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August 23, 2022

VIA ELECTRONIC FILING

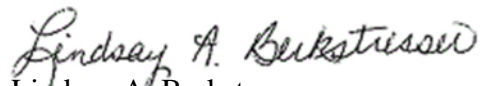
Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
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400 North Street, 2nd Floor North
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Harrisburg, PA 17105-3265

**Re: PA Public Utility Commission v. Columbia Gas of Pennsylvania, Inc.
Docket No. R-2022-3031211**

Dear Secretary Chiavetta:

Attached for filing please find the Main Brief (PUBLIC and **CONFIDENTIAL** versions) on behalf of Columbia Gas of Pennsylvania, Inc. in the above-referenced proceeding. Confidential material will be provided pursuant to the Protective Order issued in this proceeding.

Respectfully submitted,



Lindsay A. Berkstresser
Principal

LAB/kl
Attachment

cc: Honorable Christopher P. Pell
Honorable John M. Coogan
Certificate of Service

CERTIFICATE OF SERVICE

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

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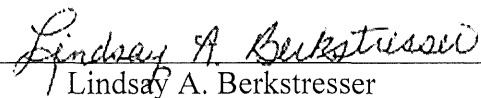
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Date: August 23, 2022


Lindsay A. Berkstresser

PUBLIC VERSION

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	R-2022-3031211
Office of Small Business Advocate	:	C-2022-3031632
Office of Consumer Advocate	:	C-2022-3031767
Pennsylvania State University	:	C-2022-3031957
Columbia Industrial Intervenors	:	C-2022-3032178
Jose A. Serrano	:	C-2022-3031821
Constance Wile	:	C-2022-3031749
Richard C. Culbertson	:	C-2022-3032203
	:	
v.	:	
	:	
Columbia Gas of Pennsylvania, Inc	:	

**MAIN BRIEF OF COLUMBIA GAS OF PENNSYLVANIA, INC.
IN SUPPORT OF NON-UNANIMOUS SETTLEMENT
ON REVENUE ALLOCATION AND RATE DESIGN**

TO ADMINISTRATIVE LAW JUDGES CHRISTOPHER P. PELL AND JOHN COOGAN:

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PUBLIC VERSION

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Statutes, Codes, and Other Authorities

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52 Pa. Code § 5.2314
52 Pa. Code § 5.232, § 69.4065
52 Pa. Code § 69.4014, 5

I. INTRODUCTION

Columbia Gas of Pennsylvania, Inc. (“Columbia” or the “Company”) hereby submits this Main Brief in Support of the Non-Unanimous Settlement on Revenue Allocation and Rate Design, which will be submitted on September 2, 2022, the due date for reply briefs in this proceeding. The Non-Unanimous Settlement is agreed to or not objected to by Columbia, the Bureau of Investigation and Enforcement (“I&E”) of the Pennsylvania Public Utility Commission (“Commission”), the Office of Consumer Advocate (“OCA”), Columbia Industrial Intervenors (“CII”),¹ Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (“CAUSE-PA”), Pennsylvania Weatherization Providers Task Force (“Task Force”) and The Pennsylvania State University (“PSU”) (hereinafter collectively referred to as the “Joint Petitioners to the Non-Unanimous Settlement”). Shipley Choice, LLC, NRG Energy, and the Retail Energy Supply Association (“RESA”) (collectively, “RESA/NGS Parties”) and the Natural Resources Defense Council (“NRDC”) have indicated that they do not oppose the Non-Unanimous Settlement on Revenue Allocation and Rate Design. The Office of Small Business Advocate (“OSBA”) is not a party to the Joint Petition for Non-Unanimous Settlement and has reserved its right to submit briefs concerning the revenue allocation and rate design issues addressed in the Joint Petition for Non-Unanimous Settlement. For the reasons explained in this Main Brief, Columbia respectfully requests that Administrative Law Judges Christopher P. Pell and John Coogan (the “ALJs”) recommend approval of, and the Commission approve the Non-Unanimous Settlement, including the terms and conditions thereof, without modification.

