PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17120

Public Meeting held November 21, 2024

Commissioners Present:

Stephen M. DeFrank, Chairman, Statement
Kimberly Barrow, Vice Chair
Kathryn L. Zerfuss
John F. Coleman, Jr.
Ralph V. Yanora

Pennsylvania Public Utility Commission	R-2024-3046519
Office of Consumer Advocate	C-2024-3047675
Office of Small Business Advocate	C-2024-3047905
Ronald T. Bernick	C-2024-3048339
Linda Allison	C-2024-3048588
Philip Bloch	C-2024-3048478
The Pennsylvania State University	C-2024-3048624
Daniel E. Skvarla	C-2024-3049677

v.

Columbia Gas of Pennsylvania, Inc.

OPINION AND ORDER

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BY THE COMMISSION:

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition are: (1) the Exceptions of Columbia Gas of Pennsylvania, Inc. (Columbia or the Company), filed on October 8, 2024, to the Recommended Decision (R.D.) of Administrative Law Judge (ALJ) Jeffrey A. Watson, issued on October 1, 2024, in the above-captioned proceeding; and (2) the Replies to Exceptions, filed on October 15, 2024, by the Office of Consumer Advocate (OCA) and the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA). The ALJ recommended, *inter alia*, that the Commission grant the Joint Petition for Settlement (Joint Petition or Partial Settlement), filed by Columbia, the Commission's Bureau of Investigation and Enforcement (I&E), the OCA, the Office of Small Business Advocate (OSBA), and the Pennsylvania State University (PSU) (collectively, the Joint Petitioners) on August 22, 2024.[1]

For the reasons stated, *infra*, we shall: (1) deny the Exceptions of Columbia; (2) adopt the Recommended Decision of the ALJ, as modified; and (3) conditionally grant the Joint Petition that approves the Partial Settlement, without modification, consistent with this Opinion and Order.

As discussed below, Columbia originally proposed a base rate change that would have increased its annual natural gas operating revenues by $124.1 million, or by approximately 15.79%, over revenues at present rates, based on a Fully Projected Future Test Year (FPFTY) ending December 31, 2025. In this Opinion and Order, we shall approve an annual increase of $74 million in natural gas operating revenues, representing an increase of approximately 9.41% over revenues at present rates, based on the Joint Petition that we will also conditionally approve.

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[1] As noted below, on August 28, 2024, Columbia filed a revised version of the Partial Settlement, correcting certain ministerial errors.

I. Introduction and Background

Columbia is a public utility and natural gas distribution company (NGDC), as those terms are defined in the Public Utility Code (Code), 66 Pa.C.S. §§ 102 and 2202, and provides natural gas distribution, sales, transportation, and/or supplier of last resort services to approximately 445,000 retail customers in portions of 26 counties in western, northwestern, southern, and central Pennsylvania. Columbia's principal corporate office is located in Canonsburg, Pennsylvania. The Company is a wholly-owned subsidiary of NiSource Gas Distribution Group, Inc., which is a subsidiary of NiSource, Inc. (NiSource). NiSource acquired the Columbia Energy Group and its subsidiaries, including Columbia, on November 1, 2000. Columbia represented that its primary reason for filing its requested increase in annual operating revenues was the Company's ongoing significant investment to enhance its natural gas distribution system through the replacement of pipe and related accessories that are reaching the end of their useful lives. Therefore, Columbia sought Commission approval to increase its base rates to recover the revenue requirement associated with the capital the Company has invested, and will continue to invest, in its facilities, as part of its continued focus to address identified risks in its natural gas distribution system, including its accelerated pipeline replacement program and its ongoing operations and maintenance (O&M) expenditures. Columbia M.B. at 1; Columbia St. 1 at 3-5; Columbia St. 8 at 2.

II. History of the Proceeding

The history of this proceeding that follows is summarized from the Recommended Decision of ALJ Watson, the majority of which may be found at pages one through thirteen of the R.D.

On March 15, 2024, Columbia filed Supplement No. 374 to its Tariff Gas – Pa. P.U.C. No. 9 (Supplement No. 374), to be effective for service rendered on or

after May 14, 2024. Therein, the Company proposed changes to its natural gas distribution base rates designed to produce an increase in annual revenues of approximately $124.1 million[2] based upon data for the FPFTY ending December 31, 2025.

On March 18, 2024, the Pennsylvania Weatherization Providers Task Force, Inc. (PWPTF) filed a Petition to Intervene.

On March 20, 2024, the OCA filed a Formal Complaint at Docket No. C-2024-3047675.

On March 21, 2024, I&E filed a Notice of Appearance.

On March 27, 2024, the OSBA filed a Formal Complaint at Docket No. C-2024-3047905.

On March 29, 2024, Mr. Ronald T. Bernick filed a Formal Complaint at Docket No. C-2024-3048339.

On April 4, 2024, the Commission issued an Order suspending Columbia's Supplement No. 374, by operation of law, until December 14, 2024, unless otherwise directed by Order of the Commission. Also on April 4, 2024, CAUSE-PA filed a Petition to Intervene.

On April 8, 2024, Ms. Linda Allison filed a Formal Complaint at Docket No. C-2024-3048588.

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[2] We note that Columbia subsequently revised its requested revenue increase from $124.1 million to $123.6 million. Columbia St. 4-R at 2, Columbia Exh. BJK-1R at 1.

On April 15, 2024, Mr. Philip Bloch filed a Formal Complaint at Docket No. C-2024-3048478.

On April 17, 2024, an initial telephonic prehearing conference was held. Counsel for Columbia, I&E, the OCA, the OSBA, PWPTF, and CAUSE-PA, as well as Mr. Bernick, participated in the prehearing conference, which resulted in the establishment of a litigation schedule and an agreement regarding various scheduling and procedural matters.

On April 22, 2024, the PSU filed a Formal Complaint at Docket No. C-2024-3048624.

Four public input hearings were held, at which a total of eight people testified. More specifically, two in-person public input hearings were held in Washington, Pennsylvania on May 21, 2024, at 1 p.m. and 6 p.m., respectively.[3] The 1 p.m. hearing included the testimony of Mr. Richard Culbertson, who provided the ALJ with a thirty-six-page packet of information, including Appendices I, II and III, which was marked for identification purposes as Culbertson Exhibit 1. Mr. Culbertson provided extensive testimony and requested that Culbertson Exhibit 1 be admitted into evidence. The document was provided by Mr. Culbertson to some of the Parties, and to the ALJ, on the hearing date, at approximately 10 a.m. by email transmission, and to all of the Parties, prior to the presentation of testimony by Mr. Culbertson. After providing the Parties with an opportunity to address the request by Mr. Culbertson, and given the voluminous nature of Culbertson Exhibit 1 and the relatively short period of time that Parties had to review the exhibit, the ALJ advised the Parties that an Order would be entered providing a

[3] On May 21, 2024, at 6:00 p.m., the ALJ convened the second in-person public input hearing. No one provided testimony and the hearing was adjourned. R.D. at 4.

deadline of May 29, 2024 to file and serve objections to Culbertson Exhibit 1; and a deadline of June 5, 2024 to file and serve responses to the objections.

Additionally, two telephone public input hearings were held on May 22, 2024, at 1 p.m. and 6 p.m., respectively.

On May 23, 2024, an interim order was entered permitting the Parties to file objections to the evidence proffered by Mr. Culbertson by May 29, 2024, and permitting the Parties and Mr. Culbertson to file a response to any objections by June 5, 2024.

On May 29, 2024, Columbia filed its Objections to the testimony of Mr. Culbertson, and to the admission of Culbertson Exhibit 1. More specifically, at Paragraph 6 of its Objections, Columbia objected to certain portions of Mr. Culbertson's testimony and characterized Culbertson Exhibit 1 as being irrelevant to the rates and service of Columbia. At Paragraph 7 of its Objections, Columbia objected to certain portions of Mr. Culbertson's testimony and Culbertson Exhibit 1, as being hearsay. Columbia also objected, at Paragraph 8 of its Objections, to certain portions of Mr. Culbertson's testimony and Culbertson Exhibit 1, arguing that Mr. Culbertson raised issues and claims that were previously decided by the Commission and the Commonwealth Court of Pennsylvania (Commonwealth Court).

On May 30, 2024, Mr. Daniel E. Skvarla filed a Formal Complaint at Docket No. C-2024- 3049677.

On May 31, 2024, Mr. Culbertson filed Objections to the Objections of Columbia.

On June 20, 2024, an Interim Order was entered denying the Objections of Columbia, set forth in Paragraphs 6 and 8 of Columbia's Objections, and sustaining the hearsay Objections of Columbia, set forth in Paragraph 7 of Columbia's Objections. Namely, the Interim Order further provided that the evidence submitted by Mr. Culbertson at the public input hearing, identified in Paragraphs 6 and 8 of Columbia's Objections, would be admitted to the hearing record, that the ALJ would determine the weight, if any, which the evidence would carry, and that Columbia could provide rebuttal evidence in response to the admitted evidence. The Interim Order further provided that the objections to the evidence submitted by Mr. Culbertson at the public input hearing, identified in Paragraph 7 of Columbia's Objections, were sustained and the hearsay evidence would be stricken from the hearing record.

Also on June 20, 2024, Columbia filed a Motion for Protective Order. No objections were filed, and on July 17, 2024, a Protective Order was entered.

On August 1, 2024, an evidentiary hearing was held. Columbia, I&E, the OCA, the OSBA, PSU, CAUSE-PA, and PWPTF appeared and were each represented by counsel. Additionally, Mr. Skvarla appeared, *pro se*. At the hearing, evidence submitted by each of Columbia, I&E, the OCA, the OSBA, PSU, and PWPTF was admitted into the record.[4]

On August 13 and 14, 2024, the ALJ received email communication from the Parties advising that they were engaged in Settlement discussions and that they requested a revision of the deadline for filing a settlement petition and main briefs.

[4] See pages 7 to 10 of the R.D. for a list of each Party's Statements and Exhibits that were admitted into the record.

On August 14, 2024, an Interim Order was issued, which, *inter alia,* directed Columbia, in the event that the Parties were to reach a full or partial settlement, to serve a copy of any settlement petition filed in this proceeding, upon all Parties and all individual Complainants, by August 22, 2024, with instructions that any objections to the settlement petition must be filed with the Commission's Secretary, and served upon the Parties and the ALJ by August 30, 2024.

On August 22, 2024, Columbia, I&E, the OCA, the OSBA, and PSU filed the Joint Petition, resolving all but one issue in this proceeding. CAUSE-PA and PWPTF did not oppose the Joint Petition.

Also on August 22, 2024, Columbia, the OCA, and CAUSE-PA each filed Main Briefs on the remaining contested issue: Columbia's proposed municipal levelization charge (MLC).

On August 28, 2024, Columbia filed a revised version of the Joint Petition. The cover letter accompanying the revised version stated that the prior version contained duplicate numbering of Paragraphs 37 through 39, on pages 9 through 13 of the Partial Settlement. Columbia represented that the Paragraph numbers in Sections III.D through V on pages 9 through 13 of the Partial Settlement had been corrected to be Paragraphs 40 through 63 of the Partial Settlement.

On August 30, 2024, Columbia, I&E, the OCA, the OSBA, and PSU filed Statements in Support of the Partial Settlement (Statements in Support).

Also on August 30, 2024, Columbia and the OCA filed Reply Briefs.

No objections to the Joint Petition were received by the due date of August 30, 2024, and the record closed on that date.

On October 1, 2024, the Commission issued the Recommended Decision of ALJ Watson, wherein he recommended: (1) that the Commission grant the Joint Petition to approve the Partial Settlement, without modification; and (2) that the Commission deny Columbia's proposed MLC.

As previously noted, Columbia filed Exceptions to the Recommended Decision on October 8, 2024. The OCA and CAUSE-PA filed Replies to Exceptions on October 15, 2024.

III. Public Input Hearings

As noted in the History of Proceeding, *supra*, four (4) public input hearings were held in this matter, with a total of eight (8) individuals testifying. For a discussion and summary of the public input hearings, see pages 13 through 18 of the Recommended Decision.

IV. Legal Standards

A. Justness and Reasonableness of Rates

In deciding this or any other general rate increase case brought under Section 1308(d) of the Code, 66 Pa.C.S. § 1308(d), certain principles always apply. A public utility is entitled to an opportunity to earn a fair rate of return on the value of the property dedicated to public service. *Pa. PUC v. Pennsylvania Gas and Water Co.*, 341 A.2d 239, 251 (Pa. Cmwlth. 1975). In determining a fair rate of return, the Commission is guided by the criteria provided by the United States Supreme Court in the landmark cases of *Bluefield Water Works and Improvement Co. v. Public Service Comm'n of West Virginia*, 262 U.S. 679 (1923) *(Bluefield)* and *Federal Power Comm'n*

v. Hope Natural Gas Co., 320 U.S. 591 (1944) *(Hope Natural Gas)*. In *Bluefield*, the Court stated:

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

Bluefield, 262 U.S. at 692-93.

Section 1301(a) of the Code mandates that "[e]very rate made, demanded, or received by any public utility ... shall be just and reasonable, and in conformity with [the] regulations or orders of the [C]ommission." 66 Pa.C.S. § 1301(a). Pursuant to the just and reasonable standard, a utility may obtain "a rate that allows it to recover those expenses that are reasonably necessary to provide service to its customers [,] as well as a reasonable rate of return on its investment." *City of Lancaster Sewer Fund v. Pa. PUC*, 793 A.2d 978, 982 (Pa. Cmwlth. 2002) (*City of Lancaster*). There is no single way to arrive at just and reasonable rates, and "[t]he [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) (*Popowsky II*).

The burden of proof to establish the justness and reasonableness of every element of a public utility's rate increase request rests solely upon the public utility in all proceedings filed under Section 1308(d) of the Code. The standard to be met by the public utility is set forth in Section 315(a) of the Code, 66 Pa.C.S. § 315(a), as follows:

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

In reviewing Section 315(a) of the Code, the Commonwealth Court interpreted a public utility's burden of proof in a rate proceeding as follows:

> Section 315(a) of the Public Utility Code, 66 Pa.C.S. § 315(a), places the burden of proving the justness and reasonableness of a proposed rate hike squarely on the public utility. *It is well-established that the evidence adduced by a utility to meet this burden must be substantial*.

Lower Frederick Twp. Water Co. v. Pa. PUC, 409 A.2d 505, 507 (Pa. Cmwlth. 1980) (emphasis added). *See also*, *Brockway Glass Co. v. Pa. PUC*, 437 A.2d 1067 (Pa. Cmwlth. 1981).

In general rate increase proceedings, it is well established that 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. There is no similar burden placed on parties to justify a

proposed adjustment to the Company's filing. The Pennsylvania Supreme Court has held:

> [T]he appellants did not have the burden of proving that the plant additions were improper, unnecessary or too costly; on the contrary, that burden is, by statute, on the utility to demonstrate the reasonable necessity and cost of the installations, and that is the burden which the utility patently failed to carry.

Berner v. Pa. PUC, 116 A.2d 738, 744 (Pa. 1955).

This does not mean, however, that in proving that its proposed rates are just and reasonable, a public utility must affirmatively defend every claim it has made in its filing, even those which no other party has questioned. As the Commonwealth Court has held:

> While it is axiomatic that a utility has the burden of proving the justness and reasonableness of its proposed rates, it cannot be called upon to account for every action absent prior notice that such action is to be challenged.

Allegheny Center Assocs. v. Pa. PUC, 570 A.2d 149, 153 (Pa. Cmwlth. 1990) (citation omitted). *See also, Pa. PUC v. Equitable Gas Co.*, 73 Pa. P.U.C. 310, 359-360 (1990).

