COMMONWEALTH OF PENNSYLVANIA

PATRICK M. CICERO
Consumer Advocate

OFFICE OF CONSUMER ADVOCATE
555 Walnut Street, 5th Floor, Forum Place
Harrisburg, Pennsylvania 17101-1923
(717) 783-5048
(800) 684-6560

@pa_oca
/pennoca
FAX (717) 783-7152
consumer@paoca.org
www.oca.pa.gov

August 22, 2024

Via Electronic Filing
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-2024-3046519

Dear Secretary Chiavetta:

Enclosed for e-filing please find a copy of the Main Brief of the Office of Consumer Advocate in the captioned proceeding.

Copies have been served on the Honorable Administrative Law Judge Jeffrey A. Watson and as indicated on the enclosed Certificate of Service.

Respectfully submitted,

/s/ Melanie Joy El Atieh
Melanie Joy El Atieh
Deputy Consumer Advocate
PA Attorney I.D. # 209323
MElAtieh@paoca.org

Enclosures

cc: Honorable Administrative Law Judge Jeffrey A. Watson (via e-mail)
Mary Swarner, Legal Assistant, mswarner@pa.gov (via e-mail)
Certificate of Service (as indicated)

CERTIFICATE OF SERVICE

Pennsylvania Public Utility Commission	:	
v.	:	Docket Nos. R-2024-3046519
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 Main Brief 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. This document was filed on the Commission's electronic filing system.

Dated this 22nd day of August 2024.

SERVICE BY E-MAIL ONLY

Michael W. Hassell, Esq
Megan Rulli, Esquire
Post & Schell, P.C.
17 North Second Street, 12th Floor
Harrisburg, PA 17101-1601
mhassell@postschell.com
mrulli@postschell.com
Counsel for Columbia Gas

Theodore J. Gallagher, Esq
Candis A. Tunilo, Esq
NiSource Corporate Services Co.
800 N. Third St., Suite 204
Harrisburg, PA 17102
Telephone: (223) 488-0794
ctunilo@nisource.com
Counsel for NiSource

Scott B. Granger, Esq
Bureau of Investigation & Enforcement
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120
sgranger@pa.gov
Counsel for I&E

Steven C. Gray, Esq
Rebecca Lyttle
Office of Small Business Advocate
555 Walnut Street
1st Floor, Forum Place
Harrisburg, PA 17101-1923
sgray@pa.gov
relyttle@pa.gov
Counsel for OSBA

Charis Mincavage, Esq
Kenneth R. Stark, Esq
McNees Wallace & Nurick LLC
100 Pine Street
P.O. Box 1166
Harrisburg, PA 17108-1166
cmincavage@mcneeslaw.com
kstark@mcneeslaw.com
Counsel for Columbia Industrial Intervenors

Thomas J. Sniscak, Esq
Whitney E. Snyder, Esq
Phillip D. Demanchick Jr., Esq
Hawke McKeon & Sniscak, LLP
100 N. 10th Street
Harrisburg, PA 17101
tjsniscak@hmslegal.com
wesnyder@hmslegal.com
pddemanchick@hmslegal.com
Counsel for Pennsylvania State University

Joseph L. Vullo, Esq
Burke Vullo Reilly Roberts
1460 Wyoming Avenue
Forty Fort, PA 18704
jlvullo@bvrrlaw.com
Counsel for Pennsylvania Weatherization Providers Task Force

Todd S. Stewart, Esq
Hawke McKeon & Sniscak LLP
100 North Tenth Street
P.O. Box 1778
Harrisburg, PA 17105-1778
tsstewart@hmslegal.com

Elizabeth R. Marx, Esq
Pennsylvania Utility Law Project
118 Locust Street
Harrisburg, PA 17101
emarxpulp@palegalaid.net
pulp@palegalaid.net
Counsel for CAUSE-PA

/s/ *Melanie Joy El Atieh*
Melanie Joy El Atieh
Deputy Consumer Advocate
PA Attorney I.D. # 209323
melatieh@paoca.org

Harrison W. Breitman
Assistant Consumer Advocate
OCA2024COLGASBRC@paoca.org

Counsel for:
Office of Consumer Advocate
555 Walnut Street
5th Floor, Forum Place
Harrisburg, PA 17101-1923
717-783-5048