The Non-Unanimous Settlement, if approved, will resolve the revenue allocation and rate design issues raised in this proceeding. A Joint Petition for Partial Settlement, which resolves all

¹ CII’s member is Knouse Foods Cooperative, Inc.

issues in this proceeding among Columbia, I&E, OCA, OSBA, CII, CAUSE-PA, Task Force, PSU, RESA/NGS Parties, and NRDC, except for revenue allocation and rate design issues, as well as statements in support of the Joint Petition for Partial Settlement, will be submitted concurrently with the Joint Petition for Non-Unanimous Settlement on September 2, 2022.² As the Joint Petition for Partial Settlement will indicate, the Joint Petitioners to the Partial Settlement have agreed to an annual increase in operating revenues of **BEGIN CONFIDENTIAL [REDACTED] END CONFIDENTIAL** (Joint Petition for Partial Settlement ¶ 24).

After numerous settlement discussions, the Joint Petitioners to the Non-Unanimous Settlement have agreed on a revenue allocation and rate design that allocates the **BEGIN CONFIDENTIAL [REDACTED] END CONFIDENTIAL** in increased annual operating revenue to the various rate classes and designs rates to produce the agreed upon revenue requirement. The Non-Unanimous Settlement represents a compromise of the various litigation positions presented by the Joint Petitioners to the Non-Unanimous Settlement. The revenue allocation set forth in the Joint Petition for Non-Unanimous Settlement is within the range of the various cost studies presented by the parties in this proceeding, as scaled back to the revenue increase of **BEGIN CONFIDENTIAL [REDACTED] END CONFIDENTIAL** which demonstrates its reasonableness. The revenue allocation and rate design agreed to in the Joint Petition for Non-Unanimous Settlement is in the best interest of Columbia, its customers, and the Joint Petitioners to the Non-Unanimous Settlement. Accordingly, it should be approved.

² This Main Brief does not address any of the issues that are resolved by the Joint Petition for Partial Settlement, and Columbia will submit a separate statement in support of the Joint Petition for Partial Settlement on September 2, 2022. Mr. Culbertson is not a party to the Joint Petition for Partial Settlement or the Joint Petition for Non-Unanimous Settlement and has reserved his right to submit briefs. Mr. Culbertson did not submit any testimony or exhibits in this proceeding. Ms. Wile and Mr. Serrano also filed formal complaints but did not actively participate in this proceeding and are not parties to the Joint Petition for Partial Settlement or the Joint Petition for Non-Unanimous Settlement.

II. HISTORY OF THE PROCEEDINGS

On March 18, 2022, Columbia filed Supplement No. 337 to Tariff Gas Pa. P.U.C. No. 9 with an effective date of May 17, 2022. Columbia proposed to increase overall rates by approximately \$82 million per year, based upon data for a Fully Projected Future Test Year (“FPFTY”) ending December 31, 2023. The filing was made in compliance with the Commission’s regulations, and contains all supporting data and testimony required to be submitted in conjunction with a tariff change seeking a general rate increase.

On April 14, 2022, the Commission issued an Order suspending Columbia’s Supplement No. 337 by operation of law until December 17, 2022.³

The OCA, OSBA, PSU, Richard Culbertson, Constance Wile, and Jose Serrano filed formal complaints. The Task Force, RESA/NGS Parties, CAUSE-PA, and NRDC filed petitions to intervene. I&E filed a notice of appearance.

A Prehearing Conference was held on April 29, 2022, at which time a litigation schedule was established.

On May 3, 2022, the ALJs issued a Prehearing Order containing the matters discussed by the parties during the prehearing conference.

On May 6, 2022, Columbia filed a Motion for Protective Order, which was granted by the ALJs on May 11, 2022.

Public input hearings were held on May 31, 2022 and June 1, 2022.

The parties submitted direct, rebuttal, surrebuttal and rejoinder testimony in accordance with the litigation schedule.

³ On April 22, 2022, Columbia filed Supplement No. 342 pursuant to the Commission’s April 14, 2022 Suspension Order. Supplement No. 342 suspended the proposed rates contained in Tariff Supplement No. 337 until December 17, 2022.

At the request of the parties, the hearing scheduled for August 2, 2022 was cancelled to allow additional time for settlement negotiations.

An evidentiary hearing was held on August 3, 2022, at which time RESA/NGS Parties cross examined a Columbia witness. All other parties agreed to waive cross examination.

