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December 30, 2020

Via Electronic Filing

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor (filing room)
Harrisburg, PA 17120

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

The Pennsylvania State University v. Columbia Gas of Pennsylvania, Inc.; Docket
No. C-2020-3020666;

THE PENNSYLVANIA STATE UNIVERSITY'S REPLY EXCEPTIONS

Dear Secretary Chiavetta:

Enclosed please find The Pennsylvania State University's Reply Exceptions in the above-referenced dockets. Copies have been served in accordance with the attached Certificate of Service.

Should you have any questions or comments, please feel free to contact me directly.

Very truly yours,

/s/ Thomas J. Sniscak

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Counsel for The Pennsylvania State University.

TJS/BRB

Enclosure

cc: Honorable Katrina Dunderdale (via email kdunderdal@pa.gov)
Per Certificate of Service

CERTIFICATE OF SERVICE

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

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Dated this 30th day of December, 2020

INTRODUCTION AND SUMMARY

The Pennsylvania State University (“PSU”), by and through its attorneys in this matter, Hawke McKeon & Sniscak LLP, hereby submits Reply Exceptions to the Exceptions of the Office of Consumer Advocate (“OCA”), CAUSE-PA, and in part to the Exceptions of the Office of Small Business Advocate (“OSBA”). PSU’s Reply Exceptions are submitted pursuant to the Secretarial Letter dated December 4, 2020 and 52 Pa. Code § 5.535. PSU submits Reply Exceptions to two issues.

First, the OCA and CAUSE-PA excepted to the Recommended Decision’s (“RD”) correct recommendation that Columbia’s residential customer assistance program costs be assigned under Columbia’s existing practice of recovering all these costs from the cost-causer; specifically, the residential class rather than allocating the cost of the program to other rate classes that do not qualify for residential customer assistance programs.¹ Adherence to the longstanding ratemaking principle of matching costs to the cost-causer should continue to be followed; otherwise, unlawful subsidization and discrimination in rates will occur which is prohibited by the Commonwealth Court’s holding in *Lloyd v. Pa. P.U.C.*² In short, the OCA and CAUSE-PA once again advocate for spreading these costs to other rate classes, which runs afoul of Commonwealth Court’s mandate to eliminate cross-class subsidies.³ Each relies upon the false premise that all rate classes benefit from Columbia’s residential universal service program through unmeasured and unsubstantiated societal and macroeconomic theories. Using those theories, OCA and CAUSE-PA essentially propose tax or Legislative decisions and attempt to enact new laws. PSU respectfully submits that

¹ RD at 398-399.

² *Lloyd v. Pa. P.U.C.*, 904 A.2d 1010 (Pa Cmwlth. 2006) (*Lloyd*)

³ *Id.*

is not the role of this Commission to legislate via a rate proceeding. Rather, these tax-like and financial aid issues and decisions are something for elected Legislators to decide.

The OCA and CAUSE-PA bear the burden to prove tangible facts and legal grounds for their proposal and here they have failed to do so. As discussed below, the residential customer assistance programs are not available to other classes of customers, such as commercial, public, or industrial customers. The evidence presented in this case shows that residential customer assistance programs do not benefit rate classes other than the residential class. The RD correctly found that the evidence in this case does not show any tangible and direct benefits to commercial, public, or industrial customers from Columbia's residential assistance program, and the amorphous alleged economic theoretical benefits for which OCA and CAUSE-PA advocate were not proven in the record. In sum, what the OCA and CAUSE-PA are asking the Commission to do is institute a tax on non-residential rate classes – a request outside the Commission's authority which must be reserved for elected Legislators who make laws, and not for this Commission to legislate on a piecemeal, individual rate case basis. Instituting an unlawful tax or subsidy is a particularly bad idea when businesses and institutions are also facing financial challenges due to COVID-19.

PSU's second reply exception deals with the Cost of Service Study ("COSS") determination in the event there is an increase to Columbia's rates approved by the Commission. In short, Columbia's Average COSS method is correct, and the RD erred in recommending what it concedes is not the best method. Columbia's averaging both the Customer-Demand method with the Peak and Average method is the fairest approach. The shifting of cost responsibility by recommending OCA's residential customer biased Peak and Average method results in severe increases (again a bad idea during COVID-19 conditions) to non-residential customer classes and is not good for Pennsylvania business, its economy, or its public institutions. On this premise, PSU

and the OSBA agree. However, while the OSBA correctly excepted to the RD's erroneous adoption of the unbalanced OCA Peak and Average COSS, which heavily subsidizes the residential class, the OSBA incorrectly advocated for the Commission to adopt the OSBA's COSS which erroneously skews the average of the Customer-Demand/Peak and Average COSSs by weighting the studies at 25/75 which results in an unbalanced and unjust result rather than 50/50 weighting that Columbia proposed and which the record evidence supports. As PSU argued in its Exceptions, the Commission should adopt Columbia's Average COSS as the most fair, just, and reasonable approach, balancing the interests of all rate classes.