Additionally, Section 315(a) of the Code, 66 Pa.C.S. § 315(a), cannot reasonably be read to place the burden of proof on the utility with respect to an issue the utility did not include in its general rate case filing and which, frequently, the utility would oppose. Inasmuch as the Legislature is not presumed to intend an absurd result in interpretation of its enactments,[5] the burden of proof must be on the party who proposes a

[5] 1 Pa.C.S. § 1922(1), *PA Financial Responsibility Assigned Claims Plan v. English*, 541 Pa. 424, 430-431, 64 A.2d 84, 87 (1995).

rate increase beyond that sought by the utility. The mere rejection of evidence contrary to that adduced by the public utility is not an impermissible shifting of the evidentiary burden. *United States Steel Corp. v. Pa. PUC*, 456 A.2d 686 (Pa. Cmwlth. 1983).

In analyzing a proposed general rate increase, the Commission determines a rate of return to be applied to a rate base measured by the aggregate value of all the utility's property used and useful in the public service. The Commission determines a proper rate of return by calculating the utility's capital structure and the cost of the different types of capital during the period in issue. The Commission is granted wide discretion, because of its administrative expertise, in determining the cost of capital. *Equitable Gas Co. v. Pa. PUC*, 405 A.2d 1055, 1059 (Pa. Cmwlth. 1979) (determination of cost of capital is basically a matter of judgment which should be left to the regulatory agency and not disturbed absent an abuse of discretion).

B. Settlements Must Serve the Public Interest

The policy of the Commission is to encourage settlements, and the Commission has stated that settlement rates are often preferable to those achieved at the conclusion of a fully litigated proceeding. 52 Pa. Code §§ 5.231, 69.401. A full settlement of all the issues in a proceeding eliminates the time, effort, and expense that otherwise would have been used in litigating the proceeding, while a partial settlement may significantly reduce the time, effort, and expense of litigating a case. A settlement, whether whole or partial, benefits not only the named parties directly, but, indirectly, all customers of the public utility involved in the case.

The Partial Settlement, in this case, is a "black box" settlement. This means that the Joint Petitioners were not able to agree on each and every element of the

revenue requirement calculation. The Commission has recognized that "black box" settlements can serve an important purpose in reaching consensus in rate cases:

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

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

Rate increase proceedings are expensive to litigate, and the reasonable cost of such litigation is an operating expense recovered in the rates approved by the Commission. Partial or full settlements allow the parties to avoid the substantial costs of preparing and serving testimony and the cross-examination of witnesses in lengthy hearings, the preparation and service of briefs, reply briefs, exceptions and replies to exceptions, together with the briefs and reply briefs necessitated by any appeal of the Commission's decision, yielding significant expense savings for the company's customers. For these and other sound reasons, settlements are encouraged by long-standing Commission policy.

Despite the policy favoring settlements, the Commission does not simply rubber stamp settlements without further inquiry. In order to accept a settlement such as the one proposed here, the Commission must determine that the proposed terms and conditions are in the public interest. *Pa. PUC v. York Water Co.*, Docket No.

R-00049165 (Order entered October 4, 2004); *Pa. PUC v. C. S. Water and Sewer Assoc.*, 74 Pa. P.U.C. 767 (1991) (*CS Water and Sewer*). The focus of the inquiry for determining whether a proposed settlement should be approved by the Commission is whether the proposed terms and conditions foster, promote, and serve the public interest. *Pa. PUC, et al. v. City of Lancaster – Bureau of Water*, Docket Nos. R-2010-2179103, *et al*. (Order entered July 14, 2011), citing *Warner v. GTE North, Inc*., Docket No. C-00902815 (Order entered April 1, 1996) and *CS Water and Sewer.* Because the Joint Petitioners request that the Commission enter an order in this proceeding approving the Settlement without modification, they share the burden of proof to show that the terms and conditions of the Settlement are in the public interest. *See*, 66 Pa.C.S. § 332(a) ("Except as may be otherwise provided in section 315…or other provisions of this part . . . the proponent of a rule or order has the burden of proof.").

In his Recommended Decision, the ALJ made fifty-seven (57) Findings of Fact and reached fourteen (14) Conclusions of Law. R.D. at 18-27, 118-20. The Findings of Fact and Conclusions of Law are incorporated herein by reference and are adopted without comment unless they are either expressly or by necessary implication rejected or modified by this Opinion and Order.

Finally, any issue or Exception that we do not specifically address shall be deemed to have been duly considered and denied without further discussion. The Commission is not required to consider expressly or at length each contention or argument raised by the parties. *Consolidated Rail Corp. v. Pa. PUC*, 625 A.2d 741 (Pa. Cmwlth. 1993); *see also, generally, University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).

V. Joint Petition for Approval of the Partial Settlement

A. Terms and Conditions of the Partial Settlement

The Joint Petitioners agreed to the Partial Settlement covering all issues except for one: Columbia's proposed MLC.[6] Additionally, although CAUSE-PA and PWPTF did not join the Joint Petition, both indicated that they did not oppose the Partial Settlement. As previously noted, the Partial Settlement is a "black box" settlement, which means that it does not reflect a specific resolution of every element of the revenue requirement, including reaching a specified rate of return, but instead represents the Joint Petitioners agreed-upon final revenue increase amount based on their respective individual analyses of the various revenue and expense items. The Partial Settlement provided for an increase in rates designed to produce approximately $74.0 million in additional annual base rate revenues for Columbia based upon the *pro forma* level of operations for the FPFTY ending December 31, 2025. This is in lieu of the Company's originally-filed request for an annual revenue increase of approximately $124.1 million. Joint Petition at 2, 4.

The Joint Petition consisted of a sixteen-page document outlining the terms and conditions of the Partial Settlement. Additionally, Appendices A-J were attached, or were subsequently filed, to the Joint Petition.[7] Appendix A outlined the tariff changes included in Supplement No. 374. Appendix B outlined the agreed-upon class revenue allocation. Appendix C set forth the agreed-upon rate design for all customer classes. Appendix D contained the Joint Petitioners' proposed conclusions of law and ordering paragraphs. Appendix E set forth the Statement in Support of Columbia. Appendix F set

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[6] As noted in Paragraph 39 of the Partial Settlement, *infra,* the Joint Petitioners reserved this issue for litigation.

[7] Appendices A through D were attached to the Joint Petition, while Appendices E through J were filed on August 30, 2024.

forth the Statement in Support of I&E. Appendix G set forth the Statement in Support of the OSBA. Appendix H set forth the Statement in Support of the OCA. Appendix I set forth the Statement in Support of PSU. Appendix J contained a letter by PWPTF explaining that it did not oppose the Joint Petition.

The essential terms of the Joint Petition for Partial Settlement were contained in Section III of the Joint Petition, in Paragraphs 21 through 52. These terms are set forth below and reflect the Joint Petitioners' agreement with regard to the issues of: (1) Revenue Requirement; (2) Alternative Ratemaking; (3) Revenue Allocation and Rate Design; (4) Energy Efficiency and Conservation (EE&C); (5) Universal Service; and (6) Miscellaneous Issues. These essential terms are printed *verbatim*, and for ease of reference, maintain the paragraph numbers and formatting that appear in the Partial Settlement.

A. REVENUE REQUIREMENT

> 21. Rates will be designed to produce an increase in annual operating revenues of $74.0 million over current base rates based upon the pro forma level of operations for the twelve months ended December 31, 2025.
>
> 22. The state income tax rate in this proceeding will be set at 7.99% and has been reflected in the settlement revenue requirement. The Company will reflect subsequent state tax adjustments to the state income tax rate for the post-2025 tax years through the Company's State Tax Adjustment Surcharge, currently Tariff Gas – Pa. P.U.C. No. 9, page 165, or future base rate proceedings
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> 23. As of the effective date of rates in this proceeding, Columbia will be eligible to include plant additions in the Distribution System Improvement Charge ("DSIC") at the later of (1) the end of the FPFTY or (2) once the total FPFTY account balances exceeds $4,815,151,833 as projected by Columbia at December 31, 2025 per Columbia Exhibit No. 108, Schedule 1. The foregoing provision is included

solely for purposes of calculating the DSIC and is not determinative for future ratemaking purposes of the projected additions to be included in rate base in a FPFTY filing.

24. For purposes of calculating its DSIC, Columbia shall use the equity return rate for gas utilities contained in the Commission's most recent Quarterly Report on the Earnings of Jurisdictional Utilities and shall update the equity return rate each quarter consistent with any changes to the equity return rate for gas utilities contained in the most recent Quarterly Earnings Report, consistent with 66 Pa. C.S. § 1357(b)(3), until such time as the DSIC is reset pursuant to the provisions of 66 Pa. C.S. § 1358(b)(1).

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

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

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

(i) Blackhawk Storage – Continuation of the previously-approved 24.5 year amortization of the total amount of $398,865 to be included on books and in rate base as a regulatory asset to reflect the total original cost that began on October 28, 2008.

(ii) Pension Prepayment – Continuation of the previously-approved ten-year amortization of $8,449,772.00 that began December 16, 2018.

(iii) COVID-19 Related Uncollectible Accounts Expense – Continuation of the previously-approved 4-year amortization of $2,832,363 that began December 17, 2022.

28. As established in the settlement of Columbia's base rate proceeding at R-2012-2321748, Columbia will be

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

29. Commencing with the effective date of rates, Columbia will deposit amounts in the OPEB trusts when the cumulative gross annual accruals calculated by its actuary pursuant to ASC 715 are greater than $0. If annual amounts deposited into OPEB trusts, pursuant to this Partial Settlement, exceed allowable income tax deduction limits, any income taxes paid will be recorded as negative deferred income taxes, to be added to rate base in future proceedings.

30. On or before April 1, 2025, Columbia will provide I&E, OCA and OSBA an update to Columbia Exhibit No. 108, Schedule 1, which will include actual capital expenditures, plant additions, and retirements by month for the twelve months ending December 31, 2024. On or before April 1, 2026, Columbia will update Exhibit No. 108, Schedule 1 filed in this proceeding for the twelve months ending December 31, 2025. In Columbia's next base rate proceeding, the Company will prepare a comparison of its actual revenue, expenses and rate base additions for the twelve months ended December 31, 2025. However, it is recognized by the Joint Petitioners that this is a black box settlement that is a compromise of Joint Petitioners' positions on various issues.

31. Tariff rates will go into effect on December 14, 2024.

32. For purposes of this settlement, Columbia's as-filed depreciation and amortization rates will be utilized. The parties to this proceeding continue to disagree about the appropriate depreciation method to be used by Columbia, and this settlement should not be construed as agreement to the methodology. All parties reserve their respective rights to address the depreciation methodology in any future base rate proceeding.

33. The Company agrees to file a cash working capital study in its first rate case filed after January 1, 2026. All parties reserve their respective rights to present any position on the treatment of the results of such study.

34. The proposed IT transformation ("WAM") plan and schedule, as well as the allocation of costs thereof to Columbia, are accepted.

B. ALTERNATIVE RATEMAKING

35. Columbia's Pilot Weather Normalization Adjustment ("WNA") mechanism will continue until a final order is entered in the Company's first rate case filed after December 14, 2024, which is the end of the suspension period for the general rate increase filing in this docket, pursuant to the terms of the Commission-approved settlement at Docket No. R-2021-3024296, and as further modified herein. For informational purposes, the Company shall continue to maintain and provide to the OCA, I&E and OSBA by October 1 of each year all reports and records supporting the operation of its WNA for the preceding year, including the Company's monthly computation of the WNA and all data underlying the Company's monthly WNA computation. All parties reserve their respective rights to propose or oppose a WNA in a future base rate proceeding.

36. Columbia's Revenue Normalization Adjustment ("RNA") proposal is withdrawn without prejudice.

C. REVENUE ALLOCATION AND RATE DESIGN

37. Class revenue allocation will be approximately as shown in Appendix "B". Rate design for all classes shall be as

shown in Appendix "C". Revenue allocation and rate design reflect a compromise and do not endorse any particular cost of service study.

38. The Residential customer charge will be set at $17.25 per month.

39. Columbia's proposed Municipal Levelization Charge is reserved for briefing.

D. ENERGY EFFICIENCY AND CONSERVATION ("EE&C")

40. The updates to Columbia's Three-Year Energy Efficiency Plan ("EE Plan"), as described in the direct testimony of Theodore M. Love, are accepted.

E. UNIVERSAL SERVICE ISSUES

41. Columbia will work with its Universal Service Advisory Committee ("USAC") to develop a plain language notice, on a pilot basis, of the right to enter Customer Assistance Program ("CAP") and the arrearage forgiveness benefits of CAP, to be provided to confirmed low-income customers with arrears of at least $300. The Company may recover the costs of the pilot notice through its Universal Services Rider. Columbia will report the results and costs of the pilot in its next Universal Service and Energy Conservation Plan ("USECP") filing.

42. Columbia will work with its USAC to develop a plain language notice, on a pilot basis, of the right to enroll in CAP when a security deposit is waived or refunded pursuant to 66 Pa. C.S. § 1404(a.1) and 52 Pa. Code § 56.32(e). The Company may recover the costs thereof through its Universal Services Rider. Columbia will report the results and costs of the pilot in its next USECP filing.

43. Columbia will work with its USAC to develop a plain language notice, on a pilot basis, to customers at or below 150% of the FPL when negotiating a payment arrangement. The Company may recover the costs thereof through its

Universal Services Rider. Columbia will report the results and costs of the pilot in its next USECP filing.

44. Columbia will work with its USAC to develop a plain language notice, on a pilot basis, to customers who have had service disconnected for nonpayment, and who remain disconnected at the time of the Company's Cold Weather Survey ("CWS") undertaken for the PUC. The Company may recover the costs thereof through its Universal Services Rider. Columbia will report the results and costs of the pilot in its next USECP filing.

45. Columbia will present a pilot program involving the use of speech analytics no later than the Company's next USECP review or base rate proceeding, whichever comes first. As discussed in the Direct Testimony of OCA witness Colton, the Company will include the USAC in the development of the speech analytics pilot. The Company may recover the costs thereof through its Universal Services Rider.

46. The Company will amend its Tariff language regarding security deposits (Section 6.2(1)) to state: "A Customer or Applicant that provides self-certification or other income documentation that household income is at or below 150% of the federal poverty level shall not be asked to provide a cash deposit."

47. Columbia will report at each USAC meeting for at least three years, or until the final decision in its next base rate case, whichever is longer, the number of customers with waived or refunded security deposits.

48. The Company will review with its USAC call scripting and checklists for its Customer Service Representatives ("CSR") to assist in screening customers for eligibility and refer low-income customers to available assistance programs, including CAP, before placing customers on a payment arrangement.

49. The costs of implementing the above-actions related to confirmed and low-income customers will be recoverable through the Universal Service rider.

50. The Company will increase its Low Income Usage Reduction Program ("LIURP") annual budget by $800,000 beginning in 2026. All parties reserve their respective rights to propose an appropriate budget amount for LIURP in any future rate case proceeding or other appropriate proceeding.

F. MISCELLANEOUS ISSUES

51. Columbia will implement a process to initiate an email to an existing customer, if an existing email is available, upon any request to start or transfer gas service of an active account into another name. The Company will work with PSU to implement comments on PSU's accounts.

52. Other issues raised by other parties are withdrawn, without prejudice.

Joint Petition ¶¶ 21-52 at 5-11.

