**PENNSYLVANIA**

**PUBLIC UTILITY COMMISSION**

**Harrisburg, PA 17120**

Public Meeting held December 16, 2021

Commissioners Present:

Gladys Brown Dutrieuille, Chairman

John F. Coleman, Jr., Vice Chairman

Ralph V. Yanora

Pennsylvania Public Utility Commission R-2021-3024296

Office of Consumer Advocate C-2021-3025078

Office of Small Business Advocate C-2021-3025257

Columbia Industrial Intervenors C-2021-3025600

The Pennsylvania State University C-2021-3025775

Richard C. Culbertson C-2021-3026054

Ronald Lamb C-2021-3027217

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 are the following matters: (1) the Exceptions filed by Richard C. Culbertson on October 20, 2021, to the Recommended Decision of Administrative Law Judge (ALJ) Mark A. Hoyer served on October 12, 2021, in the above-captioned general rate increase proceeding; and (2) the Joint Petition for Settlement (Joint Petition or Settlement), filed on September 7, 2021, by Columbia Gas of Pennsylvania, Inc. (Columbia or the Company), the Commission’s Bureau of Investigation and Enforcement (I&E), the Office of Consumer Advocate (OCA), the Office of Small Business Advocate (OSBA), Columbia Industrial Intervenors (CII), Shipley Choice, LLC d/b/a Shipley Energy Company (Shipley) and the Retail Energy Supply Association (RESA) (collectively, Shipley/RESA), the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA), the Pennsylvania State University (PSU), and the Pennsylvania Weatherization Providers Task Force (Task Force) (collectively, the Joint Petitioners).[[1]](#footnote-1) On October 29, 2021, Columbia filed Replies to Exceptions.

For the reasons stated below*,* we shall deny Mr. Culbertson’s Exceptions, in major part, and grant Mr. Culbertson’s Exceptions, in limited part; adopt the Recommended Decision; and approve the Joint Petition, without modification, as set forth in detail in this Opinion and Order.

# I. History of the Proceeding

On March 30, 2021, Columbia filed Supplement No. 325 to its Tariff Gas – Pa. P.U.C. No. 9. Supplement No. 325 was issued to be effective for service rendered on or after May 29, 2021. Supplement No. 325 proposed changes to Columbia’s distribution base rates designed to produce an increase in annual revenues of approximately $98.3 million based upon data for a fully projected future test year (FPFTY) ending December 31, 2022.

On April 7, 2021, I&E filed a Notice of Appearance. Complaints were filed by the OCA, at Docket No. C-2021-3025078, on April 6, 2021; the OSBA, at Docket No. C-2021-3025257, on April 15, 2021; CII, at Docket No. C-2021-3025600, on April 29, 2021; PSU, at Docket No. C-2021-3025775, on May 7, 2021, Mr. Culbertson, at Docket No. C-2021-3026054, on May 25, 2021 (Rate Complaint); and Mr. Lamb, at Docket No. C-2021-3027217, on July 12, 2021.[[2]](#footnote-2)

Petitions to Intervene were filed by CAUSE-PA on April 12, 2021, and Task Force on May 3, 2021. On May 5, 2021, Shipley/RESA filed an Amended Petition to Intervene to amend a Petition to Intervene previously filed by Shipley and Interstate Gas Supply, Inc. (IGS) by substituting RESA in place of IGS.

By Order entered May 6, 2021 (*May 2021 Order*), the Commission suspended Columbia’s Supplement No. 325 by operation of law until December 29, 2021. The *May 2021 Order* instituted an investigation to determine the lawfulness, justness, and reasonableness of the rates, rules, and regulations contained in the proposed Supplement and assigned the case to the Office of Administrative Law Judge for the prompt scheduling of such hearings as may be necessary culminating in the issuance of a Recommended Decision.

A prehearing conference was held on May 17, 2021. Columbia, I&E, the OCA, the OSBA, CII, PSU, CAUSE-PA, Shipley/RESA, and Task Force were represented at the conference.

Two public input hearings were held on June 14, 2021. Two additional public input hearings were held on June 16, 2021. Three witnesses testified at these hearings. *See* R.D. at 13.

On July 28, 2021, Columbia filed a Motion for a Protective Order. On August 3, 2021, a Protective Order was issued.

An evidentiary hearing was held on August 4, 2021, for the purpose of admitting evidence into the record and allowing *pro se* Complainant Mr. Culbertson to conduct cross-examination of Columbia’s witness, Mark Kempic, President of Columbia. Subsequently, Columbia informed the ALJ that the Parties, except Mr. Culbertson and Mr. Lamb, agreed to a settlement in principle of all issues, excluding the issues Mr. Culbertson raised.

On August 25, 2021, Mr. Culbertson and Columbia filed Main Briefs.

On August 26, 2021, Columbia filed a Motion to Strike, requesting that pages 34-42 of Mr. Culbertson’s Main Brief be stricken. Mr. Culbertson filed a response to Columbia’s Motion to Strike on August 30, 2021. On September 2, 2021, the ALJ issued the Tenth Interim Order granting Columbia’s Motion to Strike.

On September 7, 2021, the Joint Petitioners filed the Settlement and Statements in Support of the Settlement. Also on September 7, 2021, Mr. Culbertson and Columbia filed Reply Briefs.

On September 8, 2021, the ALJ issued the Eleventh Interim Order directing that any objections or comments to the Settlement be filed and served by September 17, 2021.

On September 24, 2021, Mr. Culbertson filed a Motion to Properly Respond to the Black Box Settlement Agreement Among the Participants (excluding Culbertson) Rate Case. On September 29, 2021, the ALJ issued the Twelfth Interim Order denying Mr. Culbertson’s Motion and closing the record.

 In the Recommended Decision, served on October 12, 2021, ALJ Hoyer approved the Joint Petition, without modification, finding that the Joint Petition is in the public interest, consistent with the Public Utility Code (Code), and is supported by substantial evidence.

 As previously noted, Mr. Culbertson filed Exceptions on October 20, 2021. On October 22, 2021, Columbia, I&E, the OCA, CII, and PSU each filed letters indicating they would not be filing Exceptions.

 On October 29, 2021, Columbia filed Replies to Exceptions. I&E, CII, Shipley/RESA, and PSU each filed letters indicating they would not be filing Replies to Exceptions.

# II. Background

Columbia is a public utility and natural gas distribution company which provides natural gas distribution, sales, transportation and/or supplier of last resort services to approximately 436,000 customers in portions of twenty-six counties of Pennsylvania. Columbia St. 1 at 34; Joint Petition at 2.

In its original filing, Columbia proposed rates designed to result in an increase in annual distribution operating revenues of approximately $98.3 million, an increase of approximately 19.91% over existing rates. If approved, the total average monthly bill of a residential customer using 70 therms of gas per month would have increased from $100.77 to $115.37. Under the Settlement, the proposed increase in Columbia’s rates would result in additional annual distribution operating revenues of approximately $58.5 million, an increase of approximately 11.87% over existing rates. If the Commission approves the settlement without modification, the total average monthly bill of a residential customer using 70 therms of gas per month would increase from $100.77 to $109.10. Joint Petition at 4-5.

# III. Discussion

As a preliminary matter, we note that the ALJ reached twelve Conclusions of Law. R.D. at 64-66. We will adopt the Conclusions of Law unless they are overruled expressly or by necessary implication.

Additionally, as we proceed in our review of the various positions espoused in this proceeding, we are not required to consider expressly or at great length each and every contention raised by a party to our proceedings. *University of Pennsylvania* *v. Pa. PUC*, 485 A.2d 1217, 1222 (Pa. Cmwlth. 1984). Any exception or argument that is not specifically addressed herein shall be deemed to have been duly considered and denied without further discussion.

## A. Legal Standards

### 1. General Rate Increase Proceedings

The purpose of this investigation is to establish rates for Columbia’s customers that are “just and reasonable” pursuant to Section 1301 of the Code, 66 Pa. C.S. § 1301.

The Commission applies certain principles in deciding any general rate increase case brought under Section 1308(d) of the Code, 66 Pa. C.S. § 1308(d). A public utility seeking a general rate increase is entitled to an opportunity to earn a fair rate of return on the value of the property dedicated to public service. *Bluefield Water Works and Improvement Co. v. Public Service Comm’n of West Virginia*, 262 U.S. 679 (1923) (*Bluefield*). In determining what constitutes a fair rate of return, the Commission is guided by the criteria set forth in *Bluefield, supra,* and *Federal Power Comm’n v. Hope Natural Gas Co.*, 320 U.S. 591 (1944) (*Hope Natural Gas)*. In *Bluefield*, the United States Supreme Court stated:

A public utility is entitled to such rates as will permit it to earn a return on the value of the property which it employs for the convenience of the public equal to that generally being made at the same time and in the same general part of the country on investments in other business undertakings which are attended by corresponding risks and uncertainties; but it has no constitutional right to profits such as are realized or anticipated in highly profitable enterprises or speculative ventures. The return should be reasonably sufficient to assure confidence in the financial soundness of the utility and should be adequate, under efficient and economical management, to maintain and support its credit and enable it to raise the money necessary for the proper discharge of its public duties.

A rate of return may be too high or too low by changes affecting opportunities for investment, the money market and business conditions generally.

*Bluefield*,262 U.S. at 692-3.

The public utility seeking a Section 1308(d) general rate increase has the burden of proof to establish the justness and reasonableness of every element of the rate increase request. Regarding the burden of proof in a proceeding involving a proposed increase in rates by a public utility, Section 315(a) of the Code provides:

1. **Reasonableness of rates.—**In any proceeding upon the motion of the commission, involving any proposed or existing rate of any public utility, or in any proceedings upon complaint involving any proposed increase in rates, the burden of proof to show that the rate involved is just and reasonable shall be upon the public utility. The commission

shall give to the hearing and decision of any such proceeding preference over all other proceedings, and decide the same as speedily as possible.

66 Pa. C.S. § 315(a).

However, “a party proposing an adjustment to a ratemaking claim bears the burden of presenting some evidence or analysis . . . tending to demonstrate the reasonableness of the adjustment.” *Pa. PUC v. Philadelphia Gas Works*, Docket No.

R-2017-2586783 (Order entered November 8, 2017) (*PGW*) at 12. It is well-established that “while a utility has the burden of proving the justness and reasonableness of its proposed rates, it cannot be called upon to account for every action absent prior notice” of a challenge. *Id.* “[T]he statutory burden of proof placed on the utility under Section 315(a) of the Code, 66 Pa. C.S. § 315(a), cannot reasonably be read to place the burden of proof on the utility with respect to an issue that the utility did not propose in its general rate case filing, and which, frequently, the utility would oppose.” *Pa. PUC v. PECO Energy Company – Electric Division*, Docket No. R-2018-3000164 (Order entered December 20, 2018)at 13.

### 2. Mr. Culbertson’s Claims

In this case, the issues reserved for litigation pertain to claims that Mr. Culbertson raised in his individual Complaint and which Columbia did not present in its filing. As the proponent of a rule or order, Mr. Culbertson bears the burden of proof pursuant to Section 332(a) of the Code, 66 Pa. C.S. § 332(a), which provides that the party seeking a rule or order from the Commission has the burden of proof in that proceeding. Mr. Culbertson must prove his case by “establishing a preponderance of evidence which is substantial and legally credible.” *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600 (Pa. Cmwlth. 1990), *alloc. denied,* 529 Pa. 654, 602 A.2d 863 (1992). That is, the Complainant’s evidence must be more convincing, by even the smallest amount, than that presented by the Company. *Se-Ling Hosiery, Inc. v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950).

