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June 17, 2021

VIA ELECTRONIC FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor North
Harrisburg, PA 17105-3265


Re: PA Public Utility Commission v. Columbia Gas of Pennsylvania, Inc.
Docket No. R-2021-3024349

Dear Secretary Chiavetta:

Attached for filing on behalf of Columbia Gas of Pennsylvania, Inc. ("Columbia") is the Main Brief (public version) in the above-referenced proceeding. Copies will be provided as indicated on the Certificate of Service.

Columbia will also be filing a **CONFIDENTIAL** version of its Main Brief, sent to your attention via email. Columbia respectfully requests that the **CONFIDENTIAL** version of the Main Brief be maintained in the Commission's non-public files and only made accessible to appropriate Commission staff, consistent with the Protective Order issued in the above-referenced proceeding. The **CONFIDENTIAL** version of Columbia's Main Brief will also be provided to parties that have executed an appropriate non-disclosure certificate, pursuant to the Protective Order issued in this proceeding.

Respectfully submitted,



Lindsay A. Berkstresser

LAB/kl
Attachment

Rosemary Chiavetta, Secretary
June 17, 2021
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cc: Honorable Emily DeVoe (*w/att.*)
Certificate of Service

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served upon the following persons, in the manner indicated, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

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Date: June 17, 2021



Lindsay A. Berkstresser

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	R-2021-3024349
Office of Consumer Advocate	:	C-2021-3024643
Office of Small Business Advocate	:	C-2021-3024762
	:	
v.	:	
	:	
Columbia Gas of Pennsylvania, Inc. 1307(f)	:	

**MAIN BRIEF OF
COLUMBIA GAS OF PENNSYLVANIA, INC.**

TO ADMINISTRATIVE LAW JUDGE EMILY I. DEVOE:

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I. INTRODUCTION

Pursuant to the provisions of Section 1307(f) of the Public Utility Code, 66 Pa. C.S. § 1307(f), and the Pennsylvania Public Utility Commission’s (“Commission”) regulations at 52 Pa. Code §§ 53.61-53.69, Columbia Gas of Pennsylvania, Inc. (“Columbia” or the “Company”) initiated this annual proceeding to propose purchase gas cost (“PGC”) rates to become effective on October 1, 2021. As will be set forth in a Joint Petition for Partial Settlement to be filed simultaneously with the Reply Brief in this proceeding, the parties have achieved settlement on all issues in this case, with one exception. The issue reserved for resolution by Administrative Law Judge Emily I. DeVoe (the “ALJ”) and the Commission is whether Columbia’s long-established methodology for excluding from the PGC the cost of incremental capacity acquired to provide Elective Balancing Service (“EBS”) Option 1 for General Service transportation customers should be modified as proposed by the Office of Consumer Advocate (“OCA”). Columbia will address the issue reserved for litigation in this Brief. Columbia’s explanation of why the Partial Settlement is in the public interest and should be approved will be contained in Columbia’s Statement in Support of the Joint Petition for Partial Settlement to be filed by June 24, 2021.

A. Statement of the Case

On March 1, 2021, Columbia filed with the Commission certain pre-filing data required by the Commission’s regulations. That pre-filing data provided for an increase in its rates for recovery of purchased gas costs of \$0.12191/Therm from rates then in effect. On April 1, 2021, Columbia filed with the Commission Supplement No. 327 to Tariff Gas Pa. P.U.C. No. 9. Supplement No. 327 is to become effective for service rendered on and after October 1, 2021. In Supplement No. 327, Columbia proposes an increase in its rates for recovery of purchased gas costs of \$0.12191/Therm.

Formal Complaints were filed by the Office of Consumer Advocate (“OCA”) and the Office of Small Business Advocate (“OSBA”). The Commission’s Bureau of Investigation & Enforcement (“I&E”) filed a Notice of Appearance.

An initial Prehearing Conference was held on April 6, 2021. At the prehearing conference, the ALJ established a litigation schedule. The ALJ also set forth discovery rules, which included shorter response times than those provided in the Commission’s regulations. *See* 52 Pa. Code §§ 5.341 *et seq.* On April 6, 2021, the ALJ issued a Prehearing Order that confirmed the litigation schedule established at the Prehearing Conference.

In accordance with the litigation schedule, OCA filed Direct Testimony on May 4, 2021, regarding the issue reserved for litigation. Columbia filed rebuttal testimony on May 21, 2021. OCA filed surrebuttal testimony on May 28, 2021. No other party submitted testimony in this proceeding.

On May 26, 2021, Columbia filed a Motion for a Protective Order pursuant to the provisions of 52 Pa. Code § 5.365(a). On May 28, 2021, ALJ DeVoe issued a Protective Order in accordance with Columbia’s request.

The parties engaged in settlement discussions over the course of this proceeding. As a result of those discussions and the efforts of the parties, a settlement in principle of all but the previously identified issue reserved for litigation was achieved by the parties. The parties agreed to waive cross-examination on the issue reserved for litigation. A hearing was held before the ALJ on June 3, 2021, to allow the witnesses’ testimony to be introduced and admitted into evidence.

Columbia’s Main Brief on the issue reserved for litigation is being filed in accordance with the procedural schedule adopted by the ALJ.

B. Burden of Proof

Section 332(a) of the Public Utility Code (“Code”), 66 Pa.C.S. § 332(a), provides that the party seeking a rule or order from the Commission has the burden of proof in that proceeding. It is axiomatic that “[a] litigant’s burden of proof before administrative tribunals as well as before most civil proceedings is satisfied by establishing a preponderance of evidence which is substantial and legally credible.” *Samuel J. Lansberry, Inc. v. Pa. P.U.C.*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990). The preponderance of evidence standard requires proof by a greater weight of the evidence. *Cmwlth. v. Williams*, 557 Pa. 207, 732 A.2d 1167 (1999). This standard is satisfied by presenting evidence more convincing, by even the smallest amount, than that presented by another party. *Brown v. Cmwlth.*, 940 A.2d 610, 614 n.14 (Pa. Cmwlth. 2008).

