**PENNSYLVANIA**

**PUBLIC UTILITY COMMISSION**

**Harrisburg, PA 17120**

Public Meeting held April 15, 2021

Commissioners Present:

Gladys Brown Dutrieuille, Chairman

David W. Sweet, Vice Chairman

John F. Coleman, Jr.

Ralph V. Yanora

Pennsylvania Public Utility Commission R-2020-3018835

Office of Small Business Advocate C-2020-3019702

Office of Consumer Advocate C-2020-3019714

Columbia Industrial Intervenors C-2020-3020105

Dr. Richard Collins C-2020-3020207

Ionut R. Ilie C-2020-3020498

The Pennsylvania State University C-2020-3020666

v.

Columbia Gas of Pennsylvania, Inc.

**OPINION AND ORDER**

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**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is the Petition for Reconsideration (Petition) filed by the Office of Consumer Advocate (OCA) on March 8, 2021, seeking reconsideration of the Order entered on February 19, 2021 (*February 2021 Order*), relative to the above-captioned proceeding. Columbia Gas of Pennsylvania, Inc. (Columbia or Company) filed an Answer to the Petition on March 11, 2021. The Commission’s Bureau of Investigation and Enforcement (I&E) filed a letter in response to the Petition (Letter Response) on March 16, 2021. For the reasons set forth below, we shall deny the Petition.

# I. History of the Proceeding

On April 24, 2020, Columbia filed Supplement No. 307 at Docket No. R‑2020-3018835, with an effective date of January 23, 2021.[[1]](#footnote-1) Columbia proposed to increase overall rates by approximately $100.4 million per year, or 17.54% over present revenues. Columbia’s proposal, if granted, would increase the average monthly residential customer bill from $87.57 to $103.19, or by approximately 17.84%.

On April 27, 2020, I&E filed a Notice of Appearance. On May 4, 2020, the Office of Small Business Advocate (OSBA) filed a Public Statement and Formal Complaint at Docket No. C-2020-3019702. On May 5, 2020, the OCA filed a Public Statement and Formal Complaint at Docket No. C-2020-3019714.

On May 14, 2020, the Community Action Association of Pennsylvania (CAAP) filed a Petition to Intervene. On May 18, 2020, the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA) filed a Petition to Intervene.

By Order entered May 21, 2020, the Commission suspended the implementation of Supplement No. 307 by operation of law, pursuant to 66 Pa. C.S. § 1308(d), until January 23, 2021, unless permitted by Commission Order to become effective at an earlier date, and instituted an investigation into the lawfulness, justness, and reasonableness of the rates, rules, and regulations proposed. The Commission assigned the matter to the Office of Administrative Law Judge (OALJ) for the prompt scheduling of such hearings as may be necessary and issuance of a Recommended Decision.

On May 29, 2020, the Columbia Industrial Intervenors (CII), on behalf of its members (Hanover Foods Corporation, Knouse Foods Cooperative, Inc. and RHI Magnesita), filed a Formal Complaint at Docket No. C-2020-3020105.

On May 29, 2020, I&E filed an Expedited Motion to Extend the Statutory Suspension Period During the Emergency Interruption of Normal Operations of the Pennsylvania Public Utility Commission (Motion to Extend). I&E asked Chief Administrative Law Judge (CALJ) Charles Rainey to grant an extension of the suspension period from January 23, 2021, to February 4, 2021, pursuant to the Commission’s Emergency Order at Docket No. M-2020-3019262, dated March 20, 2020, and ratified by the Commission on March 26, 2020, which authorized the CALJ to establish reasonable deadlines under the circumstances, after consideration of the positions of the Parties and the presiding ALJ, if necessary, in response to the obstacles created by the COVID-19 pandemic.

On June 3, 2020, the ALJ conducted a prehearing conference in which various procedural matters were discussed and a litigation schedule was established. Columbia, the OCA, the OSBA, I&E, CII, CAAP, and CAUSE-PA were present and represented by counsel. After the Parties were provided with an opportunity to state their positions on the record, CALJ Rainey ruled orally to grant I&E’s Motion to Extend. In a written Order dated June 3, 2020 (*June 3 Order*), CALJ Rainey granted I&E’s Motion to Extend and extended the suspension period for resolution of this case by twelve days, from January 23, 2021 to February 4, 2021.