In addition to the specific essential terms to which the Joint Petitioners have agreed, as set forth above, the Partial Settlement contained certain additional general terms typically found in settlements submitted to the Commission. Specifically, the Joint Petitioners agreed that the Partial Settlement is conditioned upon the Commission's approval of the terms and conditions therein, without modification. The Partial Settlement established the procedure by which any of the Joint Petitioners may withdraw from the Partial Settlement and proceed to litigate this case, if the Commission should act to modify the Partial Settlement. In addition, the Joint Petitioners asserted that although the Partial Settlement is proffered to settle the instant proceeding, it may not be cited as precedent in any future proceeding, except to the extent required to implement any term specifically agreed to by the Joint Petitioners. Further, the Joint Petitioners submitted that the Partial Settlement was made without prejudice to any position which any of the Joint Petitioners might adopt in future proceedings, except to the extent necessary to effectuate or enforce any term specifically agreed to in the Partial Settlement before us. Finally, the Joint Petitioners explained that they have waived their right to file Exceptions

regarding the issues in the Partial Settlement if the ALJ recommended that the Commission adopt the Partial Settlement, without modification. However, the Joint Petitioners stressed that each Joint Petitioner retained the right to file briefs, exceptions, and replies to exceptions with respect to the lone issue reserved for litigation in this proceeding, *i.e.* the Company's proposed MLC. Joint Petition ¶¶ 56-63 at 11-13.

B. Statements in Support of the Partial Settlement

As noted above, each of the five Joint Petitioners individually filed a Statement in Support of the Partial Settlement. Each Joint Petitioner submitted that the Partial Settlement reflects a carefully balanced "black box" compromise of the interests of the Joint Petitioners, that the Partial Settlement is in the best interest of the Company and its customers, that the Partial Settlement is in the public interest, and that the Partial Settlement should be approved, without modification.

This section of this Opinion and Order provides an overview of the Positions of the Parties, outlined in their Statements in Support, regarding the six major issues resolved by the uncontested Partial Settlement. In the Recommended Decision, the ALJ provided an extensive summary of the various positions of the Parties, as set forth in their respective Statements in Support. For a detailed summary of each Party's position on the settled issues, please refer to pages 37 to 88 of the Recommended Decision.

1. Revenue Requirement (¶¶ 21-34)

a. Parties' Statements in Support

In its Statement in Support, Columbia noted that the increase in annual operating revenues of $74 million, produced under the Partial Settlement, is approximately 59.6% of the Company's originally requested revenue increase of

$124.1 million. According to the Company, the revenue increase produced by the Partial Settlement reflects a reasonable compromise among the Joint Petitioners and will provide the Company with the additional revenues that are necessary to provide safe and reliable service to its customers. In this regard, Columbia explained that it has made, and will continue to make, significant capital investments in its distribution system, including investments in its accelerated pipeline replacement program. In addition, Columbia argued that it has incurred increasing O&M costs associated with maintaining pipeline safety and improving customer satisfaction. Therefore, Columbia opined that the Partial Settlement appropriately balances the need of the Company to have an opportunity to earn a reasonable return on the significant capital investments it has made to its distribution system, with its customers' need for reasonable rates. Columbia Statement in Support at 3-6.

Columbia also touted the Joint Petitioners' agreement in the Partial Settlement as to: (1) the Company's Distribution System Improvement Charge (DSIC); (2) the Company's use of normalization accounting with respect to the benefits of the tax repairs deduction and the tax treatment of mixed service costs; (3) the Company's amortization of costs related to Blackhawk Storage, Pension Prepayment, and COVID-19 Related Uncollectible Accounts Expense; (4) accounting for Columbia's ongoing contributions to trusts for Other Post-Employment Benefits (OPEB); (5) the reporting of actual capital expenditures, plant additions, and retirements; (6) the use of Columbia's as-filed depreciation and amortization rates; (7) the Company's plans to transform its Information Technology (IT) systems over the next five years; and, (8) the Company's agreement to perform a cash working capital (CWC) study in its first rate case filed after January 1, 2026. According to the Company, each of these provisions is in the public interest and should be approved. Columbia Statement in Support at 6-12.

In its Statement in Support, I&E submitted that the final negotiated revenue increase of $74 million, or 9.41%, under the Partial Settlement, is well within a

reasonable range. In this regard, I&E compared this revenue increase to: (1) the Company's originally requested revenue increase of $124.1 million, or 15.8%; and (2) I&E's final litigation position, wherein it proposed an annual revenue increase of $70.75 million, or 9.00%. Therefore, I&E explained that it fully supported the negotiated revenue increase as a full and fair compromise that provides Columbia, the Joint Petitioners, the Company's ratepayers, and the Commission with a proper resolution of the overall revenue increase. I&E also stated that it supported, or did not oppose, the various provisions under the Revenue Requirement section of the Partial Settlement, which are listed under the Company's position, *supra,* arguing that these provisions are in the public interest. I&E Statement in Support at 7-14.

In its Statement in Support, the OCA highlighted that the annual increase in operating revenues agreed to under the Partial Settlement is approximately $50.1 million, or 40% less than the Company's originally requested increase of $124.1 million. Therefore, the OCA echoed the above position of I&E that this negotiated increase is within the range of possible outcomes in this proceeding. The OCA further claimed that the Partial Settlement's revenue increase of $74 million will provide sufficient funds to maintain Columbia's distribution system in an adequate, efficient, safe, and reasonable manner, while imposing a far less negative impact on Columbia's ratepayers than what Columbia's full request would have caused. OCA Statement in Support at 5-8.

Like the Company and I&E, the OCA also echoed its support for the various additional provisions under the Revenue Requirement section of the Partial Settlement. The OCA specifically highlighted, *inter alia,* its position that achieving a settlement of the depreciation rates was an integral part of achieving an overall resolution of this case, while still maintaining the right to address this issue in future proceedings. In addition, the OCA touted the Company's agreement to include a CWC study in its first rate case filed after January 1, 2026, opining that a CWC study would be in the best interest of Columbia's ratepayers. Thus, in the OCA's view, the revenue increase agreed

to under the Partial Settlement, when combined with the important conditions outlined in the Partial Settlement, yields a result that is in the public interest, and should be approved. OCA Statement in Support at 7, 8-10.

In its Statement in Support, PSU submitted that the revenue increase of $74 million achieved under the Partial Settlement, in lieu of the Company's originally proposed revenue increase, is in the public interest and represents a reasonable outcome based upon the issues presented in this proceeding. PSU specifically highlighted the lower revenue increase that will be allocated to the Small Distribution Service (SDS)/Large General Sales Service (LGSS) and Large Distribution Service (LDS)/LGSS customer classes, as a result of the Partial Settlement. Therefore, PSU opined that the Commission should approve the revenue increase achieved by the Partial Settlement. PSU Statement in Support at 4.

b. Recommended Decision

The ALJ noted that, with respect to the revenue increase, the Partial Settlement is a "black box" settlement. The ALJ explained that "black box" settlements provide a timely resolution of disputes, while avoiding costly litigation expenses. On consideration, the ALJ found that the agreed-upon revenue increase of $74 million, in lieu of the Company's originally proposed increase of $124.1 million, appears to constitute a full and fair compromise that provides Columbia, the Joint Petitioners, affected ratepayers, and the Commission with an appropriate resolution of the overall revenue increase. The ALJ also found the annual revenue increase under the Partial Settlement to be reasonable and sufficient to provide Columbia with the additional revenues necessary to provide safe and reliable service to its customers at reasonable rates, while also permitting the Company to have an opportunity to earn a reasonable rate of return. R.D. at 49-50, 56.

The ALJ further concluded that the terms of the Partial Settlement regarding: (1) the Company's DSIC, (2) the accounting treatment of the Company's tax repair deductions, (3) the amortization of certain costs, (4) the accounting for the Company's OPEB, (5) reporting on actual capital expenditures, (6) depreciation, (7) IT Transformation, and (8) the Company's agreement to file a CWC study in its next base rate case, each, likewise, appear to constitute a full and fair compromise, are necessary provisions in the context of the Partial Settlement, and are in the public interest. R.D. at 49-58.

The ALJ specifically found that the Company's agreement, in Paragraph 30 of the Partial Settlement, that in its next base rate proceeding, the Company will prepare a comparison of its actual revenue, expenses, and rate base additions for the twelve months ending December 31, 2025, should be approved because it will provide I&E, the OCA, and the OSBA with ongoing information concerning Columbia's capital investments. According to the ALJ, this information can be used as a metric to gauge Columbia's actual capital investment, plant additions, retirements, and expenses in future base rate proceedings. R.D. at 55.

2. Alternative Ratemaking (¶¶ 35-36)

a. Parties' Statements in Support

In its Statement in Support, Columbia argued that the Joint Petitioners" agreement, that the Company's Weather Normalization Adjustment (WNA) Pilot mechanism will continue until a final order is entered in the Company's first base rate case filed after December 14, 2024, is in the public interest and resolves certain disagreements among the Parties in this proceeding. Columbia explained that it agreed to withdraw its revenue normalization adjustment (RNA) proposal in the interest of

resolving the issues in this proceeding through the Partial Settlement. Columbia Statement in Support at 12.

In its Statement in Support, I&E explained that it opposed Columbia's original proposal to modify its existing WNA Pilot by removing the 3% deadband.[8] I&E also acknowledged the language in the Settlement to Columbia's 2021 base rate proceeding at Docket No. R-2021-3024296 (2021 Settlement[9]), wherein it was agreed that a final determination would be made regarding Columbia's WNA Pilot after May 31, 2026. Therefore, I&E stressed its full support for the settled upon terms regarding the Company's WNA Pilot, as a full and fair compromise that provides Columbia, the Joint Petitioners, ratepayers, and the Commission with regulatory certainty, which is in the public interest. Further, I&E argued that Columbia's decision to withdraw its proposed RNA, without prejudice, is also in the public interest. I&E Statement in Support at 14-16.

In its Statement in Support, the OCA explained that it likewise opposed the Company's original proposal to modify its WNA pilot by removing the 3% deadband, arguing that this proposal would breach the terms of the 2021 Settlement. Therefore, the OCA touted the provision, set forth in Paragraph 35 of the Partial Settlement, wherein the Company effectively agreed to withdraw its proposal to eliminate the 3% deadband. According to the OCA, because the Partial Settlement ensures that interested stakeholders can challenge the WNA in Columbia's next base rate case, this provision of the Partial

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[8] A 3% deadband means that a billing adjustment will only occur if the variation of actual heating degree days (HDD) is lower than 97% or higher than 103% percent of the normal HDD for an individual billing cycle. *See*, OCA St. 1 at 53.

[9] *See Pa. PUC*, *et al. v Columbia Gas of Pennsylvania, Inc*., Docket No. R-2021-3024296, (Opinion and Order entered December 16, 2021) (*December 2021 Columbia Rate Case Order*).

Settlement is reasonable, is in the public interest, and should be adopted by the Commission. OCA Statement in Support at 14-17.

The OCA also expressed its support for the provision, set forth in Paragraph 36 of the Partial Settlement, that Columbia will withdraw its proposed RNA, without prejudice. The OCA reasoned that unlike the WNA, which limits lost revenue recovery to weather-related changes in sales, the Company's proposed RNA would have allowed Columbia to periodically adjust its distribution service rates to recover any lost revenues that may arise, regardless of the reason. As a result, the OCA continued that the proposed RNA would have provided the Company with a benchmark level of distribution revenues, regardless of changes in its customers' actual usage levels. The OCA submitted that these and other factors relevant to Columbia's proposed RNA weighed against its authorization and implementation, such that the Company's agreement to withdraw its proposal in this proceeding is in the public interest. OCA Statement in Support at 17-20.

In its Statement in Support, the OSBA explained that it also opposed Columbia's proposal to eliminate its WNA deadband. According to the OSBA, if the Company's proposal was placed into effect, rates would change on any day that was not deemed a "normal" temperature. Therefore, the OSBA stated its support for Paragraph 35 of the Partial Settlement, wherein the Company has agreed to withdraw this proposal. The OSBA further noted that because it also opposed the Company's proposed RNA mechanism, it fully supported Columbia's agreement to withdraw this proposal. OSBA Statement in Support at 2-3.

b. Recommended Decision

The ALJ found the provisions of the Partial Settlement pertaining to the Company's WNA to be reasonable and in the public interest. According to the ALJ, the Joint Petition appears to clarify the issues regarding the WNA Pilot, while providing that

the Parties may challenge the WNA in Columbia's next base rate case. The ALJ also found the Company's agreement to withdraw its proposed RNA, without prejudice, to be in the public interest, finding that this will provide all Parties, including the Company's ratepayers, with regulatory certainty. R.D. at 63, 64.

3. Revenue Allocation and Rate Design (¶¶ 37-39)

a. Parties' Statements in Support

In its Statement in Support, Columbia submitted that the agreed-upon revenue allocation and rate design in the Partial Settlement strikes a balance that is in the best interest of all of Columbia's customers and should be approved. According to Columbia, although the Joint Petitioners were not able to agree on a specific "class cost of service study" (CCOSS) in the Partial Settlement, they were able to agree to a revenue allocation that is within the range of revenue allocations proposed by the Joint Petitioners in this proceeding, and which will meet the CCOSS standards adopted by the Courts and the Commission. Columbia also opined that the Partial Settlement achieves progress in the movement toward cost-based rates. Columbia Statement in Support at 13-14.

As to the agreed-upon rate design, Columbia compared its originally proposed customer charges for its residential customers, small commercial and industrial customers, and large commercial and industrial customers with the respective customer charges agreed to under the Partial Settlement. For example, Columbia highlighted that it originally proposed to increase the monthly customer charge for its residential customers from $16.75 to $26.00, representing a monthly increase of $9.25. Columbia noted that under the Partial Settlement, it has agreed to increase the monthly residential customer charge from $16.75 to $17.25, representing a monthly increase of $0.50. Columbia asserted that these terms of the Partial Settlement are in the public interest and should be approved. Columbia Statement in Support at 15-17.

In its Statement in Support, I&E explained that the revenue allocation and rate design agreed to under the Partial Settlement resulted from extensive negotiations among the Joint Petitioners. I&E specifically highlighted that: (1) the residential customer charge will be set at $17.25 per month; and (2) the tariff rates will go into effect on December 14, 2024. I&E claimed that the settled upon rate design and residential customer charges are very favorable when compared to the rate design and customer charges originally proposed by the Company. Accordingly, I&E expressed its full support for the Joint Petition's revenue allocation and rate design, arguing that these Partial Settlement provisions are in the public interest and should be approved. I&E Statement in Support at 16-18.

In its Statement in Support, the OCA took the position that the revenue allocation agreed to under the Partial Settlement is consistent with the principles of cost causation and is within the range of expected outcomes if this case were fully litigated. The OCA submitted that the compromise reached among the Joint Petitioners reasonably allocates the $74 million revenue increase among customer classes, and designs rates to recover the amounts allocated to the customer classes. The OCA also noted that the Parties to this proceeding had significant differences of opinion as to the appropriate cost of service methodology to use, and how the revenue allocation should be structured. Thus, the OCA stated that the agreed-to revenue allocation in this proceeding will ensure some certainty for all Parties involved, while avoiding further litigation of the various cost of service proposals presented. OCA Statement in Support at 20-25.

As to the rate design, the OCA specifically highlighted that the residential customer charge agreed to in the Partial Settlement represents a monthly increase of $0.50, as opposed to the Company's originally proposed monthly increase of $9.25. According to the OCA, the agreed-upon increase to the residential customer charge reflects a reasonable compromise in consideration of likely litigation outcomes before the Commission and is in the public interest. OCA Statement in Support at 25-26.

In its Statement in Support, the OSBA proffered that the revenue allocation set forth in the Joint Petition reflects the work of the OSBA and the other Joint Petitioners and represents a just and reasonable resolution of what was a contentious issue. In addition, the OSBA supported the rate design achieved under the Partial Settlement. The OSBA specifically highlighted that the Joint Petitioners have agreed to increase the monthly small general service 1 (SGS1) customer charge to $33.00, and the monthly small general service 2 (SGS2) customer charge to $63.00. According to the OSBA, this represents a reasonable resolution to the parties' disagreement as to the appropriate customer charge. OSBA Statement in Support at 3-4.