### 3. The Settlement

In the instant proceeding, the Joint Petitioners have reached an accord on all the issues and claims that arose in this proceeding and submitted the Settlement for the Commission’s review and approval. The Commission has expressed a policy of encouraging settlements. *See* 52 Pa. Code §§ 5.231, 69.401. The Commission has stated that settlement results are often preferable to those achieved after a fully litigated proceeding. 52 Pa. Code § 69.401. A settlement in a proceeding may reduce or eliminate the substantial time, effort, and expense that otherwise may be used or incurred in litigating a proceeding.[[3]](#footnote-3) Rate cases, in general, are expensive to litigate and the reasonable costs of such litigation is an operating expense recovered in the rates approved by the Commission. This means that a settlement, which allows the parties to avoid or minimize the substantial costs of litigation, may yield potential savings for the Company’s customers. Thus, a settlement, whether full or partial, may directly benefit the named parties as well as indirectly benefit the customers of the public utility involved in the case. For this and other sound reasons, settlements are encouraged by long‑standing Commission policy.

Under this Settlement, the settlement revenue requirement is a “black box” amount. A “black box” settlement means that the parties were not able to agree on each and every element of the revenue requirement calculation. The Commission has recognized that “black box” settlements can serve an important purpose in reaching consensus in rate cases:

We have historically permitted the use of “black box” settlements as a means of promoting settlement among the parties in contentious base rate proceedings. Settlement of rate cases saves a significant amount of time and expense for customers, companies, and the Commission and often results in alternatives that may not have been realized during the litigation process. Determining a company’s revenue requirement is a calculation involving many complex and interrelated adjustments that affect expenses, depreciation, rate base, taxes and the company’s cost of capital. Reaching an agreement between various parties on each component of a rate increase can be difficult and impractical in many cases.

*Pa.* *PUC v. Peoples TWP LLC*, Docket No. R-2013-2355886 (Order entered December 19, 2013) (*Peoples TWP)*, at 28 (citations omitted).

In order to accept a settlement, the Commission must determine that the proposed terms and conditions of the settlement are in the public interest. *Pa. PUC v. York Water Co.*, Docket No. R‑00049165 (Order entered October 4, 2004); *see generally* *Pa. PUC v. C. S. Water and Sewer Assoc.*, Docket Nos. R-881147, *et al*., 74 Pa. P.U.C. 767 (Order entered July 22, 1991) (*CS Water and Sewer*). The focus of the inquiry for determining whether a proposed settlement should be approved is whether the proposed terms and conditions foster, promote and serve the public interest. *See Pa. PUC, et al. v. City of Lancaster – Bureau of Water*, Docket Nos. R-2010-2179103, *et al*. (Order entered July 14, 2011), citing *Warner v. GTE North, Inc*., Docket No. C‑00902815 (Order entered April 1, 1996) and *CS Water and Sewer.* Moreover, Section 332(a) of the 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. Consequently, in this proceeding, the Joint Petitioners have the burden of showing that the terms and conditions of the Settlement are in the public interest.

### 4. Substantial Evidence

Finally, a Commission decision must be supported by substantial evidence in the record. “Substantial evidence” is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & Western Ry. Co. v. Pa. PUC*,489 Pa. 109, 413 A.2d 1037 (1980); *Erie Resistor Corp. v. Unemployment Comp. Bd. of Review*, 166 A.2d 96 (Pa. Super. 1961); *Murphy v. Comm. Dept. of Public Welfare, White Haven Center*, 480 A.2d 382 (Pa. Cmwlth. 1984).

## B. Joint Petition for Settlement

### 1. Terms and Conditions of the Settlement

As previously indicated, the Settlement is a “black box” agreement, which does not specifically identify the resolution of certain disputed issues. At the same time, the Settlement does represent a full settlement of all issues and concerns raised by the Joint Petitioners in the above-captioned general base rate proceeding. The Settlement provides for increases in rates designed to produce $58.5 million in additional annual base rate operating revenues, as set forth in the *pro forma* level of operations for the twelve-month period ending December 31, 2022, attached to the Joint Petition as Appendix A and the proof of revenues attached to the Joint Petition as Appendix B. The new rates are scheduled to go into effect on December 29, 2021. The *pro forma* tariff supplement that incorporates the rate increases and the proposed tariff changes resulting from the Settlement is attached to the Joint Petition as Appendix C. Appendices D through L represent the Statements in Support of Columbia, I&E, the OCA, the OSBA, CAUSE-PA, CII, PSU, Task Force, and Shipley/RESA, respectively.

The Joint Petitioners state that the Settlement was achieved after conducting extensive discovery and engaging in numerous settlement discussions. Settlement at ¶ 49. They further state that the Settlement terms and conditions constitute a reasonably negotiated compromise on the issues addressed therein. *Id.* at ¶¶ 18, 51, 56‑57. The Joint Petitioners also agree that the Settlement is in the public interest for several reasons including: the reduced base rate increase, the reduced administrative burden and cost of proceeding to uncertain litigation, and the reasonable revenue allocation. *Id.* at ¶¶ 18, 31-32, 50.Furthermore, the Settlement addresses several low-income customer issues to assist customers affected by the ongoing pandemic. *Id.* at ¶¶ 37-45; Statements in Support, Appendices D-L, generally.

The essential terms of the Settlement are set forth in Section III of the Joint Petition, which is shown below in full as it appears in the Joint Petition:

1. The following terms of this Settlement reflect a carefully balanced compromise of the interests of all the Joint Petitioners in this proceeding. The Joint Petitioners unanimously agree that the Settlement, which resolves all but Mr. Culbertson's issues in this proceeding, is in the public interest. The Joint Petitioners respectfully request that the 2021 Base Rate Filing, including those tariff changes included in Supplement No. 325 and specifically identified in Appendix “C” attached hereto, be approved subject to the terms and conditions of this Settlement specified below:

**A. REVENUE REQUIREMENT**

19. Rates will be designed to produce an increase in operating revenues of $58.5 million over current base rates based upon the pro forma level of operations for the twelve months ended December 31, 2022.

20. As of the effective date of rates in this proceeding, Columbia will be eligible to include plant additions in the DSIC once eligible account balances exceed the levels projected by Columbia at December 31, 2022. The foregoing provision is included solely for purposes of calculating the DSIC, and is not determinative for future ratemaking purposes of the projected additions to be included in rate base in a FPFTY filing.[[4]](#footnote-4)

21. For purposes of calculating its DSIC, Columbia shall use the equity return rate for gas utilities contained in the Commission's most recent Quarterly Report on the Earnings of Jurisdictional Utilities and shall update the equity return rate each quarter consistent with any changes to the equity return rate for gas utilities contained in the most recent Quarterly Earnings Report, consistent with 66 Pa. C.S.

§ 1357(b)(3), until such time as the DSIC is reset pursuant to the provisions of 66 Pa. C.S. § 1358(b)(1).

22. Columbia will continue to use normalization accounting with respect to the benefits of the tax repairs deduction.

23. Columbia also will be permitted to continue to use normalization accounting with respect to the tax treatment of Section 263A mixed service costs.

 24. Columbia will be permitted to recover the amortization of costs related to the following:

1. Blackhawk Storage — Continuation of the previously-approved 24.5 year amortization of the total amount of $398,865 to be included on books and in rate base as a regulatory asset to reflect the total original cost that began on October 28, 2008.
2. Corporate Services OPEB-Related Costs — Continuation of the previously-approved amortization of the regulatory asset of $903,131 associated with the transition of NiSource Corporate Services Company from a cash to accrual basis for Other Post-Employment Benefits (“OPEBs”), over a ten-year period that began July 1, 2013.
3. Pension Prepayment — Continuation of the previously-approved ten-year amortization of $8,449,772.00 that began December 16, 2018. Any unamortized balance shall not be permitted to be included in rate base in future cases.
4. COVID-19 Related Uncollectible Accounts Expense — The Company agrees to discontinue the deferral of COVID-19 related Uncollectibles Accounts Expense as of the implementation dates of the rates contemplated by this Settlement, or earlier if directed by the Commission. The amount of $5,579,245 representing deferrals through December 31, 2020 shall be amortized over a five-year period beginning January 1, 2022. The Company shall introduce its claim for incremental uncollectible expenses subsequent to December 31, 2020 in its next base rate proceeding.

25. The revenue requirement agreed upon above also reflects a reduction to rate base for the excess Accumulated Deferred Income Taxes (“ADIT”) as of the end of the FPFTY resulting from the reduction of the Federal income tax rate to 21% pursuant to the Tax Cuts and Jobs Act of 2017. The Company agrees to continue such treatment in future base rate filings until the entire amount has been refunded.

26. As established in the settlement of Columbia's base rate proceeding at R-2012-2321748, Columbia will be permitted to continue to defer the difference between the annual OPEB expense calculated pursuant to FASB Accounting Standards Codification (“ASC”) 715, “Compensation — Retirement Benefits (SFAS No. 106) and the annual OPEB expense allowance in rates of $0. Only those amounts attributable to operation and maintenance would be deferred and recognized as a regulatory asset or liability. To the extent the cumulative balance recorded reflects a regulatory asset, such amount will be collected from customers in the next base rate proceeding over a period to be determined in that rate proceeding. To the extent the cumulative balance recorded reflects a regulatory liability, there will be no amortization of the (non-cash) negative expense and the cumulative balance will continue to be maintained.

1. Commencing with the effective date of rates, Columbia will deposit amounts in the OPEB trusts when the cumulative gross annual accruals calculated by its actuary pursuant to ASC 715 are greater than $0. If annual amounts deposited into OPEB trusts, pursuant to this Settlement, exceed allowable income tax deduction limits, any income taxes paid will be recorded as negative deferred income taxes, to be added to rate base in future proceedings.
2. On or before April 1, 2022, Columbia will provide the Commission’s Bureau of Technical Utility Services (“TUS”), I&E, OCA and OSBA an update to Columbia Exhibit No. 108, Schedule 1, which will include actual capital expenditures, plant additions, and retirements by month for the twelve months ending December 31, 2021. On or before April 1, 2023, Columbia will update Exhibit No. 108, Schedule 1 filed in this proceeding for the twelve months ending December 31, 2022. In Columbia’s next base rate proceeding, the Company will prepare a comparison of its actual revenue, expenses and rate base additions for the twelve months ended December 31, 2021. However, it is recognized by the Joint Petitioners that this is a black box settlement that is a compromise of Joint Petitioners’ positions on various issues.
3. Columbia will preserve and provide to I&E, OCA and OSBA as a part of its next base rate case the following: (1) all documentation supporting debt issued between this base rate case and the next base rate case; and (2) for each issuance the prevailing yield on U.S. utility bonds as reported by Bloomberg Finance L.P. for companies with a credit risk profile equivalent to that of NiSource Inc.
4. Tariff rates will go into effect on December 29, 2021.

**B. REVENUE ALLOCATION AND RATE DESIGN**

1. Class revenue allocation will be approximately as shown in Appendix “A”. Rate design for all classes shall be as shown in Appendix “B”. Revenue allocation and rate design reflect a compromise and do not endorse any particular cost of service study
2. The Residential customer charge will be set at $16.75/month.
3. Columbia’s proposal to continue its Pilot Weather Normalization Adjustment (“WNA”) mechanism until a final order is entered in the Company's first rate case filed after May 31, 2026 is approved. For informational purposes, the Company shall continue to maintain and provide to the OCA, I&E and OSBA by October 1 of each year all reports and records supporting the operation of its WNA for the preceding year, including the Company's monthly computation of the WNA and all data underlying the Company's monthly WNA computation.

 34. Columbia’s Revenue Normalization Adjustment (“RNA”) proposal has been

withdrawn without prejudice.

 35. Columbia's Federal Tax Reform Adjustment (“FTR”) Rider has been withdrawn without prejudice.

36. The Company’s Gas Procurement Charge (“GPC”) and Merchant Function Charge (“MFC”) shall be as filed by the Company.

**C. UNIVERSAL SERVICE AND CONSERVATION**

37. To assist with the unexpected need and possible depletion of customers’ savings resulting from the COVID-19 Pandemic, the Company will expand the budget for its Emergency Repair Fund, which provides for the repair and replacement of faulty equipment for low-income homeowners, from $600,000 to $700,000 per year, for the years 2022 and 2023. The Company will recover the actual costs through the Rider USP which has an annual true up.