Also, on June 3, 2020, Dr. Richard Collins filed a Formal Complaint at Docket No. C-2020-3020207.

On June 18, 2020, Columbia submitted an unopposed Motion for Protective Order pursuant to 52 Pa. Code § 5.423(a), which was granted on June 23, 2020.

Also, on June 23, 2020, Columbia filed a Petition for Reconsideration from Staff Action (Petition for Reconsideration) and sought a reversal of the CALJ’s *June 3 Order*. I&E, the OCA, and the OSBA filed responses to the Petition.

On June 24, 2020, Ionut (John) R. Ilie filed a Formal Complaint at Docket No. C-2020-3020498.[[2]](#footnote-2)

On July 8, 2020, ALJ Dunderdale conducted a telephonic public input hearing during which two witnesses testified. Also, on July 8, 2020, the Pennsylvania State University (PSU) filed a Formal Complaint at Docket No. C-2020-3020666.

By Opinion and Order entered on August 20, 2020 (*August 2020 Order*), Columbia’s Petition for Reconsideration was denied, in part, and granted, in part. The Commission denied the Petition for Reconsideration in that it affirmed the *June 3 Order* of CALJ Rainey to grant the Petition for Extension and granted the Petition in that the effective suspension date remained January 23, 2021. In addition, the OALJ was directed to issue a Recommended Decision in this matter on or before November 20, 2020.

On August 11, 2020, the Parties notified the presiding officer via email that in an effort to maintain the original procedural schedule, an agreement had been reached by the Parties which would extend the suspension date to February 25, 2021, maintain the effective date of January 23, 2021, as required by the Commission’s *August 2020 Order*, and move the due date for the Recommended Decision from November 20, 2020 to December 4, 2020.

On August 12, 2020, Columbia filed Supplement No. 315 to Tariff Gas – Pa. P.U.C. No. 9 (Supplement No. 315), which voluntarily suspended its statutory suspension period from January 23, 2021 to February 25, 2021, with rates to go into effect January 23, 2021 – *i.e*., subject to the condition that Columbia will bill retroactively for the revenues lost at the final approved rates for the period from the end of the statutory suspension period (January 23, 2021) through the date the Commission makes its approved rates effective by approving the requisite compliance filing.

On September 24, 2020, ALJ Dunderdale conducted a telephonic evidentiary hearing. At the hearing, the Parties submitted written statements, with signed affidavits from each witness, and exhibits of the various witnesses pursuant to an agreement between the Parties that cross-examination would not be necessary.

On September 25, 2020, ALJ Dunderdale issued the Post-Hearing Order which ordered that the written statements, exhibits, and verifications sponsored and moved into the hearing record by the Parties on September 24, 2020, should be entered into the Commission’s hearing record. The Post-Hearing Order required all the Parties which had evidence admitted into the hearing record to file an accurate copy of that evidence with the Commission on or before October 9, 2020. By the same Order, the presiding officer closed the hearing record. The pre-hearing and hearing transcripts consist of 221 pages.

On October 16, 2020, Columbia, I&E, the OCA, the OSBA, CAUSE-PA, CAAP, CII, and PSU filed Main Briefs on the issues reserved for litigation. These Parties filed Reply Briefs on October 30, 2020.

In the Recommended Decision, issued on December 4, 2020, ALJ Dunderdale recommended that the Commission deny Columbia’s request in its entirety on the basis that the Company did not satisfy its burden of proving, by substantial evidence, that the proposed base rate revenue increase will result in just and reasonable rates, as required by 66 Pa. C.S.§ 1301, during the current COVID-19 pandemic. According to ALJ Dunderdale, because the Commission may disagree with the recommendation to deny the proposed base rate revenue increase in its entirety, she reviewed each element in the proposed base rate increase and addressed whether Columbia proved each proposal by substantial evidence.[[3]](#footnote-3) Further, ALJ Dunderdale stated that she did not recommend an alternative revenue requirement and rate of return, as explained in Section III, Subsection C-9 of the Recommended Decision, because the mathematical calculation may change if the Commission agrees with some, but not all of the recommendations, for each proposal. R.D. at 1, 409.

Columbia, I&E, the OCA, the OSBA, CAUSE-PA, and PSU filed Exceptions to the Recommended Decision on December 22, 2020. On December 30, 2020, Columbia, I&E, the OCA, the OSBA, CAUSE-PA, and PSU filed Replies to Exceptions.

