesses and communities alike.

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[173] Final CAP Policy Statement Order at 92-93 (footnotes omitted).

[174] Final CAP Policy Statement Order at 97.

[175] Moreover, Lloyd does not preclude the consideration of other factors. In the City of DuBois, the Commission specifically permitted such consideration of other factors and stated "[o]n this point, we are in agreement with the City that while *Lloyd* establishes cost of service rates as the polestar of ratemaking, it does not preclude consideration of other factors." Pa. PUC v. City of DuBois, Docket No. R-2016-2554150, Order at 26 (May 18, 2017).

The MEIUG case also does not support the argument of CII and PSU. The MEIUG case simply stands for the proposition that the Electric Choice Act does not require a particular cost allocation. See, PSU M.B. at 15; CII M.B. at 17-18. The matter is left to the discretion of the Commission. MEIUG, 960 A.2d at 202-203. As can be seen, neither the Electricity Generation Customer Choice and Competition Act (Electric Choice Act) nor the Natural Gas Choice and Competition Act (Natural Gas Choice Act) has been found to preclude the recovery of the costs of CAP programs from all ratepayers.

Contrary to the arguments of Columbia, CII and PSU, there is no legal precedent that would preclude the Commission from allocating universal service costs to all customer classes. These arguments are without merit and should be rejected.

c. This base rate proceeding is the proper forum to consider allocation of universal service costs.

Columbia and CII also argue that the issue of allocation of universal service costs should be raised outside of this base rate proceeding. CPA M.B. at 148; CII M.B. at 20. Contrary to the arguments of CII and Columbia, the Commission's CAP Policy Statement specifically provides that parties may raise the issue of cost allocation in base rate proceedings such as this proceeding. The CAP Policy Statement provides:

> (b) In rate cases, parties may raise the issue of recovery of CAP costs, whether specifically or as part of universal service program costs in general, from all ratepayer classes. No rate class should be considered routinely exempt from CAP and other universal service obligations.[176]

Indeed, in the Final CAP Policy Statement Order, the PUC sought to examine this issue with a full record. Final CAP Policy Statement Order at 72-73.

[176] 52 Pa. Code § 69.265(b).

As the Commission stated, "in PGW's 2017 rate case, the Commission noted that recovering universal service costs from all ratepayers does not appear to be a violation of Title 66 or Commission regulations."[177] The Commission did not otherwise limit the Commission's holding to PGW. The Final CAP Policy Statement Order also provided "consistent with the comments of the Low Income Advocates and OCA, the Commission concludes that the General Assembly clearly identified the public purpose of these programs in the Competition Acts by requiring that their costs be 'nonbypassable' when a customer switches energy providers." [178] The Commission further held that "there is no statutory or appellate prohibition that limits the recovery of CAP costs, whether specifically calculated or as part of total universal service costs, to funding from the residential class."[179]

In spite of the generic proceeding that led to the Commission's Final CAP Policy Statement Order, Columbia argued that another generic proceeding should address the allocation of universal service costs to avoid utilities being treated differently. CPA M.B. at 148. Columbia opined that by granting the OCA and CAUSE-PA's proposal in this case, the proposal would single out Columbia and be discriminatory and violate the neutrality principles of the Natural Gas and Competition Act. CPA M.B. at 148, citing 66 Pa. C.S. § 2203(5). The proposal is not discriminatory because the issue may be raised in each of the natural gas and electric distribution companies' base rate proceedings. There are many differences between utilities that are often dealt with in base rate proceedings, including the fact that PGW already allocates universal service costs to customers other than residential customers. Further, as other natural gas utilities make their

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[177] Final CAP Policy Statement Order at 98, fn. 148, *citing* Pa. PUC v. PGW, Docket No. R-2017-2586783, Order at 75 (Order entered Nov. 8, 2017); see also, Final CAP Policy Statement Order at 94.

[178] Final CAP Policy Statement Order at 98-88 (footnotes omitted).

[179] Id.

respective base rate filings, the issue may be similarly addressed in those proceedings. Columbia's position would suggest that no decision could be made in a base rate case if another utility has the same operation. Such an argument must be rejected.

