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August 30, 2024

VIA ELECTRONIC FILING

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

**Re: PA PUC, et al. v. Columbia Gas of Pennsylvania, Inc.
Docket Nos. R-2024-3046519, et al.**

Dear Secretary Chiavetta:

Attached for filing please find the Reply Brief on behalf of Columbia Gas of Pennsylvania, Inc. in the above-referenced proceeding. Copies are being provided as indicated on the Certificate of Service.

Respectfully submitted,



Megan E. Rulli

MER/kl
Attachment

cc: The Honorable Jeffrey A. Watson (*via email; w/attachment*)
Mary Swarner, Legal Assistant (*via email; w/attachment*)
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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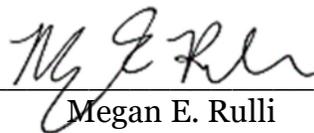
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Dated: August 30, 2024



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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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Office of Small Business Advocate	:	C-2024-3047905
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Pennsylvania State University	:	C-2024-3048624
Daniel E. Skvarla	:	C-2024-3049677
	:	
v.	:	
	:	
Columbia Gas of Pennsylvania, Inc.	:	

REPLY BRIEF OF COLUMBIA GAS OF PENNSYLVANIA, INC.

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I. INTRODUCTION

On August 22, 2024, in accordance with the litigation schedule established in this proceeding, Columbia Gas of Pennsylvania, Inc., (“Columbia” or the “Company”), the Pennsylvania Public Utility Commission’s (“Commission”) Bureau of Investigation and Enforcement (“I&E”), the Office of Small Business Advocate (“OSBA”), the Office of Consumer Advocate (“OCA”), and The Pennsylvania State University (“PSU”) filed a Joint Petition for Settlement (“Settlement”) of all issues but one in the above-captioned proceeding.¹ The single issue reserved for litigation is Columbia’s proposed Municipal Levelization Charge (“MLC”). Also, on August 22, 2024, Columbia, OCA, and CAUSE-PA filed Main Briefs on the proposed MLC. Columbia hereby files this Reply Brief in response to the Main Briefs of OCA and CAUSE-PA.

II. SUMMARY OF ARGUMENT

The Company has proposed the MLC as a pilot program to examine the effectiveness of rate signals to mitigate excessive municipal fees and restoration ordinances. Excessive restoration costs are a major driver of increases in the cost to replace aging pipe. OCA and CAUSE-PA oppose the MLC, offering various reasons why they believe the MLC is illegal or improper. Columbia anticipated and responded to various contentions in its Main Brief and has endeavored to avoid repeating those responses in this Reply Brief.

For the reasons explained below and in Columbia’s Main Brief, the ALJ and the Commission should approve Columbia’s proposed MLC as a pilot program.

¹ The Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (“CAUSE-PA”), and the Pennsylvania Weatherization Providers Task Force, Inc. (“PA Task Force”) have indicated they do not oppose the Settlement.

III. ARGUMENT

A. THE MLC IS JUSTIFIED UNDER TRADITIONAL RATEMAKING PRINCIPLES

OCA and CAUSE-PA assert that the MLC creates unreasonable differences in rates and is contrary to cost causation principles, in violation of Section 1304 of the Public Utility Code. 66 Pa. C. S. § 1304. OCA M.B. pp. 8-12; CAUSE-PA M.B. pp. 5-8. OCA's and CAUSE-PA's contentions are incorrect.