If the applicant sets forth a prima facie case, then the burden shifts to the opponent. *McDonald v. Pennsylvania Railroad Co.*, 348 Pa. 558, 36 A.2d 492 (1940). Establishing a prima facie case requires either evidence sufficient to make a finding of fact permissible or evidence to create a presumption against an opponent which, if not met, results in an obligatory decision for the proponent. Once a prima facie case on a point has been established, if contrary evidence is not presented, there is no requirement that the applicant produce additional evidence in order to sustain its burden of proof. *See, e.g., District of Columbia’s Appeal*, 343 Pa. 65, 21 A.2d 883 (1941); *Application of Pennsylvania Power & Light Co.*, Doc. Nos. A-110500F0196, et al., 1994 Pa. PUC LEXIS 65 (Oct. 21, 1994).

Further, a party that raises an issue that is not included in a public utility’s filing bears the burden of proof. For example, in *Pa. PUC v. Metropolitan Edison Co., et al.*, Docket Nos. R-00061366, et al., 2007 Pa. PUC LEXIS 5 (Order entered Jan. 11, 2007), a party offered proposals to have the companies incur expenses not included in their filings. The ALJ held that, as the proponent of a Commission order with respect to its proposals, the party bears the burden of proof

as to proposals that are not included in the companies' filings. The Commission agreed and adopted the ALJ's conclusion that Section 315(a) of the Public Utility Code cannot reasonably be read to place the burden of proof on the utility with respect to an issue the utility did not include in its filing and which, frequently, the utility would oppose. *Id.* at *111-12.

II. SUMMARY OF ARGUMENT

The sole issue reserved for litigation in this case is whether Columbia's methodology for excluding from the PGC the cost of firm transportation and storage capacity used to provide EBS Option 1 should be modified as proposed by OCA. Presently, Columbia excludes from the PGC the cost of incremental capacity that it acquired from Dominion Transmission ("DTI") and Equitrans, L.P. ("Equitrans") to provide the elective balancing service for General Delivery Service ("GDS") transportation customers.¹ Columbia is at risk for recovery of the excluded capacity from customers who elect EBS Option 1. This method is supported by Columbia's currently effective Commission-approved tariff, which provides that storage capacity acquired for the purpose of providing EBS Option 1 will be excluded from PGC costs. Columbia has been excluding from the PGC the cost of incremental capacity acquired to provide EBS Option 1 in this manner since the Company began offering EBS in 2001. The existing methodology was established in the Commission-approved Settlement Agreement of Columbia's 2001 Tariff Filing at Docket No. R-00016668, in which Columbia proposed several tariff changes, including tariff rules pertaining to the establishment of EBS.

For approximately twenty years, parties have not challenged the Commission-approved methodology for excluding from the PGC the cost of incremental capacity acquired to provide EBS Option 1. For the first time this case, OCA argues that the cost of incremental capacity

¹ Residential and small commercial Choice transportation customers are not subject to the provisions of Rider EBS. Columbia Exhibit TMM-2R (Joint Petition for Settlement ¶ 2).

acquired to provide EBS Option 1 should no longer be excluded from the PGC, but rather that the amount excluded should be based exclusively on the cost of firm transportation and storage services provided by Columbia Gas Transmission, LLC (“TCO”). Historically, the cost of capacity that Columbia acquires from DTI and Equitrans for EBS has been more costly than the capacity that Columbia obtains from TCO. Thus, basing the EBS credit on the DTI and Equitrans capacity has resulted in a larger credit to PGC customers than if the credit were based on the cost of TCO capacity. On July 31, 2020, TCO filed a Section 4 rate proceeding at the Federal Energy Regulatory Commission (“FERC”) proposing an increase in rates. Although the case is currently pending before FERC, TCO’s proposed rates have gone into effect subject to refund. Given TCO’s rate increase, the cost of capacity that Columbia acquires from TCO is now more costly than the capacity that Columbia acquires from DTI and Equitrans.

OCA contends that its proposed change should be made because TCO serves most of the market areas where customers electing EBS are located. This was the case at the time the existing methodology was established and agreed to in the Settlement of the 2001 Tariff Filing and has been the case ever since. Yet, OCA did not make this argument at the time of the 2001 Tariff Filing and instead waited until the TCO capacity became more expensive to make this argument. There are no changed circumstances that would warrant changing Columbia’s methodology as set forth in its Commission-approved tariff. It is inappropriate and inequitable to change the long-established, settled methodology for defining the capacity to be excluded from the PGC for EBS Option 1 based upon whatever capacity is more costly at the time. Moreover, such an approach is unworkable as pipeline rates for storage and transportation capacity are constantly changing. The better approach is to continue to exclude from the PGC the cost of incremental capacity that was

acquired to provide EBS Option 1, which is what Columbia currently does, and has done for nearly 20 years, pursuant to its Commission-approved tariff.

As more fully explained herein, OCA's proposal to change the EBS calculation should be rejected. Columbia's current practice of excluding from the PGC the cost of incremental capacity acquired to provide EBS Option 1 is reasonable and should continue without modification.

III. ARGUMENT

A. History of Columbia's EBS Service.

To understand why Columbia's existing methodology for excluding from the PGC the cost of incremental capacity acquired to serve EBS Option 1 is reasonable and should continue, it is first necessary to briefly explain the history of Columbia's balancing service.