The OCA submits that the allocation of Columbia's universal service costs should be addressed in this proceeding. The Final CAP Policy Statement Order correctly provided the parties the opportunity to raise the issue of the allocation of universal service costs in Columbia's base rate proceeding. For the reasons set forth in the OCA's Main Brief and below, the OCA submits that the allocation of universal service costs to all ratepayers is consistent with the law, is not discriminatory, and should be approved in this base rate proceeding for Columbia.

d. The allocation of universal service costs is consistent with sound ratemaking principles.

PSU and CII seek to rely on a cost causation argument tied to participation in a specific program. Columbia and CII further argue that commercial and industrial customers should not have to pay the costs of the programs because the programs were created to benefit the residential customer class to reduce residential customer arrearages and reduce the costs incurred by residential customers. CPA M.B. at 147; CII M.B. at 18-19. What PSU and CII ignore is the public good nature of the universal service costs and the broad-based benefits of the universal service programs.

As OCA witness Colton testified, a well-accepted tenet of ratemaking is that certain expenses incurred by a utility are "public goods." All customers receive the benefits from the public goods, and the costs should be spread over all customer classes. Universal service programs are a public good. The Pennsylvania General Assembly specifically identified the universal service charge as non-bypassable. This designation clearly establishes the universal service programs as a public good because they cannot be avoided by ratepayers by switching suppliers.

As discussed in OCA witness Colton's and CAUSE-PA witness Miller's testimony, Pennsylvania's CAP programs provide direct and indirect benefits to all customer classes by helping low-income customers to maintain service. OCA M.B. at 163-182; OCA St. 5 at 40-56; CAUSE-PA M.B. at 32-38. Some of the benefits identified by Mr. Colton include, *inter alia*, addressing utility payment problems; reducing housing abandonment; improving educational attainment; improving adverse health outcomes for payment-troubled customers; reducing the need for local government services such as public health services and public safety costs; increasing available income to be used in the retail economy that drives additional job creation, income generation, and economic activity; helping to off-set low wages paid by businesses; increasing employee productivity; decreasing employee turnover; and decreasing time missed from work due to family care responsibilities and illness. OCA M.B. at 163-182; OCA St. 5 at 34, 40-56. The ratemaking treatment that should be accorded for costs incurred for the public good is one of broad-based allocation to all ratepayers.

CII also critiqued the OCA and CAUSE-PA references to other states' determinations to allocate universal service costs to all customer classes and argued that they should not be considered applicable to Pennsylvania. CII M.B. at 20. The OCA submits that it is significant that ten other states (Maine, Maryland, New Hampshire, New Jersey, Ohio, Illinois, Colorado, Washington, Oregon, and Nevada) have determined that universal service program costs should be allocated to all customers, consistent with sound ratemaking principles. See, OCA St. 5 at 56; CAUSE-PA St. 1 at 43. OCA witness Colton testified that there are some similarities to program design structure. For example, OCA witness Colton noted that the eight states identified in his testimony all have Percentage of Income Payment Programs (PIPPs) and allocate the costs to all customer classes. Arguments to the contrary ignore the substantial benefits to communities,

businesses, the general economy, and the utility system that can arise from rate affordability programs.

The OCA submits that allocation of universal service costs to all ratepayers is consistent with sound ratemaking principles. Universal service programs are a public good whose many direct and indirect benefits redound to all ratepayers. The ratemaking treatment that should be accorded costs incurred for the public good is one of broad-based allocation to all ratepayers.

e. Poverty is not just a residential class problem.

In its Main Brief, PSU also argued that the universal service programs are a residential customer class issue. PSU M.B. at 16-17. The Final CAP Policy Statement Order reached a different conclusion and stated that poverty is "not just [a] residential class problem." Final CAP Policy Statement Order at 94. The OCA submits that the Commission's statement was correct. OCA witness Colton examined the economic factors throughout Columbia's service territory that contribute to the inability-to-pay of Columbia's low-income customers. OCA St. 5 at 34. These factors are not limited to the residential class.