In the *February 2021 Order*, we: (1) reversed the ALJ’s recommendation to completely deny Columbia’s requested rate relief due to the pandemic; (2) granted, in part, and denied, in part, the Exceptions filed by Columbia and I&E; and (3) denied the Exceptions filed by the OCA, the OSBA, CAUSE-PA, and PSU. Additionally, we approved an annual revenue increase of $63,548,905 to the Company’s pro forma revenue at present rates of $572,769,574, or approximately 11.10%.

As previously noted, the OCA filed the instant Petition on March 8, 2021. Columbia filed an Answer to the Petition on March 11, 2021, and I&E filed a Letter Response to the Petition on March 16, 2021.

**II. Discussion**

**A. Legal Standards**

Initially, we note that any issue we do not specifically address herein has been duly considered and will be denied without further discussion. It is well settled that we are not required to consider expressly or at length each contention or argument raised by the Parties. [*Consolidated Rail Corporation v. Pa. PUC,* 625 A.2d 741 (Pa. Cmwlth. 1993)*;*](file:///C:\Documents%20and%20Settings\tfarrar\Local%20Settings\Temporary%20Internet%20Files\Content.Outlook\Local%20Settings\Temporary%20Internet%20Files\Content.Outlook\Local%20Settings\Temporary%20Internet%20Files\Content.Outlook\Local%20Settings\research\buttonTFLink) *also* *see, generally,* [*University of Pennsylvania v. Pa. PUC*,485 A.2d 1217 (Pa. Cmwlth. 1984).](file:///C:\Documents%20and%20Settings\tfarrar\Local%20Settings\Temporary%20Internet%20Files\Content.Outlook\Local%20Settings\Temporary%20Internet%20Files\Content.Outlook\Local%20Settings\Temporary%20Internet%20Files\Content.Outlook\Local%20Settings\research\buttonTFLink)

The Public Utility Code (Code) establishes a party’s right to seek relief following the issuance of our final decisions pursuant to Subsections 703(f) and (g), 66 Pa. C.S. §§ 703(f) and 703(g), relating to rehearings, as well as the rescission and amendment of orders. Such requests for relief must be consistent with Section 5.572 of our Regulations, 52 Pa. Code § 5.572, relating to petitions for relief following the issuance of a final decision. The standards for granting a Petition for Reconsideration were set forth in *Duick v. Pennsylvania Gas and Water Company*, 1982 Pa. PUC Lexis 4, \*12-13:

A Petition for Reconsideration, under the provisions of 66 Pa. C.S. § 703(g), may properly raise any matters designed to convince the Commission that it should exercise its discretion under this code section to rescind or amend a prior order in whole or in part.

In this regard we agree with the court in the Pennsyl­vania Railroad Company case, wherein it was stated that:

Parties . . . cannot be permitted by a second motion to review and reconsider, to raise the same questions which were specifically considered and decided against them . . . what we expect to see raised in such petitions are new and novel arguments, not previously heard, or considera­tions which appear to have been overlooked by the Commission.

Under the standards of *Duick*, a petition for reconsideration may properly raise any matter designed to convince this Commission that we should exercise our discretion to amend or rescind a prior Order, in whole or in part. Such petitions are likely to succeed only when they raise “new and novel arguments” not previously heard or considerations which appear to have been overlooked or not addressed by the Commission. *Id*. at \*13.

**B. *February 2021 Order***

In the *February 2021 Order*, we reversed the ALJ’s recommendation to completely deny Columbia’s requested rate relief due to the pandemic and approved an annual revenue increase of $63,548,905 to the Company’s pro forma revenue at present rates of $572,769,574, or approximately 11.10%. In reaching our determination, we declined to adopt the ALJ’s recommendation to completely deny Columbia’s requested rate relief, for the following two reasons: (1) the continued use of traditional ratemaking methodologies during the pandemic is consistent with the setting of just and reasonable rates and the constitutional standards established in *Bluefield Water Works and Improvement Co. v. Public Service Comm’n of West Virginia*, 262 U.S. 679, 692-93 (1923) (*Bluefield*) and *Federal Power Commission v. Hope Natural Gas Co.*,320 U.S. 591, 603 (1944) (*Hope Natural Gas*), and the pandemic did not change the continued application of these standards; and (2) there was a lack of substantial evidence in the record to support the ALJ’s recommendation to completely deny the Company’s requested rate increase. *February 2021 Order* at 42.