On August 17, 2022, counsel for Columbia informed the ALJs that all parties, except for Mr. Culbertson, reached a settlement agreement on all issues except for revenue allocation and rate design.

On August 19, 2022, counsel for Columbia informed the ALJs that all parties, except for OSBA and Mr. Culbertson, reached a non-unanimous settlement in principle on the revenue allocation issues. Subsequently, those parties agreed to a rate design for recovery of the allocated rate increase.

On August 2, 2022, the ALJs issued a Briefing Order setting forth the instructions for briefs.

III. LEGAL STANDARD

Commission policy promotes settlements. *See* 52 Pa. Code § 5.231. Settlements lessen the time and expense that the parties must expend litigating a case, and at the same time, conserve precious administrative resources. The Commission has indicated that settlement results are often preferable to those achieved at the conclusion of a fully litigated proceeding. *See* 52 Pa. Code § 69.401. The Commission has explained that parties to settled cases are afforded flexibility in reaching amicable resolutions, so long as the settlement is in the public interest. *Pa. PUC v. MXenergy Electric Inc.*, Docket No. M-2012-2201861, 2013 Pa. PUC LEXIS 789 (Opinion and Order entered Dec. 5, 2013). In order to accept a settlement, the Commission must first determine that the proposed terms and conditions are in the public interest. *Pa. PUC v. Windstream Pennsylvania, LLC*, Docket No. M-2012-2227108, 2012 Pa. PUC LEXIS 1535 (Opinion and Order

entered Sept. 27, 2012); *Pa. PUC v. C.S. Water and Sewer Assoc.*, Docket No. R-881147, 74 Pa. PUC 767 (Opinion entered Jul. 22, 1991).

The Commission's policy permits parties to enter "partial" or "non-unanimous" settlements. *See* 52 Pa. Code § 69.401. *See also* 52 Pa. Code § 5.232, § 69.406. As with full settlements, partial settlements, whether involving a partial settlement of issues or a partial settlement of the parties involved (non-unanimous), must be reasonable and in the public interest. *See Pa. PUC v. City of Bethlehem – Water Department*, Docket No. R-2020-3020256, 2021 Pa. PUC LEXIS 116 (April 15, 2021) ("*City of Bethlehem Water*"). The Commission has approved non-unanimous settlements as being just and reasonable and in the public interest and has not rejected or disfavored settlements because they are non-unanimous. *See, e.g. City of Bethlehem Water; Pa. PUC v. Pike County Light and Power Company – Electric*, Docket No. R-2020-3022135 (Recommended Decision May 5, 2021; Order entered June 23, 2021) ("*Pike County*"); *Pa. PUC v. Pennsylvania-American Water Company*, Docket No. R-2020-3019369 (Order entered Feb. 25, 2021).

The standards for approving the terms of non-unanimous settlements are the same as those for deciding a fully contested case, *i.e.* the parties to the non-unanimous settlement must demonstrate that the proposed settlement is supported by substantial evidence and that the rates agreed to are just and reasonable and in conformity with the Commission's orders and regulations. *See* 66 Pa. C.S. § 1301; *Pike County*, Docket No. R-2020-3022135. Also relevant to the Commission's approval of a non-unanimous settlement is the due process afforded to non-settling parties, such as whether non-settling parties were provided an opportunity to object to the settlement and to present their positions on the issues, and the range of interests represented in the non-unanimous settlement. *City of Bethlehem Water*, 2021 Pa. PUC LEXIS 116. In this case, the

non-settling parties to the Joint Petition for Non-Unanimous Settlement were given an opportunity to submit briefs on the issues addressed in the Non-Unanimous Settlement. In addition, the Non-Unanimous Settlement will be served on all parties to the proceeding, and the ALJs have established procedures for filing comments in opposition thereto. The Joint Petition for Non-Unanimous Settlement represents a range of interests in this proceeding, including residential customers, low-income customers, large industrial customers, and the Company. As explained herein, Columbia believes that the Joint Petition for Non-Unanimous Settlement is supported by substantial evidence, is just and reasonable and in the public interest and, therefore, should be approved without modification.