Dated: August 22, 2024

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission	:	Docket Nos.
	:	R-2024-3046519
v.	:	C-2024-3047905
	:	C-2024-3047675
Columbia Gas Pennsylvania, Inc.	:	

MAIN BRIEF
OF THE
OFFICE OF CONSUMER ADVOCATE

Counsel for:
Patrick M. Cicero
Consumer Advocate

Office of Consumer Advocate
555 Walnut Street
5th Floor, Forum Place
Harrisburg, PA 17101-1923
Phone: 717-783-5048
Fax: 717-783-7152

Harrison W. Breitman
Assistant Consumer Advocate
PA Attorney I.D. #320580
HBreitman@paoca.org

Melanie Joy El Atieh
Deputy Consumer Advocate
PA Attorney I.D. #209323
MElAtieh@paoca.org

Dated: August 22, 2024

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I. INTRODUCTION

The Office of Consumer Advocate (OCA) joins in the unanimous partial settlement between Columbia Gas of Pennsylvania, Inc. (Columbia or the Company) and the other parties to this proceeding. All issues but one are addressed in the Joint Petition for Settlement.[1] The one unresolved issue – Columbia's proposed new rate design called the Municipal Levelization Charge (MLC) – was reserved for briefing by the parties and for a final decision by the Pennsylvania Public Utility Commission (Commission). The OCA now submits this Main Brief in support of its litigation position in opposition to the MLC.

A. Description of the Office of Consumer Advocate

The OCA is a statutory advocate with the authority and duty to represent the interest of consumers as a party before the Commission in public utility rate requests. 71 P.S. § 309-4.

B. Procedural History[2]

On March 15, 2024, Columbia filed Supplement No. 374 to its Tariff Gas – Pa. P.U.C. No. 9, in the captioned R docket, with the Commission. The Company proposed to increase rates to produce additional overall revenues of $124.1 million per year, a 21.7% increase in overall distribution revenue requirement. Columbia Gas provides natural gas public utility service to approximately 445,000 residential, commercial, and industrial customers in portions of 26 counties in Western, Northwestern, Southern, and Central Pennsylvania.

On March 20, 2024, the OCA filed its Formal Complaint and Public Statement.

On April 4, 2024, the Commission issued an Order that initiated an investigation into the lawfulness, justness, and reasonableness of the proposed rate increase in this filing, in addition to

[1] Consistent with ALJ Watson's August 21 Order, The Joint Petition for Settlement is being submitted on August 22, 2024, the same date as this brief. Statements in Support of the settlement will be submitted on August 30, 2024.
[2] In the interest of brevity, the OCA presents a very brief and relevant procedural history as related to the litigated issues. A more detailed procedural history will be presented in the Joint Petition for Settlement.

the Company's existing rates, rules, and regulations, assigned this matter to the Office of Administrative Law Judge (OALJ) for further proceedings as appropriate, and suspended the effective date of Supplement No. 374 until December 14, 2024. The OALJ assigned the case to the Honorable Administrative Law Judge (ALJ) Jeffrey A. Watson.

On May 21 and 22, 2024, each day at 1 p.m. and 6 p.m., the Commission held Public Input Hearings in Washington, Pennsylvania and telephonically, respectively. Around five customers testified at the Public Input Hearings, regarding the unaffordability of current and proposed rates and the WNA. OCA witness Roger Colton summarized the Public Input Hearing testimony in his Direct Testimony, Exhibit RDC-2.

Consistent with the procedural schedule issued by ALJ Watson, the OCA served on the ALJ and the parties its written Direct, Rebuttal, and Surrebuttal Testimonies on June 14, 2024, July 10, 2024, and July 25, 2024, respectively, in which the OCA opposed and/or recommended adjustments to the Company's requests. Written rejoinder testimony was submitted by Columbia on July 30, 2024.

On August 1, 2024, ALJ Watson convened, held and concluded a telephonic evidentiary hearing, during which time the OCA moved its testimony into evidence.

On August 13, 2024, and August 14, 2024, the parties communicated with ALJ Watson that that the Parties were engaged in Settlement discussions and that they requested a revision of the deadline for filing a Settlement Petition. On August 21, 2024, ALJ Watson issued a Third Interim Order directing that the Main Briefs and Joint Petition for Settlement be filed on August 22, 2024, and that Statements in Support or Objections to the Settlement and Reply Briefs be filed on August 30, 2024.