REPLY EXCEPTIONS

I. PSU Reply Exception No. 1: The Commission should adopt the RD's allocation of Columbia's residential customer assistance program costs as consistent with *Lloyd* and sound ratemaking principles that match costs to the cost-causer and reject the OCA's and CAUSE-PA's exceptions.

The RD correctly recommended that the costs of Columbia's residential customer assistance program, referred to generally as Columbia's residential universal service program, should not be allocated to other rate classes, finding that the unproven and unquantified societal and macroeconomic theories put forth by the OCA and CAUSE-PA are outside the bailiwick of a base rate proceeding and should not be used to overturn sound and longstanding ratemaking principles.⁴ PSU, the Company, OSBA, and the Columbia Industrial Intervenors ("CII") all agree that the residential universal service program costs should not be assigned to customers outside the residential class.⁵ The OCA and CAUSE-PA seek the opposite result and rely on a false and unproven premise that non-residential rate classes benefit from Columbia's residential universal

⁴ RD at 399.

⁵ PSU MB at 15-20, Columbia MB at 147-148, OSBA MB at 20-21, CII MB at 17-20. I&E takes no position. I&E MB at 99.

service program. Instead of proving any tangible or direct benefit, the OCA and CAUSE-PA offer unproven and unsubstantiated generalized alleged societal impacts⁶ of Columbia's residential customer assistance program. Such amorphous and unquantified allegations are no substitute for proof.

The RD is correct in following a longstanding, common sense, and fair ratemaking principle of matching costs to the cost causer which avoids subsidies from one class to another, which under *Lloyd*, are illegal ratemaking. The RD, in adopting Columbia's proposal to continue the ratemaking treatment in place for decades to assign costs for its residential universal service program to the residential class, which is the only class that obtains the benefits of this program, should continue. Assigning these costs to other classes violates cost-causation principles that are the "polestar" of ratemaking and would amount to nothing more than a tax on non-residential utility customers which the Commission lacks the authority to impose. In *Lloyd*, the Commonwealth Court discussed the mandate to eliminate cross-class subsidies:

Because the flat percentage increase in transmission charges increases any previous discrimination in rates, and the Commission offers no explanation how discrimination in distribution and transmission rate structures are eventually going to be gradually alleviated, in effect, the Commission has determined that the principle of gradualism trumps all other ratemaking concerns—especially the polestar—cost of providing service.

...

Accordingly, we vacate the Commission's order regarding transmission and distribution rates and remand for the setting of non-discriminatory reasonable rates and rate structure for each service.⁷

⁶ OCA Exceptions at 5-10; CAUSE Exceptions at 8-12.

⁷ *Lloyd*, at 1020-21.

Assigning costs to ratepayers that do not benefit from those programs increases subsidies and violates this principle by imposing a *de facto* tax on non-residential customers in addition to being discriminatory.

Further, while the OCA argues in its Exceptions that the RD erred in choosing to delay the issue and retain the current allocation,⁸ the OCA failed to accept the fact that the *Final CAP Policy Statement Order* did not mandate cross-class subsidization of CAP programs – rather only that parties may raise the issue of recovery of CAP costs.⁹ A Policy Statement is neither law nor a regulation properly promulgated under Pennsylvania laws for proposing and adopting regulations including the Regulatory Review Act.¹⁰ The RD correctly noted that the consideration of this regulatory issue would carry such wide-ranging policy implications and requires more than silence in order to overturn ratemaking policy and distribute residential universal service program costs among all the rate classes.¹¹ As OSBA Witness Knecht stated: “It is the long-standing policy of the Pennsylvania Public Utility Commission that the costs for these programs be allocated only to residential rate classes.”¹² There is no reason to stray from that long-standing policy here.

The Commission’s policy statement at 52 Pa. Code § 69.265(1) is not determinant here:

Consistent with the discussion above, the Commission finds it appropriate to consider recovery of the costs of CAP costs 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

⁸ OCA Exceptions at 8.