IV. SUMMARY OF ARGUMENT

The revenue allocation proposed in the Joint Petition for Non-Unanimous Settlement appropriately moves classes toward the cost of service, while recognizing secondary considerations such as gradualism and value of service. With respect to the Residential class, the Joint Petition for Non-Unanimous Settlement would allocate effectively the same percentage of the revenue increase to Residential class as that proposed by OSBA in this proceeding. The Joint Petition for Non-Unanimous Settlement proposes to allocate a slightly higher percentage increase to the SGS-1 class and a slightly lower percentage increase to the LDS class than what was proposed by OSBA. Other classes (SGS-2 and SDS) also would be allocated increases comparable to that proposed by OSBA, as scaled back to the **BEGIN CONFIDENTIAL** [REDACTED] **END CONFIDENTIAL** settlement increase. The ALJs and the Commission should adopt the position of the Joint Petitioners to the Non-Unanimous Settlement and reject OSBA's proposed revenue allocation because OSBA's proposal ignores the principle of gradualism by assigning 2.0 times the system average to the LDS class. The Joint Petition for Non-Unanimous Settlement moves rates for all classes closer to the cost of service, while also being tempered by gradualism.

The rate design proposed in the Joint Petition for Non-Unanimous Settlement reflects a reasonable compromise of the positions of the Joint Petitioners to the Non-Unanimous Settlement. The proposed rate design is designed to recover the costs allocated to the various customer classes and reflects a balanced approach of recovering the increased revenue requirement through both customer charges and commodity distribution charges. Therefore, the rate design proposed in the Joint Petition for Non-Unanimous Settlement should be approved.

V. **ARGUMENT**

A. **REVENUE ALLOCATION**

1. **The revenue allocation agreed to by the Joint Petitioners to the Non-Unanimous Settlement is just and reasonable, in the public interest, and consistent with cost-causation principles, and should be approved.**

In accordance with the Joint Petition for Non-Unanimous Settlement that will be filed on September 2, 2022, Columbia adopts as its litigation position for purposes of this Main Brief the revenue allocation agreed to by the Joint Petitioners to the Non-Unanimous Settlement. Appendix A to the Joint Petition for Non-Unanimous Settlement sets forth the agreed to revenue allocation to the classes and is attached hereto as **CONFIDENTIAL Appendix A**. *See* Non-Unanimous Settlement Appendix A. The resulting class increases agreed to by the Joint Petitioners to the Non-Unanimous Settlement, as compared to the Company's as-filed increases, are as follows:

BEGIN CONFIDENTIAL

[REDACTED]	[REDACTED]	[REDACTED] [REDACTED] [REDACTED]	[REDACTED]	[REDACTED] [REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED] [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED] [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED] [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED] [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED] [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

END CONFIDENTIAL

⁴ Columbia Exhibit No. 103, Schedule 8, p. 4.

Revenue allocation was the subject of extensive litigation and negotiation. The Joint Petition for Non-Unanimous Settlement reflects a compromise of the positions of the Joint Petitioners to the Non-Unanimous Settlement, which includes all active parties to this proceeding who submitted testimony on revenue allocation issues, except for the OSBA.⁵ The revenue allocation agreed to in the Joint Petition for Non-Unanimous Settlement represents a range of interests, including residential customers, low-income customers, large industrial customers, and Columbia. The Joint Petition for Non-Unanimous Settlement strikes a balance that is in the best interest of all of Columbia's customers, and the revenue allocation terms should be approved.

The proposed allocation of revenue among the rate classes agreed to in the Joint Petition for Non-Unanimous Settlement is representative of the cost to serve each class. As indicated by the Commonwealth Court in *Lloyd*, cost of service is the "polestar" of utility rates. *Lloyd v. Pa. P.U.C.*, 904 A.2d 1010, 1020 (Pa. Cmwlth. 2006) *appeal denied*, 591 Pa. 676, 916 A.2d 1104 (2007) ("*Lloyd*"). While other factors, such as gradualism, may be considered, these factors are not permitted to trump cost of service as the primary basis for allocating the revenue increase. *Id.* at 1020-21. Consistent with the Commonwealth Court's directive in *Lloyd*, a proposed revenue allocation will only be found to be reasonable where it moves distribution rates for each class closer to the full cost of providing service. *Pa. Publ. Util. Comm'n, et al. v. PPL Electric Utilities Corporation*, Docket Nos. R-00049255, et al., 2007 Pa. PUC LEXIS 55 (Order on Remand entered July 25, 2007).