As indicated by the Commonwealth Court, 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*”). However, the Commission has repeatedly recognized that cost of service 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., Pa. PUC v. Aqua Pa., Inc.*, Docket Nos. R-00072711, *et al.*, 2008 Pa. PUC LEXIS 50, *84 (Order entered July 31, 2008); *Pa. PUC v. West Penn Power Co.*, Docket Nos. R-901609, *et al.*, 1990 Pa. PUC LEXIS 142, *186, 73 Pa. PUC 454, 119 P.U.R.4th 110 (Order dated Dec. 13, 1990); *Pa. PUC v. Pa. Power & Light Co.*, 55 PUR 4th 185, 249 (Order dated Aug. 19, 1983). Pennsylvania courts have repeatedly held that factors other than the cost of providing service must be considered in determining a rate structure. The courts have recognized other relevant factors to include the recent and past rate history of the utility, the practicality of administering the rate schedules, and the value of the service provided. *See Pittsburgh v. Pa. PUC*, 106 Pa. Commonwealth Ct. 437, 445, 526 A.2d 1243, 1247 (1986); *Peoples Natural Gas Co. v. Pa. PUC*, 47 Pa. Commonwealth Ct. 512, 537, 409 A.2d 446, 458 (Pa. Cmwlth. 1979).

Section 1304 of the Public Utility Code, cited by OCA and CAUSE-PA, does not prohibit rate differences, either among localities or customer classes. Only “unreasonable” rate differences are prohibited:

No public utility shall establish or maintain any unreasonable difference as to rates, either as between localities or as between classes of service. . . . This section does not prohibit the establishment of reasonable zone or group systems, or classifications of rates

The determination of what are reasonable differences in rates between classes of customers or between localities is primarily an administrative question for the Commission. *See, e.g., Deitch v. Pa. PUC*, 203 A.2d 515, 519, 204 Pa. Super. 102, 109 (1964); *Riverton Consolidated Water Co. v. Pa. PUC*, 140 A. 2d 114, 125, 186 Pa. Super. 1, 24 (1958); *Harrisburg Steel Corp. v. Pa. PUC*, 109 A.2d 719, 176 Pa. Super 550 (1954). Many utilities, particularly water utilities, have geographically-established rate districts for short, and sometimes extended, periods of time. *See, e.g., Pa. PUC, et al. v. Columbia Water Co.*, Docket Nos. R-2023-3040258, *et al.*, 2024 Pa. PUC LEXIS 23, *2 (Order entered Jan. 18, 2024); *Application of Aqua Pennsylvania, Inc., pursuant to 66 Pa. C.S. §§ 1102 and 1329 for: (1) approval of the acquisition by Aqua Pennsylvania, Inc. of the water system assets of the Borough of Shenandoah*, Docket No. A-2022-3034143, 2023 Pa. PUC Lexis 186, *51-52 (Order entered July 13, 2023); *Joint application of The York Water Company and Spring Grove Water Company for approval of the acquisition by the former of all the stock of Spring Grove Water Company*, Docket Nos. A-213550 F0018, *et al.*, 2005 Pa. PUC LEXIS 171, *5-6 (Order entered June 24, 2005). The Commonwealth Court has further observed:

There is no requirement that rates for different classes of service must be either uniform or equal or that they must be equally profitable. Differences in rates between classes of customers based on such criteria as the quantity of electricity used, the nature of the use, the time of the use, the pattern of the use, or based on differences of conditions of service, or cost of service are not only permissible but often are desirable and even necessary to achieve reasonable efficiency and economy of operation. Rate structure, which is an essential, integral component of rate-making, is not merely a mathematical exercise applying theoretical principles. Rate structure must be based on the hard economic facts of life and a complete and thorough knowledge and understanding of all the facts and circumstances which affect rates and services; and the rates must be designed to furnish the most efficient and satisfactory service at the lowest reasonable price for the greatest number of customers, i.e., the public generally. Since each public

utility has different problems of supply, production, distribution, competition, geographic conditions, etc., there need be and there can be no absolute equality and uniformity of rates between utilities or between classes of service within the same utility.

Phila. Suburban Transp. Co. v. Pa. PUC, 281 A.2d 179, 196-97 (Pa. Cmwlth 1981) (quoting *Pa. PUC, et al. v. Metropolitan Edison Co.*, 44 Pa. P.U.C. 709, 750-51 (1970)).