In its Statement in Support, PSU submitted that the Partial Settlement achieves a revenue allocation that is within the range of likely litigated outcomes in this proceeding, but that also recognizes the principles of gradualism. PSU highlighted that this agreed-upon revenue allocation will ensure that no single rate class receives an increase greater than 1.4 times the system average increase. Therefore, PSU averred that it is generally supportive of the agreed-upon revenue allocation as a compromise of competing positions among the Joint Petitioners. PSU added that the rate design achieved under the Partial Settlement produces rates that are just, reasonable, and in the public interest. PSU Statement in Support at 4-8.

b. Recommended Decision

The ALJ concluded that the revenue allocation achieved by the Partial Settlement appears to yield a result that is reasonable and is the product of a compromise among the Joint Petitioners. The ALJ reasoned that this compromise ensures some certainty in the revenue allocation for all Parties involved without having to litigate the various cost of service proposals presented. In the ALJ's view, the terms of the Partial Settlement related to revenue allocation are in the public interest. R.D. at 71-72.

The ALJ found that the Joint Petitioners agreed-upon rate design, likewise, appears to yield a result that is reasonable and in the public interest. The ALJ noted that the Parties in this proceeding submitted extensive testimony and engaged in substantial negotiations regarding the appropriate rate design. According to the ALJ, the rate design reflected in the Partial Settlement represents an appropriate compromise. The ALJ also opined that the resulting customer charges are very favorable to Columbia's customers when compared to the Company's original proposal. The ALJ further opined that this rate design will provide Columbia, the Joint Petitioners, the Company's ratepayers, and the Commission with regulatory certainty. R.D. at 72-73.

4. Energy Efficiency and Conservation (¶ 40)

a. Parties' Statements in Support

In its Statement in Support, Columbia stressed that no Party to this proceeding opposed the Company's proposed updates to its EE&C Plan, as described in the direct testimony of its witness, Mr. Theodore M. Love. Columbia Statement in Support at 17 (citing Columbia St. 13 at 2-3). Accordingly, Columbia submitted that Paragraph 40 of the Partial Settlement, which references these Plan updates, is in the public interest and should be approved. Columbia added that these updates recognize that certain components of the original EE&C Plan have greater interest than others such that the Company has shifted funds accordingly to stay within the Plan's approved budget. Columbia Statement in Support at 17-18.

In its Statement in Support, I&E explained that it did not oppose the Company's proposed updates to its EE&C Plan. According to I&E, these updates, as memorialized in the Partial Settlement, are in the public interest and should be approved. I&E Statement in Support at 18.

In its Statement in Support, the OCA noted that it does not oppose the provisions of the Partial Settlement regarding the Company's update to its EE&C Plan. The OCA opined that this provision is in the public interest because the Plan provides benefits to Columbia's customers, and the updates to the Plan do not affect the Plan's budget. OCA Statement in Support at 26.

b. Recommended Decision

The ALJ found that because no Party opposed the Company's proposed updates to its EE&C Plan, the terms in this section of the Partial Settlement represent a fair resolution of this issue and are in the public interest. R.D. at 75.

5. Universal Service Issues (¶¶ 41-50)

a. Parties Statements in Support

In its Statement in Support, Columbia highlighted the Company's commitments to universal service contained in the Partial Settlement regarding: (1) the Company's adoption of certain plain language notices; (2) the Company's agreement to present a pilot program involving the use of speech analytics at the earlier of its next Universal Service and Energy Conservation Plan (USECP) review or its next base rate proceeding; (3) the Company's agreement to modify its tariff language regarding security deposits; (4) the Company's agreement to work with its Universal Service Advisory Committee (USAC) to (a) review Columbia's call scripting and checklists for its Customer Service Representatives (CSRs) to assist in screening its customers for eligibility, and (b) to refer low-income customers to available assistance programs, including the customer assistance program (CAP), before placing them on a payment arrangement; and (5) Columbia's agreement to increase its annual Low Income Usage Reduction Program (LIURP) budget by $800,000 beginning in 2026. Columbia insists

that these Partial Settlement provisions are in the public interest and should be approved because they reflect the Company's continued support for these programs. Columbia Statement in Support at 18-21.

In its Statement in Support, I&E explained that it submitted limited testimony on the universal service/low-income issues in this proceeding, but that it shared some of the concerns raised by other parties, including the OCA, regarding these issues. According to I&E, as a result of the Partial Settlement, the Company reached an amicable agreement on these issues with the parties that raised them. Thus, I&E stated that it does not oppose the terms of the Partial Settlement on these issues, as they represent a full and fair compromise, which is in the public interest. I&E Statement in Support at 18-20.

In its Statement in Support, the OCA proffered that the resolution of the universal service and low-income customer assistance issues, set forth in Paragraphs 41 to 50 of the Partial Settlement, addressed several concerns raised by the OCA's witness, Mr. Roger Colton, regarding, *inter alia*, the following:

> (1) the Company's process for identifying low-income customers and enrolling low-income customers in CAP;
>
> (2) exploring the benefits of leveraging technology to help the Company to improve its identification of low-income customers; and
>
> (3) directing the Company to modify its tariff to properly reflect the regulatory requirement that a customer is to be exempt from cash security deposits "when the customer provides income documents or other information that he or she is eligible for state benefits based upon household income eligibility requirements that are consistent with those of the public utility's customer assistance program."

OCA Statement in Support at 26-33 (citing OCA St. 6 at 53-68).

Additionally, the OCA stressed its support for the provisions of the Partial Settlement regarding call scripting and the Company's proposed increase of $800,000 to its LIURP budget. According to the OCA, the universal service provisions of the Partial Settlement represent a reasonable compromise to address all of Mr. Colton's recommendations, in consideration of possible litigation outcomes. Therefore, the OCA submitted that the Commission should approve these provisions of the Partial Settlement because they are in the public interest. *Id*.

b. Recommended Decision

The ALJ observed that the Joint Petitioners presented extensive testimony on the low-income issues set forth in Paragraphs 41 through 50 of the Joint Petition. According to the ALJ, the agreements reached by the Joint Petitioners regarding the issues of universal service and low-income customer assistance appear to be a just resolution of these issues and constitute a fair compromise, which is in the public interest. R.D. at 84.

6. Miscellaneous Issues (¶¶ 51-52)

a. Parties' Statements in Support

In its Statement in Support, Columbia highlighted that under Paragraph 51 of the Partial Settlement, the Company has agreed to implement a process to initiate an email to an existing customer, if an email is available, upon any request to start or transfer the gas service of an active account into another name. Columbia represented that it will also work with PSU to implement comments on PSU's accounts. According to Columbia, this provision is in the public interest and should be adopted. Columbia asserted that this provision of the Partial Settlement will aid the Company in its goal of

providing its customers with enhanced customer service. Columbia Statement in Support at 21.

In its Statement in Support, PSU characterized Columbia's commitment under the Partial Settlement to be "a step in the right direction to prevent [the] unauthorized transfer of active accounts to a third party." According to PSU, this Settlement provision will result in Columbia's customers receiving additional notice, which will enable these customers to identify when unauthorized requests for service are initiated on their account. PSU also stressed that Columbia's commitment to implement comments on PSU's accounts will provide additional notice and instruction to CSRs that may receive a fraudulent request to transfer service. Therefore, PSU submitted that the Commission should approve this section of the Partial Settlement. PSU Statement in Support at 8.

b. Recommended Decision

The ALJ found that the Joint Petitioners' agreement that: (1) Columbia will implement a process to initiate an email to an existing customer, if an existing email is available, upon any request to start or transfer the gas service of an active account into another name, and (2) Columbia will work with PSU to implement comments on PSU's accounts, appears to be a fair resolution and is in the public interest. R.D. at 86.

C. Recommended Decision-Overall Recommendation

As previously noted, in the Recommended Decision, the ALJ provided an extensive discussion of the issues addressed by the terms and conditions of the Partial Settlement, as well as the positions of the Joint Petitioners regarding the Partial Settlement, as set forth in the Joint Petitioners' individual Statements in Support. R.D. at 37-88. Based upon the ALJ's findings, *supra,* as to each of the major sections of the Partial Settlement, the ALJ concluded that the proposed Partial Settlement is just and reasonable and in the public interest. As such, the ALJ recommended that the Commission approve the Partial Settlement, without modification. *Id*. at 1.

D. Disposition of the Joint Petition

The matter before us is a Partial Settlement, to which no party to this proceeding is opposed. At the outset, we reinforce that while it is the policy of the Commission to favor settlements, we must also determine whether the proposed terms and conditions, therein, are in the public interest. *See*, *CS Water and Sewer, supra.* The Commission has previously acknowledged that the standard for approval of a partial settlement remains the same as that for a full settlement, whether involving a partial settlement of issues, or a partial settlement of the parties involved (*i.e.*, a non-unanimous settlement). In addition, substantial evidence must exist to support the ALJ's recommendation to adopt the settlement. *See*, *Pa. PUC v. Pennsylvania-American Water Company*, Docket Nos. R-2020-3019369 and R-2020-3019371 (Order entered February 25, 2021) at 40. On consideration of the record evidence in this proceeding, including the Joint Petition, we agree with the ALJ and the Joint Petitioners that the Partial Settlement is in the public interest and is supported by substantial evidence. As noted by the Parties in their Statements in Support, the Partial Settlement reflects a compromise of the range of positions and evidence proffered as to each issue.

Accordingly, we shall conditionally grant the Joint Petition and approve the Partial Settlement, without modification, consistent with the discussion below.

Revenue Increase

We acknowledge that the agreed upon revenue increase was achieved under the terms of a "black box" settlement. However, we expressly find that the substantial evidence of record supports the annual revenue increase agreed to under the terms of the Partial Settlement. Namely, the Joint Petitioners have proposed that rates be designed to produce an additional $74 million in annual base rate operating revenues. This represents a reduction of $50.1 million, or approximately 40%, when compared to the Company's originally-filed increase request of approximately $124.1 million. Additionally, the Joint Petitioners provide that Columbia will receive an increase in existing base rate operating revenues of approximately 9.41% over revenues at present rates of $786,107,079,[10] instead of the 15.79% revenue increase Columbia originally sought.[11] Further, a typical residential customer using 70 therms of gas per month will experience an increase in their monthly bill from $118.16 to $128.06, or an increase of approximately 8.38%, in lieu of the monthly increase from $118.16 to $136.92 per month, or approximately 15.88%, that was originally proposed in the filing. Moreover, a typical small commercial customer using 150 therms of gas per month will experience an increase in their monthly bill from $196.43 to $215.72, or by approximately 9.82%, as opposed to the monthly increase from $196.43 to $226.24 per month, or by approximately 15.18%, that was originally proposed by the Company. Columbia Statement in Support at 22.

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[10] *See* Columbia Exh. 102, Sch. 3 at 3.

[11] As previously noted, prior to settlement negotiations in this proceeding, Columbia revised its initially requested revenue increase from $124.1 million to $123.6 million. This revised requested increase represented an increase of approximately 15.72% over revenues at present rates. Columbia St. 4-R at 2, Columbia Exh. BJK-1R at 1.

We concur with the Joint Petitioners and the ALJ that the revenue increase agreed to under the Partial Settlement represents a reasonable compromise and is in the public interest. As specifically noted by I&E and the OCA, the revenue increase achieved by the Partial Settlement is favorable when compared to that originally sought by the Company and is within the range of possible outcomes had this proceeding been fully litigated. I&E Statement in Support at 8; OCA Statement in Support at 6. In our view, the annual revenue increase of $74 million will provide the Company with sufficient additional revenues to maintain its natural gas distribution system in an adequate, efficient, safe, and reasonable manner, while minimizing the rate impact on its customers. We note, however, that because the Partial Settlement is a "black box settlement," the Partial Settlement sets forth the final agreed-upon revenue increase for Columbia but does not depict specific information regarding the underlying components used to calculate the overall revenue increase or a specific rate of return. Therefore, in this proceeding, we make no finding as to whether the agreed-upon revenue increase will allow the Company to earn a reasonable rate of return. We further conclude that a calculation of the rate of return is not required for our determination that the agreed-upon revenue increase under the Partial Settlement is in the public interest. *See*, *Pa. PUC, et al. v Manwalamink Water Company and Manwalamink Sewer Company,* Docket Nos. R-2017-2603026, *et al.* (Opinion and Order entered November 8, 2017) at 17-18.

Revenue Allocation and Rate Design

The Joint Petitioners noted that the appropriate revenue allocation for use in this proceeding was a contentious issue among the Parties. The Joint Petitioners differed both as to the proper CCOSS and the structure of the allocation within each CCOSS. *See*, Columbia Statement in Support at 13; I&E Statement in Support at 16; OCA Statement in Support at 20-24; OSBA Statement in Support at 3; PSU Statement in Support at 5. Table 1, below, shows a comparison of the resulting class increases under the Partial Settlement, as compared to the Company's originally requested increase.

Table 1: Comparison of the Partial Settlement's Revenue Allocation to Columbia's originally proposed Revenue Allocation[12]

Customer Group	As Filed	Percentage of Proposed Increase	As Settled	Percentage of Settled Increase
Residential (RS/RDS)	$86,302,967	69.52%	$48,442,452	65.46%
Small General Service 1 (SGSS1/SGDS1/SCD1)	$11,242,051	9.06%	$7,287,802	9.85%
Small General Service 2 (SGSS2/SGDS2/SCD2)	$12,393,385	9.98%	$8,399,452	11.35%
Small Distribution Service (SDS/LGSS)	$8,137,115	6.55%	$5,144,731	6.95%
Large Distribution Service (LDS/LGSS)	$6,061,742	4.88%	$4,725,171	6.39%
Mainline Distribution Service (MLDS/NSS)	$4	0%	$0	0%
Flex	$1,314	0%	$392	0%
Total	$124,138,578	100%	$74,000,000	100%

Joint Petition at Appendix B; Columbia Statement in Support at 14.

On review, we concur with the ALJ and the Joint Petitioners that the above revenue allocation, which does not endorse any particular CCOSS, fairly and equitably allocates the agreed-upon revenue increase among customer classes. In our view, the Joint Petitioners have agreed to a revenue allocation that is within the range of likely litigated outcomes in this proceeding, is consistent with the principles of cost causation, and recognizes principles of gradualism. *See* OCA Statement in Support at 24; PSU Statement in Support at 6. More specifically, in *PA PUC*, *et al. v. Columbia Gas of Pa., Inc.*, Docket Nos. R-2020-3018835, *et al*. (Opinion and Order entered February 19, 2021) (*February 2021 Columbia Rate Case Order*), the Commission stated, as follows:

> [A]lthough there are no definitive rules for determining what kind of rate increase would violate the principle of gradualism, limiting the maximum average rate increase for any particular class to 1.5 to 2.0 times the system average

[12] *See*, Columbia Exhibit 103, Sch. 8 at 4, Line 13 for Columbia's, as filed, percentage of proposed increase for each class. Additionally, under the Partial Settlement, there are slight increases to the revenues assigned to the Mainline and Flex customer classes due to increased customer charges. Columbia Statement in Support at 14, n.5.

> increase is one common metric that has been used by experts in the Commonwealth.

February 2021 Columbia Rate Case Order at 233. Because the Joint Petitioners represent that no customer class receives an increase that is greater than 1.4 times the system average increase, we find the Revenue Allocation achieved by the Partial Settlement to be consistent with principles of gradualism and that it is in the public interest. *See*, OCA Statement in Support at 23; PSU Statement in Support at 6.