Even prior to *Lloyd*, Pennsylvania appellate courts recognized the importance of properly allocating a proposed revenue increase among a utility's rate classes. In *Philadelphia Suburban Water Company v. Pa. Pub. Util. Comm'n*, the court stated that:

⁵ Mr. Culbertson is not a party to the Joint Petition for Non-Unanimous Settlement but did not submit testimony on revenue allocation or rate design.

in order for a rate differential to survive a challenge brought under Section 1304 of the Public Utility Code [bar against rate discrimination], the utility must show that the differential [different rates among the classes] can be justified by the difference in costs required to deliver service to each class. The rate cannot be illegally high for one class and illegally low for another.

Philadelphia Suburban Water Company v. Pa. Pub. Util. Comm'n 808 A.2d 1044, 1060 (Pa Cmwlth. 2002). Indeed, any significant departure from the results of a cost-of-service study requires the proponent to fully justify the deviation.

Although cost of service studies may appear to have great precision, the Commission has repeatedly recognized that the cost-of-service study is a guide to designing rates and is only one factor, albeit an important one, to be considered in the rate setting process. *See e.g., Aqua 2008*, 2008 Pa. PUC LEXIS 50; *Pa. P.U.C. v. West Penn Power Co.*, Docket Nos. R-901609, et al., 1990 Pa. PUC LEXIS 142, 73 Pa. PUC 454, 119 P.U.R.4th 110 (Order dated Dec. 13, 1990); *Pa. P.U.C. v. Pennsylvania Power & Light Co.*, 55 PUR 4th 185, 249 (Order dated Aug. 19, 1983). Cost allocation studies require a considerable amount of judgment and are described as more of an accounting/engineering art rather than science. *Application of Metropolitan Edison Co.*, R-00974008 (Order dated June 30, 1998); *Pa. P.U.C. v. Pennsylvania Power & Light Co.*, 55 PUR 4th 185 (Order dated Aug. 19, 1983).

The revenue allocation agreed to by the Joint Petitioners to the Non-Unanimous Settlement is consistent with cost causation principles and meets the “cost of service” standards adopted by the Courts and the Commission in tandem with secondary considerations, including gradualism, value of service, efficiency, and fairness. The Joint Petitioners to the Non-Unanimous Settlement proposed a variety of class cost of service studies and cost allocation methodologies in this proceeding. In Columbia’s 2020 rate proceeding, the Commission appears to have endorsed the peak and average study as the most appropriate methodology to allocate the revenue increase. *Pa.*

PUC v. Columbia Gas of Pennsylvania, Inc., Docket No. R-2020-3018835 (Order entered Feb. 19, 2021) at 211-18.

Although Columbia presented three allocated cost of service studies in the current case as providing a reasonable range of returns – the customer-demand study (Exhibit 111, Schedule 1), the peak and average study (Exhibit 111, Schedule 2), and the average study (Exhibit 111, Schedule 3) – Columbia used the results of the peak and average study as the primary guide for the allocation of the revenue increase, consistent with the Commission’s decision in Columbia’s 2020 rate case. (Columbia St. 6, pp. 4, 17). I&E and OCA supported Columbia’s use of the peak and average study as the primary basis for revenue allocation. (I&E St. 3, p. 12; OCA St. 3, p. 8). While OSBA noted its disagreement with the peak and average methodology, it accepted the peak and average study “for reasons of Commission precedent.” (OSBA St. 1, p. 15). PSU recommended that the results of the customer-demand study be used for allocating revenue. (PSU St. 1, p. 18). CII supported PSU’s position. (CII St. 1, p. 7).