In accordance with the procedural schedule established in this proceeding, the OCA now submits this Main Brief in support of its litigation position opposing the MLC.

C. Statement of the Case (Summary Description of the MLC)

Columbia is proposing to implement a new rate design called the Municipal Levelization Charge (MLC) for customers residing in certain municipalities within its service territory. OCA St. 5 at 28. The purpose of the MLC is two-fold. First, it is to reflect Columbia's assertion that the City of Pittsburgh and the Borough Perryopolis impose paving and restoration requirements for infrastructure replacement projects that exceed what other municipalities require and the statewide Pennsylvania Department of Transportation (PennDOT) requirements. OCA St. 5 at 28. Second, it is to reflect Columbia's assertion that Roscoe Borough and New Sewickley Township have less costly infrastructure replacement paving and restoration requirements. *Id*. The MLC will operate by being a monthly MLC charge of $0.70 per bill to customers located in the City of Pittsburgh and the Borough of Perryopolis, and a monthly MLC credit of $7.44 per bill to customers located in Roscoe Borough and New Sewickley Township. *Id.* The revenues collected from customers located in the City of Pittsburgh and the Borough Perryopolis through the MLC charge would be credited to the customers located in Roscoe Borough and New Sewickley Township.

Currently Columbia recovers its paving and restoration costs through base rates from all customers. *Id.* Columbia claims that the MLC charge/credit will foster fairness because customers living in municipalities that do not impose costly paving and restoration requirements will no longer pay for paving and restoration costs that only benefit customers in those municipalities that impose more costly requirements. *Id.*

D. Legal Standards

i. Utility Monopoly Regulation

Columbia is a natural gas distribution provider with an exclusive monopoly franchise. Consumers who reside in its certificated service territory have no choice; if they want natural gas service, they must buy it from Columbia. Public utility regulation stems from the state's police power to protect the health, safety, morals, and general welfare of their citizens. States have the power to regulate the use of private property, and the rates charged by certain private companies in industries "clothed with a public interest." *Munn v. Illinois*, 94 U.S. 113, 126 (1877). "[T]he regulation of utilities is one of the most important of the functions traditionally associated with the police power of the States." *Ark. Elec. Coop. Corp. v. Ark. Pub. Serv. Comm'n*, 461 U.S. 375, 377 (1983). The Public Utility Code (Code) governing sales that are only rationally dealt in by a monopoly is a proper exercise of the state police power to regulate the health, safety, morals, and general welfare of citizens. *Relief Elec. Light, Heat & Power Co's. Petition*, 1916 Pa. Super. LEXIS 89, **6-15 (Pa. Super. Ct. Mar. 1, 1916). The Commission's comprehensive authority under the Code to oversee and regulate jurisdictional public utilities is a constitutional exercise of traditional state police powers as a reasonable exercise of police power by appropriate means for a legitimate end. *Jenkins Twp. v. Pub. Serv. Comm'n*, 1916 Pa. Super. LEXIS 30, **15-16 (Oct. 30, 1916) ("The authority which the commission seeks to exercise in this case is clearly the exercise of the police power inherent in our State as delegated to the commission by the provisions of the Public Service Company Law" (which the Public Utility Law of 1937 replaced) (which the Code (of 1978) replaced)).[3]

[3] *See also* Charles F. Phillips, Jr., *The Regulation of Public Utilities: Theory and Practice*, 87 (Pub. Utils. Reports, Inc., 3rd ed. 1993); James H. Booser, *The Constitutional Limitations on Public Utility Regulation*, 67 Dick. L. Rev. 363, 364 (1963), *available at*: https://ideas.dickinsonlaw.psu.edu/dlra/vol67/iss4/3 (last visited Mar. 21, 2024).

ii. Burden of Proof

Columbia bears the full burden of proof to establish the justness and reasonableness of every element of its requested rate increase:

> 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 the 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.

66 Pa. C.S. § 315(a). The evidence necessary to meet that burden must be substantial, legally credible, and cannot be mere "suspicion" or "scintilla" of evidence. *Lower Frederick Twp. Water Co. v. Pa. PUC*, 409 A.2d 505, 507 (Pa. Cmwlth. 1980); *Lansberry v. Pa. PUC*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990) (*Lansberry*).