The Final CAP Policy Statement Order correctly identified that "poverty, housing stock, and other factors" that contribute to low-income and near-poor customers' inability to sustain their own utility service are not simply a residential class problem. OCA witness Colton identified the various aspects of poverty and how each of these aspects are not "caused" by the residential class. See, OCA M.B. at 166-169. In particular, OCA witness Colton discussed the impact of other factors, including the wage levels throughout the Company's service territory, that demonstrate that the residential class is not the "cause" of the need for CAP. See, OCA M.B. at 166-169; OCA St. 5 at 24. OCA witness Colton testified:

> I conclude that the observation in my Direct Testimony remains accurate, that "the Pennsylvania PUC was correct when it observed

> in September 2019 that Poverty is a broad-based social problem not associated with any particular customer class, including specifically not being associated with the residential class exclusively. I find that a substantial number of wage-earning customers participate in CGPA's universal service programs. I find further that one reason that these customers income qualify for CGPA's universal service program is because a substantial number of peoples throughout the CGPA service territory are working at Poverty wages." (OCA St. 5, at 39).

OCA St. 5-S at 24.

As the Final CAP Policy Statement correctly identified, poverty is not just a residential customer class problem, and the economic factors throughout Columbia's service territory contribute to the inability of customers to pay utility bills. The universal service programs are often provided to low wage earners. Those low wage earners are able to maintain utility service because of the universal service programs.

f. The parties' additional arguments lack merit.

OSBA, PSU and CII also raised several additional arguments about why universal service costs should not be allocated to all ratepayers. OSBA argued that such an allocation would essentially be a tax on other ratepayers. See, OSBA St. 1-R at 4-7. OSBA, CII, and PSU also raised issues regarding the impact of COVID-19 on businesses, and PSU raised an issue about the impact of the allocation of universal service costs on flex rate customers. OSBA M.B. at 21 CII M.B. at 19; PSU M.B. at 17, 20. For the reasons set forth below, the parties' arguments lack merit.

i. Universal service programs are not a tax.

In its Main Brief, OSBA generally relied upon the analysis of its witness, OSBA witness Knecht, and stated only that OSBA witness Knecht "provides a detailed analysis to those parties who would allocate the USP charge to classes other than the residential class in this, or any other proceeding." OSBA M.B. at 20-21, citing OSBA St. 1-R at 2-11. In the referenced Rebuttal

testimony, Mr. Knecht made several arguments, many made by other parties in their briefs and addressed above, including that the OCA and CAUSE-PA proposal was akin to treating the universal service charge as a tax or insurance model. OSBA St. 1-R at 4-7. Similarly, PSU witness Crist referred to the allocation of universal service costs as a "tax." PSU St. 1-R at 6.

The OCA submits that OSBA's and PSU's arguments are not consistent with the statutory requirements for universal service programs under Sections 2203(6)-(8) of the Public Utility Code. Universal service programs are required by the Natural Gas Choice and Competition Act and must be funded through utility rates. OCA witness Colton testified:

> Irrespective of Mr. Knecht's perspectives on whether universal service costs should be recovered through utility rates, Pennsylvania has determined that providing such assistance is a proper utility function, the costs of which should be included in rates. His discussion of whether universal service costs should be taxpayer-funded or ratepayer-funded is simply a discussion of an issue that is not presented in this proceeding.

OCA St. 5-S at 26; OCA St. 5-S at 29-30.

The OCA submits that the Natural Gas Choice Act requires universal service programs. Arguments regarding whether such costs constitute a tax are irrelevant to the consideration of this issue.

ii. A determination about allocation of universal service costs should not be delayed.

CII argued that "even if the Commission were to consider the OCA's claim of a 'public benefit' for purposes of cost causation, no such public benefit can be found, especially in light of the hardships currently faced by large commercial and industrial customers due to the COVID-19 pandemic." CII M.B. at 19, citing CII St. 1R at 2. CII, OSBA, and PSU raised concerns regarding the timing of the proposal during the COVID-19 pandemic. CII M.B. at 19; OSBA M.B. at 21; PSU M.B. at 17. In consideration of COVID-19, OSBA requests that the matter be deferred until

a later time. OSBA M.B. at 21. Regarding the impact of COVID-19 on businesses, OCA witness Colton testified:

> There is no question but that businesses in Pennsylvania are being adversely affected by the COVID-19 pandemic. Many businesses have been ordered to close, or to substantially curtail, their operations during this time of public health emergency. However, residential customers are also impacted by the economic difficulties but still are responsible for universal service costs. Many of the residential customers paying the costs of program are also low-income or near poverty and experiencing a similar economic impact that businesses are experiencing. The economic difficulties faced by businesses during this health emergency is not reason, unto itself, to decline to allocate universal service costs amongst all customer classes for all the reasons I have outlined above.