1. The Company will develop remedies for exits from CAP relating to the failure to recertify. The Company will continue to automatically re-enroll customers into the Company's Customer Assistance Program (“CAP”) when they move from one address to another within the Company’s service territory. The Company will report to the Bureau of Consumer Services the affirmative steps it will take to reduce the percentage of exits attributable to a failure to recertify within 60 days of the Commission-approved order in this proceeding.
2. The Company will develop an outreach campaign to promote existing customer assistance programs and all available resources. The campaign will include TV and social media ads, electronic and written materials, and a Targeted Outreach component providing services to customers with household incomes below 50% of poverty that have not received available assistance. The Targeted Outreach will be provided by a third-party contractor who will initiate contact with customers using Company lists of income eligible customers with high arrears as well as referrals from community members and Customer Service Representatives. The Targeted Outreach representative will work with existing resource administrators to make the customers aware of the available assistance and aid the customers in enrolling/applying to these assistance programs, as necessary. The Company will recover the cost through the Rider USP not to exceed $200,000 in 2022.
3. The Company will expand its Low Income Usage Reduction Program (“LIURP”) Health & Safety Pilot by re-allocating existing LIURP dollars to the pilot to provide services to more high usage households with health and safety issues which prevent delivery of usage reduction services. The Company will increase the LIURP budget for Health and Safety repairs from $200,000 to $400,000 in 2022 and will subsequently extend the pilot until approval of the Company’s next USECP plan with a maximum budget of $600,000 per year if homes are available.

The Company will modify the approved formula to include savings associated with CAP credit savings, thus providing for a higher Health & Safety allotment to remediate higher cost obstacles to weatherization such as full roofs and knob and tube re-wiring. The Company will provide a bi­annual report of the number of homes completed, in progress and identified along with associated costs.

1. The Company will increase its LIURP budget by $200,000 until the effective date of rates in Columbia’s next base rate proceeding.
2. In regard to the large carryover of LIURP funding from 2020, the Company will canvas participating Community Based Organizations (“CBOs”) to determine if they have the capacity to do additional work and will increase the LIURP allocations of the affirmatively responding CBOs who are on track to meet their existing allocations.
3. Columbia will amend its tariff language, as set forth in Appendix “C”, to indicate that all “confirmed low-income customers” as reported in the Commission's Universal Service Report with income at or below 150% FPL will not be charged a security deposit.
4. Columbia agrees to refund all deposits being held for “confirmed low-income customers” as reported in the Commission’s Universal Service Report within 60 days.
5. Columbia will review currently held security deposits on a semi-annual basis and issue a bill credit or refund for any deposit previously collected from a confirmed low-income customer.

**D. NATURAL GAS SUPPLIER ISSUE**

 46. If the Columbia Gas Transmission (“TCO”) rate case at Federal Energy Regulatory Commission Docket No. RP20-1060-000 materially changes shipper responsibilities on the pipe, i.e., daily balancing, Columbia agrees to convene a collaborative to take input on ways to address the changes in its tariff.

**E. OTHER**

47. Except as otherwise modified by this Settlement, the Company’s proposed tariff changes are approved, as set forth in Appendix “C”.

**F. RESERVED ISSUES FOR LITIGATION**

48. The issues raised by Richard C. Culbertson, an individual complainant in this proceeding, are reserved for litigation.

Joint Petition at 5-12.

In addition to the specific terms to which the Joint Petitioners have agreed, the Settlement contains other general terms and conditions typically found in settlements submitted to the Commission. Specifically, the Joint Petitioners agreed that the Settlement is conditioned upon the Commission’s approval of all the terms and conditions contained therein without modification. Joint Petition at ¶ 52. The Joint Petition establishes the procedure by which any of the Joint Petitioners may withdraw from the Settlement and proceed to litigate this case if the Commission should act to modify or reject the Settlement, and, in such event, the Settlement shall be null and void. *Id*. In addition, the Joint Petitioners asserted that although the Settlement is proffered to settle the instant case, it may not be cited as precedent in any future proceeding, except to the extent required to implement any term in the Settlement. *Id.* at ¶ 54. Additionally, the Joint Petitioners submitted that the Settlement is the result of compromise and is presented without prejudice to any position which any of the Joint Petitioners might adopt in any subsequent litigation of this proceeding or in future proceedings. *Id.* at

¶¶ 56-57. Moreover, the Joint Petitioners waived their right to file Exceptions in this case if the ALJ recommended that the Commission adopt the Settlement without modification. *Id*. at ¶ 59. However, the Joint Petitioners expressly submitted that they retain their rights to file briefs, exceptions, and replies to exceptions with respect to any issues raised by Mr. Culbertson that are reserved for litigation. *Id.*

### 2. Statements in Support of the Settlement

As previously mentioned, each of the nine Joint Petitioners filed individual Statements in Support of the Settlement. The Joint Petitioners submitted that the Settlement is in the best interest of the Company and its customers, that the Settlement is in the public interest, and that the Settlement should be approved without modification.

In its Statement in Support, Columbia stated that an extensive investigation of its filing was conducted, which included, in addition to informal discovery, Columbia responding to over 800 formal discovery requests, submission of multiple rounds of testimony by the Parties and accompanying exhibits, and extensive negotiations among the Joint Petitioners. Columbia Statement in Support at 2. Columbia claimed that because the Settlement was achieved among parties representing a wide array of stakeholder interests and having extensive experience in rate cases, the Settlement reflects a carefully balanced compromise of the interests of all the Joint Petitioners and, therefore, represents a reasonable resolution of all outstanding issues in this proceeding and is in the public interest. Columbia Statement in Support at 2-3.

In its Statement in Support, I&E stated that the rate increase of $58.5 million allowed in the Settlement is $39.8 million less than the $98.3 million initially requested by Columbia, or about a 40% reduction. I&E only agreed to this amount after I&E conducted an extensive investigation of Columbia’s filing and related information obtained through the formal and informal discovery process, including several public input hearings, and after I&E participated in numerous settlement conferences, to determine the amount of revenue Columbia needs to provide safe, effective, and reliable service to its customers. I&E Statement in Support at 1-2, 5-6.

In its Statement in Support, the OCA stressed the careful balance of the compromise reached. Specifically, with regard to the Revenue Requirement, the OCA emphasized that the Settlement represents a “black box” approach to all individual revenue requirement issues. OCA Statement in Support at 6. The OCA asserted that black box settlements avoid protracted litigation over the merits of individual revenue adjustments and allow the various stakeholders with diverse interests to reach a consensus that otherwise would not be possible if each individual revenue adjustment had to be agreed upon separately by all the parties. *Id.* Additionally, based on the OCA’s analysis of the Company’s filing, the proposed revenue increase under the Settlement represents an amount which, in the OCA’s view, would be within the range of likely outcomes in the event of full litigation of the case. *Id.* at 3, 6. The OCA asserted that the rate increase is reasonable and yields a result that is in the public interest while providing adequate funding to allow Columbia to continue to provide safe, adequate, and reliable service. *Id.* at 3-4. Finally, the OCA also noted that Columbia will discontinue the deferral of COVID-19 related Uncollectible Accounts Expense, which is in the public interest and further supports approval of the Settlement. *Id.* at 8.

In his Recommended Decision, the ALJ provided an extensive summary of the various positions of the Parties outlined in their Statements in Support and that discussion will not be repeated here. For a detailed summary of each Party’s position on the settled issues, please refer to the ALJ’s Recommended Decision at pages 13 through 58.

### 3. ALJ’s Recommendation

 The ALJ approved the Joint Petition, finding that it is in the public interest, consistent with the Code, and is supported by substantial evidence. R.D. at 1, 64, 66. The ALJ stated that the Revenue Requirement, Revenue Allocation, and Rate Design the Joint Petitioners agreed to are all within the range of likely outcomes if this matter had been fully litigated. The ALJ observed that the Settlement addressed Universal Service issues and CAP issues of heightened concern as a result of the COVID-19 pandemic and the economic hardships low-income customers have experienced. The ALJ noted that certain terms included in the Settlement are designed to improve outreach to low-income customers who may be eligible for help, to increase CAP enrollment of eligible customers, and to ensure that CAP customers remain enrolled in the program when changing residences or recertifying income eligibility. *Id*. at 64.

The ALJ reasoned that the Joint Petitioners represent many interests, stating that I&E, the OCA, and the OSBA represent the public interest, the interests of residential customers, and the interests of small business customers, respectively. The ALJ added that the Joint Petitioners also include CII, CAUSE-PA, PSU, Shipley/RESA and Task Force. The ALJ stated that to reach a settlement of all issues with the aforementioned parties in a base rate case is unusual, and the resulting Settlement represents hours of negotiation and a great deal of cooperation. The ALJ concluded that the Settlement addresses every contested issue in this proceeding, and since all of the diverse interests represented by the Joint Petitioners have been satisfied, the Settlement benefits Columbia’s customers and saves the Parties and the Commission the time and expense of fully litigating this matter. *Id*. at 62.

 In addition to addressing the Settlement, the ALJ also addressed the issues Mr. Culbertson raised in this proceeding. First, the ALJ stated that in his Main Brief, Mr. Culbertson asserted that an investigation to determine the reasonableness of Columbia’s requested rate increase, as required by the *May 2021 Order*, has not occurred. R.D. at 60 (citing Culbertson M.B. at 6-7). The ALJ found that Mr. Culbertson is incorrect in his assertion that there has been no investigation of Columbia’s proposed rate increase. The ALJ stated that “Columbia’s filing has been subject to an extensive and detailed investigation by eight other active parties in this proceeding.” R.D. at 60. The ALJ added that Columbia provided material supporting its claim consistent with the Commission’s Regulations and filing requirements for a proposed general rate increase in excess of $1 million. *Id*. (citing 52 Pa. Code § 53.53; Columbia Sts. 1-14; Columbia Exhs. 1-17; 101-117 and 400-414; Columbia Standard Data Responses COS 121, ROR 1‑23 and RR 1-55). The ALJ observed that Columbia has responded to over 800 formal interrogatories, including subparts, from the various Parties; multiple expert witnesses have reviewed Columbia’s filing information and the testimony of Columbia’s witnesses and have submitted their own testimony analyzing Columbia’s case; and four public input hearings and a technical evidentiary hearing were held to hear public opinion and to examine Columbia’s case. R.D. at 60.

Second, the ALJ addressed Mr. Culbertson’s argument that there is no reasonable assurance that the rates agreed to in the Settlement are just, reasonable and lawful. R.D. at 60 (citing Culbertson M.B. at 6-7). The ALJ concluded that Mr. Culbertson did not present any factual basis to overcome the substantial evidence of record supporting the rate increase agreed to by the Joint Petitioners. R.D. at 60. The ALJ reasoned that Mr. Culbertson presented no evidence challenging any specific aspect of Columbia’s case, including the detailed information provided regarding the Company’s rate base, capital investments, and O&M expenses. *Id*. at 61 (citing Columbia Exhs. 104, 108). The ALJ also reasoned that Mr. Culbertson did not challenge any of the evidence presented by the other active Parties to this proceeding. Third, the ALJ stated that Mr. Culbertson made allegations concerning Columbia’s audits, internal controls, rates, rate base, and safety but he failed to support those allegations with substantial evidence. R.D. at 61.

Finally, the ALJ stated that some of the issues Mr. Culbertson raised would not be addressed in the Recommended Decision because they are not relevant to this base rate filing. The ALJ noted that issues relating to discovery were raised previously and addressed in interim orders. The ALJ also noted that issues concerning gas service to another ratepayer, Mr. Hicks, who testified at a public input hearing are not relevant and cannot be raised by Mr. Culbertson because he is not an attorney and cannot represent another ratepayer. *Id*. The ALJ then observed that the primary issue underlying Mr. Culbertson’s Complaint in this proceeding is his belief that Columbia improperly disconnected an inactive service line at 1608 McFarland Road, Pittsburgh, Pennsylvania, and subsequently required Mr. Culbertson to replace the customer-owned portion of the service line before restoring service. *Id*. at 62 (citing Rate Complaint at 10, 25, 27-30, 40-46, 50, 53, 59). The ALJ reasoned that these same issues were fully litigated in a separate complaint proceeding initiated by Mr. Culbertson against Columbia that is currently pending before the Commission. R.D. at 62; *see Culbertson v. Columbia Gas of Pennsylvania., Inc.*, Docket No. F- 2017-2605797 (Initial Decision issued October 4, 2019).[[5]](#footnote-5)

Accordingly, the ALJ determined that Mr. Culbertson’s Rate Complaint should be dismissed because he “failed to provide substantial and legally credible evidence in support of his contentions regarding Columbia’s rates and service.” The ALJ also determined that Mr. Culbertson failed to prove with substantial evidence that Columbia violated the Code, the Commission’s Regulations or Orders, or Columbia’s Commission-approved tariff. R.D. at 59, 62.