We stated that the continued use of traditional ratemaking methodologies would allow for the factoring in of important ratemaking principles, such as quality of service, gradualism, and rate affordability in setting just and reasonable rates during the pandemic as well as consideration of evidence of the impact of the pandemic in evaluating the Company’s cost of providing service. Based on our consideration of the evidence in this case, we found that the ALJ’s justifications to deny the Company’s requested rate increase in its entirety were not supported by substantial evidence in the record. *Id*. at 51.

In addressing the ALJ’s determination and the Parties’ positions in support of denying the Company’s rate increase request in its entirety, we noted that the ALJ cited unemployment rates of 8.8% to 19.2% of the working population in Columbia’s service area in discussing the pandemic’s impact on customers. *Id*. (citing R.D. at 48). We acknowledged the gravity of these unemployment statistics, but concluded that the Parties did not demonstrate with substantial evidence that the impact of *any* rate increase on unemployed customers would lead to harm that outweighed all other valid ratemaking concerns “especially the polestar – cost of providing service.” *February 2021 Order* at 51 (citing *Lloyd*, 904 A.2d at 1020). We also stated the following:

Furthermore, taking the approach of denying any rate relief due to rising unemployment numbers among residential customers is inconsistent with our prior rate orders issued during this pandemic: specifically, the *PGW Rate Order*, the

*UGI Gas Rate Order*, and the *PWSA Rate Order*,[[4]](#footnote-4) where we granted rate increases despite rising unemployment numbers across the Commonwealth due to the pandemic. No party in this proceeding has offered a rational basis to justify a different treatment under the circumstances here. Indeed, we are not persuaded by the argument that the final rates in the other cases were the results of settlement agreements, as that fact alone does not change the reality that such settlements would not be effective unless approved under our ratemaking authority, and we clearly acknowledged the need for revenue increases during this pandemic for these companies by approving the settled-upon rate increases after we found that such settlements were in the public interest and resulted in just and reasonable rates. *See PGW Rate Order, UGI Gas Rate Order, PWSA Rate Order.[[5]](#footnote-5)*

*February 2021 Order* at 51-52. We then provided a detailed analysis explaining why the ALJ’s decision was not supported by substantial evidence in the record. *Id*. at 52-54.

Having initially reached this conclusion, we proceeded to review the evidence and arguments the Parties presented relating to Columbia’s requested revenue increase and in setting just and reasonable rates. *Id*. at 54. In so doing, we, *inter alia*, granted a smaller overall rate increase than the Company requested, selected a lower rate of return than the Company originally proposed, eliminated certain projected expenses and capital spending from the Company’s claim, and made various directives concerning improvements to the Company’s low-income programs. *February 2021* *Order* at 61, 71‑72, 82, 97, 141, 143, and 144-77.

**C. Petition and Answer**

In its Petition, the OCA objects to the Commission’s reference to the *Settled Base Rate Case Orders* for three reasons. First, the OCA argues that it is improper for settled cases to be used as precedent, noting that the *Settled Base Rate Case Orders* included standard language that settlements may not be cited as precedent in future proceedings. Petition at 6 (citing *HIKO Energy, LLC v. Pa. PUC*, 209 A.3d 246, 265); *PGW Rate Order*.

Second, the OCA avers that the Commission failed to consider that the *Settled Base Rate Case Orders* the Commission referred to in the *February 2021 Order* included robust COVID-19 relief programs and other measures beneficial to ratepayers that were carefully balanced against the Parties’ decisions to agree on a rate increase. Petition at 6-7. According to the OCA, it was improper for the Commission to compare the settlements in the *Settled Base Rate Case Orders* to the Columbia proceeding, because the Columbia filing did not include a COVID-19 relief plan to offset the impact of the Company’s proposed rate increase on ratepayers. The OCA submits that because the Commission overlooked the lack of ratepayer COVID-19 protections in the *February 2021 Order*, the Commission should reconsider the remaining evidence in its decision to grant Columbia a revenue increase as well as the amount of such increase. *Id*. at 7.