OCA St. 5 at 51. The OCA does not agree that a determination regarding the allocation of universal service costs should be delayed until a later time.

Moreover, CII and OSBA overlook the public health benefits provided by continued natural gas service for low-income customers during this COVID-19 pandemic. As CAUSE-PA stated in its Main Brief:

> Universal service programming, such as CAP and LIURP help provide affordable service to low-income customers, which reduces the risk that they will forego food and medicine or keep homes at unsafe temperatures. (Id. at 41-42). Additionally, once the current moratorium on service terminations is lifted, these programs will be relied upon to help low-income customers maintain natural gas service. Continued access to natural gas service is vital in the face of the pandemic because it is necessary for hot water to wash and sanitize and heat for working/schooling from home; both of which are vital to helping curb the spread of disease, including COVID-19. Thus, universal service programs benefit all utility consumers and the economy by helping battle the pandemic by helping prevent further spread of COVID-19 in low-income and minority communities.

CAUSE-PA M.B. at 36.

The OCA submits that a determination about the allocation of universal service costs should not be delayed due to COVID-19. COVID-19 has created a public health crisis that has impacted all ratepayers, including residential ratepayers who are near-poor or low-income and not otherwise enrolled in CAP. Public health will be benefitted from maintaining universal service programs.

iii. Flex rate customers should be allocated universal service costs.

In its Main Brief, PSU also argued that those customers that receive a flex rate should not be allocated any costs, as it would be a violation of the contract between Columbia and the flex rate customer, and if universal service costs are allocated to flex rate customers, the customers would exit the Columbia distribution system. PSU M.B. at 20; see also, CPA M.B. at 148. In response to the argument that flex customers would leave the Columbia distribution system, OCA witness Colton testified:

> The argument that flex customers would "exit the Columbia distribution system as a customer" should be viewed the same way as the PUC viewed the argument that allocating universal service costs amongst all customer classes would adversely affect businesses in Pennsylvania. As the Commission noted with respect to that argument:
>
>> OSBA and the Industrial Customers have argued that recovering costs of universal service programs from industrial and commercial customers may negatively impact businesses in the Commonwealth. However, we have not seen evidence that the economic climate in Philadelphia has been negatively impacted as a result of universal service costs charged by PGW. Further, as noted by multiple parties in the Review proceeding, many states recover the cost of utility low-income programs from all ratepayer classes, including New York, New Jersey, Ohio, Illinois, Maine, and New Hampshire. We are not aware that this practice negatively impacted the business climate of any [of] these states.

> (2019 CAP Policy Statement Order, at 98 internal notes omitted). The same decision should be reached in this instance. There is no evidence from other instances where universal service costs have been allocated to "flex customers" that such customers have chosen "to flee the public utility system." As the Commission observed with respect to the six specific states it cited, there is no evidence that the allocation of universal service costs resulted in the asserted result. Mr. Crist's argument to the contrary should be rejected.

OCA St. 5-S at 34-35.

The OCA submits that no evidence has been presented that flex rate customers in either PGW's service territory or in other states have chosen to flee the public utility system, and there is no evidence to support a conclusion that flex customers will do so in this case.

g. The recovery of costs through the universal service cost recovery mechanism is not impacted by allocation to other customer classes.

Columbia argued that OCA and CAUSE-PA's proposals failed to take into account that universal service costs including CAP discounts and pre-program arrearage forgiveness are recovered pursuant to a reconciled recovery mechanism with amounts which are outside the Company's control. CPA M.B. at 147, citing Columbia St. No. 1-R at 24. In the Rebuttal Testimony of Columbia witness Tubbs, the Company stated that no party has challenged the continued recovery of costs through the USP Rider. The Company is correct that the OCA has not challenged the continued recovery of the universal service costs through the USP. The approximate budgets for the proposed costs are included in the Universal Services and Energy Conservation Plan budgets, and the proposed costs can be reviewed within the Company's USECP proceeding.