The party with the burden of proof has a formidable task to show that the Commission may lawfully adopt its position. *Burleson v. Pa. PUC*, 461 A.2d 1234, 1236 (Pa. 1983) (*Burleson*). Even where a party has established a prima facie case, the party with the burden must establish that "the elements of that cause of action are proven with substantial evidence which enables the party asserting the cause of action to prevail, precluding all reasonable inferences to the contrary." *Id.* Furthermore, it is well-established that the "degree of proof before administrative tribunals as well as before most civil proceedings is satisfied by establishing a preponderance of the evidence." *Lansberry* at 602.

The burden of proof does not shift to parties challenging the rate increase, but rather must be met by the utility:

> It is well-established that in general rate increase proceedings, the burden of proof does not shift to parties challenging a requested rate increase. Rather, the utility's burden of establishing the justness and reasonableness of every component of its rate request is an affirmative one and that burden remains with the public utility throughout the course of the rate proceeding. It has been held that there is no similar burden placed on other parties to justify a proposed adjustment to the utility's filing.

Pa. PUC v. Pa.-American Water Co., 2004 Pa. PUC LEXIS 29 at *16-18 (Order entered Jan. 29, 2004) (citing *Berner v. Pa. PUC*, 116 A.2d 738, 744 (Pa. 1955)). The Commission recognizes in its rate determinations that the burden of proof will not shift to a complainant or intervener that is challenging the requested rate increase. *Pa. PUC v. Equitable Gas Co.*, 57 Pa. PUC 423, 471 (1983); *see also University of Pa. v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984); *Pa. PUC v. PPL Elec. Util. Corp.*, 237 PUR4th 419 (Pa.PUC 2004) (Order entered Dec. 22, 2004). Thus, it is unnecessary for the OCA (or any challenger) to prove that the Company's proposed rates are unjust, unreasonable, or not in the public interest. To prevail in its challenge, Pennsylvania law requires only that the OCA show *how* the Company failed to meet its burden of proof. While subtle, this critical distinction shows that parties opposing a utility in a rate proceeding need only to shift the burden of going forward to prevail.

iii. Just and Reasonable and Not Unduly Discriminatory Rates

As a matter of law, a public utility's rates must be just and reasonable and in conformity with regulations or orders of the Commission. 66 Pa. C.S. § 1301(a). Rates must not be unduly discriminatory. 66 Pa. C.S. § 1304.

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 Commission's discretion to determine if a requested rate is just and reasonable includes the "power to make and apply policy" concerning the appropriate balance between rates charged to consumers and returns allowed to utility investors. *Popowsky v. Pa. PUC*, 665 A.2d 808, 812 (Pa. 1995).

II. SUMMARY OF ARGUMENT

There is no dispute in this proceeding that local paving and restoration costs are included in the Company's cost of service, OCA St. 5SR at 37, and that such costs will be reflected in the revenue requirement authorized in this proceeding. Further, there is no dispute over the level of expenses projected by the Company related to restoration work. Rather, the dispute is whether a de minimus portion of such costs (less than 1%) should be recovered as a surcharge from customers in two municipalities and credited to customers in other municipalities through the proposed MLC rate to solve the problem of certain municipalities charging what Columbia considers to be unjustifiably high fees related to utility restoration work. OCA St. 5SR at 39.

To be clear, the OCA supports efforts to make local paving and restoration requirements consistent on a statewide basis. Indeed, the OCA recently supported a bill before the General Assembly that would cap both the permit fees and restoration standards of municipalities to those adopted by PennDOT.[4] This is because greater uniformity in local requirements would serve the interests of utility consumers by reducing the costs that ultimately get recovered through utility base rates.