Third, the OCA argues that due to the Commission’s citation to the *Settled Base Rate Case Orders*, parties may be reluctant to engage in good faith settlement negotiations if their settlement positions would be detrimental to them in future proceedings. *Id*. at 8. The OCA states that the Commission’s reference to the settled rate increases it approved in the *Settled Base Rate Case Orders* compromises the Commission’s own policy of encouraging settlements. *Id*. (citing 52 Pa. Code §§ 5.231, 69.401). The OCA contends that the Commission failed to consider the negative effect that citing to prior settlements could have on the behaviors of parties in future proceedings and settlement negotiations. Petition at 8.

For these reasons, the OCA requests that: (1) the Commission reconsider and amend the *February 2021 Order* and remove any reference to or reliance on the settlements approved in the *Settled Base Rate Case Orders*, and (2) the Commission reconsider the remaining evidence relating to its decision to grant Columbia a revenue increase.

In its Answer to the Petition, Columbia argues that the OCA’s request for reconsideration should be denied because it fails to satisfy the *Duick* standards. Columbia asserts that the Commission specifically considered and rejected the OCA’s argument regarding the applicability of the *Settled Base Rate Case Orders*. Answer at 4 (citing *February 2021 Order* at 51-52). Columbia states that the Commission considered and rejected the OCA’s position that the *Settled Base Rate Case Orders* should not inform the Commission’s decision in this case. Columbia avers that the Commission rejected the OCA’s position, finding that the rate increases in the *Settled Base Rate Case Orders* could only be approved pursuant to the Commission’s ratemaking authority. Columbia explains that if the Commission had not reviewed and approved the rate increases provided for in the settlements as just and reasonable, then those rate increases would not have become effective, and the fact that the rate increases in the *Settled Base Rate Case Orders* resulted from settlements was not material to the Commission’s analysis. Answer at 5 (citing *February 2021 Order* at 51-52). Columbia believes that the OCA takes the Commission’s statements regarding the *Settled Base Rate Case Orders* out of context and that the Commission was referring to the *Settled Base Rate Case Orders* for the purpose of showing that the Commission previously granted rate increases during the COVID-19 pandemic. Answer at 5-6 (citing *February 2021 Order* at 51). Columbia submits that it is clear from the *February 2021 Order* that the Commission referenced the *Settled Base Rate Case Orders* in response to the arguments of the Parties opposing the rate increase and the ALJ’s recommendation to deny a rate increase entirely due to the economic circumstances resulting from the pandemic, including increased unemployment. According to Columbia, the Commission logically reasoned that if increased unemployment due to the pandemic was a basis for prohibiting base rate increases, such a prohibition would have equally applied to other rate increase requests during the pandemic. Answer at 6.

Columbia also disagrees with the OCA’s argument that the Commission’s reference to the *Settled Base Rate Case Orders* would discourage future settlement negotiations. Columbia states that the Commission did not rely on the resolution of any specific issue in a prior settlement as precedent, but, rather, cited the results of prior settled cases to show that the Commission previously approved rate increases during the COVID-19 pandemic. Columbia avers that the Commission considered and rejected the unprecedented contention that an otherwise justified rate increase could be denied due to economic conditions. *Id*.

Further, Columbia avers that in its Petition, the OCA is attempting to re-litigate its argument that no rate increase is appropriate during the COVID-19 pandemic, and the Commission has already specifically considered and rejected the OCA’s argument. *Id*. at 7 (citing *February 2021 Order* at 54). Columbia states that the Commission found that traditional ratemaking methodologies permit the Commission to consider “important factors or principles in setting just and reasonable rates, such as quality of service, gradualism, and rate affordability, during this pandemic.” Answer at 7 (citing *February 2021 Order* at 47). Columbia also states that the Commission then applied these factors in its consideration of the elements of Columbia’s requested rate increase. Answer at 7. For example, Columbia notes that the Commission granted a smaller overall rate increase than the Company requested, selected a lower rate of return than the Company originally proposed, eliminated certain projected expenses and capital spending from the Company’s claim, accepted the ALJ’s modification to the Company’s proposed Residential rate design, and made various directives concerning low-income programs. *Id*. at 7-8 (citing *February 2021* *Order* at 61, 71-72, 82, 97, 141, 143, 144-77, and 262-65). Columbia asserts that it was this analysis pursuant to the Commission’s authority under traditional ratemaking methodologies, rather than the consideration of the *Settled Base Rate Case Orders*, that supports the Commission’s decision to reject the ALJ’s recommendation to deny any rate increase to Columbia. Answer at 8.