### 4. Exceptions and Replies[[6]](#footnote-6)

#### a. Exception No. 1, Replies, and Disposition

In Mr. Culbertson’s Exception No. 1, he objects to the ALJ’s recitation of Columbia’s position that “Columbia’s filing has been subject to an extensive and detailed investigation by eight other active partiesin this proceeding.” Exc. at 5 (citing R.D. at 60, citing Columbia R.B. at 3-4). Mr. Culbertson argues that this statement is false, that Columbia’s financials have not been audited in accordance with generally accepted auditing standards or by a financial auditor or investigator, and that eight Parties did not conduct an extensive and detailed filing, emphasizing that Mr. Culbertson himself did not do a detailed and extensive investigation. Exc. at 5. Mr. Culbertson states that Columbia’s financials should have been audited in accordance with the “GAO [Government Accountability Office] Yellow Book” and the “Federal Acquisition Regulations.” *Id*. at 5, 7-8. Mr. Culbertson also argues that the Commission failed to conduct an investigation of the lawfulness, justness, and reasonableness of the rates in this case in accordance with the *May 2021 Order*. Exc. at 6.

In its Replies to Exceptions, Columbia states that as it explained in its Reply Brief, Mr. Culbertson’s argument that the Company’s rate filing was not properly investigated is unfounded. R. Exc. at 1 (citing Columbia R.B. at 3-4). Columbia avers that eight other active Parties conducted a thorough examination of Columbia’s proposals. Columbia also avers that: (1) its direct filing included thousands of pages of material supporting its claims in accordance with the Commission’s Regulations and filing requirements for a proposed general rate increase in excess of $1 million; R. Exc. at 1 (citing 52 Pa. Code § 53.53; Columbia Sts. 1-14; Columbia Exhs. 1-17; 101‑117, 400-414; Columbia Standard Data Responses COS 1-21, ROR 1-23 and RR 1‑55); (2) it responded to over 800 formal interrogatories, including subparts, from various Parties; (3) multiple expert witnesses acting on behalf of the other active Parties reviewed Columbia’s filing information and the testimony of Columbia’s witnesses and submitted their own testimony analyzing Columbia’s case; (4) several public input hearings and a technical evidentiary hearing were held to hear public opinion and to examine Columbia’s case; and (5) the active Parties engaged in settlement discussions that ultimately led to the Joint Petition which resolves all issues in this case, except for the issues raised in Mr. Culbertson’s Complaint. R. Exc. at 1-2. Accordingly, Columbia submits that the ALJ’s recommendation to approve the Joint Petition is based on an extensive evidentiary record, as well as the Statements in Support of the Settlement from each of the Joint Petitioners. *Id*. at 2 (citing Joint Petition, Appendices D-L).

In response to Mr. Culbertson’s argument that he did not conduct a “detailed and extensive” investigation, Columbia states that Mr. Culbertson was afforded the opportunity to do so. R. Exc. at 2. Columbia avers that Mr. Culbertson did fully participate in all aspects of this proceeding, including the following: participating in discovery, attending public input hearings and cross-examining witnesses, presenting written direct and surrebuttal testimony that was stipulated into evidence at the evidentiary hearing, cross-examining a Columbia witness, filing a Main Brief and a Reply Brief, participating in settlement negotiations with Columbia’s counsel, and having the opportunity to comment on the Joint Petition. *Id*. at 3.

In reply to Mr. Culbertson’s averment that Columbia’s financials have not been audited in accordance with the “GAO Yellow Book,” Columbia explains that the Company is subject to regular audits by the Commission, and the GAO Yellow Book applies only to audits of government agencies and is therefore not relevant to this proceeding. R. Exc. at 3 (citing Columbia M.B. at 6-7). Columbia continues that the “Federal Acquisition Regulations” are likewise irrelevant to this proceeding because Columbia does not engage in procurement for the federal government. R. Exc. at 3.

Further, Columbia contends that Mr. Culbertson’s arguments are flawed because he confuses the concept of an “audit” with a rate investigation, and neither the Code nor the Commission’s Regulations direct an “audit” as part of a Section 1308(d), 66 Pa. C.S. § 1308(d), rate filing and investigation. Nevertheless, Columbia asserts that its proposed rates, policies, and procedures have been thoroughly examined by experts in the fields of accounting, fair return, rate design, low income programs, and other relevant matters. Columbia states that the active Parties examined the Company’s current rates and proposed rates, and the Settlement provides for certain changes to Columbia’s current tariff terms, thus demonstrating that current rates have been investigated. R. Exc. at 4.

Upon review, we shall deny Mr. Culbertson’s Exception. We find that the record demonstrates that in addition to the testimony and exhibits Columbia presented in support of its filing, Columbia’s filing has been subject to an extensive and detailed investigation by eight other active Partiesin this proceeding: I&E, the OCA, the OSBA, Shipley/RESA, CAUSE-PA, CII, PSU, and the Task Force. These Parties engaged in extensive discovery with the Company, had their expert witnesses review Columbia’s filing and testimony, submitted direct, rebuttal, and surrebuttal testimony analyzing Columbia’s case; were represented by counsel at the evidentiary hearing in this proceeding during which their various testimony and exhibits were admitted into the record, and engaged in settlement discussions that resulted in the Settlement of all of the issues in this proceeding, except those raised by Mr. Culbertson.

As we have stated in prior decisions,

In the context of a general rate increase case such as this one, the Commission is aided by the active participation of entities representing various subgroups of the entire public. A number of these active participants have a statutorily imposed obligation to provide this representation, while others are self-created entities choosing to represent a delineated subgroup. Taken as a whole, these active participants cover the entire spectrum of the public whose welfare is to be protected.

 The OCA is statutorily charged with the duty of representing “the interests of consumers”, *i.e.*, individual ratepayers, “in any matter properly before the commission,” such as the instant general rate increase case. 66 Pa. C.S.

§ 3206(a). The OSBA is statutorily charged with the duty of representing “the interests of small business consumers, in any matter properly before the commission,” such as the instant general rate increase case. 66 Pa. C.S. § 3206(b). I&E is statutorily charged with taking “appropriate enforcement actions, including rate proceedings . . . to insure compliance with this title [Title 66, Pennsylvania Consolidated Statutes], commission regulations and orders.” 66 Pa. C.S. § 308.2.(a)(11).

One could argue that these three entities alone constitute representation of the entire public whose welfare is to be protected.

*Pa. PUC v. UGI Utilities, Inc. – Electric Division*, Docket No. R-2021-3023618 (Order entered October 28, 2021) (*UGI Utilities*), at 37-38. All three of these entities, frequently described as the “public advocates,” actively participated in this proceeding, and all three participated in the negotiation of the Settlement contained in the Joint Petition and have stated their support for its adoption by the Commission. *See* OCA Statement in Support, OSBA Statement in Support, and I&E Statement in Support.

The other entities who actively participated in this case represent other subgroups of the public as a whole. For instance, CAUSE-PA is an unincorporated association of low-income individuals that advocates to enable consumers of limited income in the Commonwealth of Pennsylvania to connect to and maintain affordable water, electric, heating, and telecommunications services. The Task Force is a Pennsylvania non-profit corporation and statewide association of thirty-seven organizations providing utility assistance and energy conservation services in each of Pennsylvania’s sixty-seven counties. RESA is a trade association of retail energy suppliers dedicated to promoting efficient, sustainable, and customer-oriented competitive retail markets. Shipley is a licensed natural gas supplier providing natural gas supply service using Columbia’s jurisdictional facilities. CII is an ad hoc group of energy-intensive customers receiving service from Columbia under both sales and transportation rate schedules. PSU is a major customer of Columbia for natural gas service for separate accounts under Large Distribution Service, Small Distribution Service, and Residential Sales Service. Together, these entities represent low-income individuals and large commercial customers, either individually or collectively. Each of them has stated that the public interest, from their perspective, is protected by the Settlement contained in the Joint Petition. *See* CAUSE-PA Statement in Support, CII Statement in Support, PSU Statement in Support, Task Force Statement in Support, and Shipley/RESA Statement in Support.

Moreover, Mr. Culbertson was provided with the opportunity to be heard on his claims and to fully participate in this proceeding. Mr. Culbertson participated in discovery, attended the public input hearings during which he asked witnesses questions, presented written direct and surrebuttal testimony that was stipulated into evidence at the evidentiary hearing, cross-examined Columbia witness Mr. Kempic, and filed a Main Brief and a Reply Brief.

Accordingly, we conclude that the investigation conducted in this case was proper and was similar to investigations conducted in other recent Section 1308(d) general rate increase proceedings to ensure that a public utility’s rates are just and reasonable. *See* *UGI Utilities*; *Pa. PUC v. Philadelphia Gas Works*, Docket No. R‑2020‑3017206 (Order entered November 19, 2020); *Pa. PUC v. Columbia Water Company*, Docket No. R-2017-2598203 (Order entered March 1, 2018). As Columbia has explained, the GAO Yellow Book and the “Federal Acquisition Regulations” do not apply to Commission rate investigations.

Under the Code, the Commission is responsible for ensuring that a public utility’s base rates are just and reasonable and not unduly discriminatory. 66 Pa. C.S.

§§ 1301, 1304. We explained the Commission’s process for determining just and reasonable rates in *Pa. PUC v. Columbia Gas of Pennsylvania, Inc*., Docket No. R‑2020‑3018835 (Order entered February 19, 2021) (*Columbia February 2021 Order*), as follows:

“In determining just and reasonable rates, the PUC has discretion to determine the proper balance between interests of ratepayers and utilities…Further, the PUC is obliged to consider broad public interests in the rate-making process.” *Popowsky v. Pa. PUC*, 665 A.2d 808, 812 (Pa. 1995) (*Popowsky I*) (citations omitted); *see also* *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…”).

 Regarding our discretion in fixing just and reasonable rates, the Pennsylvania Supreme Court explained:

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

*Columbia February 2021 Order* at 42-43 (citations omitted). Finding that a proper investigation, which considered investor and the consumer interests, was conducted in this proceeding, we shall deny Mr. Culbertson’s Exception No. 1.

#### b. Exception No. 2, Replies, and Disposition

In his Exception No. 2, Mr. Culbertson contends the Commission should have disqualified the ALJ based on his Motion to Remove,[[7]](#footnote-7) and the ALJ should have disqualified himself because his impartiality was reasonably questioned. Mr. Culbertson relies on Section 319 of the Code, 66 Pa. C.S. § 319, and the canons of judicial ethics found in the Code of Judicial Conduct at 207 Pa. Code Chapter 33. Arguing the latter, Mr. Culbertson contends that the rules of judicial conduct require a judge to avoid impropriety, including the appearance of impropriety, and that a judge shall perform duties impartially, competently, and diligently. Describing the ALJ’s Recommended Decision as “a form of bad fruit from the poison tree” and “simply illegal,” Mr. Culbertson concludes that “[h]aving had a previous bad experience with [the ALJ], I was reasonably certain issues brought before [him] in this rate case would not be judged impartially. The complete record shows that to be correct.” Exc. at 15.

In its Replies to Exceptions, Columbia asserts first that by failing to preserve the issue by raising it in briefs, Mr. Culbertson has waived it on exception, as exceptions are intended to challenge findings in the Recommended Decision and not reargue motions, citing our Regulation at 52 Pa. Code § 5.533. Addressing the merits, Columbia describes Mr. Culbertson’s argument as “mere speculation and unsupported theories that do not constitute evidence of bias.” R. Exc. at 5 (citing Columbia’s Answer to Motion to Remove).