Although the revenue allocation set forth in the Non-Unanimous Settlement reflects a compromise of the Joint Petitioners’ revenue allocation proposals and is not based upon a specific agreed to formulaic approach or specific cost of service study results, the scaled-back revenue allocation proposed in the Non-Unanimous Settlement is within the range of revenue allocations proposed by the parties, which further evidences its reasonableness. In particular, the class allocations are within the range of allocations of those parties that supported the use of the peak and average studies. Attached hereto as **CONFIDENTIAL Appendix C** are the scaled-back class revenue allocations of the various parties to this proceeding. All amounts are scaled back proportionately from the Company’s original revenue increase of approximately \$82 million to the settlement increase of **BEGIN CONFIDENTIAL** [REDACTED] **END CONFIDENTIAL** with

the exception of the I&E allocations, which reflects the application of I&E's first dollar rate relief to the residential class (I&E St. 2, p. 16). As can be seen by a comparison of **CONFIDENTIAL Appendix C** to the Non-Unanimous Settlement allocations listed in the table above, the **BEGIN CONFIDENTIAL** [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. **END CONFIDENTIAL** Columbia notes that because of the disagreement

among the parties over cost allocation studies and the "black box" nature of the Joint Petition for Partial Settlement, it is not possible to precisely calculate the extent to which the revenue allocation agreed to in the Non-Unanimous Settlement moves rates closer to cost of service for all Joint Petitioners. However, Columbia believes that the Non-Unanimous Settlement achieves progress in the movement toward cost-based rates and represents a fair and reasonable allocation of the agreed upon increase in annual operating revenue. Therefore, Columbia requests that the ALJs and the Commission approve the revenue allocation proposed in the Joint Petition for Non-Unanimous Settlement.

2. **OSBA's litigated position on revenue allocation is unreasonable and is not supported by gradualism principles and therefore, should be rejected.**

The OSBA is not a party to the Joint Petition for Non-Unanimous Settlement and maintains its litigation position with respect to rate design and revenue allocation issues. For the reasons explained herein and in Columbia witness Johnson's rebuttal testimony and rejoinder testimony, the OSBA's litigation position as to certain classes should be rejected.

As explained above, the Non-Unanimous Settlement proposes to essentially adopt **BEGIN**
CONFIDENTIAL [REDACTED]

[REDACTED]

[REDACTED] **END CONFIDENTIAL.**

OSBA witnesses Knecht and Ewen proposed to assign 8.3% of the requested revenue increase to the Large General Class as compared to the proposed assignment of 6.29% of the settled revenue requirement to the Large General Class in the Joint Petition for Non-Unanimous Settlement. OSBA St. No. 1-SR, p. 6. Mr. Knecht's and Mr. Ewen's revenue allocation proposal would result in the LDS/LGSS class receiving an increase of 2.0 times the system average, which violates principles of gradualism. (Columbia St. 6-R, p. 4). In Columbia's 2020 rate case, the Commission determined that 1.5 times the average system increase was the upper bound for rate gradualism. *Pa. PUC v. Columbia Gas of Pennsylvania, Inc.*, Docket No. R-2020-3018835 (Order entered Feb. 19, 2021). As Columbia witness Johnson explained, it would be inappropriate to adopt a more aggressive interpretation of gradualism in this case as compared to the 2020 case because the Peak and Average Study produces an allocation of mains cost to the LGS/LDS class that is beyond the maximum allocation of footage of pipe for any one LGS/LDS customer. (Columbia St. No. 6-RJ, p. 4). Columbia witness Johnson also explained that it would not be prudent to accelerate the increase to the LGS/LDS class beyond 1.5 times the average system increase in light of the recent rate increase impacts described in CII witness Plank's surrebuttal testimony. (CII St. No. 1). Despite these considerations, OSBA maintains its position that the LDS/LGSS class should be allocated an increase of 2.0 times the system average.

OSBA's proposed revenue allocation should be rejected because, unlike the revenue allocation proposed in the Joint Petition for Non-Unanimous Settlement, it is not tempered by

gradualism. While cost of service is the primary consideration in allocating the revenue requirement, other important factors such as gradualism may be considered so long as the proposed revenue allocation moves rates closer to the cost of service. *Pa. Publ. Util. Comm'n, et al. v. PPL Electric Utilities Corporation*, Docket Nos. R-00049255, et al., 2007 Pa. PUC LEXIS 55 (Order on Remand entered July 25, 2007). Columbia believes that the revenue allocation proposed in the Joint Petition for Non-Unanimous Settlement should be approved because, unlike OSBA's revenue allocation proposal, the Joint Petition for Non-Unanimous Settlement moves rates closer to the cost of service while also giving due consideration to principles of gradualism.