We also find the rate design, including the customer charges, agreed to under the Partial Settlement, to be in the public interest. In its Statement in Support, the OCA noted that Columbia's current residential customer charge is the highest of any NGDC in Pennsylvania. The OCA provided a comparison of Columbia's originally proposed and present residential customer charges to the residential customer charges of the other NGDCs in Pennsylvania, which is reproduced in Table 3, as follows:

Table 3: Comparison of Residential Customer Charges for Pennsylvania NGDCs

Columbia Gas of Pennsylvania – Proposed	**$26.00**
Columbia Gas of Pennsylvania – Current	**$16.75**
Philadelphia Gas Works	$16.25
Columbia Gas	$15.75
UGI Gas	$15.00
Columbia Natural Gas	$14.50
PECO Energy Company	$14.25
National Fuel Gas Company	$14.00

OCA Statement in Support at 25. As Table 3 indicates, Columbia's originally proposed monthly residential customer charge of $26 would have been *significantly* higher than that of any other NGDC in the Commonwealth. Therefore, we echo the sentiment of I&E and the other Joint Petitioners, and the ALJ, that the agreed upon monthly increase in the

residential customer charge of $0.50, or from $16.75 to $17.25 is "very favorable" when compared to the Company's originally proposed monthly increase of $9.25, or from $16.75 to $26. *See* I&E Statement in Support at 18; R.D. at 72-73.

Similarly, in Table 4, we note a comparison of Columbia's as-filed monthly customer charge for customers under Rate Schedules Small General Sales Service (SGSS), Small Commercial Distribution (SCD), and Small General Distribution Service (SGDS) to the customer charges for Columbia's small commercial and industrial (C&I) customers that result from the Partial Settlement.

Table 4: Monthly Customer Charge Comparison for Customers Under Rates Schedules SGSS, SCD, and SGDS

	Current Customer Charge	Customer Charge as-filed	Original Increase	Customer Charge as-settled	Increase under Partial Settlement
Customers using up to 6,440 therms annually	$29.92	$36.55	**$6.63**	$33	**$3.08**
Customers using between 6,440 therms and 64,440 annually	$57	$69.63	**$12.63**	$63	**$6.00**

Columbia Statement in Support at 16; Joint Petition, Appendix C at 6-7. We find that the customer charges for Columbia's small C&I class, as agreed to under the Partial Settlement, represent a reasonable compromise between the Joint Petitioners.

Finally, Columbia initially proposed a 22.14% increase in base rates for its LDS/LGSS customer class. Under the Partial Settlement, the Joint Petitioners agreed to allocate 6.39% of the settled revenue increase to the LDS/LGSS customer class. Columbia Statement in Support at 17. We likewise find this to be in the public interest.

Additional Settlement Provisions

In addition to our previous findings that the agreed-upon revenue increase, revenue allocation, and rate design are in the public interest and are supported by substantial evidence, we find that there are a number of other settled issues within the Partial Settlement that are also particularly beneficial to Columbia's customers. Among these provisions are: (1) the agreement that state tax rate adjustments for the post-2025 tax year will be addressed through the Company's State Tax Adjustment Surcharge tariff, which will allow for future adjustments to the Pennsylvania Corporate Net Income Tax rate to flow through to customers automatically each year; (2) the agreement that the Company will not be entitled to include plant additions in its DSIC until the later of, (a) the end of the FPFTY, or (b) when the total FPFTY account balances exceed the total eligible account balances projected by Columbia as of December 31, 2025; (3) the agreement that the Company will be permitted to amortize certain costs; (4) the Company's commitment to prepare a comparison of its actual revenue, expenses, and rate base additions for the twelve months ended December 31, 2025 in its next base rate proceeding; (5) the Company's agreement to file a CWC study in its first rate case filed after January 1, 2026; (6) the agreement to accept the Company's plans to transform its IT systems over the next five years to replace outdated legacy IT systems with integrated, secure and reliable systems; (7) the agreement that the Company's WNA mechanism will continue in its present form until a final order is entered in the Company's first rate case filed after December 14, 2024; (8) the Company's agreement to withdraw its proposed RNA; (9) the agreement to accept Columbia's proposed changes to its EE&C Plan; (10) the Company's agreement to work with its USAC to develop a plain language notice of the right to enter a CAP program and to highlight the arrearage forgiveness benefits of the CAP; (11) the Company's agreement to develop a pilot program involving the use of speech analytics; (12) the Company's agreement to modify its tariff language regarding security deposits; (13) Columbia's agreement to increase its LIURP program budget by $800,000 beginning in 2026; (14) the agreement that Columbia will implement a process

to initiate an email to an existing customer, if an existing email is available, upon any request to start or transfer gas service of an active account into another name; and, (15) Columbia's agreement to work with PSU to implement comments on PSU's accounts.

On consideration, we find each of these enumerated provisions within the Partial Settlement also lend support to a finding that the Joint Petition for Partial Settlement is in the public interest. The Partial Settlement resolves a majority of the issues impacting residential, small C&I, and large C&I customers, and the public interest at large. The benefits of the Partial Settlement are numerous and will result in significant savings of time and expenses for all Parties involved by avoiding the necessity of further administrative proceedings, as well as possible appellate court proceedings, thereby conserving precious administrative resources. Further, the Partial Settlement provides regulatory certainty with respect to the disposition of issues, which benefits all Parties. For the reasons stated herein, and as specified in the Joint Petitioners' Statements in Support, we agree with the ALJ's conclusion that the Joint Petition for Partial Settlement is in the public interest, as conditioned in the following section of this Opinion and Order.

Notice to Columbia's Customers of the Requested Increase

Notwithstanding the above, we note that the record is devoid of evidence that the Company provided notice to its customers of its requested rate increase. The requirement for jurisdictional utilities to provide their customers with notice of proposed rate changes is a fundamental procedural safeguard. Rate increases involve substantial property interests for customers; therefore, constitutional due process requires adequate notice and opportunity to be heard prior to a rate increase. *McCloskey v. Pa. PUC*, 195 A.3d 1055, 1067-68 (Pa. Cmwlth. 2018). The Commission's recognition of customer notice as a fundamental safeguard is reflected in the fact that both the Code and the Commission's Regulations impose a duty upon public utilities to notify customers of

a pending rate increase. *See* 66 Pa.C.S. § 1308(a), (requiring public utilities to give notice of proposed changes to interested persons as the Commission may direct); 52 Pa. Code § 52.45(b), (mandating that utilities adhere to a prescribed public notice process upon filing a general rate increase). Additionally, unless otherwise ordered by the Commission, noncommon carrier public utilities[13] are not permitted to change their existing and duly established tariffs without providing sixty (60) days of notice to the public. 52 Pa. Code § 53.31. The Commission's regulations prescribe a defined process that public utilities must use to notify their customers of a general rate increase. 66 Pa.C.S. § 1308(d); 52 Pa. Code § 53.45(b).

Our Regulations relating to notice procedures for general rate increases also require public utilities to provide notice to the public using multiple methods of notification. 52 Pa. Code § 53.45(b). Additionally, upon completion of the notice requirements, public utilities must file an affidavit with the Commission confirming that the notice requirements have been met. 52 Pa. Code § 53.45(h) (*Section 53.45(h) Affidavit*). More specifically, public utilities must provide public notice by *each* of the following methods: (1) by posting a prescribed notice at least 15 by 20 inches in size in a conspicuous place in each company office at which payments are accepted describing the proposed increase. § 53.45(b)(1); (2) by providing written or printed notice to be mailed to customers at least 61 days prior, or hand delivered to customers at least 60 days prior, to the proposed effective date of the tariff supplement. § 53.45(b)(2); and (3) by news release through a prescribed process relying upon major newspapers, radio, and television

[13] 52 Pa. Code § 23.1 defines "Common carrier" as a "person or corporation holding out, offering or undertaking, directly or indirectly, service for compensation to the public for the transportation of passengers or household goods in use, or both, or any class of passengers or household goods in use, between points within this Commonwealth by, through, over, above or under land, water or air, including forwarders, but not motor common carriers of property, group and party carriers of more than 15 passengers, contract carriers, brokers or any bona fide cooperative association transporting property exclusively for the members of the association on a nonprofit basis."

stations serving the public utility's area. § 53.45(b)(3). As pertinent here, a fourth provision, § 53.45(b)(4), prescribes an alternative method that may be employed to replace the written or printed notice method outlined in § 53.45(b)(2).

Specifically, Section 53.45(b)(4) of our Regulations, *Alternative method*, provides that "a public utility on a 1-month billing cycle filing a proposed general rate increase may notify its customers by means of a bill insert." Utilities that elect to employ the alternative method option to provide notice through a bill insert must also adhere to the following eight additional requirements outlined in 52 Pa. Code § 53.45(b)(4):

> (i) The text of the bill insert shall be printed on distinctive color paper and shall contain the exact notice language specified in paragraph (1); (ii) The bill insert shall be included with customer bills beginning no later than the day the tariff, tariff supplement or tariff revision containing the rate increase is filed; (iii) There may be no sales, marketing or promotional type literature included in a customer bill that contains the customer notice of proposed rate increase; (iv) The billing envelope's front side, in conspicuous type, shall call attention to the fact that rate increase information is contained in that month's mailing; (v) The bill insert shall continue each billing day until the 1-month billing cycle is completed and all customers have been notified; (vi) Due to the longer time frame of this method of notification, a public utility that elects to use bill inserts shall agree to extend from 60 to 90 days the minimum period within which the filing of a complaint places the burden of proof upon the company with respect to proposed rates; (vii) On the date the rate increase is filed, notice by bill insert shall be supplemented by paid newspaper advertisements published in the major newspapers serving the public utility's service area containing a description of the proposed rate changes, and (viii) A public utility that elects to use this alternative method of customer

> notification shall advise the Commission of this election in writing at the time the rate increase is filed.

52 Pa. Code §§ 53.45(b)(4)(i)-53.45(b)(4)(viii).

When Columbia submitted its request for a general rate increase on March 15, 2024, it submitted an accompanying cover letter with its filing. In its cover letter, Columbia included the following passage regarding its provision of public notice of the filing: "Columbia has provided public notice of this filing and the overall rate increase information in accordance with Section 53.45(b)(4) of the Commission's regulations." However, as previously noted, no other information regarding Columbia's provision of public notice is available in the docket or the record. Therefore, our extensive review of Columbia's rate request, and of its subsequent filings, concludes without a determination of whether, when, and how Columbia notified its customers of its requested rate changes in compliance with 52 Pa. Code § 53.45(b). A review of the record further reflects that no *Section 53.45(h) Affidavit* evidencing compliance with the notice requirements has been filed. 52 Pa. Code § 53.45(h).[14]

As a condition for approval of the rate increase, which is the subject of this proceeding, Columbia must provide evidence of having satisfied, or must satisfy, the requisite notice to its customers of the proposed rate increase.

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[14] Although neither the Code nor the Commission's Regulations define an "affidavit," Pennsylvania's regulations regarding Pennsylvania Statutes and Court Rules provide a definition for an affidavit as follows: "[a] statement in writing of a fact or facts signed by the party making it, sworn to or affirmed before an officer authorized by the laws of this Commonwealth to take acknowledgments of deeds, or authorized to administer oaths, or before the particular officer or individual designated by law as the one before whom it is to or may be taken, and officially certified to in the case of an officer under his seal of office." 1 Pa. C.S. § 1991. While Columbia's cover letter indicates its election of the alternative notice process permitted by 52 Pa. Code § 53.45(b)(4), the cover letter is not a substitute for the affidavit required by 52 Pa. Code § 53.45(h).

As a condition of approving the Joint Petition, and to ensure that Columbia has complied with the Commission's Regulations at 52 Pa. Code §53.45(h), Columbia must file a *Section 53.45(h) Affidavit* with the Commission confirming that the notice requirements have been met. More specifically, we direct Columbia to file an affidavit identifying the specific dates, methods, and publications for which it provided notice. We shall also direct Columbia to attach a copy of the bill inserts it provided to customers and to certify its compliance with the bill insert procedures identified in 52 Pa. Code §§ 53.45(4)(i) -- (viii), *supra*. Columbia's *Section 53.45(h) Affidavit* must be filed with the Commission within 10 days of the effective date of this Opinion and Order. We shall further direct that a copy of this affidavit be served upon the Bureau of Technical Utility Services-Finance Division.

Alternatively, if Columbia is unable to provide the *Section 53.45(h) Affidavit* as directed above, Columbia may elect to proceed with this case by voluntarily extending the statutory timeline prescribed under 66 Pa.C.S. § 1308(d) to provide for additional time, as may be necessary, for Columbia to provide compliant public notice,[15] and for incorporation of additional evidence in this case. If Columbia determines to proceed with a voluntary extension of the statutory timeline, upon the receipt of such a request, the Commission will remand this matter to the Office of Administrative Law Judge (OALJ) and direct Columbia to provide notice to all ratepayers of its originally proposed rate increase in accordance with 52 Pa. Code § 53.45. Upon Columbia's certification of compliance with the requirements of 52 Pa. Code § 53.45, we shall direct the OALJ to establish the procedures and timeframe necessary to receive any additional evidence and/or Formal Complaints from notified customers.

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[15] *See*, *Pa. PUC v. Citizens Electric Company of Lewisburg, PA*, Docket No. R-2010-2172665 (Order entered July 29, 2010) at 6-7. The Commission approved Citizens' request to extend the suspension period for its rate increase after Citizens discovered that its billing agent inadvertently failed to mail the required customer notices. The additional time was needed to mail the notices and to ensure that the rights of its customers would be adequately protected.

In the event Columbia is unable to provide the *Section 53.45(h) Affidavit* certifying public notice as we have directed, *and* if the Company does not wish to voluntarily extend the statutory timeframe as necessary to permit a process for public notice and opportunity to be heard *via* further proceedings, as necessary, the Commission will be compelled to deny Columbia's request for rate relief, to reject the Joint Petition, and to mark this matter as closed.

Based on the above, we shall conditionally adopt the ALJs' recommendation to grant the Joint Petition and adopt the Settlement, without modification. However, we shall adopt the recommendation to approve the Joint Petition, and the associated revenue increase thereunder, without modification, conditioned upon the Company filing a *Section 53.45(h) Affidavit* confirming that the notice requirements under the Code and Commission Regulations have been satisfied. 52 Pa. Code §53.45.

VI. Contested Issue

A. Municipal Levelization Charge

1. Background

As part of its rate filing, Columbia proposed implementation of an MLC. Columbia submits that the MLC is designed to foster fairness and to discourage municipalities from adopting costly road permitting and restoration requirements that increase the costs of its pipeline replacement program. Columbia St. 1 at 22; Columbia M.B. at 4. Columbia indicated that the MLC is intended to recover "excessive costs" incurred by Columbia's compliance with ordinances and permit requirements which increase the costs of its infrastructure replacement projects. Columbia St. 1 at 9. According to Columbia, municipalities that enact restoration requirements which exceed

the Pennsylvania Department of Transportation (PennDOT) standards, are uniquely driving rate increases to customers across all municipalities; therefore, the MLC is a tool to bring visibility to customers about the true cost impact of those restoration standards. Columbia St. 1-R at 11. Columbia believes that by making customers aware of the financial impacts that municipal ordinances are having upon their gas bill, the MLC can help urge municipalities to adopt PennDOT permitting and restoration standards. *Id.* at 10.

Columbia serves approximately 445,000 customers within 450 municipalities in its service territory, and each of those municipalities has its own municipal fee ordinance structure and permitting methodologies. Columbia St. 1 at 3, 20. To determine which customers should be subject to the MLC proposal in this case, Columbia identified municipalities that had ordinances which imposed restoration requirements for construction projects that either exceeded or fell below PennDOT's restoration standards. For each of the identified municipalities with higher restoration standards than PennDOT's, Columbia reviewed all construction projects for the calendar years of 2021, 2022, and 2023 to determine whether the municipality had agreed to negotiate lower restoration standards. Columbia's review concluded with its determination that the City of Pittsburgh (Pittsburgh) and the Borough of Perryopolis (Perryopolis) had restoration standards that exceeded PennDOT standards, and that each of those municipalities was unwilling to negotiate with Columbia for lower standards. On the other hand, New Sewickley Township and Roscoe Borough each had lower restoration requirements than PennDOT standards, as they permitted restoration back to the roadway's original condition. Columbia St. 9 at 18.