Transportation customers' deliveries of gas to Columbia frequently will be out of balance with their requirements. Prior to the adoption of EBS in 2001, Columbia provided an interruptible balancing service for GDS transportation service customers using then-available PGC assets to manage deliveries. GDS customers paid for the use of those assets on an interruptible basis. However, because PGC assets were being used to provide the balancing, and those assets were acquired to deliver sufficient supplies to meet sales customers' requirements, it was necessary for Columbia to interrupt balancing service for GDS customers for extended periods due to cold weather. GDS customers and Natural Gas Suppliers ("NGSs") were dissatisfied with the interruptible nature of the balancing service. Columbia St. No. 1-R, pp. 2-3. Therefore, following a series of meetings with a stakeholder group, Columbia proposed several tariff changes on August 22, 2001. These tariff changes included the creation of EBS ("2001 Tariff Filing"). *See* Columbia Exhibit No. TMM-1R.

EBS was developed to provide substantial enhancements to the balancing service that Columbia had provided its GDS customers prior to the inception of EBS. Columbia St. No. 1-R,

pp. 2-3. EBS provides GDS customers with two daily balancing options.² Customers electing EBS Option 1 can carry banks over from month to month. Under EBS Option 1, natural gas suppliers (“NGSs”) and customers are provided firm cold day and warm day Operational Flow Order (“OFO”)/Operational Matching Order (“OMO”) tolerances. Columbia St. No. 1-R, p. 3. Under cold day OFO/OMOs, NGS or customer deliveries equal to or greater than 95% of actual (OMO) or estimated (OFO) demand are considered in compliance with the flow orders, provided that the customer has sufficient gas in its bank. Under warm day OFO/OMOs, NGS or customer deliveries less than or equal to 102.5% of actual (OMO) or estimated (OFO) demand are considered to be in compliance with the flow order, provided that the customer has sufficient room in its bank to accept the over deliveries. Columbia St. No. 1-R, p. 3. Under EBS Option 1, NGS and customer access to banks is provided on a seasonal firm basis, recognizing the daily OFO/OMO limitations noted above, as long as an NGS or customer has a positive bank balance. Columbia St. No. 1-R, p. 4. Customers electing EBS Option 2 would continue with the fully interruptible nature of balancing prior to the development of EBS. Customers electing EBS Option 2 are cashed out monthly. A monthly cashout provides customers the opportunity to carry an intra-month bank but this bank is cashed-out at the end of each month. There are no customers currently electing Option 2. Columbia St. No. 1-R, p. 3.

In order for Columbia to provide the firm balancing service under EBS Option 1, Columbia needed to acquire incremental firm storage and transportation capacity above the capacity that had been acquired to satisfy sales customers’ needs. Columbia St. No. 1-R, p. 4. As Columbia explained in its 2002 PGC proceeding at Docket No. R-00027204, in order to serve the balancing requirements of GDS customers electing EBS Option 1, the Company acquired firm transportation

² Originally, a third option was offered, which provided for a daily cash-out. However, this option was subsequently eliminated because no customers elected the service. Columbia St. No. 1-R, p. 3.

and storage service from Equitrans. The storage and transportation service provided a peak day deliverability of 19,130 Dth and 2,000,000 Dth of seasonal capacity. In Columbia's 2002 PGC proceeding, Columbia witness Mr. Anderson explained:

Q. How is Columbia able to provide EBS?

A. Columbia is able to provide this enhanced service through the acquisition of new storage and related firm transportation service capacity and the operational integration of that capacity into Columbia's capacity portfolio. This integration will provide Columbia the opportunity to manage all supplies delivered to it for its own sales supply requirements plus those delivered for its Choice and GDS customers while providing the enhanced services of EBS. The new storage and firm transportation capacity acquired by Columbia establishes an asset to provide firm seasonal access to GDS customers banked volumes as well as the additional peak day deliverability and injection flexibility needed to provide the cold day and warm day OFO/OMO delivery tolerances.

Columbia Exhibit No. TMM-3R.

The 2001 Tariff Filing proposed that the costs of the incremental capacity acquired to provide EBS Option 1 be excluded from the PGC cost recovery mechanism. Columbia would offer a rate for EBS Option 1, and GDS customers could decide whether to elect the option, or elect EBS Option 2. See Columbia St. No. 1-R, pp. 4-5; Columbia Exhibit TMM-1R (August 22, 2001 filing of Supplement No. 22 to Tariff Gas Pa. PUC No. 9 and August 23, 2001 filing of standard filing requirements pursuant to 52 Pa. Code § 53.52). Because the costs and revenues to provide EBS Option 1 are excluded from the PGC, Columbia is at risk for cost recovery of the excluded costs.³ No parties opposed this cost recovery mechanism. Columbia St. No. 1-R, p. 7.

The 2001 Tariff Filing was ultimately resolved by a Settlement. Columbia Exhibit No. TMM-2R. The Settlement modified several provisions in the 2001 Tariff Filing but did not modify

³ EBS Option 2 revenue continues to be credited to the PGC. Columbia Exhibit TMM-1R.

the tariff provisions regarding the exclusion from the PGC of incremental capacity acquired to provide EBS Option 1.

Since the adoption of EBS, Columbia has made one change to the capacity used for EBS Option 1. In Columbia's 2014 PGC case (Docket No. R-2014-2408268), the Company submitted testimony and exhibits to explain that it was terminating a portion of the Equitrans capacity and replacing that portion with DTI. That change was made to increase storage capacity in the State College market. Columbia St. No. 1-R, p. 6. Specifically, as discussed in the testimony of witness Catron in the Company's 2014 PGC case, a new DTI storage and transportation contract effective April 2014, for 4,800 Dth/day and seasonal contract quantity of 240,000 Dth offset a capacity reduction on Equitrans. The Equitrans capacity was reduced to 14,348 Dth/day from 19,130 Dth/day along with the seasonal capacity reduced to 1,500,000 Dth from 2,000,000 Dth. No party to that PGC proceeding opposed the change. Columbia St. No. 1-R, pp. 6-7.