We reject Mr. Culbertson’s Exception No. 2 and agree that Mr. Culbertson has failed to substantiate his claim. Section 319 of the Code establishes by statute the code of ethics applicable to Commissioners and Administrative Law Judges of the Commission. The regulations governing judicial conduct cited by Mr. Culbertson are applicable to justices and judges of state courts, common pleas courts, the Philadelphia Municipal Court (except the Traffic Division), and all senior judges. 207 Pa. Code § 19‑1. Accordingly our decision will rely on the ethics provisions applicable to Mr. Culbertson’s claim involving the ALJ before the Commission as found in the Code, our Regulations under the Code, and applicable case law.

Though applicable to two different adjudicative bodies, in matters involving the Commission’s jurisdiction, the ethical standards imposed on adjudicators in utility proceedings are similar to those applied in the state and local court system. The Code requires that Commissioners and ALJs alike avoid actual as well as the appearance of impropriety and that they carry out their duties in a professional, impartial, and diligent manner. 66 Pa. C.S. § 319(a)(1),(2). The statute also establishes standards governing conduct by Commissioners and ALJs regarding, among others, financial, extra-curricular, and political affairs. 66 Pa. C.S. § 319(a)(8)-(11). In concert with statutory obligations under Section 319 of the Code, our Regulations also provide further direction regarding our ALJs, including their authority, restrictions on duties and activities, manner of conducting hearings, and disqualification. 52 Pa. Code §§ 5.481-5.486.

Other than obliquely referring to an alleged prior bad prior experience with the ALJ or his own personal opinions, in his Exceptions, Mr. Culbertson refers to no

evidence, in an affidavit or otherwise, of an actual or apparent impartiality or unprofessional conduct of the proceeding by the ALJ.[[8]](#footnote-8) In the Motion to Remove, Mr. Culbertson relied on the same authority cited in his Exceptions. Further, he argued that the ALJ cannot be impartial and independent because he is a Commission employee and he has, as alleged in the motion, a nexus to other cases before the Commission, one final and one pending.

We have previously addressed the standard for justifying recusal as follows:

To render a hearing unfair, the defect or practice complained of must be such as might lead to a denial of justice, or there must be an absence of one of the elements deemed essential to due process of law. 2 Am Jr. 2d, Administrative Law § 410. Unfairness is evident if the tribunal’s partiality or hostility goes too far toward the extreme of its authority, and its members engage in conduct such as heated, argumentative questioning of a party more characteristic of a prosecutor than of a neutral detached and impartial decision maker. *See Dayoub v. Commonwealth of Pennsylvania, State Dental Council & Examining Board*, 453 A.2d 751 (Pa. Cmwlth. 1982).

*Patton v. PPL Electric Utilities Corp.*, 2005 WL 1880603 (*Patton*) (quoting *Rosenblum v. Bell Atlantic-Pennsylvania, Inc.*, 1995 Pa. PUC LEXIS 79 at \*2).

In *Patton*, the complainant filed exceptions challenging the ALJ’s Initial Decision dismissing the complaint and, at the same time, filed a Motion to Recuse the ALJ. The complainant argued that an observation by the ALJ of the nature of the complainant’s argument was derogatory and outrageous. On review of the record, we determined that “the ALJ conducted himself at all times in a fair and neutral manner[,]” and in finding against the complainant, he “did so with references to the record of evidence before him and a thorough discussion of his findings.” *Id.* We find the same here.

We also note Mr. Culbertson’s lack of verified evidence. In this case, Mr. Culbertson’s references to the Code are supported by his assertions why he believes the ALJ could not reach an impartial and independent adjudication. However, we have previously ruled that recitation of the law “without proof of specific disqualifying acts, are tantamount to mere assertions” presenting insufficient grounds to remove an ALJ. *Mosso v. Peoples Natural Gas Co.*, 70 Pa. P.U.C. 146 (1989), 0089 WL 1646825 at 2. Further, “[t]o be disqualifying, personal bias must result in an opinion on the merits of a case not supported by the record.” *Re Pennsylvania Gas and Water Company*, 1991 Pa. PUC LEXIS 155 at \* 3-4 (citations omitted).

Mr. Culbertson’s averment of a prior bad decision from the ALJ also fails because prior adverse rulings by a decision-maker do not constitute grounds for recusal.

It is well established that adverse rulings, conclusions, opinions, and subjective findings are not a basis for recusal. Opinions are the culmination of a decision-maker’s deliberative process. … [I]n order to insure that decision-makers are free to say whatever needs to be said and to conclude what needs to be concluded, opinions are not normally proper evidence in support of recusal.

*Id.* at \* 8 (citations omitted).

We find no evidence to support a conclusion that the ALJ was compromised – in actuality or in appearance. The motion presents argument with neither accompanying affidavit, as required by 52 Pa. Code § 5.482(a), nor verification, and cannot be relied on as evidence sufficient to warrant granting of Mr. Culbertson’s Exception. Thus, Mr. Culbertson’s Exception lacks evidence to support his contention.

In addition, Columbia contends that Mr. Culbertson failed to brief the issue, and therefore, has waived it. R. Exc. at 5. Because it was not an issue preserved in briefing, in his Recommended Decision the ALJ does not address Mr. Culbertson’s specific claims of impartiality.[[9]](#footnote-9) By failing to preserve the issue in briefs, Mr. Culbertson has denied the ALJ the opportunity to provide his position for our consideration. Thus, notwithstanding our denial of the Exception because it is not warranted on the merits, we also find that by failing to seek interlocutory review of the issue as our Regulations allow, and then by failing to brief the issue as our Regulations require, Mr. Culbertson has not preserved it for our review.[[10]](#footnote-10)

#### c. Exception No. 3, Replies, and Disposition

In his Exception No. 3, Mr. Culbertson takes issue with many of the ALJ’s conclusions, all of which he argues under the rubric “[t]he big lie or the magic words? – ‘is in the public interest.’” Exc. at 15. Mr. Culbertson challenges the conclusion that the ALJ’s recommendation comports with “laws, regulations, standards, and contracts.” Exc. at 15-16 (citing *Hope Natural Gas*). Mr. Culbertson asserts “there is a recipe and formula for just and reasonable rates,” initially provided in the federal law he relies on, which includes consideration of not just contemporary investors and consumers but also social and economic costs. Exc. at 16. Mr. Culbertson then cites several additional sections of the Natural Gas Act, 15 U.S.C. § 717, *et seq*., setting forth his position of the proper manner of calculating costs to be considered in determining just and reasonable rates. Exc. at 16-17.

Next Mr. Culbertson challenges the “black box” nature of the Joint Settlement, comparing it to a “point spread” in sports betting and “[a] prognostication of actual legitimate cost” as a reliable ratemaking standard, concluding that “[b]lack box settlements are illegal.” *Id.* at 17. Mr. Culbertson claims that “[n]ot using the right recipe or process to reach just and reasonable costs and rates results in substandard or unlawful outcomes.” *Id.* at 18. In support, Mr. Culbertson relies on citations to federal regulations in the U.S. Code; Article VIII, Section 10, of the Pennsylvania Constitution; the Securities and Exchange Act of 1934, 15 U.S.C. § 78a, *et seq*.; Commonwealth Management Directives; and other non-specified generally accepted accounting and auditing practices. Exc.at 18-20. We also note that Mr. Culbertson challenges the “black box” nature of the settlement in his Exception No. 4, claiming, based on a Google search, that the description of the settlement as “black box” is not a “generally accepted definition,” is misrepresented in the Recommended Decision, and is an illegal prognostication under both state and federal law. *Id.* at 29, 30-31.[[11]](#footnote-11)

Finally, Mr. Culbertson contends that “the use of the phrase ‘is in the public interest’ in the Recommended Decision is “meant to be deceptive and to appease customers and the Commission,” because the underlying investigation supporting the Joint Settlement did not include thorough documentation of the ALJ’s review of existing rates.” *Id.* at 20. In support, Mr. Culbertson includes in his Exceptions a table contained in his Rate Complaint and briefs in which he presents his comparison of the rate base of Columbia’s affiliates in other jurisdictions that he contends is “substantial evidence to not raise rates” because that table “outweighs Columbia’s 10 volume submission of why the rates should be increased.” *Id.* at 22.

Columbia responds that Mr. Culbertson’s criticisms are unfounded. First, noting his reliance on federal law, Columbia states that as a Pennsylvania natural gas distribution company, it is subject to regulation primarily, and specifically with regard to intrastate sales, by the Commission under the Code and not the Federal Energy Regulatory Commission under the Natural Gas Act. R. Exc. at 6.

Next, relying on several prior past Commission decisions and quoting our recent decision in *Pa. PUC v. Pike County Light & Power Company – Electric*, Docket No. R-2020-3022135 (Order entered July 21, 2021) (*Pike County Light & Power*), Columbia contends that the Commission has historically relied on “black box” settlements as important tools to resolve rate cases. R. Exc. at 6-7.

In response to Mr. Culbertson’s contention that the Settlement the ALJ recommended to the Commission does not consider actual legitimate costs, Columbia contends that Mr. Culbertson “failed to present substantial and legally credible evidence” addressing Columbia’s rate base or expenses. R. Exc. at 8. Relying on the ALJ’s analysis of the Settlement in his Recommended Decision, Columbia refers to the substantial evidence from the other active Parties to the case and concurs with the ALJ’s conclusion that Mr. Culbertson “offered no factual evidence or arguments to rebut the substantial evidence of record” from those Parties. *Id.*

As for Mr. Culbertson’s cited legal support, Columbia responds that several authorities, including the Pennsylvania Constitution, Pennsylvania Management Directives, and sections of federal law and regulations, are neither relevant nor supportive. *Id.* at 8-9.

Finally, as to Mr. Culbertson’s challenges to its existing rates or his calculation of affiliates’ rate bases in other states, Columbia refers to its explanation in briefs why rate bases of other companies, even affiliated companies, can differ and are irrelevant to evaluating Columbia’s rate base in Pennsylvania. *Id.* at 9 (citing Columbia M.B. at 20-21, Columbia R.B. at 8).

We find the ALJ’s disposition of these issues in his Recommended Decision to be persuasive on both the law and the facts. Thus, we agree with Columbia, and we conclude that Mr. Culbertson’s Exception No. 3, and his similar assertion regarding “black box” settlements in his Exception No. 4, are unfounded in the law and unsubstantiated by the evidence.

First, as to the law relevant to our decision, our ratemaking jurisdiction over Columbia’s intrastate rates derives from the Code, 66 Pa. C.S. §§ 101 – 3316 and, with few exceptions not applicable here, not the Natural Gas Act, the Securities and Exchange Act of 1934, or other federal statutory or regulatory provisions.[[12]](#footnote-12) Other legal sources relied on by Mr. Culbertson outside the Code are equally irrelevant. The Commonwealth Management Directives cited are issued by the Governor and applicable to agencies and other entities under the Governor’s jurisdiction.[[13]](#footnote-13) The Commission is an independent agency not under the Governor’s jurisdiction. Article III, Section 10 of the Pennsylvania Constitution addresses audits of entities funded or aided by the Commonwealth, including Pennsylvania agencies and institutions. Columbia is regulated by the Commission, but it is not funded by the Commission.[[14]](#footnote-14) Nothing in the Code or pertinent Pennsylvania law applicable to our resolution, supports Mr. Culbertson’s legal conclusion that “black box” settlements are illegal.

Mr. Culbertson also asserts that because the Settlement is a “black box,” it fails to use the right recipe or process to reach just and reasonable costs and rates and is illegal. However, as Columbia responds, not only are settlements, including those characterized as “black box,” not illegal in Pennsylvania but also settled rate cases are encouraged.