Thus, while the OCA supports Columbia' intent to rein in restoration costs to more reasonable levels given that doing so would inure to the benefit of ratepayers, the Company's proposed MLC rate design must be rejected because the Company has failed to demonstrate that the MLC rate is not unduly discriminatory and just and unreasonable. Under existing law, Columbia must comply with the restoration requirements set by the various localities within its service area. There is no existing legislation or Commission regulation or policy that establishes

[4] *See* Testimony of Patrick M. Cicero Regarding HB1655, available at: https://www.oca.pa.gov/wp-content/uploads/Testimony-of-Patrick-Cicero-Re-House-Bill-1655-resurfacing.pdf (Sept. 6. 2023) (last visited on August 22, 2024).

statewide standards on utility restoration work, and municipalities are currently free to impose requirements that exceed the PennDOT standards. Absent a statewide policy that changes the status quo, the Company cannot and has not shown that the MLC is a rate that is not unduly discriminatory and just and reasonable. Therefore, the OCA requests that the Commission reject the MLC as being statutorily prohibited and inconsistent with generally accepted ratemaking principles.

III. ARGUMENT

A. The Commission Must Reject Columbia's MLC Proposal Because It Creates Unreasonable Difference in Rates as Between Localities in Which Consumers Reside and Creates Unreasonable Preferences and Disadvantages in Rates Based on Where Customers Reside, 66 Pa. C.S. § 1304.

The Commission must reject Columbia's proposed MLC rate design because it creates an unreasonable preference and disadvantage in rates depending on which municipality a customer resides, *i.e.*, the locality, and creates an unreasonable difference in rates as between localities. Setting rates that make or grant an unreasonable preference to a customer and an unreasonable prejudice or disadvantage to another customer is statutorily prohibited, as is setting rates that establish an unreasonable difference as between localities. 66 Pa.C.S. § 1304. Section 1304 provides, in relevant part:

> No public utility shall, as to rates, make or grant any unreasonable preference or advantage to any person, corporation, or municipal corporation, or subject any person, corporation, or municipal corporation to any unreasonable prejudice or disadvantage. No public utility shall establish or maintain any unreasonable difference as to rates, either as between localities or as between classes of service.

66 Pa. C.S. § 1304. While the Commission has discretion to determine reasonable differences in rates, such differences must be justified, for example: "by a variety of considerations including the quantity of service used, the nature of the use, the time of the use, the pattern of the use, differences

of conditions of service or cost of service." *Zucker v. Pa. PUC,* 402 A.2d 1377, 1382 (Pa. Cmwlth. 1979).

Here, the very objective of the MLC is to treat customers differently by charging different rates based on the locality in which the customer resides. Specifically, the MLC will operate by being a monthly MLC charge of $0.70 per bill to customers located in the City of Pittsburgh and the Borough of Perryopolis, and a monthly MLC credit of $7.44 per bill to customers located in Roscoe Borough and New Sewickley Township. OCA St. 5 at 28. Columbia attempts to justify this difference in rate on the basis that the City of Pittsburgh and the Borough Perryopolis impose more costly paving and restoration requirements while Roscoe Borough and New Sewickley Township impose less costly infrastructure replacement paving and restoration requirements. OCA St. 5 at 28. Columbia claims that in 2022 and 2023, the Company was forced to spend nearly $1.3 million of its capital program to pave above and beyond the standards that are perfectly fine for every state highway in Pennsylvania. *Id.* The OCA does not dispute the amount claimed by Columbia, however, Columbia has failed to carry its burden of proof to establish that this is the appropriate baseline from which to measure costs absent statewide legislation, regulation, or policy that would state that the PennDOT standards should be the baseline. The reality is, that under existing law, Columbia must comply with the restoration requirements set by the various localities within its service area. There is no existing legislation or regulation that establishes a statewide standard on restoration work, and municipalities simply are free to impose requirements that exceed the PennDOT standards. Absent a statewide policy that changes the status quo, the Company's proposed MLC is not a legitimate solution because it creates an unreasonable difference in rates as between localities. Therefore, there is no legitimate justification for the different in rates as between localities.

That the MLC rate is an unreasonable difference as between localities is highlighted by the fact that the proposed MLC is not intended to address *all differences* in costs between municipalities; rather, it is intended to address one major cost category that is uniquely driving increases in rates to customers across all municipalities: *i.e*., those municipalities that demand restoration which far exceeds PennDOT standards. OCA St. 5SR at 40. The proposed MLC is $0.70 per month and, therefore, would reflect less than 1% of Columbia's total cost of serving the average Residential customer. OCA St. 5 at 29. The remaining 99% of the cost of service is not addressed in the MLC. *Id*. It is unreasonable to recognize this less than 1% difference in the cost of serving customers in different municipalities and to ignore cost differences which may exist for the remaining 99% of the cost of service. *Id*. Indeed, the "fairness" of a utility rate generally means that the rate bears a reasonable relationship to the utility's cost of serving the customer without exceeding the value of service to the customer. James C. Bonbright et al., *Principles of Public Utility Rates*, at 82-92 (1st ed. 1988).