⁹ 52 Pa. Code § 69.265(b).

¹⁰ *Central Dauphin School District v. Department of Education*, 608 A.2d 576, 580-81 (Pa. Cmwlth. 1992); *see also* Regulatory Review Act at 71 P.S. § 745.1 *et seq.*

¹¹ RD at 399.

¹² OSBA St. No. 1-R, Rebuttal Testimony of Robert D. Knecht at 2:24-26.

longer routinely exempt non-residential classes from universal service obligations.¹³

The footnotes associated with this text make this clear:

We are not making a final precedential decision regarding cost recovery in this docket. We are merely providing that the recovery of CAP costs in particular can be fully explored in utility rate cases henceforth. Decisions regarding cost recovery will remain the province of utility-specific proceedings.

A rate case is the appropriate forum to determine the cost allocation for each ratepayer class. In its 1992 Report, BCS recommended the cost allocations for CAP across ratepayers should depend on a number of factors, including the amount of CAP funding needed, the relative ability of each class (residential, commercial, and industrial) to bear additional costs, the size (number of customers or volume of sales) of the rate classes, and the price sensitivity of industrial customers to minimize anti-competitive impacts. *Final Report on The Investigation of Uncollectible Balances* at 158.¹⁴

While the Commission has indicated potential change in its long-standing policy to only charge residential customer assistance program costs to the residential class, as OSBA Witness Knecht explained, this potential change is not based in sound regulatory philosophy or cost causation principles:

The Commission's primary motivation for considering a change in the cost recovery method was not based on any identifiable change in regulatory philosophy or cost causation principles. The rationale for *considering a change to the policy appears to be that the low-income assistance programs have become unaffordable to those residential customers who are ineligible or who otherwise do not participate in the programs.*¹⁵

¹³ 2019 Amendments to Policy Statement on Customer Assistance Program, Docket No. M-2019-3012599, Final Policy Statement and Order at 97 (entered Nov. 5, 2019).

¹⁴ *Id.* at nn. 150-151.

¹⁵ OSBA St. No. 1-R, Rebuttal Testimony of Robert D. Knecht at 3:10-15.

In its Exceptions, the OCA provides a summary of the evidence it believes supports the allocation of residential universal service costs to all customer classes.¹⁶ However, the speculative and unsupported testimony OCA references does not provide evidence of any proven or quantified benefits to customer classes beyond the residential class when allocating the costs of residential universal service to all customer classes. Rather, the OCA relies on unproven, unmeasured, and unsubstantiated societal theory evidence and misapplied and exaggerated macroeconomic theory evidence to support its preferred end result. The direct benefit to all residential customers for residential universal service programs is clear – if a residential customer needs and qualifies for the program it is there for them, even if they are not currently utilizing the program.

Notably, and not to be lost, neither the OCA nor CAUSE-PA have or can dispute that classes other than the residential class are ineligible for the program. Columbia’s residential universal service program provides no benefit to non-residential rate classes and is both an illegal tax and discriminatory in violation of principles recognized in *Lloyd*.

Turning to the record, regardless of the unproven and unsubstantiated generalized societal theory evidence summarized by the OCA in its Exceptions,¹⁷ the evidence here shows only the residential rate class benefits from residential universal service programs and imposing these costs on customers such as PSU, who is also facing challenges and losses from the COVID-19 pandemic,¹⁸ will have negative impacts.

As PSU Witness Mr. Crist testified in showing the lack of quantification or supporting facts in OCA’s and CAUSE PA’s requested subsidy:

¹⁶ OCA Exceptions at 8-10.

¹⁷ *Id.*

¹⁸ See generally PSU St. No. 1-R, Rebuttal Testimony of J. Crist at 5:5-6:8; PSU St. No. 1-SR, Surrebuttal Testimony of J. Crist at 17:15-19:7.