The OCA submits that recovery through the USP mechanism should not be an obstacle to recovery of universal service costs as proposed by OCA witness Colton. OCA witness Colton has proposed that the allocation of universal service costs among customer classes should be based on

the percentage of revenue provided by each customer class at base rates as proposed in Schedule RDC-4. See, OCA St. 5 at RDC-4. Based upon the Company's proposed rates included in the filing, OCA witness Colton's proposal would allocate 55.7% of the costs to residential customers and the remaining 44.3% of costs across fourteen of the commercial and industrial customer rate classes pursuant to the percentages of revenues identified on OCA witness Colton's Schedule RDC-4.[180] OCA St. 5 at Sch. RDC-4. OCA witness Colton notes that "a cost allocation based on class contribution to total revenues at base rates would be administratively easy to apply." OCA St. 5 at 58. As OCA witness Colton testified, the final allocation percentages would be established in each base rate proceeding. OCA St. 5 at 58. Moreover, PGW currently collects its universal service costs through a reconcilable universal service rider.

The OCA submits that the Company's concerns about continued recovery of the universal service costs through Columbia's existing reconcilable USP Rider are without merit. OCA witness Colton proposed an allocation mechanism that would be administratively easy to apply. The OCA's proposal to continue to allocate universal service costs through the USP Rider should be adopted.

For the reasons set forth above, the OCA submits that universal service charges should be allocated between customer classes on a competitively neutral basis, and the allocation of universal service costs among customer classes should be based on the percentage of revenue provided by each customer class at base rates. OCA St. 5 at 6. The OCA submits that the Commission should

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[180] The OCA notes that OCA witness Colton's proposed allocation is based upon the Company's proposed rates. The actual percentages would vary based upon the Commission's determination on the Company's filing. The OCA also notes that OCA witness Colton does not propose to allocate any percentage of costs to the Main Line Distribution Service Class 1 as identified on Schedule RDC-4. OCA St. 5 at Sch. RDC-4.

adopt the OCA and CAUSE-PA's proposal to allocate the costs of universal service programs to all customers.

D. Rate Design.

1. Residential Rate Design.

Columbia's proposal to increase the residential customer charge from $16.75 to $23.00 violates the principle of gradualism, would significantly expand on a customer charge that is already the highest in Pennsylvania, would disproportionately impact low-income customers and must be rejected. This is not the time to be increasing charges that customers cannot avoid through conservation. Similarly, the WNA and RNA mechanisms as proposed do not provide any consumer benefits and are intended for the benefit of Columbia's shareholders. The WNA and RNA mechanisms as proposed in this proceeding are unsupported, unnecessary, and must be rejected.

a. Residential Customer Charge.

i. Columbia's Proposed 40% Increase to the Residential Customer Charge should be Rejected.

As discussed in its Main Brief, the OCA is opposed to Columbia's proposal to increase its Residential customer charge from $16.75 to $23.00.[181] Other Parties who addressed the residential customer charge in their Main Briefs included Columbia, I&E, CAUSE-PA and CAAP.[182] CAUSE-PA and CAAP agree with the OCA that the residential customer charge should remain at

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181 OCA M.B. at 185-198.

182 Columbia M.B. at 149-153; I&E M.B. at 100-102; CAUSE-PA M.B. at 38-41; CAAP M.B. at 9-10.

its current level.[183] I&E agrees with the Company's proposal to increase the customer charge to $23.00.[184]

In its Main Brief, the Company responded to OCA witness Mierzwa's testimony that Columbia's customer charge is already the highest in the Commonwealth and thus should remain unchanged in this proceeding.[185] Columbia argues that comparing its customer charge to other Pennsylvania NGDCs is "meaningless", and uses an example of declining block rates[186] in place at National Fuel Gas Distribution to buttress its argument.[187] The OCA submits that comparing Columbia's existing and proposed customer charge to other Pennsylvania NGDCs is a reasonable starting point to examine the reasonableness of its proposal. As OCA witness Mierzwa's unrebutted testimony establishes, Columbia's current customer charge of $16.75 is the highest in the state. OCA St. 4 at 37-38.

Mr. Mierzwa also testified that Columbia's proposed customer charge of $23.00, an almost 40% increase, violates the principle of gradualism:

> Gradualism is an important factor in developing a sound rate design and refers to stability and predictability in rates with a minimum of unexpected changes seriously adverse to ratepayers, and with a sense of historical continuity. In short, gradualism refers to the avoidance of rate shock.

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[183] CAUSE-PA M.B. at 38-41; CAAP M.B. at 9-10.