For example, to serve the City of Pittsburgh, Columbia has installed an average of 54 feet of distribution main per customer. OCA St. 5 at 29. To serve New Sewickley Township, Columbia has installed an average of 142 feet of distribution main per customer. *Id.* Hence, the average feet of distribution mains installed by Columbia to serve a customer in the City of Pittsburgh is much lower than the average feet of distribution mains installed by Columbia to serve a customer in New Sewickley Township. OCA St. 5SR at 41. However, under the MLC, City of Pittsburgh customers would be assessed higher charges than New Sewickley Township customers, and the MLC fails to account for the lower costs of the distribution mains serving the City of Pittsburgh. *Id*. Moreover, while the same MLC would be assessed as the same flat charge to all customers in a municipality served by Columbia, the MLC does not recognize differences in the costs associated with serving

different customer classes. OCA St. 5 at 30. Residential, commercial, and industrial customers would each be assessed the same amount, despite cost-of-service differences between them.

Furthermore, the proposed difference in rates as between localities in which customers reside is not based on any customer behavior that would cause the Company to incur greater costs in restoration work. Rather, the difference in rates is based on the decisions of the officials presiding over the municipalities that set the paving and restoration requirements, over which utility consumers have little to no control. Effectively, the proposed rate design is intended to recover costs from customers who did not cause them (unreasonable prejudice) and reward other customers who took no action (unfair preference). This has no immediate benefit for customers as it does not reduce the costs of restoration that Columbia collects it simply surcharges one group of customers who did not cause the higher restoration costs and credits another group of customers who did nothing to cause the lower restoration lower costs. Hence, the proposed MLC is fundamentally unfair to consumers given that it is based on where customers live and not tied to any consumer behavior that caused the costs.

Thus, based on the foregoing reasons, Columbia has failed to meet its burden demonstrating that the rate discrimination caused by the MLC is reasonable and permitted under the Public Utility Code. In the OCA's view, the Commission must find that it is an unreasonable difference in rates as between localities and that it creates an unreasonable preference and prejudice in rates depending on where a consumer resides, and under Section 1304, such a rate is prohibited.

B. The Commission Must Reject the MLC as an Unjust and Unreasonable Rate Design Because It Is Not Consistent with Cost Causation Principles, 66 Pa. C.S. § 1301(a).

The Commission must reject the MLC rate because the Company has failed to demonstrate with substantial evidence that it is a just and reasonable rate. A public utility's rates must be just and reasonable and in conformity with regulations or orders of the Commission. 66 Pa. C.S. §

1301(a). Under the MLC, customers who would pay the MLC charge are not the cost causers and the customers who would receive the MLC credit did nothing to deserve the benefit. Thus, the MLC is inconsistent with well-established cost causation principles.

Along these lines, additional paving and restoration costs incurred to serve customers in the City of Pittsburgh and Borough of Perryopolis are reflected in the rates proposed by Columbia in this proceeding for all customers served by Columbia. OCA St. 5 at 30. Columbia currently serves a total of 22,604 customers in the City of Pittsburgh and the Borough of Perryopolis which would be assessed the MLC, and a total of 2,116 customers in New Sewickley Township and Roscoe Borough that would receive the MLC credit. *Id*. It is unreasonable to impose a charge on 22,604 customers for additional costs incurred to serve those customers and then credit the additional charges to 2,116 customers when the additional City of Pittsburgh and Borough of Perryopolis paving and restoration costs have been reflected in the rates of all Columbia customers. *Id*. Moreover, the Company's societal objectives relating to paving and restoration requirements cannot and should not be achieved through a rate design that is fundamentally unfair to consumers. OCA St. 5SR at 40.

C. The MLC is Not Adopted Anywhere Else in the Country; Is An Attempt at Impermissible Single-Issue Ratemaking; and, the Company Has Not Demonstrated a Need For This Rate Design.