Q. WHAT DIRECT BENEFITS ACCRUE TO NON-RESIDENTIAL CLASSES FROM THE EXISTENCE OF UNIVERSAL SERVICE PROGRAMS?

A. None. Mr. Colton and Mr. Miller attempt to justify such cost shifting to non-residential classes by opining that such programs provide some indirect societal benefits. Notably they have no quantifiable calculation of this alleged benefit—the truth is they cannot and have not. Even if there were some alleged benefits they would be insignificant compared to the impact of assigning significant costs to commercial and industrial customers particularly when facing the challenges to business or operations due to COVID-19. Such topics and considerations are appropriately debated by the Legislature.¹⁹

Q. WHAT CUSTOMER CLASS MAY RECEIVE UNIVERSAL SERVICE BENEFITS?

A. Only Residential customers are eligible to receive universal service benefits. Neither Mr. Colton or Mr. Miller propose to expand programs so that commercial or industrial customers might be eligible for some type of benefit. Yet, they want other non-residential classes to openly subsidize these benefits. That is unfair and as unreasonable. I am aware that Section 1304 of the Public Utility Code prohibits any unreasonable preference or advantage or subject any customer to any unreasonable prejudice or disadvantage. During the transition to a more competitive natural gas marketplace protections were put into place to address concerns of discrimination and subsidization. Section 2203(5) of Title 66, Chapter 22, Natural Gas Competition, states: “The commission shall require that restructuring of the natural gas utility industry be implemented in a manner that does not unreasonably discriminate against one customer class for the benefit of another.” Assigning residential universal service program costs to commercial and industrial classes would do just that.²⁰

Q. ARE UNIVERSAL SERVICES PROGRAMS A PUBLIC BENEFIT?

A. No. They are a direct benefit to residential customers. Mr. Colton and Mr. Miller worked hard in their testimony to construct a logic trail to somehow claim that these programs that enable residential customers to pay their Columbia gas bill are a benefit to commercial and industrial customers. They have done no qualitative analysis to prove their points; rather they offer generalities and assume someone else can pay for what they want.

¹⁹ PSU St. No. 1-R, Rebuttal Testimony of J. Crist at 18:11-19.

²⁰ PSU St. No. 1-R, Rebuttal Testimony of J. Crist at 19:15-20:6.

Mr. Colton and Mr. Miller portray the recipients of the direct benefits of universal service programs, without any qualitative analysis, as low-income, or retired, without sufficient means to pay their Columbia gas bill in absence of such programs, then attempt to explain that such programs presumably benefit businesses and the community indirectly by providing such support.

They ignore and did no research or vetting into the truth that businesses and industrial customers and universities are all challenged financially, as there are not unlimited financial resources. If the broader universe of commercial and industrial customers is considered then one must evaluate what is the best way to spend an incremental dollar? Should it be spent on a universal service program to pay a residential customer's bill from Columbia, or should it be spent on energy conservation and efficiency programs for commercial and industrial customers or toward economic development programs undertaken by government and utilities that have proven their worth by obtaining multiple financial benefits for the dollars invested in them? These are difficult questions for sure, but any movement to apply costs of the residential universal service programs to non-residential classes must require a thorough evaluation of all opportunities across all customer classes to determine the best bang for the buck of where incremental program dollars should be deployed for optimal benefits to the public.²¹

The testimony of PSU is not based in nebulous, unsubstantiated theories – the fact of Columbia's residential universal service program is that only residential customers may benefit from the program. In contrast, as PSU's witness testified, the OCA and CAUSE-PA's witness provided no quantifiable calculation or data to support their unproven and unsubstantiated requests to require PSU and other non-residential customers to pay for a program they cannot benefit from. That the OCA and CAUSE-PA provided no quantified evidence to support their idea that all customer classes benefit from Columbia's residential universal service program and rather relied on arm-chair economic theories shows that they have not met their burden of proving that all customer classes benefit from Columbia's residential universal service program.

²¹ PSU St. No. 1-R, Rebuttal Testimony of J. Crist at 22:14-23:21.

Also, the OCA in its Exceptions attempts to extract certain language in the Competition Acts and apply that wording to claim that Universal Service Charges create a public benefit.²² In the Competition Acts,²³ the General Assembly was addressing the issues that arise from customers that switch their supply source from utility supply to supply provided by energy marketers.²⁴ The General Assembly was striving to maintain a level playing field by ensuring that switching customers are subject to the same distribution service costs as non-switching customers. Specifically, with regards to the Universal Service Charge any *residential* customers that switched from utility supply to energy marketer supply should not escape payment of those *residential* class costs. They were designated as nonbypassable and the instrument to collect such costs was a nonbypassable rider.

OCA's use of the Competition Acts to support the subsidy here is clearly incorrect. There was no statutory authority whatsoever in the Competition Acts that attempted to assign costs for *residential* universal service programs to other customer classes or otherwise justify OCA's attempt to cross-subsidize such program costs to classes other than *residential*. Simply put, the Competition Acts reference to "nonbypassable" was to ensure that a *residential* customer who shops or switches suppliers remains subject to contributing toward costs of *residential* customer assistance programs. Nowhere do the Competition Acts say they authorize, let alone address, imposing *residential* class-caused costs for *residential* customer assistance programs upon *non-residential* customers who are ineligible for the program.