[184] I&E M.B. at 100-102. The OCA notes that I&E's arguments on this issue mirror those of the Company, and as such, the OCA will focus on addressing the Company's arguments in this section.

[185] Columbia M.B. at 151-152.

[186] The OCA notes that to the best of its knowledge, NFGD is the only NGDC in Pennsylvania that still has some form of declining block rates, as such this rate design has generally been disfavored as it discourages conservation.

[187] Id.

OCA St. 4 at 38. Mr. Mierzwa went on to explain that higher fixed customer charges create a disincentive to engage in conservation efforts. OCA St. 4 at 37-38. In its Main Brief, Columbia argued that in this case it is also seeking to increase volumetric rates, and as such, customers can still see savings by reducing their usage due to the proposed higher volumetric charges.[188] Columbia's argument here is misplaced and without merit.

As Mr. Mierzwa's testimony provides, higher fixed charges create additional burdens for residential customers:

> With the strains on household budgets attributable to the economic conditions caused by the pandemic, increasing fixed charges limits the benefits Residential customers can realize from engaging in conservation actions and their ability to address budgetary strains. Promotion of energy conservation has been a longstanding energy policy of the Commonwealth. To promote the Commonwealth's policy goals to encourage conservation and provide the Residential customers of Pennsylvania's largest NGDCs comparable opportunities to control their heating bills, Columbia's current monthly Residential customer charge should not be increased.

OCA St. 4-S at 12-13. CAUSE-PA witness Miller also testified to the fact that higher fixed charges are a disincentive to conservation:

> Regardless of the level of household usage, any increase to the fixed charge prevents customers from exercising the ability to use conservation measures to mitigate that portion of the rate increase.

CAUSE-PA St. 1 at 32.

The OCA submits that Columbia has failed to carry its burden to show that increasing the residential customer charge by almost 40% at this time would result in rates that are just and reasonable. Further, as detailed in the next section, substantially increasing the residential customer charge at this time will disproportionally impact lower income customers who are already suffering disproportionate harm from the COVID-19 pandemic.

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[188] Columbia M.B. at 152.

ii. The Proposed $6.25 Increase to the Customer Charge will Disproportionately Harm Low-Income Customers.

In its Main Brief, the Company disagreed with OCA witness Colton's and CAUSE-PA witness Miller's concerns regarding the impact of the proposed rate increase on low-income and near poor customers. CPA M.B. at 102-103. Columbia argued that all low-income customers who are not enrolled in CAP and who meet the eligibility criteria are able to enroll in CAP. CPA M.B. at 102. The Company observed that if a low-income customer's bill becomes unaffordable, the customer can apply for CAP and an affordable option can be selected for the customer at the time of enrollment, or if enrolled in CAP, the customer can have their CAP payment adjusted. CPA M.B. at 102. What Columbia's Main Brief fails to acknowledge is that OCA witness Colton found that Columbia's CAP actually "reaches a very small proportion of its confirmed low-income customer base." OCA St. 5 at 59.

According to Columbia, the Company has confirmed the low-income status of 61,152 customers, while estimating a total low-income population of 101,375, or approximately 60% of its estimated low-income population. OCA St. 5 at 59. As Mr. Colton testified, CAP serves less than 23% of Columbia's estimated low-income population. OCA St. 5 at 59-60. As such, CAP does not protect the vast majority of low-income customers.

In its Main Brief, Columbia also argued that "the majority of CAP customers will experience no impact or very little impact from any increase in rates because their monthly CAP payment is based on factors unrelated to rates." CPA M.B. at 102, citing CPA St. 13-R at 9-10. OCA witness Colton explained why CAP customers would not necessarily be protected from the proposed customer charge increase, and that the Company's statements overlook the impact of the proposed customer charge increase on Percentage of Bill customers. Mr. Colton testified:

> CGPA has different aspects to its CAP program: the percentage of income component; the average of past payments component; the percentage of bill component; and the minimum payment component. (CAUSE-PA-1-2). According to the Company, its enrollment by program component in December 2019, and in May 2020, was as follows:

Table 2. Percentage of CGPA CAP Enrollment by CAP Program Component (CAUSE-PA-I-2)

	December 2019	May 2020
Total	20,350	22,411
PIPP	18.7%	18.2%
Average of Payments	11.4%	10.5%
% of Bill	61.2%	61.8%
Minimum Payment	8.8%	9.5%

> As can be seen in this Table, more than three out-of-five CGPA CAP participants participate in the "Percentage of Bill" program component. Through this CAP design, CAP participants pay a percentage of the bill at standard residential rates. If residential rates increase, in other words, the CAP participant's payment will increase correspondingly.