OCA witness Mierzwa testified that, to the best of his knowledge, he has not seen an MLC or similar mechanism being charged anywhere else in the country by any public utility. OCA St. 5 at 29. Columbia has not provided any evidence as to how customers would be able to understand the MLC.

Additionally, the MLC is an attempt at impermissible single-issue ratemaking. As emphasized by the Commonwealth Court, single-issue ratemaking is similar to retroactive ratemaking and is generally prohibited if it impacts on a matter normally considered in a base rate

case, such as this proceeding. *See Popowsky v. Pa. PUC*, 13 A.3d 583, 593 (Pa. Cmwlth. 2011). Here, the Company's proposed MLC constitutes single-issue ratemaking because the costs that Columbia proposes to recover through the MLC apply to costs that are normal, ongoing costs of providing natural gas distribution service. Attempting to single out municipal restoration costs by rewarding some ratepayers and punishing others in hopes of making political change at the municipality level, is both discouraged single-issue ratemaking and an unreasonable attempt at a solution to a political issue that customers likely will not understand.

Furthermore, the Company has not shown that revenue variances related to paving and restoration costs are creating a financial hardship and are large relative to its overall cost structure. The MLC is a poor attempt to solve a legislative issue in a way that penalizes certain ratepayers in order to potentially make a political impact in a way the ratepayer most likely would not understand. OCA St. 5SR at 40. However, this effort to make societal/political change through ratemaking is not a demonstration with substantial evidence that the MLC will have such a desired effect or that it is even appropriate. *Id.* The OCA would be supportive of legitimate solutions to the problem on a statewide basis including statutory improvements and statewide PennDOT standards; however, these are policy solutions that involve the utilities, statutory advocates, and the Commission to work together outside of the context of a litigated rate case to develop and seek to implement. *Id*.

IV. CONCLUSION

For the reasons stated above, the OCA requests that the Commission reject the Company's proposed Municipal Levelization Charge because the Company has failed to meet its burden of proving that the rate is permitted under Sections 1301(a) and 1304 of the Public Utility Code, 66 Pa. C.S.§§ 1301(a), 1304, and consistent with generally accepted ratemaking principles.

Respectfully submitted,

/s/ Melanie Joy El Atieh
Melanie Joy El Atieh
Deputy Consumer Advocate
PA Attorney I.D. # 209323
MElAtieh@paoca.org

Harrison W. Breitman
Assistant Consumer Advocate
PA Attorney I.D. #320580
HBreitman@paoca.org

Counsel for:
Patrick M. Cicero, Consumer Advocate
Office of Consumer Advocate
555 Walnut Street
5th Floor, Forum Place
Harrisburg, PA 17101-1923
Phone: 717-783-5048
Fax: 717-783-7152

Dated: August 22, 2024

OCA Proposed Findings of Fact

1. Columbia is proposing to implement a new rate design called the Municipal Levelization Charge (MLC) for customers residing in certain municipalities within its service territory. OCA St. 5 at 28.

2. The purpose of the MLC is two-fold. First, it is to reflect Columbia's assertion that the City of Pittsburgh and the Borough Perryopolis impose paving and restoration requirements for infrastructure replacement projects that exceed what other municipalities require and the statewide Pennsylvania Department of Transportation (PennDOT) requirements. OCA St. 5 at 28. Second, it is to reflect Columbia's assertion that Roscoe Borough and New Sewickley Township have less costly infrastructure replacement paving and restoration requirements. *Id*.

3. The MLC will operate by being a monthly MLC charge of $0.70 per bill to customers located in the City of Pittsburgh and the Borough of Perryopolis, and a monthly MLC credit of $7.44 per bill to customers located in Roscoe Borough and New Sewickley Township. *Id.* The revenues collected from customers located in the City of Pittsburgh and the Borough Perryopolis through the MLC charge would be credited to the customers located in Roscoe Borough and New Sewickley Township. *Id*.

4. Currently Columbia recovers its paving and restoration costs through base rates from all customers. *Id.*

5. The Company spent nearly $1.3 million of its capital program to pave above and beyond the standards that are perfectly fine for every state highway in Pennsylvania. OCA St. 5 at 28.