B. RATE DESIGN

1. Introduction as to Rate Design

Appendix B to the Joint Petition for Non-Unanimous Settlement sets forth the agreed to rate design for the customer classes and is attached hereto as **CONFIDENTIAL Appendix B**. The rate design agreed to by the Joint Petitioners to the Non-Unanimous Settlement reflects a compromise of the various rate design proposals and represents a fair and reasonable rate design for the customer classes. Accordingly, the rate design agreed to in the Non-Unanimous Settlement should be approved.

2. Residential Rate Design

The Joint Petition for Partial Settlement provides for **BEGIN CONFIDENTIAL** [REDACTED]

[REDACTED] **END CONFIDENTIAL**

3. Small Commercial and Industrial Rate Design

The customer charges provided for in the Joint Petition for Non-Unanimous Settlement are **BEGIN CONFIDENTIAL** [REDACTED]

[REDACTED]

[REDACTED] **END CONFIDENTIAL**

4. Large Commercial and Industrial Rate Design

The Joint Petition for Non-Unanimous Settlement proposes a customer charge for the SDS/LGSS class of **BEGIN CONFIDENTIAL** [REDACTED] **END CONFIDENTIAL** Columbia proposed a customer charge of \$1,265.29 for the SDS/LGSS class based on the full amount of its requested revenue increase as supported by the Company’s customer cost analysis. (Columbia St. 6, p. 26). I&E agreed with Columbia’s proposal. (I&E St. 3, p. 23). The customer charge proposed in the Joint Petition for Non-Unanimous Settlement represents a proportionate scale back of the Company’s and I&E’s proposed SDS/LGSS customer charge based on the settled revenue requirement of **BEGIN CONFIDENTIAL** [REDACTED] **END CONFIDENTIAL** The proposed customer charge for the SDS/LGSS class as scaled back proportionately to the amount of the settled revenue increase is reasonable and should be approved.

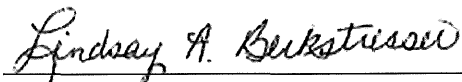
5. Conclusions as to Rate Design

The proposed changes to the rate design for all customer classes, as set forth in Appendix B to the Joint Petition for Non-Unanimous Settlement, reflect an accord reached between the Joint Petitioners to the Non-Unanimous Settlement as to the rate design to be used to recover the rate increases allocated under the Partial Settlement to the Company’s customers. Columbia submits that the Non-Unanimous Settlement reflects an acceptable compromise of the competing litigation positions of the Joint Petitioners to the Non-Unanimous Settlement relative to rate design.

VI. CONCLUSION

The Non-Unanimous Settlement is the result of a detailed examination of Columbia's and the other parties' proposals, multiple rounds of discovery, direct, rebuttal, surrebuttal, and rejoinder testimony on revenue allocation and rate design, and compromise by the Joint Petitioners to the Non-Unanimous Settlement. Columbia believes that fair and reasonable compromises have been achieved on the revenue allocation and rate design agreed to in the Non-Unanimous Settlement. Columbia fully supports this Non-Unanimous Settlement and respectfully requests that the ALJ and the Commission review and approve the Non-Unanimous Settlement in its entirety without modification.

Respectfully submitted,



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Date: August 23, 2022

APPENDIX A
(No public version)

APPENDIX B
(No public version)

APPENDIX C
(No public version)

APPENDIX D
(No public version)

APPENDIX E

Proposed Conclusions of Law in Support of Brief on Non-Unanimous Settlement

1. Settlements must be in the public interest. *Pa. PUC v. Windstream Pennsylvania, LLC*, Docket No. M-2012-2227108, 2012 Pa. PUC LEXIS 1535 (Opinion and Order entered Sept. 27, 2012); *Pa. PUC v. C.S. Water and Sewer Assoc.*, Docket No. R-881147, 74 Pa. PUC 767 (Opinion entered Jul. 22, 1991).