B. Columbia's existing Commission-approved methodology for defining the capacity to be excluded from the PGC due to EBS Option 1 is reasonable and should not be changed.

The EBS program, including the cost and rate recovery mechanisms, was approved by the Commission, pursuant to a Settlement of the 2001 Tariff Filing. *See Pa. PUC et al. v. Columbia Gas of Pennsylvania, Inc.*, Docket No. R-00016668 (Order entered January 29, 2002) (approving Joint Petition for Settlement and tariff provisions contained therein). The Settlement Agreement was supported by all parties, including the OCA. *See* Columbia Exhibit No. TMM-2R. The cost and rate recovery mechanisms agreed to in the 2001 Tariff Filing Settlement appear in Columbia's currently effective tariff. *See* Columbia Exhibit No. JB-1R. OCA now seeks to change the cost and rate recovery mechanisms that were agreed to in the 2001 Tariff Filing Settlement and approved by the Commission. However, OCA has not presented any new or changed circumstances that would justify changing the tariff provisions. The cost and rate recovery

mechanisms for EBS that were agreed to in the 2001 Tariff Filing Settlement remain reasonable, and OCA's proposed change should be rejected.

Columbia prices EBS Option 1 based upon the cost of incremental Equitrans and DTI capacity acquired to provide the service and is at risk of recovery of this cost from the GDS customers electing the service. As provided for in the Commission-approved Settlement of the 2001 Tariff Filing, the costs of the incremental capacity acquired to provide EBS Option 1 are excluded from PGC costs, and an additional credit of \$300,000 annually is provided to PGC customers. *See* Columbia Exhibit No. TMM-2R (Settlement Appendix A; Settlement ¶ 10c.). Therefore, the Company, and not PGC customers, is at risk for any under-recovery associated with EBS Option 1. Columbia St. No. 2-R, p. 2.

OCA's proposal to base the EBS credits to PGC customers on only the cost of TCO capacity is inconsistent with the prior Commission-approved Settlement of the 2001 Tariff Filing and Columbia's currently effective tariff, the relevant portions of which provide:

In computing purchased gas demand costs, per thm, pursuant to the formula, above, the following definitions shall apply:

“PGDC” – purchased gas demand costs determined to the nearest one-thousandth cent (0.0001¢) to be included in rates for each thm of gas supplied under the Rate RSS, Rate SGSS, Rate LGSS, and Rate MLSS rate schedules of the tariff.

“DC” – the estimated current demand cost of gas, which shall be determined as follows:

1. for all types of purchased gas, the projected total demand charges from any interstate pipeline company or any source of gas supply purchased by the Company for the projected period when rates will be in effect; plus
2. the projected firm transportation reservation or standby service charges of any interstate or intrastate pipeline or supplier, excluding charges for transportation acquired for the purpose of providing the Full Balancing Service under Rider EBS – Option 1; plus

3. *the projected charges for storage capacity of any interstate or intrastate pipeline supplier, excluding charges for storage capacity acquired for the purpose of providing the Full Balancing Service under Rider EBS – Option 1.*

(Tariff page 153)

Demand “E” Factor

In computing the experienced over/undercollection of purchased gas demand costs for a period defined by the Commission, the following procedure shall be used:

(a) All experienced purchased gas demand costs actually incurred by the Company to service customers pursuant to all rate schedules of this tariff, excluding the cost of capacity acquired for the purpose of providing Full Balancing Service under Option 1 of the Elective Balancing Services Rider. Capacity acquired to provide Full Balancing Service under EBS Option 1 will include sufficient storage capacity for the aggregate of the maximum banks provided under this option, and sufficient storage withdrawal and transportation capacity to provide the firm balancing entitlements.

(Tariff page 155)

Option 1: RATES

The rates identified under this section billed and collected pursuant to Option 1 shall not be credited toward recovery of purchased gas costs pursuant to the Purchased Gas Cost Rider.

(Tariff page 167)

See Columbia Exhibit JB-1R, pp. 1-3 (emphasis supplied). See also Columbia Exhibit No. TMM-2R (Settlement Appendix A). Tariff pages 153, 155 and 167 clearly state that the cost of incremental capacity acquired for the purpose of providing EBS Option 1 is excluded from the calculations of the Purchased Gas Demand Costs (“PGDC”) and the PGDC E-Factor within the PGC rate calculation.

In accordance with Columbia’s tariff, the Company uses the cost of the incremental Equitrans and DTI capacity to calculate amount of EBS costs to be excluded from the PGC because these assets were specifically acquired for the purpose of providing EBS. Columbia St. No. 2-R,

p. 3. The EBS rate calculation has been based on the costs of the Equitrans and DTI storage capacity since 2014, and prior to that, the calculation was based on the original Equitrans capacity acquired to provide EBS. The use of Equitrans or Equitrans/DTI storage capacity in pricing EBS Option 1 rates and the exclusion of the cost of this capacity from the PGC has been presented consistently in all PGC proceedings since the 2002 PGC case. Columbia St. No. 1-R, p. 7.