Columbia refers to two recent cases in which the Commission approved “black box” settlements, affirming them as important tools in achieving consensus over the resolution of just and reasonable rates in rate cases. *See* Columbia R. Exc. at 6 (citing *Pa. PUC v. Aqua Pennsylvania, Inc*., Docket No. R-2018-3003558 (Order entered May 9, 2019) (*Aqua*) (denying exceptions to recommended decision and approving black box settlement without modification); *Pike County Light & Power, supra*. This Commission approved these two as well as many other “black box” settlements in the past, most recently approving another “black box” settlement of a base rate case in which a consumer complainant, like Mr. Culbertson, challenged adoption of a “black box” settlement. In that case, *UGI Utilities,* the complainant contended such a settlement could never be in the public interest because “it leaves no trace of the established reasons for compromise or lack thereof, essentially negating the burden of proof that is supposed to be on the utility.”[[15]](#footnote-15) *Id.* at 34.

All Parties to the settlement in that case, as in this, provided substantial reasons in their statements supporting the settlement outlining how the settlements are achieved, how they satisfy each individual party’s interest, and why they are in the public interest. In this case, the Settlement referred to the Parties’ substantial collective investigation through formal and informal discovery and the resulting evidentiary record consisting of multiple statements of direct, rebuttal, surrebuttal, and rejoinder testimony, and the conduct of multiple settlement discussions that culminated in an agreement to an overall rate increase, an allocation of the increase among the rate classes, and a rate design among and within the rate classes. The Joint Petition was signed by all Parties to the litigation except two individual Complainants, one of whom, Mr. Culbertson, continued his litigation. The Settlement was also supported by nine Statements in Support representing ten parties, each of which addressed multiple issues and justified the settlement resolution. *See* Joint Petition, Appendices D, E, F, G, H, I, J, K, and L (Statements in Support of Columbia, I&E, OCA, OSBA, CAUSE-PA, CII, PSU, Task Force, and Shipley/RESA, respectively).

In his description of the Settlement, the ALJ addressed each of these issues as well as additional discrete issues stipulated to and addressed by the Parties, such as the Distribution System Improvement Charge (DSIC) and a stipulated equity return for such purposes; normalization accounting for the tax repairs deduction and the tax treatment of Section 263A mixed service costs; amortization and recovery of costs related to Blackhawk Storage, Corporate Services Other Post-Employment Benefit (OPEB) costs, pension prepayments, and COVID 19-related uncollectibles expense; a reduction to rate base for Accumulated Deferred Income Taxes; continued deferrals and deposits for certain OPEB expenses; periodic reporting to the Commission’s Bureaus of Technical Utility Services and I&E, the OCA, and the OSBA of actual capital expenses, plant additions, and retirements going forward; the preservation of documentation regarding all debt issued between this and the next base rate case and the prevailing yield on U.S. utility bonds for each issuance; Columbia’s Pilot Weather Normalization Adjustment, Gas Procurement Charge, and Merchant Function Charge; Universal Service and Conservation issues including the Company’s Customer Assistance Program, Low Income Usage Reduction Program, and low-income customers’ deposits; a natural gas supplier issue addressing a collaborative to be convened in the event there are material changes to shipper responsibilities in a transmission rate case at the Federal Energy Regulatory Commission; and other proposed tariff changes not modified by the Settlement or withdrawn by the Company. R.D. at 7-13.

The ALJ also reviewed in depth each of the nine signatory Parties’ Statements in Support and outlined the reasons asserted by each why the revenue allowance specifically and the overall settlement generally is reasonable, referring to specific expense and investment requirements related to pipeline replacement and safety and operating and maintenance expense efficiencies and savings, the relativity of the settled revenue requirement compared to the Parties’ opposing litigated positions, and the benefits of the resolution of each of the discrete issues specified above. R.D. at 13-58. On the basis of this substantial record, the ALJ found the Settlement to be in the public interest. As the ALJ noted, the Settlement includes satisfaction of claims by multiple Parties representing specific customers and customer classes and other Parties with discrete interests. *See* R.D. at 62. The ALJ also noted the additional customer benefit that accrues through a reduced rate case expense resulting from truncation of the litigation, since this is an expense ultimately recovered through rates paid by customers. *Id.*

We agree with the ALJ’s conclusion that the Joint Petition constitutes a “fair, just and reasonable resolution of the Commission’s investigation” and is in the public interest. As we stated most recently in *UGI Electric*, Commission policy encourages settlements because “the results achieved from a negotiated settlement or stipulation, or both, in which the interested parties have had an opportunity to participate are often preferable to those achieved at the conclusion of a fully litigated proceeding.” *UGI Electric* at 22, quoting 52 Pa. Code § 69.401. *See also* 52 Pa. Code § 5.231(a). Moreover, as Columbia noted in its Replies to Mr. Culbertson’s Exceptions, “black box” settlements can serve an important purpose in reaching consensus in rate cases. As we discussed earlier, this Commission has historically permitted “black box” settlements as a way of promoting consensus among the parties in contentious rate proceedings, because reaching an agreement on each component of a rate increase can be difficult and impractical. *See* *UGI Electric* at 33 (quoting *Peoples TWP* at 28); Columbia R. Exc. at 6‑7.

Thus, based on our review of the record, the Joint Petition and attached supporting statements, and the ALJ’s Recommended Decision, we conclude that the “black box” settlement in this proceeding is in the public interest and results in just and reasonable rates, including a substantially lower rate increase than originally proposed by Columbia. As we have stated:

The “public interest” to be served in this general rate increase proceeding is the welfare of the public as compared to the welfare of a private individual or company. The Joint Petitioners are a diverse group of entities (some having a legally established responsibility) that when considered as a whole, clearly serve to represent the public interest of the community having a stake in the outcome of this case.

*UGI Electric* at 39. The fact that the settlement is described as a “black box,” meaning the parties did not stipulate precisely how each arrived at its conclusions, “does not diminish the effectiveness of the examination conducted by numerous parties having various, and in some cases antithetical, goals.” *UGI Electric* at 41.

There is no single path to just and reasonable rates. Many paths can lead to the same destination. Except for insular issues that require a specific finding,[[16]](#footnote-16) many alternative paths can lead to a finding that the Settlement produces just and reasonable rates that are in the public interest. However, it is characterized as a “black box” because unless an issue is resolved in a manner specifically prescribed in the settlement, how each party gets to its resolution is of no matter to the ultimate conclusion if it is supported by the record. We find that to be the case here. As Columbia aptly describes in its Statement in Support, the Joint Petitioners, their counsel, and experts, “have considerable experience in rate proceedings. Their knowledge, experience, and ability to evaluate the strengths and weaknesses of their litigation positions provided a strong foundation upon which to build a consensus on the settled issues. … The Settlement reflects a carefully balanced compromise” of each Party’s interests. Columbia Statement in Support at 2-3.

In this manner, a “black box” settlement is generally not dissimilar to settlements in general. Each party to a litigated matter ultimately finds reasons to agree to a settled conclusion of its issues and thereby to procure a resolution it deems satisfies its needs, even if it is not the fully litigated position on all issues the party initially advocated. If settlements were rejected, particularly on the basis of a challenge to their descriptive name, settlements in general would become impractical because parties would not be able to agree on the specific path any settlement takes to achieve resolution.[[17]](#footnote-17)

On the record in this proceeding, each Party to this case believes its path is supportable. We agree. “The [Commission] has broad discretion in determining whether rates are reasonable” and “is vested with discretion to decide what factors it will consider in setting or evaluating a utility’s rates.” *Popowsky v. Pa. PUC*, 683 A.2d 958, 961 (Pa. Cmwlth. 1996). The public interest historically considers the interests of ratepayers, investors, and the regulated community. *Pa. PUC v. Bell Atlantic-Pennsylvania, Inc*., 1995 Pa. PUC LEXIS 193 (Order entered September 29, 1995). Further, the ratemaking process involves many complex and interrelated adjustments that encompass a broad review of utility revenues, expenses, rate base, depreciation, taxes, and cost of capital. It is neither inflexible nor absolute. *See Popowsky v. Pa. PUC*, 665 A.2d 808, 812 (Pa. 1995) (citations omitted); *Peoples TWP* at 28. We believe the Joint Stipulation agreed to by the Parties and recommended for adoption by the ALJ satisfies the public interest and results in just and reasonable rates. For all these reasons, Mr. Culbertson’s Exception No. 3 fails on the law.

In addition to denying Mr. Culbertson’s Exceptions on legal grounds, we will also deny Mr. Culbertson’s Exceptions on the factual grounds on which Mr. Culbertson bases his challenges to the ALJ’s Recommended Decision. This is fully demonstrated in the ALJ’s disposition of Mr. Culbertson’s factual evidence in the Recommended Decision as well as in our review of the evidentiary record before us.

As acknowledged by the ALJ and as addressed in our disposition of Mr. Culbertson’s Exception No. 1, Mr. Culbertson fully participated in the proceeding, by, among other actions, serving discovery, producing testimony, and cross-examining witnesses. However, the ALJ concluded that Mr. Culbertson “failed to provide substantial and legally credible evidence in support of his contentions regarding Columbia’s rates and service.” R.D. at 59. Most importantly, as the ALJ found, Mr. Culbertson failed on the facts “to overcome the substantial evidence of record supporting the rate increase agreed to by the Joint Petitioners in the Settlement.” *Id.*at 60. The precise factual reasons for finding that Mr. Culbertson has not satisfied his burden of proof on the claims he has raised in this proceeding are addressed in our disposition of his Exception No. 4, below.

#### d. Exception No. 4, Replies, and Disposition

In his Exception No. 4, Mr. Culbertson disagrees with the ALJ’s Conclusion of Law No. 11, which provides as follows: “Complainant Richard C. Culbertson has failed to provide substantial and legally credible evidence to support his claims regarding Columbia’s rates and service and has therefore failed to prove his claims by a preponderance of the evidence.” Exc. at 23 (citing R.D. at 66). Mr. Culbertson appears to argue that he was prevented from presenting evidence to support his claims and did not have an opportunity to fully participate in the case based on the ALJ’s rulings in various Interim Orders, most of which are Orders denying his motions to compel discovery. Exc. at 24. Mr. Culbertson also believes the ALJ’s consolidation of the formal complaints in this proceeding deprived his Rate Complaint from receiving full, individual consideration. *Id*. at 25. Further, Mr. Culbertson argues that the ALJ should not have granted Columbia a Protective Order on the grounds that most matters in this rate proceeding should be subject to public scrutiny. *Id*. at 26-27.

In support of his arguments, Mr. Culbertson cites to the following Interim Orders: First Interim Order dated June 25, 2021 (granting, in part, and denying, in part, Mr. Culbertson’s Motion to Compel Discovery); Second Interim Order dated June 30, 2021 (denying Mr. Culbertson’s Second Motion to Compel Discovery); Third Interim Order dated July 20, 2021 (denying Mr. Culbertson’s Third Motion to Compel Discovery); Fourth Interim Order dated July 23, 2021 (consolidating the formal complaints in this proceeding for evidentiary hearings and disposition); Fifth Interim Order dated July 27, 2021 (denying Mr. Culbertson’s Fourth Motion to Compel Discovery); Sixth Interim Order dated July 28, 2021 (requiring responses to Columbia’s Motion for a Protective Order by July 30, 2021); Seventh Interim Order dated July 28, 2021 (denying Mr. Culbertson’s Motions for Reconsideration of the First and Second Interim Orders); Eighth Interim Order dated July 29, 2021 (denying Mr. Culbertson’s Fifth Motion to Compel Discovery); Ninth Interim Order dated August 26, 2021 (requiring Answers to Columbia’s Motion to Strike pages 34-42 of Mr. Culbertson’s Main Brief be filed by August 30, 2021); Tenth Interim Order dated September 2, 2021 (granting Columbia’s Motion to Strike); and the Eleventh Interim Order dated September 8, 2021 (setting the deadline for filing objections to the Settlement). Exc. at 23-29.