Columbia proposed charging a monthly MLC of $0.70 per bill to all customers who are located in Pittsburgh and Perryopolis. Columbia St. 9 at 19. The proposed $0.70 per bill charge was based upon Columbia's determination that while PennDOT requires 1.5-inch mill and overlay paving, Pittsburgh and Perryopolis impose

more extensive and, thus, more costly standards. More specifically, Pittsburgh imposes requirements of 3.5- and 4-inch mill and overlay paving for its projects, resulting in total additional experienced costs of $1,349,423 over the time period of 2021-2023. *Id.* at 16, 18. Perryopolis imposes a 2-inch mill and overlay requirement, resulting in additional experienced costs of $53,752 over the time period of 2021-2023. *Id.* at 19. Columbia arrived at its proposed MLC of $0.70 per bill by combining the additional costs calculated for Pittsburgh and Perryopolis and then dividing that amount by the total number of annual bills for the customers in those two combined municipalities. *Id.* at 18-19. Columbia proposed to implement the MLC as a charge to 22,604 customers in Pittsburgh and Perryopolis, without recognition of any differences in costs to serve different customer classes. Columbia Exh. NP-1 at 1; Columbia St. 1-R at 12.

On the other end of the spectrum, Columbia proposed to implement the MLC as a monthly credit of $7.44 per bill to customers in two municipalities: New Sewickley Township and Roscoe Borough. Columbia explained that this credit would be funded from the MLC charge paid by customers in Pittsburgh and Perryopolis. According to Columbia, the basis for the credit is that both New Sewickley Township and Roscoe Borough allow for paving restoration that permits pavement restoration back to existing conditions, which is less than PennDOT standards. Columbia St. 9 at 18-19. Columbia indicated that it calculated the $7.44 per bill credit by dividing the annual revenue produced from the MLC charge to the Pittsburgh and Perryopolis customers by the number of customers in New Sewickley Township and Roscoe Borough. Columbia St. 9 at 19; Columbia M.B. at 5. Columbia proposed to apply the MLC as a credit to 2,116 customers in New Sewickley Township and Roscoe Borough, without recognition of any differences in costs to serve different customer classes. Columbia Exh. NP-1 at 1; Columbia St. 1-R at 12.

According to Columbia, the MLC would be adopted both on a revenue neutral basis, and an "experimental basis." Columbia St. 1 at 22. Columbia explained

that it is not proposing the MLC as a tracking mechanism; therefore, it will not track the actual restoration costs incurred in each municipality and set rates for each municipality based on those costs. Additionally, Columbia did not propose a reconciliation mechanism for the MLC, nor did Columbia offer the MLC as an alternative ratemaking mechanism under Section 1330 of the Code. 66 Pa.C.S. § 1330. Instead, Columbia characterized the MLC as a rate design approach to assigning the cost of excessive municipal restoration demands to the customers which benefit from such restoration. Columbia M.B. at 13; Columbia R.B. at 8. If the MLC were to be approved, Columbia intended to gain experience with administering it in the four designated municipalities. Based on its experience, Columbia explained that it will then determine whether to propose expansion of MLC implementation in other municipalities in the future. Columbia St. 1 at 23.

2. Positions of the Parties

Columbia proposed its MLC as a pilot program "to examine the effectiveness of rate signals to mitigate excessive municipal fees and restoration ordinances." Columbia M.B. at 4. Columbia recognized and generally endorsed the concept of single-tariff pricing as a means to simplify its tariff, to avoid cost allocation and rate design burdens of area-by-area rates, and to recognize rate variability imposed by timing of infrastructure projects. In such instances, Columbia explained, cost differences are not controllable. Columbia M.B. at 11-12. Yet, Columbia reasoned, municipalities should not be permitted to use the Company's main replacement projects to supplement their own municipal budgets, and the MLC is an important tool to encourage municipalities to adopt reasonable permit and restoration ordinances. Columbia M.B. at 12. Columbia submitted that implementation of the MLC represents an effort to foster fairness and to discourage municipalities from adopting costly road permitting and restoration requirements that increase the cost of Columbia's pipeline replacement program. Columbia M.B. at 5.

The Alleged Impact of Higher Restoration Costs

Columbia argued that the MLC is necessary to address the increased costs that are significantly impacting its robust main replacement program. Columbia M.B. at 6. According to Columbia, since the inception of its program to accelerate the replacement of priority pipe in 2007, it has made the following priority replacements: 1,408 miles of cast iron and bare steel pipe, as well as over 274 miles of ineffectively-coated steel pipe and over 142 miles of plastic pipe. Columbia M.B. at 6. While Columbia sought to continue its progress, and to do so as cost-efficiently as possible, it stressed that over the last fifteen years, its cost per foot to replace pipe has increased from $81.25 to $289. Columbia M.B. at 6. Though Columbia attributed increased replacement costs to several factors, including increased costs for materials, supplies, and labor, it identified the costs imposed for restoration and permitting fee mandates by local ordinances as "a major driver." Columbia M.B. at 6.

To illustrate its claims about the impact of restoration fees, and to provide a comparison of the financial impact of restoration requirements that exceed the PennDOT requirement, Columbia provided three examples of unidentified municipal pipeline projects. First, Columbia pointed to two proposed pipeline projects in one Pennsylvania township that, by ordinance, imposed permitting and engineering fees that were over 57 times the cost of PennDOT's requirements. Additionally, Columbia generally pointed to the mill and overlay requirements "of many municipalities," which are far greater than what PennDOT requires on a state highway, and which increase costs for utility customers. Finally, Columbia indicated that an unidentified borough requires curb to curb paving and other excessive requirements that exceed PennDOT's corresponding restoration requirements. According to Columbia, the borough's excessive requirements resulted in costs that would nearly double those under PennDOT's requirements, increasing from the $260,000 of compliance costs under PennDOT's requirements to $470,000 in costs to comply with the borough's requirements. Columbia M.B. at 7.

Next, Columbia asserted that the higher costs it pays for allegedly excessive fees and restoration costs drive the need for customer rate cases because they increase Columbia's rate base. Furthermore, Columbia claimed that these excessive costs negatively impact customers by reducing the miles of pipe that Columbia can replace in a single year with available funding, resulting in an extended timeline for priority pipe replacement. Finally, Columbia argued that excessive restoration costs shift the cost of municipal demands, which ought to be borne by taxpayers, to ratepayers residing in other municipalities. Columbia urged that allowing such cost shifting may potentially incent municipalities' attempts to further shift their costs and budgetary shortfalls to Columbia and its customers. Columbia M.B. at 7-8.

According to Columbia, the Commission is already aware of the challenges that the Company is facing from increasing municipal restoration requirements because Columbia identified them in its 2017 Petition for Approval of its Second Long-Term Infrastructure Improvement Plan (2017 LTIIP). Specifically, in its 2017 LTIIP proceeding, Columbia responded to the Commission's inquiry into the then existing rising costs of main replacement, and its response included the recognition that changing municipal restoration requirement costs resulted in significant cost increases that ranged from 10% to more than doubling some costs entirely. Columbia M.B. at 8-9 (citing *Petition of Columbia Gas of Pennsylvania, Inc. for Approval of a Major Modification to its Existing Long-Term Infrastructure Improvement Plan and Approval of its Second Long-Term Infrastructure Improvement Plan,* Docket No. P-2017-2602917 (Order entered September 21, 2017) (*2017 LTIIP Order*)). In turn, Columbia noted that in the *2017 LTIIP Order,* the Commission acknowledged that "[i]t is likely that Columbia's 97% cost increase in 2017 over its original projections is attributable to these [municipal] restoration cost increases." Columbia M.B. at 9 (citing *2017 LTIIP* Order at 8). Columbia noted that the Commission also recognized that "[w]hile Columbia is attempting to do as much as it can to mitigate these [municipal restoration] costs, the Commission recognizes that such costs are, to some extent, out of the Company's

control." *Id*. Thus, Columbia submitted that the Commission is aware of the challenges that excessive restoration costs are imposing upon Columbia and its ratepayers. Columbia M.B. at 8-9.

Columbia's Attempts to Control Restoration Costs

Columbia claimed that before proposing to implement the MLC in this case, the Company made significant efforts to mitigate municipal fees and restoration costs. Columbia's direct efforts have included education and outreach efforts from its Public Affairs team to municipal leaders, and continued efforts to negotiate more reasonable terms with municipalities. Where negotiations proved to be unsuccessful, Columbia has sought relief in the court system. As an example, Columbia initiated an action to challenge certain ordinances of Menallen Township, and this litigation is now pending in the Commonwealth Court of Pennsylvania. Columbia stated that it has also supported legislative efforts to address excessive permitting fees and restoration standards, as exemplified by its strong support of Pennsylvania House Bill 1655. If enacted, House Bill 1655 would prohibit municipalities from implementing permitting fees or restoration requirements that exceed PennDOT requirements. Yet, Columbia cautioned, litigation and legislative efforts can take years to accomplish. Accordingly, Columbia sought to find a more expedient solution so that more capital can be spent on replacing pipe instead of paying excess fees and paving costs. Columbia M.B. at 10-11.

Columbia's Response to OCA's Objections

Columbia explained that the only Party that submitted testimony in opposition to the MLC was the OCA, *infra*. For its part, the OCA acknowledged the problem of excessive municipal permits fees and restoration standards, but it offered no solution other than calls for statutory improvements and statewide PennDOT standards. Columbia M.B. at 14. Columbia argued that the OCA's proposed solutions can take

years. Additionally, Columbia claimed that the OCA's proposed solutions ignore the fact that Columbia already has been tackling the increased costs for some time, without improvement. Columbia M.B. at 14; Columbia St. 1 at 23.

Columbia argued that the MLC is justified under traditional ratemaking principles and that it is not being proposed as an alternative ratemaking mechanism under Section 1330 of the Code. Columbia R.B. at 4, 8. Additionally, Columbia insisted that the MLC does not constitute single-issue ratemaking or retroactive ratemaking, as it is "[a] simple matter of rate design." *Id*. at 7-8. Despite the OCA's attempts to argue otherwise, Columbia claimed that 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. The MLC will credit the recovery, in a revenue neutral manner, to customers who reside in municipalities that have adopted restoration policies that are below PennDOT standards. Columbia M.B. at 8.

Likewise, Columbia disputed the OCA's position, *infra*, that the MLC should be rejected because it is experimental, and it has not been tried in other jurisdictions. Columbia averred that the fact that a proposal is novel is not a valid basis for rejection. In support, Columbia cited to the CAPs that are in place for all major Pennsylvania utilities, but which were once considered to be novel programming in 1990. Columbia also pointed to customer choice options that are now standard for gas and electric utilities, but which began as a voluntary pilot program for Columbia in 1997. Columbia M.B. at 14-15.

From an overall cost impact perspective, Columbia also addressed the OCA's claim that the effect of the MLC is less than 1% of the bill of an average residential customer, and that imposing charges for differences in costs for the remaining 99% of cost of service would be a significant and costly effort. In response, Columbia

argued that the OCA's claims overlook the fact that Columbia is not seeking to propose separate cost allocation studies for all of its 450 municipalities. Instead, Columbia explained that it is proposing the MLC to address only one significant driver: differences in paving overlay requirements. Beyond this, Columbia submitted that the OCA's focus upon the rate difference masks the impact of the excessive paving requirements of Pittsburgh and Perryopolis. Columbia M.B. at 15. Finally, Columbia addressed the OCA's assertion that the MLC is flawed because it proposes a monthly fixed charge of $0.70 per bill to all customer classes. In response, Columbia averred that there are no class cost differences in the varied municipal requirements that Columbia provide thicker milling and overlaying for main replacement projects. However, in the event that the Commission were to conclude that there is any merit to the OCA's claim, Columbia provided a calculation of per class charges and credits in its Table KLJ-5R, which was submitted in the testimony of the Company's witness, Mr. Kevin Johnson, and is reproduced in the table below:

Table KLJ-5R					
	RSS/RDS	SDS/LGSS	SGS/DS-1	SGS/DS-2	Total
MLC Charge	$0.46	$182.19	$1.67	$14.45	$0.70
MLC Credit	$(4.88)	$(1,639.67)	$(22.84)	$(190.04)	$(7.44)

Columbia M.B. at 15-16; Columbia St. 6-R at 55.

According to Columbia, excessive municipal permit fees and restoration costs are a serious and growing problem for utilities that seek to maintain, replace, or upgrade underground infrastructure in order to provide safe, reliable service. Columbia claimed that the MLC provides an opportunity for a solution, warranting its approval. Columbia M.B. at 16.

The OCA indicated that there is no dispute in this proceeding about the fact that local paving and restoration costs are already included in Columbia's cost of service,

and that they will be reflected in the revenue requirement authorized in this proceeding. OCA M.B. at 7; OCA St. 5SR at 37. Instead, the only dispute was whether less than 1% of Columbia's cost of service should be recovered as a surcharge from customers in two municipalities, and credited to customers in other municipalities, solely on the basis that Columbia considers certain municipalities' costs for utility restoration work to be unjustifiably high. While the OCA generally supports efforts to make local paving and restoration requirements consistent on a statewide basis to the benefit of reduced costs for utility customers, it opposed Columbia's proposed implementation of the MLC to rein in restoration costs. The OCA pointed out that Columbia must comply with the municipal restoration requirements, and that there is no existing legislation or Commission policy that establishes statewide restoration standards. Accordingly, the OCA asserted, municipalities are free to impose requirements that exceed the PennDOT standards. The OCA argued that Columbia has failed to demonstrate that the MLC rate is not unduly discriminatory and just and reasonable, and therefore, it should be rejected as statutorily prohibited and inconsistent with generally accepted ratemaking principles. OCA M.B. at 7-8.

The OCA Claimed that the MLC Creates an Unreasonable Preference and Disadvantage in Rates

The OCA averred that the MLC creates an unreasonable preference and disadvantage in rates between localities because it is based on the municipality in which customers reside. In this vein, the OCA argued that the MLC operates as both an unreasonable preference for customers who receive an MLC credit, and an unreasonable disadvantage to customers who receive an MLC charge, all in contravention of the Code. OCA M.B. at 8. More specifically, the OCA submitted that the MLC violates 66 Pa.C.S. § 1304, which provides, in pertinent part, as follows:

> 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.

Id. (citing 66 Pa.C.S. § 1304).

According to the OCA, the objective of the MLC is to treat customers differently based upon where they live, as evidenced by the fact that customers who live in Pittsburgh and Perryopolis would be billed a monthly MLC charge of $0.70 per bill, simply by residing in these municipalities; while customers who live in Roscoe Borough and New Sewickley Township will receive a monthly MLC credit of $7.44 simply by virtue of where they reside. OCA M.B. at 8-9. While the OCA acknowledged the Company's claims that, in 2022 and 2023, Columbia spent nearly $1.3 million of its capital program to pave above standards in place for Pennsylvania state highways in Pittsburgh and Perryopolis, it maintained that the fact that Columbia incurred such costs is not a viable basis to impose the MLC. Furthermore, the OCA took the position that Columbia failed to carry its burden of proof that PennDOT standards should be the appropriate baseline upon which to establish costs absent statewide legislative, regulation, or policy to establish it as a baseline metric. Accordingly, the OCA submitted that Columbia failed to provide legitimate justification for the difference in rates as between localities. OCA M.B. at 9.