Pennsylvania courts have held that tariff provisions previously receiving Commission approval are just and reasonable. *See Zucker v. Pa. PUC*, 401 A.2d 1377, 1379 (Pa. Cmwlth. 1979). Where there is a complaint about an existing rate, there is a strong presumption that the Commission-approved rate is just and reasonable. *See* 66 Pa. C.S. § 316; *Popowsky v. Pa. PUC*, 669 A.2d 1029, 1037 (Pa. Cmwlth. 1995), *rev'd in part on other grounds*, 706 A.2d 1197 (Pa. 1997). The burden is on the proponent to prove that change is warranted by demonstrating a significant change in circumstances. *Zucker*, 401 A.2d at 1379-80. The absence of such a showing establishes prima facie evidence of the facts found in the prior order. *Id.* A party seeking to evade the effect of an existing tariff provision “carries a very heavy burden to prove that the facts and circumstances have changed so drastically as to render application of the tariff provision unreasonable.” *Shenango Twp. Bd. of Supervisors v. Pa. PUC*, 686 A.2d 910 (Pa. Cmwlth. 1996).

There are no new or changed circumstances that would warrant modifying Columbia’s existing Commission-approved mechanism for excluding from the PGC incremental Equitrans and DTI capacity that was acquired to provide EBS Option 1 service as provided for in its tariff, and which was agreed to in the 2001 Tariff Filing Settlement and approved by the Commission. OCA contends that the change should be made because TCO serves most of the market areas where customers electing EBS are located, but this has been the case since EBS was established in 2001. The circumstances of how Columbia operates storage to provide EBS have not changed since the

existing EBS cost and rate recovery mechanisms were established and agreed to in the Commission-approved Settlement of the 2001 Tariff Filing. The Company has operated, and continues to operate, its storage on a total system basis, based on location of storage and customer needs. Columbia Statement No. 1-R, p. 7. Therefore, this is nothing “new” that would warrant changing Columbia’s existing Commission-approved tariff provisions. Moreover, the records from the 2001 Tariff Filing and the 2002 PGC proceeding are clear that Columbia could not provide the firm balancing afforded under EBS Option 1 without acquiring *incremental interstate transportation and storage capacity*. See Columbia Statement No. 1-R, pp. 5-6; Columbia Exhibit Nos. TMM-1R; TMM-2R; TMM-3R; and TMM-4R. It was appropriate at that time for the parties and the Commission to conclude that GDS customers should bear the cost of these new capacity assets to provide EBS Option 1, and OCA has not provided a justification for changing that approach. OCA’s proposal should be rejected because there is no basis to change the methodology provided for in the Company’s existing tariff provision.

Furthermore, OCA’s contention that the capacity to be excluded from the PGC should be based upon the capacity that physically serves EBS customers across all market areas is inconsistent with its own recommendation to exclude only TCO capacity. OCA St. No. 1, p. 6. Columbia uses all of the storage and transportation capacity it acquires to serve its customers across all market areas. Columbia St. No. 1-R, pp. 4, 10. For example, the additional Equitrans and DTI capacity acquired for EBS was needed above the firm capacity that Columbia used to provide sales and Choice service. However, it was never intended that the incremental capacity would be dedicated solely to providing EBS. This is because no single capacity could serve all of Columbia’s diverse service areas and customers. Therefore, storage is used to manage service for all customers across the Company’s system. Columbia Statement No. 1-R, p. 4. According to

OCA's position that the excluded capacity should be based on the assets used to serve the market areas where GDS customers are located, any change to the calculation of EBS should not be based solely on TCO capacity, but rather a combination of all three capacities. Columbia witness Ms. Monning demonstrated that if the EBS credit to PGC customers were to be based upon a weighted cost of Equitrans, DTI and TCO capacities, it would increase the PGC Credit by [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] to equal [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL], as compared to Mr. Mierzwa's proposed adjustment of [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL].⁴ Columbia emphasizes that it is not its position that this alternative calculation should be adopted as a form of "compromise" position. For reasons explained in this Main Brief, EBS Option 1 rates and the determination of capacity to be excluded from the PGC should continue to conform to the 2001 Tariff Filing and Settlement, and Columbia's Commission-approved tariff.

OCA also contends that if Columbia were to no longer provide EBS Option 1, it could presumably reduce its pipeline capacity entitlements from TCO. OCA St. No. 1-SR, p. 2. However, it is not accurate to presume that without EBS, Columbia could eliminate a portion of its TCO capacity, because it is unknown how Columbia would provide firm balancing service to GDS customers if EBS were eliminated or what assets would need to be acquired to provide this service. The decision to retain or eliminate capacity is not solely based upon the cost of capacity. That determination depends upon a variety of factors, including the expiration date of capacity contracts, customer requirements at diverse locations among Columbia's interstate receipt points and the flexibility offered under the terms of each interstate pipeline's tariff. For example, TCO

⁴ As explained in Section D. below, Columbia's calculation excludes the \$300,000 fixed credit to the PGC as provided for in the Settlement of the 2001 Tariff Filing because the credit should be discontinued if there is a material change to EBS.

capacity gives Columbia greater ability to increase deliveries and adjust deliveries across its numerous TCO receipt points. Columbia St. No. 1, pp. 11-12, 24. OCA has not analyzed whether, in fact, if EBS Option 1 ceased as a service that TCO capacity would be terminated. Such a hypothetical provides no support for OCA's argument.