OCA St. 5 at 60-61. The 61% of CAP customers that pay a Percentage of Bill will not be shielded from the impact of the proposed customer charge increase.

Columbia's Main Brief also does not address OCA witness Colton's testimony that the rate increase will have a disproportionate impact on low-income customers as many are low use customers. See, OCA M.B. at 193-198. Columbia's Main Brief focuses on the impact of the proposed customer charge on CAP customers, not low-income customers who are not enrolled in CAP. As OCA witness Colton testified, most low-income customers are not CAP customers, and CAP customers are not generally low-use customers. See, OCA St. 5 at 65-68. Company witness Bell does not dispute this conclusion.

Low-income customers cannot insulate themselves from the impact of the proposed $6.25 increase to the customer charge. For the reasons set forth above and in the OCA's Main Brief, OCA witness Mierzwa's recommendations should be adopted because of the impact the proposed increase to the customer charge will have on low-income customers.

b. Weather Normalization Adjustment.

As set out in its Main Brief, the OCA is opposed to Columbia's proposal to eliminate the 3% deadband for its Weather Normalization Adjustment (WNA), as the current 3% deadband provides a reasonable balance between the interests of Columbia's customers and the Company's shareholders.[189] Two other Parties addressed the WNA in their Main Briefs, Columbia and I&E.[190] I&E agrees with the OCA that Columbia's proposal to eliminate the WNA's 3% deadband should be denied.[191]

Columbia provides two main arguments in support of its proposal. One, the current 3% deadband is not allowing Columbia to reach the complete level of revenue stability that it is seeking.[192] Second, in a colder-than-normal-weather scenario that does not quite reach the 3% limit, Columbia is retaining revenues that, without the deadband, would otherwise be returned to customers.[193] Columbia's arguments in support of its proposal are without merit and should be rejected.

For one, as OCA witness Mierzwa testified, Columbia's WNA was not designed to completely *eliminate* the effects of weather, but rather to *mitigate* the effects of weather. OCA St.

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189 OCA M.B. at 199-200.

190 Columbia M.B. at 153-156; I&E M.B. at 102-106.

191 I&E M.B. at 106.

192 Columbia M.B. at 154.

193 Id.

4-S at 14. The WNA operates on temperature differences, but does not account for other variations in weather that might affect usage, such as wind speeds or the amount of sunshine on a particular day or even usage patterns that vary based on the day of the week. Id. The current 3% deadband ensures that these other factors that are not directly temperature related do not trigger the WNA.

Further, Columbia's focus on the alleged customer benefits from a scenario where the weather is colder than normal, should be rejected as it does not present a fair picture of its proposal as to how the Company benefits when weather is warmer than normal. Moreover, as I&E witness Cline testified, the WNA was designed to operate when weather was outside of "normal" parameters. I&E St. 3-SR at 6. As Mr. Cline testified, "weather is inherently variable". Id. There is simply no reason to incorporate slight, day-to-day weather variations. I&E St. 3-SR at 6-7.

The current 3% deadband fairly balances the interests of Columbia's shareholders and its customers. Columbia's attempts here to further stabilize and potentially increase its revenues under a warmer than normal weather scenario would be unfair to its customers and should be rejected. Further, Columbia has failed to carry its burden of proof that its proposal to eliminate the 3% deadband is either reasonable, necessary, or would result in rates that are just and reasonable.

c. Revenue Normalization Adjustment.

The OCA opposes Columbia's proposal to implement a Revenue Normalization Adjustment (RNA) rider, as the Company has failed to show that the RNA is reasonable, necessary, or that the Company has complied with the Commission's recent guidance and Orders on alternative ratemaking mechanisms.[194] Four other Parties addressed the RNA in their Main Briefs,

[194] OCA M.B. at 200-205.

Columbia, I&E, CAAP and CAUSE-PA.[195] I&E, CAAP and CAUSE-PA agree with the OCA that the RNA proposal should be rejected.