The OCA opined that the unreasonable differences that the MLC imposes, as between localities, is also highlighted in that the MLC is not intended to address all differences in costs between municipalities, but instead is intended to address only one unique costs category: restoration costs which far exceed PennDOT standards. OCA M.B. at 10; OCA St. 5SR at 40. Beyond this, the OCA submitted that the MLC's $0.70 per month charge reflects less than 1% of Columbia's total cost of serving the

average residential customer, and the remaining 99% is not addressed through the MLC, resulting in an unreasonable recognition of costs differences. The OCA argued that 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. OCA M.B. at 10 (citing James C. Bonbright *et al*., *Principles of Public Utility Rates*, at 82-92 (1st ed. 1988)). To illustrate the unreasonableness of the MLC, the OCA indicated that Columbia has installed an average of 54 feet of distribution main per customer in Pittsburgh, while it has installed an average of 142 feet of distribution main per customer in New Sewickley Township. As such, the OCA observed that the average feet of distribution mains installed by Columbia to serve a customer in Pittsburgh is much lower than the average feet of distribution mains installed by Columbia to serve a customer in New Sewickley Township. However, under the MLC, 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 Pittsburgh. OCA M.B. at 10; OCA St. 5SR at 41.

Finally, the OCA claimed that the MLC is unreasonable because it is not tied to any customer behavior that would cause Columbia to incur greater costs in restoration work. In this regard, the OCA submitted, paving and restoration requirements are established based on the decisions of the officials who preside over the municipalities, but the MLC would unfairly recover the costs of those requirements from utility consumers who have little to no control over the costs. Because customers lack control over the costs, according to the OCA, the MLC would impose unreasonable prejudice against them since the MLC is not tied to customer behavior. OCA M.B. at 11.

The OCA Claimed that the MLC Produces an Unjust and Unreasonable Rate Design

Next, the OCA argued that Columbia has failed to demonstrate that the MLC is a just and reasonable rate, thus offending 66 Pa.C.S. § 1301(a) which requires

that [a] public utility's rates must be just and reasonable and in conformity with regulations or orders of the Commission. OCA M.B. at 11-12 (citing 66 Pa.C.S. § 1301(a)). According to the OCA, this unjustness and unreasonableness is exemplified in that the MLC charge would apply to customers who did nothing to cause the costs, and that the MLC credit would apply to customers who did nothing to deserve the benefit. Thus, the OCA argued that the MLC is inconsistent with well-established cost causation principles. The OCA also averred that it is unreasonable to impose the MLC upon 22,604 Columbia customers in Pittsburgh and Perryopolis and then to credit the additional charge to 2,116 Columbia customers in New Sewickley Township and Roscoe Borough when paving and restorations costs have been reflected in the rates of all Columbia customers. The OCA also argued that "the Company's societal objectives related to paving and restoration requirements cannot and should not be achieved through a rate design that is fundamentally unfair to consumers." OCA M.B. at 12.

The OCA Asserted that the MLC Is a Novel and Impermissible Rate

The OCA's witness, Mr. Jerome D. Mierzwa, testified that, to the best of his knowledge, he has not seen an MLC, or a similar mechanism, being charged by a public utility in the country. OCA. St. 5 at 29. Aside from being novel, the OCA averred that the MLC is also an attempt at impermissible single-issue ratemaking. The OCA explained that "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." OCA M.B. at 12-13 (citing *Popowsky v. Pa. PUC*, 13 A.3d 583, 593 (Pa. Cmwlth. 2011)). By proposing to recover normal, ongoing costs of providing service (paving and restoration costs), the OCA claimed that Columbia's MLC constitutes single-issue ratemaking. The OCA claimed that singling out such municipal restoration costs by rewarding some ratepayers, while punishing others, in the hopes of making political change, is unreasonable and impermissible single-issue ratemaking. OCA M.B. at 13. The OCA also argued that Columbia has failed to cite to any statute, case law,

regulation, or Commission decision that would govern its proposed MLC rate design. Finally, the OCA reasoned that while Columbia has asserted that the MLC is experimental, and that it is proposed as a pilot program, the fact that it is proposed on such a basis does not exempt Columbia from its burden of proving the MLC would produce rates that are just, reasonable, and not unduly discriminatory. OCA R.B. at 2.

CAUSE-PA Claimed that The MLC Results in Rate Discrimination and Improper Cost Shifting

Like the OCA, CAUSE-PA opposed Columbia's MLC proposal on several grounds. First, CAUSE-PA argued that permitting Columbia to implement the MLC would result in rate discrimination and improper cost shifting. CAUSE-PA echoed the observation of the OCA that the MLC would charge residents of Pittsburgh (Allegheny County) and Perryopolis (Fayette County) an additional $0.70 per bill and would credit customers in Roscoe Borough (Washington County) and New Sewickley Township (Beaver County) $7.44 per bill ($89.28 annually) regardless of customer class, and based solely on their municipality of residence. Additionally, CAUSE-PA stressed that the MLC will not assess charges or credits to customers residing in any other municipality served by Columbia, despite the fact that those customers also pay for the paving and restoration costs for Pittsburgh, Perryopolis, Roscoe Borough, and New Sewickley through base rates. CAUSE-PA M.B. at 5-6.

CAUSE-PA argued that although the Code recognizes that classification of customers based on a variety of circumstances can justify the establishment of different rates and charges,[16] it also prohibits the establishment of rates or charges which subject any person to unreasonable prejudice or disadvantage, "either as between localities or as

[16] *See*, 66 Pa. C.S. § 1304.

between classes of service."[17] Here, CAUSE-PA emphasized its position that the MLC "cherry picks" a single component of the cost of service that differs between municipalities (*i.e.* municipal paving and restoration requirements), which accounts for "less than 1% difference in the cost of serving customers in different municipalities and ignores cost differences which may exist for the remaining 99% of the cost of service." CAUSE-PA M.B. at 7-8 (citing OCA St. 5-SR at 38). CAUSE-PA echoed the OCA's claim that Columbia's proposed MLC would create impermissible and unreasonable cost shifting by inequitably charging additional fees to some customers based solely on their location and using that money to provide substantial credits to other customers based solely on their location, despite that the cost of paving and restoration costs are reflected in rates for *all* Columbia customers through base rates. CAUSE-PA M.B. at 8.

CAUSE-PA also averred that the proposed MLC would create unjustified and unreasonable rate subsidization across rate classes. CAUSE-PA referred to the Company's Table KLJ-5R, *supra,* which was proffered by Columbia's witness, Mr. Johnson, to identify the MLC charges and credits based on Columbia's Peak and Average cost allocation.

CAUSE-PA argued that based on the information in this table, residential customers in Pittsburgh and Perryopolis would only be assessed a monthly MLC charge of $0.46 if costs were allocated according to Columbia's allocation study based on distribution main costs. However, CAUSE-PA noted, Columbia determined to allocate the MLC on a $0.70 per bill basis regardless of rate class, resulting in an additional 52% of the MLC being assessed to those residential customers. In this manner, CAUSE-PA contended, the MLC creates a dual inequity by imposing both geographic rate discrimination and interclass subsidization against Columbia's residential customers in Pittsburgh and Perryopolis. CAUSE-PA M.B. at 9-10.

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[17] *Id*.

Citing to the testimony of the OCA's witness, Mr. Colton, CAUSE-PA also argued that the MLC exacerbates the cumulative impact of recent and pending rate increases also imposed within Columbia's service territory, including for customers of Pennsylvania American Water Company, Duquesne Light Company, and the Pittsburgh Water and Sewer Authority. CAUSE-PA M.B. at 9-10 (citing OCA St. 6 at 27-29). As such, CAUSE-PA agreed with Mr. Colton that customers facing overlapping rate increases would not be able to absorb the additional financial obligations given local wages, and implementation of the MLC would compound customers' struggles. CAUSE-PA asseverated that affordability struggles are worse for low income and other vulnerable households, as low-income customers face heating burdens far above the Commission's standards for affordability and have been disproportionately impacted by inflation of goods and services. CAUSE-PA further stressed that Columbia has only enrolled roughly 25% of its estimated low-income customer population into its customer assistance programming, and that Columbia also failed to provide any analysis on the impact of the MLC on universal service programming. In sum, CAUSE-PA averred that Columbia has failed to meet its burden of proof that the proposed experimental MLC would provide just and reasonable rates. CAUSE-PA M.B. at 11-12.

3. Recommended Decision

In his Recommended Decision, ALJ Watson agreed with the positions of the OCA and CAUSE-PA that Columbia's proposed MLC should be denied because Columbia failed to meet its burden of proving that the MLC is a just and reasonable rate. ALJ Watson also found that Columbia's proposed MLC was prohibited under Section 1304 of the Code because it presents 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. ALJ Watson also agreed with the OCA that under Columbia's proposal, the customers who would pay the MLC were not the cost causers and the customers who would receive the MLC credit did nothing to deserve the benefit;

accordingly, the ALJ concluded that the MLC is also inconsistent with well-established cost-causation principles. R.D. at 117.

Just and Reasonable Charge

ALJ Watson concluded that the record evidence established that Columbia has already reflected local paving and restoration costs in the cost of service that underlies its revenue requirement in this case. The ALJ also noted that Columbia sought to implement the MLC because certain municipalities are charging what Columbia considers to be unjustifiably high fees related to utility restoration work. Purportedly, and according to Columbia, the MLC will notify municipalities that enacting excessive permitting and restoration requirements may result in their residents, who are customers of Columbia, being charged a higher rate for natural gas service. In his analysis, ALJ Watson recognized that the legislature has given municipal governments broad powers to establish and maintain roadways for the safe and proper use of the public. However, the ALJ reasoned that municipalities must obtain payment by way of a fee and not a tax, as the intended purpose must be cost recovery, and not revenue generation. R.D. at 103-04.

The ALJ identified Section 1671 of the Municipal Code to support that Townships of the Second Class[18] have authority and control over the improvement of streets within their jurisdictional boundaries. R.D. at 104 (citing 53 P.S. § 1671). Beyond this, the Second Class Township Code also expressly authorizes townships of the second class to control the appearance, construction and maintenance of their streets and roads and to address street opening and repairs. *Id*. at 104-05 (citing 53 P.S. § 67304; 53 P.S. § 67308). ALJ Watson recognized the important local government functions of

[18] The R.D. indicated that while the cited provision of the Municipal Code specifically affords police power over streets to cities within the Commonwealth, the Commonwealth Court has extended those powers to townships, as well. *See*, R.D. at 104; n.278.

establishing, repairing, and maintaining the roadways for the safe, convenient, and proper use of the traveling public. According to ALJ Watson, in recognition of the local government's roadway responsibilities, the legislature has given not only the associated duties to the municipalities, but it has also provided them with mechanisms to provide for recouping the costs of properly discharging those duties. To the extent that a municipality may enact an unenforceable ordinance or violate the enabling statute, the ALJ pointed out that those who believe they are aggrieved in ways that include being charged a fee that essentially serves as a tax to enhance general revenue have statutory remedies. Thus, the ALJ stated that in this case, if Columbia believes that municipal fees are excessive, it may proceed with litigation to challenge such requirements. ALJ Watson acknowledged that Columbia produced evidence that it is challenging Menallen Township's permitting and right-of-way fees in a case now pending with the Commonwealth Court, establishing that Columbia is aware of its ability to pursue a remedy through litigation. R.D. at 104-05.

Based on the above, the ALJ found that Columbia failed to meet its burden of proving that its proposed MLC is just and reasonable. As such, ALJ Watson recommended that the Commission not impose the MLC on utility customers when longstanding remedies are available to address improper local regulations. According to the ALJ, Columbia apparently believes that local residents will encourage their local elected officials to forgo exacting ordinances that are intended to maintain safe and adequate roadways so that Columbia will not increase their residents' gas bills. However, given that the legislature has provided broad police powers to municipalities and the already existing mechanism available to challenge the appropriateness of municipal requirements, the ALJ found it unclear why the Commission would, or could, step in and regulate these issues when they are appropriately addressed by the Common Pleas Courts and appellate courts. R.D. at 107.

Excessive Rates

Next, ALJ Watson determined that Columbia submitted insufficient evidence to support its claims that municipal requirements had the effect of shifting costs that rightfully should be borne by taxpayers in certain municipalities to ratepayers residing in other municipalities within the Company's service territory. The ALJ indicated that Columbia failed to provide any credible and specific evidence to support its conclusion that any municipality was imposing excessive or unreasonable requirements or charges that shifted the costs properly incurred by a municipality onto Columbia customers or that municipal residents improperly benefited. Furthermore, the ALJ noted, despite Columbia's attempts to characterize the enactments of some municipal costs recovery programs as part of a "strategy", no such evidence was produced. Additionally, other than Columbia's claims that ordinances exceeded PennDOT standards, the ALJ found no specific evidence to establish any impropriety of ordinances. The ALJ also found no evidence in the record to identify the basis for the adoption of specific municipal requirements, the dates they were enacted, or any specific provisions of the ordinance and the factors demonstrating they were unfair of improper. R.D. at 108-09.

Additionally, ALJ Watson acknowledged that there was no specific evidence set forth, or details established, to determine what action has been taken by Columbia, its customers, residents of the municipality, or others to challenge the enactment of ordinances through established processes provided by law. Moreover, the ALJ found Columbia failed to present credible evidence to establish the reasonableness of PennDOT requirements or to explain why the Company selected those requirements as the benchmark for municipalities to follow in enacting fees and restoration requirements. R.D. at 109-10.

Furthermore, the ALJ concluded that Columbia failed to provide specific, competent evidence to support its claims that municipalities were using Columbia's main

replacement projects to improperly supplement their own municipal budgets. While Columbia cited examples where it identified escalated permitting and restoration costs demanded by a municipality compared to what would be required under PennDOT requirements, it failed to provide any evidence to explain the circumstances and reasons underlying the disparity in costs. After reviewing Columbia's claims, the ALJ determined that more evidence is needed than conclusions that permit fees are increasing, and that fees and restoration demands significantly exceed PennDOT requirements. R.D. at 111.

ALJ Watson also found no evidence in the record as to the types of variables that could affect the costs incurred by municipalities. As an example, ALJ Watson recognized differences that could presumably exist between a city like Pittsburgh and a more rural area like Roscoe Borough. Specifically, ALJ Watson queried whether an urban city with highly traveled cobblestone road surfaces and slate sidewalks, under which several utilities maintain facilities, might have higher permit and restoration fees compared to an infrequently traveled rural roadway consisting of a gravel surface. However, the ALJ found no evidence to detail such characteristics for the respective municipalities to aid any determination of whether municipal requirements are excessive. R.D. at 111-12.

Rate Discrimination and Improper Cost Shifting

ALJ Watson also found that the MLC would create impermissible cost shifting, and would produce unreasonable and inequitable rate discrimination, by inequitably charging additional fees to some customers based solely on their location, and using that money to provide substantial credits to other customers based on their location. Additionally, the ALJ determined that the MLC would create impermissible interclass subsidies between residential and commercial customers because it would charge residential customers more than their fair share while crediting commercial customers more than their fair share. While ALJ Watson acknowledged that Section 1304 of the

Code recognizes that classification of customers based on a variety of circumstances can justify the establishment of different rates and charges, it also prohibits the establishment of rates or charges which subject any person to unreasonable prejudice or disadvantage, "either as between localities or as between classes of service." R.D. at 114. On this basis, ALJ Watson agreed with the OCA and CAUSE-PA that it is unjust and unreasonable to assess additional charges on over 22,000 residential customers who are largely urban residents of Pittsburgh, based solely on the municipality in which they reside. According to the ALJ, Columbia's MLC proposal further compounds this inequity by attempting to direct funds produced by the charge to benefit 2,116 customers based solely upon their locality, despite the fact that the cost of paving and restoration are reflected in rates for all Columbia customers through base rates. R.D. at 113-14 (citing OCA St. 5 at 30).