C. OCA's proposal to exclude from the PGC the cost of TCO capacity is inappropriate and should be rejected.

For approximately twenty years, OCA has not challenged the Commission-approved mechanism of excluding from the PGC the cost of incremental capacity acquired to provide EBS Option 1. In this case, OCA argues that the cost to be excluded from the PGC should be based exclusively on the cost of transportation and storage services provided by TCO. OCA's proposal to replace the cost of Equitrans and DTI capacity with the cost of TCO capacity in the EBS Option 1 pricing mechanism would reduce the capacity cost recovered from PGC customers while increasing the cost allocated to EBS Option 1. Columbia Statement No. 2-R, p. 2. Basing EBS Option 1 on TCO capacity costs would increase EBS costs by [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL], according to OCA witness Mr. Mierzwa's calculation. Columbia Statement No. 1-R, p. 8.⁵

Historically, TCO's storage and transportation costs have been lower than that of Equitrans and DTI. Over the past decade alone, the costs excluded from the PGC related to EBS Option 1, based upon Equitrans or Equitrans/DTI capacity costs, has been nearly [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] higher than if the rates had been based upon TCO capacity. Thus, basing the EBS cost and corresponding PGC exclusion on the

⁵ As explained herein, Mr. Mierzwa proposes that EBS Option 1 costs be based upon TCO capacity costs. The increase in costs presented by Mr. Mierzwa are a hypothetical amount, based upon an assumption that TCO's currently pending rate increase is resolved at an average of proposed rates and previously effective rates. OCA St. No. 1, pp. 7-8.

more expensive Equitrans and DTI capacity has historically favored PGC customers. Columbia Statement No. 1-R, pp. 8-9. On July 31, 2020, TCO filed its currently pending rate case before FERC, and TCO's proposed rate increase has gone into effect, subject to refund. Although FERC has not issued a final order in that case, OCA's proposal is based on the assumption that the outcome of the FERC proceeding will result in TCO's rate now being higher than the rates for Equitrans and DTI. Columbia Statement No. 1-R, p. 8. Based on this assumption, OCA now proposes that the calculation of the EBS credit to PGC customers should be changed to use TCO rates. The OCA did not recommend changing the EBS cost or rate recovery calculation in any of these previous years during which the TCO capacity was less expensive.

The cost of storage and transportation capacities should not be the basis for determining which capacity is used to calculate the EBS rate. Is it inappropriate, inequitable and unworkable to base the EBS rate on whatever storage and transportation capacity is more expensive. The storage and transportation capacities for the pipelines can change over time. Equitrans has historically been more expensive and it is possible that its rates could be higher than TCO's proposed rates in the future. The storage and transportation capacity used to calculate the EBS rate should not change every time a pipeline's rates change. Rather, the more objective and reasonable approach is to base the EBS rate on the storage and transportation capacity that was acquired for the purpose of providing the service, as provided in Columbia's tariff and the Commission-approved Settlement Agreement of the 2001 Tariff Filing.

- D. If the Commission changes the cost and rate recovery mechanisms for EBS in this proceeding, the \$300,000 fixed credit to PGC customers as provided for in the Commission-approved Settlement of the 2001 Tariff Filing should be eliminated.**

For the reasons explained herein, there is no basis for changing the EBS rate, and the capacity to be excluded from the PGC, to be based on only the cost of TCO capacity. However,

if the Commission were to change the EBS cost and rate recovery mechanisms in this proceeding, the \$300,000 fixed PGC credit as provided for in the Settlement of the 2001 Tariff Filing should be eliminated. The Commission-approved Settlement Agreement in the 2001 Tariff Filing provides:

For the twelve-month period beginning December 1, 2001, and annually thereafter, Columbia agrees to provide to the Purchased Gas Demand component of Purchased Gas Costs (“PGC”) a fixed credit of \$300,000. If the Commission makes any material change to the terms of Rider EBS or any material change to the Rules Applicable to Distribution Service (“RADS”) Sections 3.6, 3.7, 3.8, 3.11, or 3.12, then any party may propose that the credit be modified.

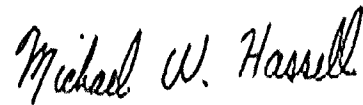
Columbia Exhibit No. TMM 2-R (Settlement 10c.)

In his calculation of the estimated rate impact of his proposal to the PGC, Mr. Mierzwa includes the \$300,000 fixed credit. Columbia Statement No. 1-R, p. 11. However, the OCA’s requested modification would result in changes to the EBS Option 1 cost structure that would constitute a material change to the EBS program. Columbia St. No. 2-R, p. 4. EBS Option 1 is based upon the exclusion of incremental capacity acquired to provide the service. At the time EBS Option 1 was established, Columbia agreed that it would be at risk of recovery of the excluded costs. Columbia Exhibit No. TMM-4R, p. 5. OCA now proposes to change that risk, by assigning a new, more expensive capacity to EBS Option 1. Given this material change, as provided in the Settlement of the 2021 Tariff Filing, Columbia explained in rebuttal that, if OCA’s proposed modifications are adopted as a result of this proceeding, it would exercise its right to propose that the additional \$300,000 credit to the PGC be discontinued. Columbia St. No. 2-R, p. 4. OCA offered no argument in opposition to this proposal in surrebuttal.

IV. CONCLUSION

WHEREFORE, for all the foregoing reasons, Columbia Gas of Pennsylvania, Inc. respectfully requests that the ALJ and Commission reject the Office of Consumer Advocate's proposal to change the methodology for determining the capacity to be excluded from the PGC related to EBS Option 1 and permit Columbia to continue to exclude from the PGC the cost of the incremental storage and transportation capacity that was specifically acquired to provide the service in accordance with the prior Commission-approved Settlement Agreement at Docket No. R-00016668.

Respectfully submitted,



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Proposed Findings of Fact

1. Prior to the adoption of Elective Balancing Service (“EBS”), Columbia provided an interruptible balancing service for General Distribution Service (“GDS”) transportation service customers using then-available PGC assets to manage deliveries. Columbia St. No. 1-R, pp. 2-3.

2. EBS was developed to provide substantial enhancements to the balancing service that Columbia had provided its GDS customers prior to the inception of EBS. Columbia St. No. 1-R, pp. 2-3.