In this case, the MLC establishes a reasonable rate differential between localities, based upon “hard economic facts.” The record unequivocally demonstrates that in the localities of the City of Pittsburgh and the Borough of Perryopolis, Columbia is incurring substantial additional costs per mile of pipe replaced due to excessive restoration requirements imposed by local ordinances. Over the past two years alone, Columbia spent over \$1.2 million more within the corporate boundaries of the City of Pittsburgh to pave than would have been the case if the Pennsylvania Department of Transportation (“PennDOT”) restoration standards had applied. Columbia St. No. 1-R, p. 11. This is caused by municipal paving restoration requirements that are over 300% greater than PennDOT standards. *Id.* Excess costs have also been incurred to install pipe in the Borough of Perryopolis. Columbia Ex. NP-1. The substantial additional investment resulting from these excessive restoration requirements will continue to increase Columbia’s rates to customers in the future, as it has over 172,000 feet of priority pipe to replace in the City of Pittsburgh and the Borough of Perryopolis. Columbia St. No. 1-R, p. 12.

Further, the MLC is justified by non-cost considerations. Customers located in the City of Pittsburgh and Borough of Perryopolis are receiving the benefit of better roads without concomitant tax increases because these municipalities’ excessive restoration requirements are being charged to Columbia and its customers.

Moreover, the \$0.70 per bill charge under the MLC cannot be considered unreasonably high and discriminatory. In *Pittsburgh v. Pa. PUC*, 106 Pa. Commonwealth Ct. 437, 526 A.2d

1243 (1986), the City of Pittsburgh opposed a rate design that increased rates to customers within the City above what the City believed were justified on a cost basis. The Court rejected this argument, stating:

To prove unreasonable discrimination, the city must show that certain customers "are paying an unreasonably high rate thereby giving an advantage to other residential customers who are paying unreasonably low rates." Philadelphia Electric Co. at 452-53, 470 A.2d at 658. However, because the difference between the commission's approved rates and the city's proposed rates, for an average residential customer, results in a \$ 1.84 per year difference, the commission found that difference to be de minimis and correctly concluded that the city failed to meet its burden of proving discrimination.

526 A 2d at 1247-48. Similarly here, a \$0.70 per month differential for City of Pittsburgh and Borough of Perryopolis customers due to excessive restoration cost requirements is a small differential to pay.

OCA asserts that the MLC is "statutorily prohibited." OCA M.B. p. 8. OCA provides no cite to this "statutory" prohibition, because there is none. The Commission has substantial discretion in the design of rates, and no statute prohibits different rates to different municipalities, so long as they are justified, and not unreasonably discriminatory.

OCA and CAUSE-PA further criticize the MLC because it does not precisely calculate and reflect all of the potential cost differences among all municipalities. OCA M.B. p 10; CAUSE-PA M.B. p. 8. However, the fact that the MLC focuses on only certain cost differences is not a flaw. Rate design is not exact. 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.*, Docket No. R-00974008, 1998 Pa. PUC LEXIS 160, *159 (Order dated June 30, 1998); *Pa. PUC v. Pa. Power & Light Co.*, 55 PUR 4th 185, 1983 Pa. PUC LEXIS 22,*190 (Order dated Aug. 19, 1983). In this case, the MLC is focused on restoration requirement differences to establish a rate differential.

OCA also objects to the MLC because the excessive restoration costs are included in the cost to serve all Columbia customers, but the MLC credit is only provided to a small subset of customers. OCA M.B. p. 12. However, OCA's objection fails to take into account that the MLC is proposed as a pilot. The intent of the MLC is not only to test whether municipalities will respond to their constituents' pressures to moderate excessive restoration demands, but also whether they will be incented to repeal restoration standards if there is a potential that rates to customers within their municipality will be lower. Columbia St. No. 1-R, p. 10. As Columbia's President, Mr. Kempic, explained:

Columbia's proposed MLC will provide the Commission, the statutory intervenors, and Columbia with valuable information concerning the impact of communicating the cost of restoration to customers. Columbia believes that the MLC can help to spur municipalities to accept reasonable PennDot permitting and restoration standards when customers living in those municipalities - along with the municipal leaders - are made aware of the financial impact those municipal ordinances are having on their gas utility bills.