2. The Commission’s policy permits parties to enter “partial” or “non-unanimous” settlements. *See* 52 Pa. Code § 69.401, § 69.406, § 5.232.

3. As with full settlements, the terms and conditions of partial settlements must be reasonable and in the public interest. *Pa. PUC v. City of Bethlehem – Water Department*, Docket No. R-2020-3020256, 2021 Pa. PUC LEXIS 116 (April 15, 2021) (“*City of Bethlehem Water*”).

4. The Commission has approved non-unanimous settlements as being just and reasonable and in the public interest and has not rejected or disfavored settlements because they are non-unanimous. *City of Bethlehem Water*; *Pa. PUC v. Pike County Light and Power Company – Electric*, Docket No. R-2020-3022135 (Recommended Decision May 5, 2021; Order entered June 23, 2021) (“*Pike County*”); *Pa. PUC v. Pennsylvania-American Water Company*, Docket No. R-2020-3019369 (Order entered February 25, 2021).

5. The standards for approving the terms of non-unanimous settlements are the same as those for deciding a fully contested case, *i.e.* the parties to the non-unanimous settlement must demonstrate that the proposed settlement is supported by substantial evidence and that the rates agreed to are just and reasonable and in conformity with the Commission’s orders and regulations. 66 Pa C.S. § 1301; *Pike County*, Docket No. R-2020-3022135.

6. When evaluating a non-unanimous settlement, the Commission will also consider the due process afforded to non-settling parties, such as whether non-settling were provided an

opportunity to object to the settlement and to present their positions on the issues, and the range of interests represented in the non-unanimous settlement. *Pa. PUC v. City of Bethlehem – Water Department*, 2021 Pa. PUC LEXIS 116.

7. Cost of service is the “polestar” of utility rates. *Lloyd v. Pa. P.U.C.*, 904 A.2d 1010, 1020 (Pa. Cmwlth. 2006) *appeal denied*, 591 Pa. 676, 916 A.2d 1104 (2007) (“*Lloyd*”). While other factors, such as gradualism, may be considered, these factors are not permitted to trump cost of service as the primary basis for allocating the revenue increase. *Id.* at 1020-21.

8. A proposed revenue allocation will only be found to be reasonable where it moves distribution rates for each class closer to the full cost of providing service. *Pa. Publ. Util. Comm'n, et al. v. PPL Electric Utilities Corporation*, Docket Nos. R-00049255, et al., 2007 Pa. PUC LEXIS 55 (Order on Remand entered July 25, 2007).

9. The cost of service study is a guide to designing rates and is only one factor, albeit an important one, to be considered in the rate setting process. *See, e.g., Aqua 2008*, 2008 Pa. PUC LEXIS 50; *Pa. P.U.C. v. West Penn Power Co.*, Docket Nos. R-901609, et al., 1990 Pa. PUC LEXIS 142, 73 Pa. PUC 454, 119 P.U.R.4th 110 (Order dated Dec. 13, 1990); *Pa. P.U.C. v. Pennsylvania Power & Light Co.*, 55 PUR 4th 185, 249 (Order dated Aug. 19, 1983).

10. Cost allocation studies require a considerable amount of judgment and are described as more of an accounting/engineering art rather than science. *Application of Metropolitan Edison Co.*, R-00974008 (Order dated June 30, 1998); *Pa. P.U.C. v. Pennsylvania Power & Light Co.*, 55 PUR 4th 185 (Order dated Aug. 19, 1983).

11. In Columbia’s 2020 rate case, the Commission determined that 1.5 times average system increase was the upper bound for rate gradualism. *Pa. PUC v. Columbia Gas of Pennsylvania, Inc.*, Docket No. R-2020-3018835 (Order entered February 19, 2021).

APPENDIX F

Proposed Ordering Paragraphs

1. The Joint Petition for Non-unanimous Settlement, filed on September 2, 2022, by Columbia Gas of Pennsylvania, Inc., the Bureau of Investigation and Enforcement of the Pennsylvania Public Utility Commission, the Office of Consumer Advocate, Columbia Industrial Intervenors, Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania, Pennsylvania Weatherization Providers Task Force, and The Pennsylvania State University is approved in its entirety and without modification.