3. EBS provides GDS customers with two daily balancing options. Columbia St. No. 1-R, p. 3.

4. Customers electing EBS Option 1 can carry banks over from month to month. Under EBS Option 1, natural gas suppliers (“NGSs”) and customers are provided firm cold day and warm day Operational Flow Order (“OFO”)/Operational Matching Order (“OMO”) tolerances. Columbia St. No. 1-R, p. 3.

5. Under EBS Option 1, when cold day OFO/OMOs are issued, NGS or customer deliveries equal to or greater than 95% of actual (OMO) or estimated (OFO) demand are considered in compliance with the flow orders, provided that the customer has sufficient gas in its bank. Under warm day OFO/OMOs, NGS or customer deliveries less than or equal to 102.5% of actual (OMO) or estimated (OFO) demand are considered to be in compliance with the flow order, provided that the customer has sufficient room in its bank to accept the over deliveries. Columbia St. No. 1-R, p. 3.

6. Under EBS Option 1, NGS and customer access to banks is provided on a seasonal firm basis, recognizing the daily OFO/OMO limitations, as long as an NGS or customer has a positive bank balance. Columbia St. No. 1-R, p. 4.

7. Customers electing EBS Option 2 would continue with the fully interruptible nature of balancing prior to the development of EBS. Customers electing EBS Option 2 are cashed out monthly. A monthly cash out provides customers the opportunity to carry an intra-month bank, but this bank is cashed-out at the end of each month. There are no customers currently electing Option 2. Columbia St. No. 1-R, p. 3.

8. In order for Columbia to provide the firm balancing service under EBS Option 1, Columbia needed to acquire incremental firm storage and transportation capacity above the capacity that had been acquired to satisfy sales customers' needs. Columbia St. No. 1-R, p. 4. The Company acquired firm transportation and storage service from Equitrans. The Equitrans storage and transportation service provided a peak day deliverability of 19,130 Dth and 2,000,000 Dth of seasonal capacity. Columbia Exhibit No. TMM-3R.

9. On August 22, 2001, Columbia filed proposed tariff changes to implement EBS ("2001 Tariff Filing"). In the 2001 Tariff Filing, Columbia proposed that the costs of the incremental capacity acquired to provide EBS Option 1 be excluded from the PGC cost recovery mechanism. Columbia would offer a rate for EBS Option 1, and GDS customers could decide whether to elect the option, or elect EBS Option 2. No parties opposed this cost recovery mechanism. Columbia St. No. 1-R, pp. 4-5, 7; Columbia Exhibit TMM-1R.

10. The 2001 Tariff Filing was ultimately resolved by a Commission-approved Settlement. *See Pa. PUC et al. v. Columbia Gas of Pennsylvania, Inc.*, Docket No. R-00016668 (Order entered January 29, 2002). The Settlement modified several provisions in the 2001 Tariff Filing but did not modify the tariff provisions regarding the exclusion from the PGC of incremental capacity acquired to provide EBS Option 1. Columbia Exhibit No. TMM-2R.

11. The cost and rate recovery mechanisms agreed to in the 2001 Tariff Filing Settlement appear in Columbia's currently effective tariff. Columbia Exhibit No. JB-1R.

12. Since the adoption of EBS, Columbia has made one change to the capacity used for EBS Option 1. In Columbia's 2014 PGC case (Docket No. R-2014-2408268), the Company explained that it was terminating a portion of the Equitrans capacity and replacing that portion with DTI capacity in order to increase storage capacity in the State College market. Columbia St. No. 1-R, pp. 6-7.

13. The new DTI storage and transportation contract effective April 2014, for 4,800 Dth/day and seasonal contract quantity of 240,000 Dth offset a capacity reduction on Equitrans. The Equitrans capacity was reduced to 14,348 Dth/day from 19,130 Dth/day along with the seasonal capacity reduced to 1,500,000 Dth from 2,000,000 Dth. No party to that PGC proceeding opposed the change. Columbia St. No. 1-R, pp. 6-7.

14. Columbia could not provide the firm balancing afforded under EBS Option 1 without acquiring incremental interstate transportation and storage capacity. Columbia Statement No. 1-R, pp. 5-6; Columbia Exhibit Nos. TMM-1R; TMM-2R; TMM-3R; and TMM-4R.

15. Columbia prices EBS Option 1 based upon the cost of incremental Equitrans and DTI capacity acquired to provide the service. Columbia St. No. 2-R, p. 2.

16. The costs of the incremental capacity acquired to provide EBS Option 1 are excluded from PGC costs. Columbia Exhibit No. TMM-2R.

17. At the time EBS Option 1 was established, Columbia agreed that it would be at risk of recovery of the excluded costs from the GDS customers electing the service. Columbia St. No. 2-R, p. 2.; Columbia Exhibit No. TMM-4R, p. 5.

18. The Commission-approved Settlement of the 2001 Tariff Filing provides for a fixed annual credit of \$300,000 to the PGC. The Settlement further provides that if the Commission makes any material change to the terms of Rider EBS or any material change to the Tariff Rules Applicable to Distribution Service (“RADS”) Sections 3.6, 3.7, 3.8, 3.11, or 3.12, then any party may propose that the credit be modified. Columbia Exhibit No. TMM 2-R.

19. The Company uses the cost of the incremental Equitrans and DTI capacity to calculate the amount of EBS costs to be excluded from the PGC because these assets were specifically acquired for the purpose of providing EBS. Columbia St. No. 2-R, p. 3.

20. The Company operates its storage on a total system basis, based on location of storage and customer needs. Columbia Statement No. 1-R, p. 7.