Columbia argues that the RNA is necessary in order to promote greater revenue stability for the company.[196] The Company argues that where average usage per customer is declining the Company's revenues are being eroded in between rate cases, and the RNA is designed to reflect what would normally happen in a rate case as to adjusting billing determinants to compensate decreased usage.[197] The OCA submits that Columbia's general arguments as to why the company needs the RNA fall short, for several reasons.

Columbia files a new rate case every one to two years. There is no evidence in this record that the RNA would change that. In fact, Company witness Miller testified that Columbia plans to file annual rate cases every year for the foreseeable future. Company St. 4-R at 8. Considering Columbia's rate case filing position, and the fact that it can use a fully projected future test year, there simply is no need for the RNA. See, I&E St. 3 at 11-12. Further, as OCA witness Mierzwa testified, the Company has provided no evidence in this case to show that without the RNA it is experiencing unstable revenues. OCA St. 4-S at 16.

In its Main Brief, the Company make several arguments in response to Mr. Mierzwa's opposition to the RNA. The Company continues to argue that the RNA is needed to stabilize Columbia's revenues and that other mechanisms it already has in place, such as the DSIC are insufficient to accomplish its goal.[198] As Mr. Mierzwa testified:

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195 Columbia M.B. at 156-164; I&E M.B. at 106-112; CAAP M.B. at 10; and, CAUSE-PA M.B. at 41-42.

196 Columbia M.B. at 156.

197 Id. At 161.

198 Columbia M.B. at 163-164.

> Ms. Bell claims that the Company's DSIC is capped at 5 percent and, therefore, limits its usefulness. I would note that Columbia's current DSIC is 1.69 percent, and is not being fully utilized. Ms. Bell presents no evidence or analysis to demonstrate that Columbia's current system of rates and charges do not provide sufficient revenue stability.

OCA St.4-S at 16. As OCA witness Mierzwa testified, Columbia's continued claims as to the need for further revenue stability are unsupported and without merit.

The Company also argued that Mr. Mierzwa is incorrect as to the RNA potentially leading to increased earnings for the Company.[199] The evidence shows, however, that the RNA is tilted in favor of the Company. As Mr. Mierzwa explained, the RNA will be initially set at an average of the residential class' revenues per customer. OCA St. 4 at 42. Lower-use customers will be charged more under the RNA, and as conservation trends continue and customers seek to use natural gas more efficiently they will continue to pay more. Id.[200]

There are also additional reasons why the RNA should not be approved, especially at this time. As OCA witness Mierzwa testified:

> There is a great deal of uncertainty concerning the impact of the pandemic on customers and unintended consequences could result. For example, the normal usage of Residential customers could change significantly as a result of the pandemic and customers could be assessed charges for these changes in usage. Alternative ratemaking mechanisms such as Rider RNA need to be accompanied by sufficient consumer protections.

OCA St. 4 at 41. As Mr. Mierzwa testified, the ongoing COVID-19 pandemic could significantly change customer usage profiles, and it would be inappropriate to set some level of "normal revenues" for the residential class during this period of great uncertainty.

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[199] Columbia M.B. at 162.

[200] See also, I&E St. 3-SR at 11.

Columbia's proposed RNA rider has not been shown to be either reasonable or necessary on this record. What the record does show, however, is that for Columbia an alternative ratemaking mechanism is not needed. As such, the OCA submits that Columbia has failed to carry its burden of proof on this issue and the RNA proposal should be rejected.

2. Small C&I Customer Rate Design.

The OCA is not providing a reply on this issue.

3. Large C&I Customer Rate Design.

The OCA is not providing a reply on this issue.

4. Gas Procurement Charge Rider.

The OCA is not providing a reply on this issue.

E. Bill Impacts.

The OCA is not providing a reply on this issue.

XI. CONCLUSION

The Office of Consumer Advocate respectfully requests the Commission to deny any rate increase to Columbia at this time, for the reasons set forth in this Reply Brief and the OCA's Main Brief. Columbia's customers are experiencing substantial economic and personal hardships as a result of the continuing COVID-19 pandemic, and any rate increase at this time would not result in just and reasonable rates. Should the Commission determine, however, that some increase is needed, then the OCA's alternative positions and adjustments should be adopted and Columbia should only receive a minimal revenue increase.

Respectfully submitted,

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