In its Replies to Exceptions, Columbia avers that the Commission’s Regulations do not allow parties to re-argue interim discovery rulings in Exceptions, and Mr. Culbertson’s Exception No. 4 should be denied on this basis. R. Exc. at 9 (citing 52 Pa. Code § 5.533). In response to Mr. Culbertson’s argument that the Protective Order entered in this proceeding was improper, Columbia states that Mr. Culbertson failed to file an answer opposing Columbia’s Motion for a Protective Order, which was unopposed by all other active Parties. R. Exc. at 9-10. Columbia notes that most of the evidence in this proceeding is public and not subject to the Protective Order. *Id*. at 10, n.4 (citing Tr. at 155-200). Columbia submits that Mr. Culbertson was provided a full and fair opportunity to engage in discovery and that Columbia answered Mr. Culbertson’s interrogatories that it did not find objectionable and properly objected to certain discovery consistent with the Commission’s Regulations. Columbia continues that it complied with the ALJ’s Interim Orders, and the outcomes of the ALJ’s interim discovery rulings do not excuse Mr. Culbertson’s failure to present substantial evidence in support of his claims. Columbia further argues that issues Mr. Culbertson failed to raise in his briefs are waived. R. Exc. at 10.

Based on our review of the record, we deny Mr. Culbertson’s Exception No. 4 as we agree with the ALJ’s determination that Mr. Culbertson has failed to satisfy his burden of proof regarding his claims about Columbia’s rates and service. As discussed in our disposition of Mr. Culbertson’s Exception No. 1, Mr. Culbertson was provided with the opportunity to fully participate in all aspects of this proceeding, and he exercised that opportunity in most instances, with the exceptions of failure to submit or to submit timely responses to Columbia’s Motion for a Protective Order and the Settlement. We cannot consider at this stage in the proceeding Mr. Culbertson’s objections to the ALJ’s interlocutory decisions in the various Interim Orders Mr. Culbertson cites in his Exceptions. *See* 52 Pa. Code § 5.533 (stating “Exceptions may not be filed with respect to an interlocutory decision”).

We have thoroughly reviewed Mr. Culbertson’s direct and surrebuttal testimony, exhibits, and Main and Reply Briefs in reaching our determination and conclude that Mr. Culbertson did not provide sufficient evidence to establish his case by a preponderance of the evidence. Among his claims, Mr. Culbertson has made averments concerning Columbia’s disconnection of an inactive service line at his property and Columbia’s disconnection of an inactive service line at a property owned by Mr. Michael Hicks, Sr., a former Columbia customer who testified at a public input hearing in this proceeding. Mr. Culbertson has also made averments regarding Columbia’s audits, internal controls, rates, rate base, and safety. We will not consider Mr. Culbertson’s claims concerning his Service Line Complaint, which is currently pending before this Commission, as these claims are more properly resolved in the Service Line Complaint proceeding. We also will not consider any arguments Mr. Culbertson makes regarding Mr. Hicks’ service line, as we agree with the ALJ that these issues are irrelevant and cannot be raised by Mr. Culbertson as he is not an attorney and cannot lawfully represent another customer. *See* 52 Pa. Code §§ 1.21(b), 1.22(a), 1.23(a).

Additionally, in support of his claim that the Commission does not properly investigate Columbia through government audits, Mr. Culbertson makes various general statements in his testimony, including statements that Columbia should be audited according to the GAO Yellowbook. Culbertson St. 1 at 15. As we previously stated, these statements are not relevant to this rate proceeding because the GAO Yellow Book does not apply to the Commission’s conduction of audits. Rather, the Commission conducts audits of jurisdictional public utilities pursuant to Section 516(a) of the Code, 66 Pa. C.S. § 516(a), and the Commission’s Bureau of Audits is responsible for financial and management audits of such public utilities. Mr. Culbertson also made general claims that Columbia does not have adequate internal controls within the Company and that, as a result, the Company’s rates are not just and reasonable (Culbertson St. 1 at 2, 17-21, 36) and that Columbia’s distribution system is unsafe and the Company has not taken the implementation of the American Petroleum Institute Recommended Practice 1173 – Pipeline Safety Management Systems (API 1173) seriously.[[18]](#footnote-18) However Mr. Culbertson did not present any evidence in support of these claims.[[19]](#footnote-19)

Mr. Culbertson further averred that Columbia’s rates are not just and reasonable based on the size of the Company and presented an exhibit of a chart containing information on the rate bases of Columbia and its companies in Kentucky, Maryland, Ohio, Virginia, and Indiana, which are owned by the same parent company, NiSource, Inc. Culbertson St. 1 at 18, 20, 58; Culbertson Exhs. A, B. Mr. Culbertson argued that because the rates in Pennsylvania are higher than the rates in other states, this makes Columbia’s financials suspect. We have previously held that because each public utility has different problems of supply, production, distribution, competition, and geographic conditions, there need not be, and cannot be, absolute equality and uniformity of rates between utilities or between classes of service within the same utility. *Hersca v. Twin Lakes Utilities, Inc*., Docket No. C-2020-3020883, at 14 (Order entered August 5, 2021). In this case, Columbia’s witnesses testified that rate base may differ among utilities and jurisdictions based on differences in size, territory, number and types of customers, location of customers, and differing state and local laws. Further, this Commission has no jurisdiction to investigate rate bases of utilities outside its jurisdiction. While Columbia maintains records of its plant in service, no Party, including Mr. Culbertson, challenged any asset as imprudently constructed or at an excessive cost. *See* R. Exc. at 9; Columbia M.B. at 20-21, Columbia R.B. at 8-9. For all of these reasons, we deny Mr. Culbertson’s Exception No. 4.

#### e. Exception No. 5, Replies, and Disposition

In his Exception No. 5, Mr. Culbertson challenges the statement from the Joint Petition that recognizes that “the proposed Settlement does not bind Formal Complainants that do not choose to join [the Settlement].” Exc. at 31 (citing Joint Petition at 14). He takes exception to this statement because, as he asserts, “all parties to this rate case know it is not true. I was never invited to participate in this black box settlement.” *Id.* at 32. Contending “the nature or text of the settlement was never disclosed” until after it was reached, he states that he “would have vigorously opposed it.” *Id.*

In its response to Exception No. 5, Columbia asserts that “[t]here is nothing untrue about the statement” because the ALJ provided Mr. Culbertson with an opportunity to join the Settlement, and he declined. R. Exc. at 11. Columbia also addresses this issue in its responses to other Exceptions. In response to Exception No. 3, Columbia contradicts Mr. Culbertson’s statement that he was excluded from settlement discussions, stating that Columbia’s counsel engaged in settlement negotiations with Mr. Culbertson, but they were unable to resolve his issues. R. Exc. at 8. In its response to Mr. Culbertson’s Exception Nos. 3 and 4, Columbia describes Mr. Culbertson’s full participation in this proceeding by way of discovery, testimony, cross-examination, and briefing, and asserts that as a non-settling party, Mr. Culbertson’s due process rights were fully protected. Further, Columbia asserts that notwithstanding the opportunity to do so, Mr. Culbertson did not file comments or objections to the Settlement. R. Exc. at 7-8.

It is evident from the ALJ’s disposition of Mr. Culbertson’s issues in the Recommended Decision and the language in the Settlement that Mr. Culbertson did not join the Settlement ,and the issues he raised were reserved for litigation. And even if that was not his “choice,” it appears from his Briefs and Exceptions that Mr. Culbertson would not have joined but rather would have “vigorously opposed” the settled resolution, precisely as he has.

The ALJ’s identification and disposition of Mr. Culbertson’s issues demonstrates that the ALJ understood and addressed Mr. Culbertson’s vigorous opposition to the Settlement. In his Recommended Decision, the ALJ fully described Mr. Culbertson’s active participation in the proceeding, including those issues addressed in his Briefs opposing the settlement and that were “relevant to this base rate filing or germane for consideration,” a clear indication that the ALJ understood that Mr. Culbertson had not joined the Settlement. *See* R.D. at 58-62. As noted above, the complainant in *UGI Electric* also objected to the “black box” settlement on the basis that she was not involved in the negotiation of the settlement. *UGI Electric* at 32. In both cases, the ALJs determined that each complainant had a full and fair opportunity to participate in the proceeding and object to the settlement, including filing formal exceptions subject to our individual review and disposition. In both cases, the ALJs found that notwithstanding complainants’ objections, the settlement produced just and reasonable rates in the public interest.

Up to and including in his Exceptions, Mr. Culbertson was provided the opportunity to do what he states he would have done had he chosen not to join the settlement, that is to vigorously oppose it. Any perceived or real discrepancy in how he exercised his right to oppose the settlement – by choice or not – has had no impact limiting, altering, or otherwise diminishing either his rights or his advocacy before us. Accordingly, Mr. Culbertson’s Exception No. 5 is denied.

#### f. Exception No. 6, Replies, and Disposition

In his Exception No. 6, Mr. Culbertson objects to the ALJ’s statement that “[t]he primary issue underlying Mr. Culbertson’s Complaint in this proceeding is his belief that Columbia improperly disconnected an inactive service line at 1608 McFarland Road, Pittsburgh, Pennsylvania, and subsequently required Mr. Culbertson to replace the customer-owned portion of the service line before restoring service.” R.D. at 62 (citing Culbertson Rate Complaint at 10, 25, 27-30, 40-46, 50, 53, 59). Mr. Culbertson avers that his Service Line Complaint against Columbia is not his primary concern in this rate case proceeding, and the issues that Mr. Culbertson has raised in this rate proceeding are set forth in his sixty-page Rate Complaint. Exc. at 32. Mr. Culbertson states that he is concerned about ensuring that an investigation has been conducted in this proceeding to ensure that Columbia’s rates are just and reasonable, and he questions whether such an investigation has been conducted. *Id*. at 33.

In its Replies, Columbia avers that the ALJ correctly found that the issues relating to Mr. Culbertson’s inactive customer service line were fully litigated in the separate Service Line Complaint proceeding and that case is pending before the Commission for decision. Accordingly, Columbia states that the issues regarding Mr. Culbertson’s inactive customer service line are not properly before the Commission in this base rate case. R. Exc. at 11. Columbia also states that Mr. Culbertson argues in his Exceptions that Columbia is engaging in a scheme to abandon customers’ service lines for the purpose of “padding the rate base.” *Id*. (citing Exc. at 10). Columbia argues that there is no evidence in the record to suggest that Columbia has engaged in a scheme involving customer service lines or that Columbia has made unnecessary investments in rate base. Exc. at 11. Columbia further avers that while Mr. Culbertson argues that the issues concerning his service line were not the primary reason for his Rate Complaint in this proceeding, Mr. Culbertson failed to present substantial evidence to support any of his claims against Columbia’s rates and service. As such, Columbia submits that the ALJ properly recommended that the Commission dismiss Mr. Culbertson’s claims for failure to meet the burden of proof. *Id*. at 12.

Upon review, we will grant Mr. Culbertson’s Exception to the limited extent that Mr. Culbertson raised various issues in his Rate Complaint, and it is not clear that the issue regarding Mr. Culbertson’s inactive service line that is part of the pending Service Line Complaint is the primary issue underlying Mr. Culbertson’s Rate Complaint. While the issue regarding Mr. Culbertson’s inactive service line is a significant part of Mr. Culbertson’s Rate Complaint, Mr. Culbertson also raised issues concerning whether Columbia’s rates have been properly investigated to ensure the rates are just and reasonable and issues concerning Columbia’s audits, internal controls, and safety practices.

In finding that Mr. Culbertson did not satisfy his burden of proof, the ALJ addressed all of these issues. *See* R.D. at 60, 61. We do not find it necessary to modify the ALJ’s decision, given that the ALJ addressed the various issues raised in Mr. Culbertson’s Complaint as well as the issues Mr. Culbertson raised throughout this proceeding in his briefs, testimony, and exhibits. We view the ALJ’s statement regarding the primary issue underlying Mr. Culbertson’s Rate Complaint as dicta as it does not form a basis for the ALJ’s decision to dismiss Mr. Culbertson’s Rate Complaint. In fact, as the ALJ properly concluded and as we discussed in our disposition of Mr. Culbertson’s Exception No. 4, Mr. Culbertson’s claims concerning his Service Line Complaint have been fully litigated and are pending a Commission decision and, consequently, are more properly considered in the Service Line Complaint proceeding.