Finally, Columbia argues that the OCA relies on an incorrect characterization of the Company’s COVID-19 customer relief efforts in attempting to distinguish the instant proceeding from the *Settled Base Rate Case Orders*. The Company describes the efforts it has undertaken in response to the pandemic. *Id*. First, Columbia states that in response to the onset of the pandemic, it voluntarily delayed its rate filing by five weeks, resulting in the loss of $16.1 million of the full amount of its proposed rate increase. *Id*. (citing Columbia St. 1-R at 11). Second, Columbia states it developed an enhanced education and outreach program, which includes Columbia call center representatives making outbound calls to customers who may be eligible for assistance based on Company records. Answer at 9. Third, Columbia temporarily ceased customer shut offs for all customers before the Commission’s directives to do so. *Id*. (citing *Public Utility Service Termination Moratorium Proclamation of Disaster Emergency – COVID-19*, Docket No. M‑2020‑3-19244 (Order entered March 13, 2020)). Fourth, in addition to the Company’s normal payment plan offerings, Columbia began to offer two new six-month payment plan options. Fifth, Columbia states that it made several changes to its Customer Assistance Program (CAP), including not removing customers from CAP, not requiring proof of income for CAP customers who are unable to verify income, and not including any “stimulus” income or additional unemployment compensation as income for purposes of determining CAP eligibility. Sixth, Columbia states that it modified its existing Hardship Fund by waiving the requirement of a demonstrated good-faith payment effort to be eligible for the Hardship Fund and allowing all low-income customers in arrears to be eligible for the Hardship Fund regardless of CAP status. Finally, Columbia waived all late payment and reconnection fees. Answer at 9 (citing Columbia M.B. at 25-30).

Columbia continues that in addition to these efforts, on October 26, 2020, Columbia requested that the Commission temporarily amend the Company’s Universal Service and Energy Conservation Plan to increase the number of customers who qualify for Hardship Fund assistance by increasing the income limit from 200% of the Federal Poverty Income Guidelines (FPIG) to 300% of the FPIG through September 31, 2021. Answer at 9. Columbia’s purpose in requesting this change was to assist customers who have been impacted financially by the COVID-19 pandemic but do not qualify for other assistance. *Id*. at 9-10. Columbia explains that to support the additional customers eligible for the Hardship Fund, Columbia secured a voluntary $400,000 shareholder contribution, which was approved by the Commission. *Id*. at 10 (citing *Petition of Columbia Gas of Pennsylvania to Temporarily Amend its Current 2019 Universal Service and Energy Conservation Plan*, Docket No. M-2018-2645401 (Secretarial Letter issued November 17, 2020)). For these reasons, Columbia contends that the OCA fails to raise a “new” argument by incorrectly claiming that Columbia has not undertaken COVID-19 relief efforts and ignoring the substantial evidence to the contrary. Answer at 10.

In its Letter Response, I&E states that it agrees with Columbia that the OCA’s Petition does not satisfy the *Duick* standards for granting reconsideration. I&E requests that the Commission deny the OCA’s Petition. I&E Letter at 1.

**D. Disposition**

Under the circumstances in this case, we find that the OCA has not satisfied the standards for reconsideration. A petition for reconsideration is governed by *Duick*, which essentially requires the Commission to perform a two-step analysis. First, the Commission must determine whether the petitioner has offered any new arguments that were not addressed by the Commission in its previous order. The Commission will not reconsider its previous decision based on arguments that have already been made. Second, the Commission must evaluate any new argument or evidence and decide whether modification of its previous order is warranted. However, the Commission will not necessarily modify a prior order just because a petitioner offers a new argument that was not addressed by the Commission in its previous order.

The OCA has not raised any arguments in its Petition that are “new and novel” or that the Commission has not previously addressed. In the *February 2021 Order*, we directly addressed the arguments the OCA raises in its Petition, namely, that: (1) the *Settled Base Rate Case Orders* could not be relied on as precedent in this proceeding, and (2) the circumstances in the *Settled Base Rate Case Orders* are distinguishable from the circumstances in this case because the *Settled Base Rate Case Orders* included robust COVID-19 relief programs and other measures beneficial to ratepayers that were carefully balanced against the parties’ decisions to agree on a rate increase. We addressed these arguments in response to the positions espoused by I&E, Columbia, and the OCA in their Exceptions and Replies to Exceptions.