²² OCA Exceptions at 5-6.

²³ See generally 66 Pa. C.S. Chapter 22 and Chapter 28.

²⁴ See generally 66 Pa. C.S. § 2802.

In sum, the Commission should reject the arguments the OCA and CAUSE-PA raise in their Exceptions and adopt the RD's recommendation on the allocation of Columbia's residential universal service program costs. Allocating Columbia's residential universal service costs to classes other than the residential class disregards the "polestar" of ratemaking principles, is unsupported by the record, and would only increase cross-class subsidization which the Commonwealth Court expressly rejected.²⁵ The RD correctly found that the evidence in this case did not show any direct or substantial benefits to commercial and industrial customers from Columbia's residential universal service program, and the unproven and unsubstantiated societal theory benefits of Columbia's residential universal service program which the OCA and CAUSE-PA advocate for cannot meet their burden required to change long-standing policy and do not outweigh the detriments of imposing residential universal services costs on commercial and industrial or large customers such as PSU. What the OCA and CAUSE-PA are asking the Commission to do is both discriminatory and unlawful under *Lloyd* and amounts to the institution of a tax on other rate classes – a request outside the Commission's authority and that must be reserved for elected Legislators who make laws, and not for this Commission to legislate on a piecemeal, individual rate case basis. Instituting an unlawful tax is a particularly bad idea when businesses and institutions are also facing financial challenges due to COVID-19.

II. PSU Reply Exception No. 2: While the OSBA correctly excepted to the RD's adoption of the OCA's Peak and Average COSS, the Commission should not adopt the OSBA's proposed COSS in place of the Company's Average COSS.

In its exceptions, the OSBA argued that the RD erred in adopting the OCA's Peak and Average COSS which is most favorable to the smallest customer classes of Columbia and noted

²⁵ *Lloyd*.

that the RD appears to have decided which COSS to use based on favoring the residential customer class.²⁶ The shifting of cost responsibility by the RD's adoption of the OCA's residential customer biased Peak and Average method results in severe increases to non-residential customer classes and is not good for Pennsylvania business, its economy or its public institutions, especially during the impacts of the COVID-19 pandemic where many businesses and institutions are in growing economic turmoil. PSU supports and agrees with the OSBA that the OCA's Peak and Average COSS is unbalanced, unreasonable, and not supported by the record as explained in PSU's Exceptions.²⁷ However, OSBA ultimately goes on to argue that the Commission should adopt the COSS recommended by OSBA.²⁸ The OSBA's COSS, however, is not as fair and balanced as Columbia's Average COSS because the OSBA's study skews the balance between the Customer-Demand and the Peak and Average COSS by suggesting unequal weighting of the studies. Regarding the OSBA COSS, PSU witness Mr. Crist testified:

Q. DO YOU AGREE WITH MR. KNECHT'S REVENUE ALLOCATION?

A. No. Mr. Knecht makes several adjustments to determine his allocation and one of those adjustments is a change of the weighting of the two studies (Customer-Demand and Peak & Average). Whereas the Company weighted the two studies equally to determine its average ACOS, Mr. Knecht weights them 25/75, Customer-Demand/Peak & Average. The point of the Company's using two studies is to determine boundaries or extremes, and then average. Mr. Knecht determines boundaries but then skews the average by the use of unequal weighting.

²⁶ OSBA Exceptions at 3.

²⁷ PSU Exceptions at 3-5.

²⁸ OSBA Exceptions at 5-6.

PSU submits that Columbia's Average COSS, which equally weighs the Customer-Demand/Peak and Average studies produces the most reasonable and fair result. For the reasons set forth in PSU's Exceptions,²⁹ the Commission should adopt Columbia's Average COSS.

CONCLUSION

For all of the foregoing reasons, PSU respectfully requests that the Commission:

- a. Reject the Exceptions of the OCA and CAUSE-PA regarding the allocation of Columbia's residential universal service program costs to all rate classes and adopt the RD's recommendation to allocate those costs only to the residential class under well-settled ratemaking principles; and
- b. Adopt Columbia's Average COSS as the fair and balanced study weighing the interests of all rate classes.

Respectfully submitted,

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DATED: December 30, 2020

²⁹ PSU Exceptions at 5-8.