

COMMONWEALTH OF PENNSYLVANIA



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October 21, 2022

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

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

Dear Secretary Chiavetta:

Attached for electronic filing please find the Office of Consumer Advocate's Reply Exceptions in the above-referenced proceeding.

Copies have been served per the attached Certificate of Service.

Respectfully submitted,

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Certificate of Service

*336849

CERTIFICATE OF SERVICE

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

I hereby certify that I have this day served a true copy of the following document, the Office of Consumer Advocate’s Reply Exceptions, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 21st day of October 2022.

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission	:	Docket Nos. 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.	:	

REPLY EXCEPTIONS
OF THE
OFFICE OF CONSUMER ADVOCATE

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I. INTRODUCTION

The Office of Consumer Advocate (OCA) submits this Reply to the Exceptions of the Office of Small Business Advocate (OSBA). The Administrative Law Judges (ALJs) correctly applied precedent in adopting the revenue allocation agreed to in the Joint Petition for Non-Uniform Settlement on Revenue Allocation (JPNUS). If the Commission adopts the OSBA's argument in this proceeding, it will stifle the parties' ability to reach settlement and harm the development of the record in future proceedings. The Commission should deny OSBA's Exception No. 3 in this proceeding given that the ALJs' Recommended Decision (R.D.) applied the correct standard for the review of the JPNUS, and their recommended approval of the JPNUS is well supported.¹

II. REPLY EXCEPTIONS

Reply to Exceptions 1 and 3: The ALJs' Recommended Adoption of the JPNUS is Consistent with Sound Ratemaking Principles.

In its Exceptions, the OSBA argues that the ALJs' RD "will lead to chaos" if adopted. OSBA Exc. at 7. Moreover, the OSBA posits that the Commission should reject the JPNUS because a Commission policy allowing for non-unanimous settlement "encourages parties who disagree with Commission precedent to join together to try to overturn precedent through non-unanimous settlements." OSBA Exc. at 8. The OSBA reaches this conclusion because, in its view, the JPNUS does not allocate costs by using a cost of service study that is consistent with the cost

¹ While the OCA does not specifically reply to the OSBA's second exception, which the OCA submits is substantively similar to OSBA's first exception. Exception 2 should also be denied and the JPNUS should be accepted for the reasons outlined in the OCA's Supplemental Statement in Support and by the ALJs in their Recommended Decision.

of service study relied upon in the 2021 Columbia base rate case. See Pa. Pub. Util. Comm’n v. Columbia Gas of Pa., Inc., Docket No. R-2020-3018835 (entered Feb. 19, 2021) (2021 Order).

In the 2021 proceeding, the Commission accepted that the allocation of distribution costs should be based, primarily, on a study that utilized the peak and average methodology for the allocation of mains costs. See 2021 Order at 230. Here, the ALJs currently point out that the 2021 Order was within the context of a full litigation of issues related to rate allocation and rate design. R.D. at 104. As such, the ALJs noted that the 2021 Order “is not fully instructive on what is required when considering the JPNUS as a non-unanimous settlement on revenue allocation and rate design.” Id.

The OCA submits that the ALJs review of the record in this proceeding was appropriate. The ALJs analyzed the requirements of reviewing a non-unanimous settlement in their R.D., and stated:

The Commission’s policy permits parties to enter “partial” or “non-unanimous” settlements. 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. 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.

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, in the public interest, and in conformity with the Commission’s orders and regulations.

R.D. at 17-18 (citations omitted). The OCA submits that this is the correct standard for the review of the JPNUS, and one that has been properly met in this case.²

The JPNUS is consistent with applicable law regarding the allocation of distribution costs. In addition to the ALJs providing a summary of the law governing the setting of rates in their R.D., the ALJs also noted the importance and presence of due process in the context of non-unanimous settlements by noting as follows:

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. In this case, the non-settling parties to the Joint Petition for Non-Unanimous Settlement were given an opportunity to first submit briefs on the issues related to revenue allocation and rate design. In addition, the Non-Unanimous Settlement was served on all parties to the proceeding, and we established procedures for filing comments in opposition thereto. The OSBA and Mr. Culbertson presented their positions in briefing and comments to the JPNUS, and therefore have been provided due process to present their positions and object to the JPNUS.