For example, the OCA averred in its Replies to Exceptions that I&E improperly relied on the Commission’s *Settled Base Rate Case Orders* in support of its position in Exceptions that Columbia should be granted an appropriate revenue increase, consistent with the standards in *Bluefield* and *Hope Natural Gas*. OCA R. Exc. at 5-6 (citing I&E Exc. at 8-11). Additionally, in response to Columbia’s proposal in its Exceptions to implement a phased-in revenue increase similar to those in the *UGI Gas Rate Order* and the *PGW Rate Order*, the OCA argued that the Company’s reliance on the *UGI Gas* *Rate Order* and the *PGW Rate Order* should be rejected, as those matters were different from Columbia’s proposal because those matters included robust COVID‑19 relief plans, low-income customer relief, stay-out provisions, and a host of other customer benefits that resulted from extensive settlement negotiations. *February 2021 Order* at 227-28, 229-30; Columbia Exc. at 33-38; OCA R. Exc. at 20.

In response to the Parties’ arguments in favor of a complete denial of Columbia’s requested rate relief and the OCA’s argument concerning any reference to the *Settled Base Rate Case Orders*, we stated the following:

Furthermore, taking the approach of denying any rate relief due to rising unemployment numbers among residential customers is inconsistent with our prior rate orders issued during this pandemic: specifically, the *PGW Rate Order*, the *UGI Gas Rate Order*, and the *PWSA Rate Order*, where we granted rate increases despite rising unemployment numbers across the Commonwealth due to the pandemic. No party in this proceeding has offered a rational basis to justify a different treatment under the circumstances here. Indeed, we are not persuaded by the argument that the final rates in the other cases were the results of settlement agreements, as that fact alone does not change the reality that such settlements would not be effective unless approved under our ratemaking authority, and we clearly acknowledged the need for revenue increases during this pandemic for these companies by approving the settled-upon rate increases after we found that such settlements were in the public interest and resulted in just and reasonable rates. *See PGW Rate Order, UGI Gas Rate Order, PWSA Rate Order.*

*February 2021 Order* at 51-52. The above language clearly reflects that we considered and denied, in the *February 2021 Order*, the same arguments that the OCA raises in its instant Petition.

Moreover, we referred to the *Settled Base Rate Case Orders* for the limited purpose of indicating that pursuant to our ratemaking authority, we have approved, and are authorized to approve, during this pandemic, rate increase requests that result in just and reasonable rates. We did not rely on as precedential or cite to any specific language or settlement terms in the parties’ settlement agreements in the *Settled Base Rate Case Orders*. This limited reference to the *Settled Base Rate Case Orders* in a small portion of the *February 2021 Order* did not impact or weigh into our decision to evaluate the Company’s rate increase proposal using the traditional ratemaking methodologies or our ultimate decision to grant Columbia a revenue increase. In fact, none of our findings in this proceeding would change if this limited reference to the *Settled Base Rate Case Orders* had not been included in the *February 2021 Order*.

As we stated in the *February 2021 Order*, we reversed the ALJ’s decision to deny Columbia’s rate request in its entirety because: (1) the continued use of traditional ratemaking methodologies during the pandemic is consistent with the setting of just and reasonable rates and the constitutional standards established in *Bluefield* and *Hope Natural Gas*, and the pandemic did not change the continued application of these standards; and (2) there was a lack of substantial evidence in the record to support the ALJ’s recommendation to completely deny the Company’s requested rate increase. *February 2021 Order* at 42, 51. Having initially reached this conclusion, we then proceeded to review the evidence and arguments the Parties presented relating to Columbia’s requested revenue increase and in setting just and reasonable rates. *Id*. at 54.