Columbia St. No. 1-R, p. 10. In future proceedings, if the MLC proves to be successful, it can be further refined to address continued cost disparities caused by excessive restoration requirements. Moreover, if successful, the MLC will benefit all customers in the future, as they will be relieved of additional investment in excessive, municipality-required, restoration costs, and the need for geographically delineated rates will be reduced or eliminated.

OCA's and CAUSE-PA's contentions that the MLC violates traditional ratemaking principles and is unreasonably discriminatory should be rejected.

B. THE MLC IS NOT PROHIBITED SINGLE ISSUE RATEMAKING

OCA argues that the MLC is impermissible single-issue ratemaking. OCA M.B. pp. 12-13. OCA's contention is without merit and distorts the entire concept of single-issue ratemaking and its corollary, retroactive ratemaking.

In *Popowsky v. Pa. P.U.C.*, 164 Pa. Commonwealth Ct. 338, 642 A.2d 648 (1994) the Court described the rule against retroactive ratemaking as follows:

The rule against retroactive ratemaking prohibits a public utility commission from setting future rates to allow a utility to recoup past losses or to refund to consumers excess utility profits. Krieger, *The Ghost of Regulation Past: Current Applications of the Rule Against Retroactive Ratemaking in Public Utility Proceedings*, 1991 Univ. Ill. L.Rev. 983, 984. The policy reasons behind this rule are that if retroactive ratemaking is allowed, it makes the "test year" method of ratemaking meaningless and the general principle that those customers who use power should pay for its production rather than requiring future ratepayers to pay for past use. This court has stated the rule as "the Commission clearly may not establish rates which are calculated to retroactively recover surpluses or refund deficits created by inaccuracies in its prior rate authorizations." *Pike County Light & Power Company v. Pennsylvania Public Utility Commission*, 87 Pa. Commonwealth Ct. 451, 456, 487 A.2d 118 (1985).

642 A.2d at 651. Single-issue ratemaking is similar to retroactive ratemaking and, in general, is prohibited if it impacts on a matter that is normally considered in a base rate case. *Pa. Indus. Energy Coalition v. Pa. PUC*, 653 A.2d 1336, 1349-1350 (Pa. Cmwlth. 1995) In *National Fuel Gas Distribution Corp. v. Pa. PUC*, 464 A.2d 546, 567 (Pa. Cmwlth. 1983), the Commonwealth Court stated that the consideration of expense and revenue items in isolation could result in confiscatory rates. Also, in *Philadelphia Electric Co. v. Pa. PUC*, 502 A.2d 722, 727-28 (Pa. Cmwlth. 1985), the Court held that there should be no line-by-line examination of items in a rate case and an isolated item of revenue or expense may not be, without more, the subject of a refund or recovery. *See also Pa. PUC, et al. v. Aqua Pa. Wastewater, Inc.*, Docket Nos. R-2021-3027385, *et al.*, 2022 Pa. PUC LEXIS 161, *153-54 (Order entered May 16, 2022) (denying proposed rider that would allow the Company to recover the costs of water purchased for resale from non-affiliated suppliers, finding it "constitutes single-issue ratemaking because the costs that Aqua proposes to recover through the reconcilable surcharges apply to costs that are normal, ongoing costs of providing water service.")

The MLC is not single-issue or retroactive ratemaking. The MLC is a simple matter of rate design. The MLC does not seek to remove an item of expense, or rate base investment, from this base rate proceeding and recover the cost through a separate incremental charge. All of the costs Columbia incurs for restoration are included in this base rate proceeding, and Columbia is not seeking to defer the costs and recover them through a separate charge. The MLC also does not seek to recover any cost retroactively. The MLC is a prospective rate, to be established in this base rate proceeding, to more appropriately allocate cost recovery to customers who benefit from their municipality's decision to shift excessive paving costs to Columbia, and to credit the recovery, in a revenue neutral manner, to customers who reside in municipalities that have adopted restoration policies that are below PennDOT standards.