21. Columbia uses all of the storage and transportation capacity it acquires to serve its customers across all market areas. Columbia St. No. 1-R, pp. 4, 10.

22. Columbia Gas Transmission (“TCO”) capacity gives Columbia greater ability to increase deliveries and adjust deliveries across its numerous TCO receipt points. Columbia St. No. 1, pp. 11-12, 24.

23. On July 31, 2020, TCO filed its currently pending rate case before FERC, and TCO’s proposed rate increase has gone into effect, subject to refund. Columbia Statement No. 1-R, p. 8.

24. Pipelines’ rates for transportation and storage capacity can change over time. Columbia St. No. 1-R, p. 9.

25. Replacing the cost of Equitrans and DTI capacity with the cost of TCO capacity in the EBS Option 1 pricing mechanism would reduce the capacity cost recovered from PGC

customers while increasing the cost allocated to EBS Option 1. Columbia Statement No. 2-R, p. 2.

26. Basing EBS Option 1 on TCO capacity costs would increase EBS costs by approximately [BEGIN CONFIDENTIAL] \$614,335 [END CONFIDENTIAL] based upon an assumption that TCO's currently pending rate increase is resolved at an average of proposed rates and previously effective rates. Columbia Statement No. 1-R, p. 8.

27. Historically, TCO's storage and transportation costs have been lower than that of Equitrans and DTI. Over the past decade alone, the costs excluded from the PGC related to EBS Option 1, based upon Equitrans or Equitrans/DTI capacity costs, has been nearly [BEGIN CONFIDENTIAL] \$2.5 Million [END CONFIDENTIAL] higher than if the rates had been based upon TCO capacity. Columbia Statement No. 1-R, pp. 8-9.

28. Basing the EBS cost and corresponding PGC exclusion on Equitrans and DTI capacity has historically favored PGC customers. Columbia Statement No. 1-R, pp. 8-9.

29. There are no new or changed circumstances that would warrant modifying Columbia's existing Commission-approved mechanism for excluding from the PGC incremental Equitrans and DTI capacity that was acquired to provide EBS Option 1 service as provided for in its tariff, and which was agreed to in the 2001 Tariff Filing Settlement and approved by the Commission. Columbia Statement No. 1-R, p. 7.

Proposed Conclusions of Law

1. The party seeking a rule or order from the Commission has the burden of proof. 66 Pa.C.S. § 332(a).
2. A litigant's burden of proof before administrative tribunals as well as before most civil proceedings is satisfied by establishing a preponderance of evidence which is substantial and legally credible. *Samuel J. Lansberry, Inc. v. Pa. P.U.C.*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990).
3. The preponderance of evidence standard requires proof by a greater weight of the evidence. *Cmwlth. v. Williams*, 557 Pa. 207, 732 A.2d 1167 (1999).
4. The preponderance of the evidence standard is satisfied by presenting evidence more convincing, by even the smallest amount, than that presented by another party. *Brown v. Cmwlth.*, 940 A.2d 610, 614 n.14 (Pa. Cmwlth. 2008).
5. If the applicant sets forth a prima facie case, then the burden shifts to the opponent. *McDonald v. Pennsylvania Railroad Co.*, 348 Pa. 558, 36 A.2d 492 (1940).
6. Establishing a prima facie case requires either evidence sufficient to make a finding of fact permissible or evidence to create a presumption against an opponent which, if not met, results in an obligatory decision for the proponent. Once a prima facie case on a point has been established, if contrary evidence is not presented, there is no requirement that the applicant produce additional evidence in order to sustain its burden of proof. *See, e.g., District of Columbia's Appeal*, 343 Pa. 65, 21 A.2d 883 (1941); *Application of Pennsylvania Power & Light Co.*, Doc. Nos. A-110500F0196, et al., 1994 Pa. PUC LEXIS 65 (Oct. 21, 1994).
7. A party that raises an issue that is not included in a public utility's filing bears the burden of proof. *Pa. PUC v. Metropolitan Edison Co., et al.*, Docket Nos. R-00061366, et al., 2007 Pa. PUC LEXIS 5 (Order entered Jan. 11, 2007).

8. Tariff provisions previously receiving Commission approval are just and reasonable, and the burden is on the proponent to prove that the change is warranted by demonstrating a significant change in circumstances. *Zucker v. Pa. PUC*, 401 A.2d 1377, 1379 (Pa Cmwlth. 1979). The absence of such a showing establishes prima facie evidence of the facts found in the prior order. *Id.*

9. Where there is a complaint about an existing rate, there is a strong presumption that the Commission-approved rate is just and reasonable. 66 Pa. C.S. § 316; *Popowsky v. Pa. PUC*, 669 A.2d 1029, 1037 (Pa. Cmwlth. 1995), *rev'd in part on other grounds*, 706 A.2d 1197 (Pa. 1997).

10. A party seeking to evade the effect of an existing tariff provision “carries a very heavy burden to prove that the facts and circumstances have changed so drastically as to render application of the tariff provision unreasonable.” *Shenango Twp. Bd. of Supervisors v. Pa. PUC*, 686 A.2d 910 (Pa Cmwlth. 1996).

Proposed Ordering Paragraphs

1. Columbia Gas of Pennsylvania, Inc.'s methodology for excluding from the PGC the cost of incremental capacity acquired to provide Elective Balancing Service Option 1 for General Service transportation customers, as set forth in its currently effective tariff and previously approved by the Commission, is reasonable and shall be permitted to continue.

2. The Office of Consumer Advocate's proposal to change Columbia Gas of Pennsylvania, Inc.'s methodology for excluding from the PGC the cost of firm transportation and storage capacity used to provide Elective Balancing Service Option 1 is denied.