6. The proposed MLC is $0.70 per month and, therefore, would reflect less than 1% of Columbia's total cost of serving the average Residential customer. OCA St. 5 at 29. The remaining 99% of the cost of service is not addressed in the MLC. *Id*.

7. To serve the City of Pittsburgh, Columbia has installed an average of 54 feet of distribution main per customer. OCA St. 5 at 29. To serve New Sewickley Township, Columbia has installed an average of 142 feet of distribution main per customer. *Id.* The average feet of distribution mains installed by Columbia to serve a customer in the City of Pittsburgh is much lower than the average feet of distribution mains installed by Columbia to serve a customer in New Sewickley Township. OCA St. 5SR at 41. However, under the MLC, City of Pittsburgh customers would be assessed higher charges than New Sewickley Township customers, and the MLC fails to account for the lower costs of the distribution mains serving the City of Pittsburgh. *Id*. Moreover, while the same MLC would be assessed to all customers in a municipality served by Columbia, the MLC does not recognize differences in the costs associated with serving different customer classes. OCA St. 5 at 30.

8. Additional paving and restoration costs incurred to serve customers in the City of Pittsburgh and Borough of Perryopolis are reflected in the rates proposed by Columbia in this proceeding for all customers served by Columbia. OCA St. 5 at 30.

9. Columbia currently serves a total of 22,604 customers in the City of Pittsburgh and the Borough of Perryopolis which would be assessed the MLC, and a total of 2,116 customers in New Sewickley Township and Roscoe Borough that would receive the MLC credit. OCA St. 5 at 30.

OCA Proposed Conclusions of Law

1. The utility requesting the rate increase has the burden of establishing the justness and reasonableness of every element of its requested rate increase. 66 Pa. C.S. §§ 315(a), 1301; *Lower Frederick Twp. Water Co. v. Pa. PUC*, 409 A.2d 505, 507 (Pa. Cmwlth. 1980).

2. Columbia has the burden of proving that the Municipal Levelization Charge rate is just and reasonable. 66 Pa. C.S. §§ 315(a), 1301.

3. Columbia has the burden of proving that the Municipal Levelization Charge rate is not unduly discriminatory. 66 Pa. C.S. §§ 315(a), 1304.

4. As a matter of law, a public utility's rates must be just and reasonable and in conformity with regulations or orders of the Commission. 66 Pa. C.S. § 1301(a).

5. Columbia must demonstrate its case by a preponderance of evidence. *Lansberry v. Pa. PUC*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990).

6. Columbia's evidence supporting the its case must be more convincing than the evidence presented by any opposing party against it. *Se-Ling Hosiery, Inc. v. Margulies*, 70 A.2d 854, 856 (1950).

7. A Commission decision must be supported by substantial evidence in the record. *Burleson v. Pa. PUC*, 461 A.2d 1234, 36 (1983).

8. The evidence must be substantial and legally credible and cannot be mere "suspicion" or a "scintilla" of evidence. *Norfolk & Western Ry. Co. v. Pa. PUC*, 413 A.2d 1037 (Pa. 1980).

9. Setting rates that make or grant an unreasonable preference to a customer and an unreasonable prejudice or disadvantage to another customer is statutorily prohibited. 66 Pa.C.S. § 1304. Section 1304 provides, in relevant part:

> No public utility shall, as to rates, make or grant any unreasonable preference or advantage to any person, corporation, or municipal corporation, or subject any person, corporation, or municipal corporation to any unreasonable prejudice or disadvantage.
>
> 66 Pa. C.S. § 1304.

10. Unreasonable rate differences as between localities is statutorily prohibited. 66 Pa.C.S. § 1304. Section 1304 provides, in relevant part: "No public utility shall establish or maintain any unreasonable difference as to rates, either as between localities or as between classes of service." 66 Pa. C.S. § 1304.

11. Every utility rate must be just and reasonable. 66 Pa. C.S. § 1301.

12. Columbia has not met its burden of proof in demonstrating that the Municipal Levelization Charge is just and reasonable and not unduly discriminatory.

13. The Municipal Levelization Charge as proposed is denied because it is not permitted under Sections 1301 and 1304 of the Public Utility Code.

Proposed Ordering Paragraphs

It is hereby ORDERED THAT:

1. The request of Columbia Gas of Pennsylvania, Inc. for approval of the Municipal Levelization Charge is denied.