### 5. Disposition of the Joint Petition

We find that the proposed Settlement balances the concerns of all Parties involved, is in the public interest, and should be approved without modification. In terms of the revenue requirement, the total increase in annual revenues of $58.5 million that the Joint Petitioners agreed to is $39.8 million less than Columbia’s original request of $98.3 million, representing about a 40% reduction from the original requested amount. Joint Petition at ¶ 16; I&E Statement in Support at 5; OCA Statement in Support at 5. The Settlement will reduce the impact of the rate increase on residential customers. The Joint Petitioners aver that while they were not able to agree on a specific cost of service study in the Settlement, they were able to agree to a revenue allocation that is within the range of reasonable revenue allocations proposed by the Joint Petitioners in this proceeding. Columbia Statement in Support at 12. Further, by using structural rate design to limit the disproportionate burdens on low-income households and through enhancements to Columbia's universal service and CAP programs, the Settlement takes rate affordability into account to better match households in need with available assistance. CAUSE-PA Statement in Support at 3.

In addition to these provisions, there are other provisions within the Settlement that are beneficial to the Company’s customers and the public. Among these provisions are the following: (1) the Company’s agreement that the residential customer charge will not be increased and will remain at $16.75 per month, which will protect residential customers while still providing Columbia with adequate revenue (Joint Petition at ¶ 32; Columbia Statement in Support at 14); (2) Columbia’s eligibility to include plant additions in the Distribution System Improvement Charge once eligible account balances exceed the levels projected by Columbia as of December 31, 2022 (Joint Petition at ¶ 20); (3) the Company’s agreement to discontinue the deferral of COVID-19 related Uncollectible Accounts Expense as of the implementation dates of the rates contemplated by this Settlement, or earlier if directed by the Commission (Joint Petition at ¶ 24); and (4) numerous provisions and modifications concerning the Company’s universal service and CAP programs, including increased funding for the Company’s Emergency Repair Fund, which provides for the repair and replacement of faulty equipment for low-income households, and for its LIURP, and the Company’s agreement to develop an outreach campaign to promote existing CAP programs (Joint Petition at ¶¶ 37-45).

Further, we find that the Settlement will result in significant savings of time and expenses for all Parties involved by avoiding the necessity of further administrative proceedings, as well as possible appellate court proceedings, thereby conserving administrative resources. The Settlement also benefits all Parties by providing regulatory certainty with respect to the disposition of the issues. For the reasons stated herein and in the Joint Petitioners’ Statements in Support, we agree with the ALJ’s conclusion that the Settlement is in the public interest and we shall approve it without modification.

# IV. Conclusion

We have reviewed the record developed in this proceeding, including the ALJ’s Recommended Decision and the Exceptions and Responses filed thereto. Based upon our review, evaluation, and analysis of the record evidence, we shall deny, in major part, and grant, in limited part, the Exceptions filed Mr. Culbertson, approve the Settlement in its entirety, and adopt the ALJ’s Recommended Decision, consistent with this Opinion and Order; **THEREFORE,**

**IT IS ORDERED:**

1. That the Exceptions filed by Richard C. Culbertson on October 20, 2021, are denied, in major part, and granted, in limited part, consistent with this Opinion and Order.

2. That the Recommended Decision of Administrative Law Judge Mark A. Hoyer served on October 12, 2021, is adopted, consistent with this Opinion and Order.

3. That the Joint Petition for Settlement, filed on September 7, 2021, by Columbia Gas of Pennsylvania, Inc., the Commission’s Bureau of Investigation and Enforcement, the Office of Consumer Advocate, the Office of Small Business Advocate, Columbia Industrial Intervenors, Shipley Choice, LLC d/b/a Shipley Energy Company and the Retail Energy Supply Association, the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania, the Pennsylvania State University, and the Pennsylvania Weatherization Providers Task Force, is approved in its entirety without modification.

4. That Columbia Gas of Pennsylvania, Inc. shall not place into effect the rates contained in Supplement No. 325 to Tariff Gas – Pa. P.U.C. No. 9.

5. That Columbia Gas of Pennsylvania, Inc. shall file tariff supplements with the Commission, reflecting the rates set forth in its proposed compliance tariff attached to the Joint Petition for Settlement as Appendix C, to become effective on one (1) days’ notice after the entry date of this Opinion and Order, for service rendered on and after December 29, 2021, so as to produce an annual increase in base rate operating revenues not to exceed $58.5 million, consistent with this Opinion and Order.

6. That after Columbia Gas of Pennsylvania, Inc. files the required tariff supplements set forth in Ordering Paragraph No. 5 of this Opinion and Order, the Formal Complaints filed by the Office of Consumer Advocate at Docket Number

C-2021-3025078, by the Office of Small Business Advocate at C-2021-3025257, by Columbia Industrial Intervenors at Docket No. C-2021-3025600, and the Pennsylvania State University at Docket No. C-2021-3025775 shall be deemed satisfied, and the Commission’s investigation at Docket No. R-2021-3024296 shall be terminated, and all five dockets shall be marked closed.

7. That the Formal Complaint filed by Richard C. Culbertson against Columbia Gas of Pennsylvania, Inc. at Docket No. C-2021-3026054, is dismissed and marked closed.

8. That the Formal Complaint filed by Ronald Lamb against Columbia Gas of Pennsylvania, Inc. at Docket No. C-2021-3027217, is dismissed and marked closed.

**BY THE COMMISSION,**

Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: December 16, 2021

ORDER ENTERED: December 16, 2021

1. All active Parties, except for two individual Complainants, Richard C. Culbertson and Ronald Lamb, agreed to the Settlement. [↑](#footnote-ref-1)
2. These formal complaints were consolidated for hearing and disposition at Docket No. R-2021-3024296 by the Fourth Interim Order issued on July 23, 2021. [↑](#footnote-ref-2)
3. For example, full or partial settlements may allow the parties to avoid the substantial costs of preparing and serving testimony and the cross-examination of witnesses in lengthy hearings, the preparation and service of briefs, reply briefs, exceptions and replies to exceptions, together with the briefs and reply briefs necessitated by any appeal of the Commission’s decision. [↑](#footnote-ref-3)
4. PSU and CII participated on a limited set of issues and agree to the Settlement terms related to revenue allocation and rate design in paragraph 31 and Appendices A and B and assignment of CAP costs. PSU and CII take no position on the remaining Settlement terms but do not oppose the settlement of all other issues. [↑](#footnote-ref-4)
5. On May 8, 2017, Mr. Culbertson filed a Formal Complaint against Columbia at Docket No. F- 2017-2605797 alleging, *inter alia*, that Columbia improperly abandoned the service line at 1608 McFarland Road, Pittsburgh, Pennsylvania (Service Line Complaint). An evidentiary hearing was held on February 4, 2019. By Initial Decision issued on October 4, 2019, ALJ Hoyer denied the Service Line Complaint on the basis that Mr. Culbertson failed to demonstrate that Columbia violated the Code, a Commission Order or Regulation, or a Company Commission-approved tariff. Mr. Culbertson filed Exceptions on October 24, 2019, and Columbia filed Replies to Exceptions on November 4, 2019. A decision on the Exceptions is pending before the Commission. [↑](#footnote-ref-5)
6. In his Exceptions, Mr. Culbertson raises issues relating to the Service Line Complaint proceeding and Columbia’s prior rate proceeding, *Pa. PUC v. Columbia Gas of Pennsylvania, Inc.*, Docket No. R-2020-3018835 (Order entered February 19, 2021). As we will discuss herein, we will not address the merits of the pending Service Line Complaint proceeding. We also will not address in this case any claims relating to issues addressed or rates set in Columbia’s prior rate proceeding. Mr. Culbertson had the opportunity to participate in the prior rate proceeding and did, in fact, testify in a public input hearing in that case. [↑](#footnote-ref-6)
7. On June 15, 2021, Mr. Culbertson filed a Motion to Remove, requesting that ALJ Hoyer be removed and that a different ALJ preside over this proceeding. Columbia filed an Answer to this Motion on July 1, 2021, averring that the Motion should be denied because Mr. Culbertson failed to demonstrate any reasonable basis for removing ALJ Hoyer from this case. The ALJ did not rule on the Motion within thirty days of receipt and, accordingly, the Motion was deemed denied under 52 Pa. Code

§ 5.482(d). [↑](#footnote-ref-7)
8. Commission Regulations provide that a party may file a motion for disqualification of a presiding officer “which shall be accompanied by affidavits alleging personal bias or other disqualification[,]” and which shall be served on the ALJ and parties to the proceeding. 52 Pa. Code § 5.482(a). [↑](#footnote-ref-8)
9. Under our Regulations, the ALJ’s failure to rule on the motion within thirty days is deemed a denial, to which a party may file an interlocutory appeal with the Commission. 52 Pa. Code § 5.482(d),(e). Mr. Culbertson did not take interlocutory appeal of the issue. [↑](#footnote-ref-9)
10. *See* 52 Pa. Code § 5.533(c) (“Statements of reasons supporting exceptions must, insofar as practicable, incorporate by reference and citation, relevant portions of the record and passages in previously filed briefs.”); *see also Wilson v. Columbia Gas of Pennsylvania, Inc.*, 2013 WL 6835138 at \*5 (“[N]ew arguments may not be raised at the exception stage of a proceeding, as it deprives parties of the opportunity to respond.”) (*citing* *Application of PPL Electric Utilities Corporation*, Docket No. A-2011-2267349 (Order entered July 16, 2013)). [↑](#footnote-ref-10)
11. Resolution of this issue, which Mr. Culbertson also raised in his Exception No. 4, is included in our discussion and disposition of his Exception No. 3. [↑](#footnote-ref-11)
12. *See, e.g.,* Columbia R. Exc. at 6 n.2, acknowledging application of FERC’s Uniform System of Accounts and applicability of federal pipeline safety laws. [↑](#footnote-ref-12)
13. *See* [325\_3.pdf (pa.gov)](https://www.oa.pa.gov/Policies/md/Documents/325_3.pdf), cited by Mr. Culbertson, which applies to agencies and other entities “under the Governor’s jurisdiction.” The other citation provided by Mr. Culbertson, to 325\_12 at <http://www.oa.pa.gov/Policies/md/Documents/325_12.pdf> provides the Governor’s Management Directive on Standards for Enterprise Risk Management in Commonwealth Agencies and also applies only to agencies and other entities under the Governor’s jurisdiction. [↑](#footnote-ref-13)
14. While the Commission determines just and reasonable rates pursuant to Chapter 13 of the Code, rates are paid by ratepayers, the consumers of the utility services, not the Commission, rendering a constitutional provision calling for audits of entities funded or aided by the Commonwealth inapplicable. [↑](#footnote-ref-14)
15. Like Mr. Culbertson, the complainant in *UGI Electric* also objected on the basis that she was not involved in the negotiation of the settlement. This issue is addressed *infra* in the disposition of Mr. Culbertson’s Exception No. 5. [↑](#footnote-ref-15)
16. *See, e.g.,* Joint Petition at ¶¶ 21-27. [↑](#footnote-ref-16)
17. *See* I&E Statement in Support at 6 (citing *Pa. PUC v. Wellsboro Electric Company*, Docket No. R-2010-2172662 (Final Order entered January 13, 2011); *Pa. PUC v. Citizens’ Electric Company of Lewisburg, PA*, Docket No. R-2010- 2172665 (Final Order entered January 13, 2011)). [↑](#footnote-ref-17)
18. Columbia’s witnesses testified that while the API 1173 is a recommended practice, Columbia is pursuing implementation of API 1173. Columbia Sts. 14 at 24, 1-R at 9-10. [↑](#footnote-ref-18)
19. Assertions, opinions, or perceptions do not constitute evidence. *Rivera v. Philadelphia Gas Works,* Docket No. C-2010-2164222 (Order entered January 12, 2012). [↑](#footnote-ref-19)