In reaching our decision to grant Columbia a revenue increase, as we have done in prior rate cases, we considered the proper balance between the interests of ratepayers and utilities as well as the broad public interests in the rate-making process. *See* *Popowsky v. Pa. PUC*, 665 A.2d 808, 812 (Pa. 1995); *Hope Natural Ga*s, 320 U.S. at 603 (the “fixing of ‘just and reasonable’ rates involves a balancing of the investor and the consumer interests”). We stated,

Indeed, in our opinion, the applicable legal standards that require the Commission to balance between the interests of the utility’s customers, investors, and the public interest, require the Commission, by necessary implication, to weigh evidence or unique considerations related to changes in service, market forces, and the economy. Thus, it is our responsibility under the applicable legal and constitutional standards to weigh evidence and unique considerations related to the COVID-19 pandemic in setting just and reasonable rates, and our continued use of traditional ratemaking methodologies permit our consideration of important ratemaking principles, like gradualism and rate affordability, in relation to this pandemic.

*February 2021 Order* at 48.

In evaluating the evidence in this proceeding consistent with these legal principles, we, *inter alia*, granted a smaller overall rate increase than the Company requested, selected a lower rate of return than the Company originally proposed, eliminated certain projected expenses and capital spending from the Company’s claim, and made various directives concerning improvements to the Company’s low-income programs. *Id*.at 61, 71-72, 82, 97, 141, 143, 144-77. Our decisions in this proceeding were based on whether Columbia satisfied its burden of proof to establish the justness and reasonableness of each element of its rate increase request and on ensuring that each decision was supported by substantial evidence in the record. Our determinations were not based on the settlements in the *Base Rate Case Orders*. For all of these reasons, we shall deny the OCA’s Petition.

**III. Conclusion**

Based on our review of the record, the Parties’ positions, and the applicable law, we shall deny the OCA’s Petition which seeks the following relief: (1) reconsideration and amendment of the *February 2021 Order* and removal of any reference to or reliance on the settlements approved in the *Settled Base Rate Case Orders*, and (2) reconsideration of the remaining evidence relating to the decision to grant Columbia a revenue increase; **THEREFORE,**

**IT IS ORDERED:**

That the Petition for Reconsideration filed by the Office of Consumer Advocate on March 8, 2021, is denied, consistent with the discussion in this Opinion and Order.

**BY THE COMMISSION,**



Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: April 15, 2021

ORDER ENTERED: April 15, 2021

1. Originally, Columbia expected to file this base rate request on or before March 20, 2020. However, beginning on March 16, 2020, pursuant to an Executive Order issued by the Pennsylvania Deputy Secretary for Human Resources and Management due to the COVID-19 disaster emergency declaration of the Governor, the Commission’s physical offices were closed. As of the entry date of this Opinion and Order, the Commission’s office buildings remain closed due to the COVID-19 disaster emergency; however, the Commission remains fully operational with its staff teleworking. All business was conducted electronically and/or telephonically. On March 25, 2020, Columbia requested to postpone the initial filing until on or before April 28, 2020. The Commission granted the Company’s request by Secretarial Letter issued on March 27, 2020. [↑](#footnote-ref-1)
2. By electronic mail on September 24, 2020, Mr. Ilie requested withdrawal of his Formal Complaint, which request was not opposed by any other Party. [↑](#footnote-ref-2)
3. We note that the ALJ makes her recommendations on these elements in the alternative, should the Commission grant Columbia’s request to consider all the elements in its base rate increase request. Accordingly, all of the ALJ’s recommendations discussed herein, with the exception of the recommendation to deny the rate increase request in its entirety, are recommendations the ALJ made “alternatively.” [↑](#footnote-ref-3)
4. *Pa. PUC v. PGW*, Docket No. R-2020-3017206 (Order entered Nov. 19, 2020) (*PGW Rate Order*); *Pa. PUC v. UGI Utilities, Inc. - Gas Division*, Docket No. R-2019-3015162 (Order entered October 8, 2020) (*UGI Gas Rate Order*); *Pa. PUC v. Pittsburgh Water and Sewer Authority*, Docket Nos. R‑2020-3017951, R‑2020‑3017970 (Order entered December 3, 2020) (*PWSA Rate Order*)). In its Petition, the OCA refers to these three cases as the *Settled Base Rate Case Orders*. We will also refer to these cases, collectively, throughout this Opinion and Order as the *Settled Base Rate Case Orders*. [↑](#footnote-ref-4)
5. In its Petition, the OCA specifically objects to the references to the *Settled Base Rate Case Orders* in this portion of the *February 2021 Order*. [↑](#footnote-ref-5)