R.D. at 104-105 (internal citations omitted).

As the Commission and courts have recognized, cost of service is to be a guide in the setting of rates. Much has been made about the term "Polestar" as utilized in the Lloyd decision. A polestar is a "directing principle", a "guide." See Merriam-Webster Dictionary, <https://www.merriam-webster.com> (last accessed on October 19, 2022). The JPNUS allocation of the settled upon Revenue Requirement increase was reasonable utilizing the cost of service study that were presented in the proceeding, and the P&A study produced by the Company. See R.D. at 74.

² The ALJs cite the Commission's 2020 decision in Pa. PUC v. Pike County Light & Power Co. in support of their RD. RD at 17. In that proceeding, Administrative Law Judge Mary Long recommended approval of a non-unanimous settlement of revenue allocation. The non-unanimous settlement was entered into between Pike, I&E and OCA. The OSBA opposed the non-unanimous settlement in that case. In its Order, the Commission approved the non-unanimous settlement over the objections of OSBA.

The OSBA argues that the JPNUS is not based on substantial record evidence. OSBA Exceptions at 3-5. The JPNUS, however, is consistent with an allocation that is based primarily on a peak and average study, as was approved in the 2021 proceeding. The OCA’s litigation allocation is unquestionably based on Peak and Average (P&A) – as the OCA has been a proponent of the P&A methodology in every major gas distribution case for over thirty years. Utilizing a P&A cost study as a guide, OCA witness Mierzwa recommended that small commercial customers receive an allocation that is *more than* the allocation included in the JPNUS. See OSBA Exc. at pp. 2, 5 (the OSBA adopted the chart found in the R.D. at 97, initially produced by Penn State). In other words, the JPNUS allocates OSBA’s main represented class fewer dollars than if the Commission were to accept the OCA’s allocation proposal, making the allocation unequivocally “within the range of possible outcomes” as the ALJs recognized. R.D. at 105.

As the ALJs concluded, “the JPNUS is supported by substantial evidence and is in the public interest in that it is within the range of possible outcomes argued by the parties and is supported by their respective experts’ testimony.” R.D. at 105. Indeed, the JPNUS results in revenue allocations that leads to no system average increases above 2x the current system average (including the LDS rate class). R.D. at 87.³ The ALJs reached the correct conclusion, and the OCA respectfully submits that the Commission should adopt the R.D. on this issue.

The OCA has concerns that the adoption of the OSBA’s position in its third exception, that the JPNUS must fully adhere to the 2021 Columbia base rate case Order, could have a chilling effect on future settlement negotiations. Under the OSBA theory, settlements must adhere to the

³ As noted in the Recommended Decision, OSBA “recommend that the . . . limit of 2.0 times system average be used in this proceeding, to make at least some modest progress toward cost-based rates for the LDS/LGSS class.” R.D. at 87 (internal citations omitted). The Recommended Decision additionally notes that OSBA witnesses testified to the fact that “under present rates, the LDS/LGSS rate class produces revenues far below average cost, with a revenue to cost ratio of 55 percent using the Company’s P&A cost of service study method. With a 1.50-times system average limit, that value increases only to 59 percent at Columbia’s proposed rates.” Id.

ratemaking principles (in this case revenue allocation) that were accepted in the most recent litigated Commission proceeding for the utility in question. In this proceeding, that would be the 2021 base rate proceeding. For other cases, it could be decades old Commission decisions.

The parties to the JPNUS are aware that settlements do not constitute Commission precedent. The OCA never advocated for the overturning of Commission precedent through non-unanimous settlement (in this case or any case) and the position that a non-unanimous is an attempt to overturn Commission precedent is unreasonable.

The OCA submits that OSBA's argument in this proceeding could stifle the parties' ability to reach settlement and harm the development of the record in future proceedings. More importantly, it is not necessary for the Commission to examine the JPNUS under the framework requested by the OSBA. The ALJs applied the correct standard for the review of the JPNUS, and their recommended approval of the JPNUS is well supported.

III. CONCLUSION

For the reasons set forth above, in the ALJs' Recommended Decision and the OCA's Supplemental Statement in Support of the JPNUS, the Office of Consumer Advocate respectfully requests that the Public Utility Commission deny the Exceptions of OSBA and adopt the JPNUS as recommended by the ALJs.

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