C. THE MLC IS NOT “ALTERNATIVE RATEMAKING”

CAUSE-PA refers to the MLC as “alternative ratemaking.” CAUSE-PA M.B. p. 5. If the purpose of this designation is to claim that the MLC is proposed pursuant to Section 1330 of the Public Utility Code, 66 Pa. C. S. § 1330, Columbia disagrees.

The MLC is a simple rate design proposal. It is not a decoupling mechanism, a performance-based rate, a formula rate, a multiyear rate plan, or any combination of the above. 66 Pa. C. S. § 1330(b). There is no reconciliation of the charge, or any rate mechanism involved. The MLC is not proposed pursuant to Section 1330.

D. THE MLC WILL NOT CAUSE UNDUE HARM TO LOW INCOME CUSTOMERS

CAUSE-PA devotes a substantial portion of its brief to contentions that the MLC will worsen affordability for customers within the City of Pittsburgh, particularly low income customers. CAUSE-PA M.B. pp. 9-11. Initially, it is to be noted that CAUSE-PA submitted no testimony to support its claimed harms. Second, as explained previously, the MLC charge to

customers residing within the City of Pittsburgh is \$0.70 per month. Third, as also explained previously, those residential customers are receiving the benefit of improved roads by the City's actions to impose excessive restoration requirements that are being paid by all Columbia customers through rates, instead of municipal taxes. Fourth, CAUSE-PA fails to give due consideration to the substantial low-income customer benefits contained in the Settlement. CAUSE-PA's contentions that the MLC will compound an affordability crisis for low-income customers within the City of Pittsburgh is substantially overstated and is not a basis for rejecting the MLC.

E. THE MLC SHOULD NOT BE CUSTOMER CLASS SPECIFIC

OCA and CAUSE-PA also asserts that the MLC is flawed because it proposes a fixed charge to all customer classes of \$0.70 per bill. OCA M.B. p. 10-11; CAUSE-PA M.B. p. 9. As explained in Columbia's Main Brief, there are no class cost differences caused by excessive municipal restoration requirements. Columbia M.B. pp. 15-16.

F. THE COMMISSION SHOULD BE PROACTIVE IN ADDRESSING EXCESSIVE RESTORATION REQUIREMENTS THAT DRIVE UP COSTS

Not once in its brief does CAUSE-PA even acknowledge that excessive municipal restoration requirements are a major driver to the over 350% increase in the cost per foot to replace pipe over the past 15 years,² even though this has been and will continue to be a contributing factor to increasing rates. While OCA does acknowledge the problem, it offers no solution other than supporting legislation. OCA M.B. pp. 7, 13. However, Columbia does not believe the Commission's hands are tied, and that the only "solution" is to hope for future legislation. The Commission's power to set rates to account for excessive municipal restoration requirements is

² Columbia St. No. 1, p. 18.

clear, and should be used now, before additional municipalities decide to solve their budget problems by imposing even greater restoration requirements on utilities.³

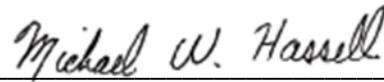
Excessive municipal permit fees and restoration costs are a serious and growing problem for utilities seeking to maintain, replace, or upgrade underground infrastructure in order to provide safe, reliable service. OCA's and CAUSE-PA's objections to the MLC are without merit and should be rejected. The MLC should be adopted.

³ Other municipalities within Columbia's service territory have adopted restoration standards in excess of PennDOT standards, but to date have been willing to negotiate with Columbia to reduce their paving requirements. Columbia St. No. 9, pp. 16-17; Columbia Ex. NP-1.

IV. CONCLUSION

WHEREFORE, for all the foregoing reasons, Columbia Gas of Pennsylvania, Inc. respectfully requests that the Public Utility Commission approve the Company's proposed Municipal Levelization Charge.

Respectfully submitted,



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