Additionally, the ALJ found that the proposed MLC violates the cost causation principle, as it is fundamentally unfair that the customers who are being assessed the additional charge did not cause the higher costs. ALJ Watson cited to the testimony of the OCA's witness, Mr. Mierzwa, which explained that by selecting municipal restoration costs as a single component of cost of service that differs between municipalities, Columbia selected a cost component which accounts for less than 1% difference in the cost of serving customers in differing municipalities while ignoring cost differences which may exist for the remaining 99%. R.D. at 115 (citing OCA St. 5-SR at 38). The ALJ pointed to an example Mr. Mierzwa provided in his testimony to illustrate the unfairness of the MLC charge in the context of distribution main costs between municipalities. Specifically, Mr. Mierzwa noted that in Pittsburgh, Columbia installed an average of 54 feet of distribution main per customer, while in New Sewickley Township, Columbia installed an average of 142 feet of distribution main per customer. Mr. Mierzwa explained that under the MLC, Pittsburgh customers would be assessed an additional charge even though based on the distribution main footage installed, the cost of serving Pittsburgh customers is less than the cost of serving New Sewickley Township

customers. R.D. at 115 (citing OCA St. 5 at 29). The ALJ concurred with the OCA's position that this would be unfair and unreasonable. Furthermore, the ALJ cited to the fact the cost of service reflected in the base rates of all Columbia customers already reflects the cost of paving and restoration requirements. R.D. at 115-16.

Outside of the improper rate discrimination that the MLC would impose, the ALJ found that it would also create unjustified and unreasonable rate subsidization across rate classes because it fails to recognize the cost differences associated with serving different customer classes. The ALJ cited to Columbia's Table KLJ-5R, *supra,* that illustrates the MLC charges and credits based on Columbia's Peak and Average cost allocation study. For ease of reference, the table is reproduced below:

Table KLJ-5R					
	RSS/RDS	SDS/LGSS	SGS/DS-1	SGS/DS-2	Total
MLC Charge	$0.46	$182.19	$1.67	$14.45	$0.70
MLC Credit	$(4.88)	$(1,639.67)	$(22.84)	$(190.04)	$(7.44)

R.D. at 116 (citing Columbia St. No. 6-R at 55, Table KLJ-5R).

The ALJ agreed with CAUSE-PA that Columbia Table KLJ-5R demonstrates that if costs were allocated according to Columbia's allocation study based on distribution mains related costs, residential customers in Pittsburgh and Perryopolis would only be assessed a monthly MLC charge of $0.46 instead of the $0.70 charge Columbia proposed, which is 52% higher. Accordingly, the ALJ determined that the MLC would create a dual inequity of geographic rate discrimination against Pittsburgh residents and interclass subsidization. R.D. at 116-17.

Based on the record evidence, the ALJ concluded that Columbia has failed to meet its burden of demonstrating that the rate discrimination caused by the MLC is reasonable and permitted under the Code. Ultimately, the ALJ concluded that the MLC

presents an unreasonable difference in rates between localities and that it creates an unreasonable preference and prejudice in rates depending upon where a customer resides; therefore, the MLC is prohibited under Section 1304. Accordingly, the ALJ recommended that the Commission reject Columbia's proposed MLC. R.D. at 117-18.

4. Exceptions and Replies

In its Exceptions, Columbia takes issue with the ALJ's recommendation that the Commission reject the MLC. More specifically, Columbia submits that the ALJ's recommendation to reject the MLC was erroneous in the following four ways: (1) the R.D. incorrectly assumed that piecemeal litigation is an effective alternative to the MLC; (2) the R.D. incorrectly perceived that the MLC will regulate municipal restoration decisions; (3) the R.D. failed to credit Columbia's evidence that increasing municipal requirements shift costs to Columbia's customers; and (4) the R.D. erred in concluding that the MLC is impermissibly discriminatory and improperly shifts costs. Columbia Exc. at 4-11.

Additionally, the OCA and CAUSE-PA filed Replies to Columbia's Exceptions. Columbia's Exceptions, as well as the OCA and CAUSE-PA's Replies to Exceptions thereto, are addressed below.

In its Exception No. 1.1, Columbia argues that the ALJ incorrectly assumed that piecemeal litigation is an effective alternative to the MLC. In its argument, Columbia insists that its briefs and testimony demonstrate its "extensive efforts to attempt to negotiate and, where viable, litigate excessive permitting fees and requirements." Columbia Exc. at 4. Columbia submits that its briefs and testimony also explain that "litigation is only a limited, and in many instances, ineffective option to the MLC." Citing the fact that the Company provides service in approximately 450 municipalities, Columbia avers that it is unreasonable to conclude that it can challenge restoration

requirements for the numerous repair and replacement projects that it undertakes across its system. Moreover, Columbia re-emphasizes that litigation is costly and could easily exceed the cost of a small project. The Company further submits that the ALJ failed to account for the fact that even expedited litigation requires lead time that would not be available when addressing issues such as main breaks. Finally, Columbia adds that although some municipal requirements may exceed PennDOT requirements, they may be upheld as not "excessive", and in such cases, litigation costs would only add to the rate burden of Columbia's customers. Columbia Exc. at 4-5.

In its Exception No. 1.2, Columbia avers that the ALJ incorrectly perceived that the MLC will regulate municipal restoration decisions. According to Columbia, the following statement in the R.D. misperceived the intent and operation of the MLC: "it is unclear why the Commission would or could step in and regulate these issues when these issues are being appropriately addressed by the Common Pleas Courts and appellate courts." Columbia Exc. at 5 (citing R.D. at 107). Columbia argues that contrary to the ALJ's interpretation, the MLC does not seek to have the Commission litigate municipal fees or restoration requirements, nor does it seek to have the Commission require municipalities to adopt PennDOT requirements. Instead, Columbia asserts that by setting higher rates for customers in municipalities with restoration requirements that exceed PennDOT standards and set lower rates for customers with restoration standards lower than PennDOT's, Columbia provides that the MLC simply applies cost causation rate design principles. Through the MLC, Columbia argues, customers who reside in a municipality that adopts an ordinance that requires excessive restoration requirements will bear the increased costs of the municipality's decision. Columbia Exc. at 5.

In its Exception No. 1.3, Columbia contends that the ALJ failed to credit Columbia's evidence that increasing municipal requirements shift costs to Columbia's customers. Specifically, Columbia takes issue with the ALJ's assertion that Columbia failed to submit sufficient evidence to establish that municipal requirements had the

effect of shifting costs from taxpayers in certain municipalities to Columbia customers in other municipalities. Columbia Exc. at 6. To refute the assertion, Columbia points back to the *2017 LTIIP Order, supra*, and submits that the Commission has already recognized that increasing restoration requirements imposed by certain municipalities have adversely affected Columbia's customers. *Id*. (citing *2017 LTIIP Order* at 8).

Columbia also alleges that the ALJ ignored the evidence of excessive restoration costs that the Company's witness, Mr. Mark Kempic, provided in his direct testimony. These examples include, *inter alia*; (1) permitting costs for two proposed pipeline projects in "one Pennsylvania Township" where Columbia calculated that fees for permitting and engineering fees would have been $143,740 instead of the $2,510 cost that would have resulted under PennDOT's requirements; (2) $1.3 million in additional costs that Pittsburgh's mill and overlay requirements cause, in exceedance of PennDOT standards; and, (3) a borough's paving requirement resulting in costs of $470,000 instead of the $260,000 that PennDOT standard paving would have cost. Columbia Exc. at 7 (citing Columbia St. 1 at 19-20).

Columbia also disputes that it failed to demonstrate that any specific provisions of any municipality's ordinances were unfair or improper. According to Columbia, the Recommended Decision misperceived the MLC because Columbia is not seeking to have the Commission determine, on a case-by-case basis, whether a municipal ordinance is illegal. Rather, Columbia insists that the MLC uses state highway standards as a baseline to charge an additional rate based on excessive costs, and it is proposed on a pilot basis designed to encourage municipalities to control their restoration demands. Despite the ALJ's concerns that there can be a number of variables that affect the costs incurred in different municipalities, Columbia submits that the issue raised by the MLC is whether Columbia's customers in some municipalities should bear the costs of requirements [of other municipalities' restoration requirements] that exceed PennDOT standards. Columbia Exc. at 7-8.

Finally, in its Exception No. 1.4, Columbia argues that the ALJ erred in concluding that the MLC is impermissibly discriminatory and improperly shifts costs. Columbia Exc. at 9 (citing R.D. at 112-17). To the contrary, Columbia avers that the MLC establishes a reasonable rate differential between localities based upon economic facts. Columbia Exc. at 9. Furthermore, Columbia argues that the MLC is also justified by non-cost considerations because customers located in Pittsburgh and Perryopolis are receiving the benefit of better roads, without concomitant tax increases. As part of its argument, Columbia also cites the case of *City of Pittsburgh v. Pa. PUC*, 106 Pa. Commonwealth Ct. 437, 526 A.2d 1243 (1986) (*City of Pittsburgh*) as authority for its position that the $0.70 per bill MLC charge cannot be unreasonably high and discriminatory. According to Columbia, in the above cited case, the City of Pittsburgh opposed a rate design that increased costs for City customers that were higher than the City believed was justified by costs. Columbia explains that the Commonwealth Court rejected the City's argument, stating as follows:

> 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.

Id. at 9-10 (citing *City of Pittsburgh* at 1247-48). Applying the passage above to the MLC, Columbia avers that a $0.70 per month charge for customers in Pittsburgh and Perryopolis due to excessive restoration cost requirements is a small price to pay. Columbia Exc. at 10.

Additionally, Columbia finds fault with the ALJ's criticism that the MLC produces a 1% rate change and ignores cost differences for the remaining 99% of cost of service. According to the Company, this finding also fails to consider the fact that the MLC is proposed as a pilot to address a significant driver of costs: differences in paving overlay requirements. Columbia maintains the MLC will apply to only a small subset of customers who reside in municipalities with significantly different requirements that refuse to negotiate more reasonable terms. In the Company's view, the Recommended Decision failed to acknowledge that the intent of the MLC is not only to test whether municipalities will respond to constituents' pressures to moderate excessive restoration demands, but also to test whether the MLC will incent the repeal of restoration standards if there is a potential that [Columbia's] rates to customers within the municipality will be lower. Columbia Exc. at 10 (citing Columbia St. No. 1-R at 10-11).

According to Columbia, if the MLC proves to be successful, it can be further refined to address "continued cost disparities caused by excessive restoration requirements." If successful, Columbia contends the MLC will benefit all customers in the future because they will be relieved of the obligation to pay for excessive municipal restoration requirements and geographically delineated rates will be reduced or eliminated. Columbia Exc. at 11. Columbia claims that the ALJ's criticism of the MLC as "discriminatory" on the basis that it charges the same rate to all customer classes in the affected municipalities ignores that there are no class cost differences in municipal requirements that direct thicker asphalt paving than PennDOT requires. Notwithstanding this, if the Commission finds merit to the customer class issue, Columbia posits that the solution is not to reject the MLC, but instead to adopt the per class charges and credits that Columbia identified. *Id.* (citing R.D. at 116). Columbia insists that the proposed MLC should be approved as a pilot program because it is just and reasonable, and it addresses an issue of substantial concern as Columbia repairs and replaces priority pipe in its system. Columbia Exc. at 11.

In its Reply Exceptions, the OCA avers that Columbia's Exception No. 1 should be denied because the ALJ did not err in recommending that the Commission reject Columbia's proposed MLC rate. OCA R. Exc. at 4 (citing R.D. at 88-118). The OCA argues that Columbia has failed to carry its burden of proving that the MLC rate design is just and reasonable and not unduly discriminatory. OCA R. Exc. at 4.

In response to the Company's Exception No. 1.1, the OCA argues that Columbia misconstrues the ALJ's recommendation because the ALJ did not conclude that initiating piecemeal litigation in 450 municipalities is the better solution to addressing municipal restoration requirements. Rather, the OCA argues, the ALJ explained the status of the law governing road restoration requirements and the legal tools available to Columbia. The OCA stresses that Columbia has not disputed the ALJ's explanation of the existing law. According to the OCA, this is imperative, because the status quo sets the context for discussion of the MLC. Namely, the OCA contends that because there is no existing statute or regulation that establishes a statewide baseline standard on restoration work, and municipalities remain free to impose restoration requirements that exceed PennDOT's standards, the only viable path to change is for the legislative and executive branches of the Commonwealth to enact legislation to establish a statewide standard. Accordingly, the OCA submits that the ALJ properly recommended that the Commission reject Columbia's reliance upon the MLC to solve a political issue. The OCA adds that the ALJ correctly determined that the Commission should not impose the MLC upon utility customers for such a purpose, especially when long-standing remedies exist, and when considered in the context of municipalities' statutorily-granted broad police powers. OCA R. Exc. at 4-7 (citing R.D. at 104-07).

In reply to the Company's Exception No. 1.2, the OCA avers that while the ALJ properly reasoned that the effect of the MLC would interfere with the legal status quo, if the Commission were to disagree, the ALJ's findings are nevertheless supported by substantial evidence and the ALJ's conclusions are in accordance with the law.

OCA R. Exc. at 7. The OCA acknowledges the following statement on page 107 of the Recommended Decision: "it is unclear why the Commission would or could step in and regulate these issues when these issues are being appropriately addressed by the Common Pleas Courts and appellate courts." *Id.* (citing R.D. at 107). Noting Columbia's claims that the ALJ's referenced statement misperceived the intent and operation of the MLC, the OCA avers that the ALJ correctly reasoned that the MLC would interfere with the legal status quo. OCA R. Exc. at 7-8.

In reply to Columbia's Exception No. 1.3, the OCA contends that contrary to Columbia's assertions, the ALJ did not ignore Columbia's evidence, as instead, he properly weighed the evidence in recommending rejection of the proposed MLC. The OCA acknowledges that Columbia took exception to the ALJ's statement that Columbia failed to submit sufficient evidence to establish that municipal requirements had the effect of shifting costs from taxpayers in certain municipalities to Columbia customers in other municipalities. Additionally, the OCA notes that Columbia also took exception to the ALJ's statement that the Company failed to demonstrate that any specific provisions of a municipality's ordinances were unfair or improper. OCA R. Exc. at 8 (citing Columbia Exc. at 6-8).

However, the OCA avers that Columbia's exceptions to each of the ALJ's referenced statements are without merit because the ALJ did not ignore Columbia's evidence, but rather, he found that in proffering such evidence, the Company failed to meet its burden of proving the justness and reasonableness of the proposed MLC. OCA R. Exc. at 8. Likewise, and contrary to Columbia's claims, the OCA stresses its position that the ALJ did not err by stating that a number of variables can affect the costs incurred in different municipalities. According to the OCA, Columbia's position relies upon the assumption that PennDOT standards are appropriate for all municipalities, without support from any statewide legislation, regulation, or policy to establish such standards as an appropriate baseline. OCA R. Exc. at 9-10.

Finally, in reply to Columbia's Exception No. 1.4, the OCA argues that the ALJ properly concluded that the MLC is impermissibly discriminatory and unjust and unreasonable. Noting that Columbia takes issue with the ALJ's conclusion that the MLC would create impermissible cost shifting and create improper geographic rate discrimination, the OCA contends that the very objective of the MLC is to treat customers differently by charging different rates based on the locality in which the customer resides. The OCA agrees with the ALJ's conclusion that, by proposing to charge customers higher rates based upon their geographic location, Columbia offends the prohibition set forth in 66 Pa.C.S. § 1304 against setting rates that establish an unreasonable difference as between localities. The OCA claims that while Columbia attempts to justify the rate difference based on costs resulting from paving and restoration requirements that exceed PennDOT's standards, the Company fails to carry its burden of proof to establish that PennDOT standards are the appropriate baseline from which to measure costs. OCA R. Exc. at 9-11.

The OCA also contends that Columbia misplaces reliance upon *City of Pittsburgh, supra,* as support for its position that a monthly MLC of $0.70 should be approved because it is not an unreasonably high amount. According to the OCA, *City of Pittsburgh* is inapposite, as it dealt with an issue involving a water utility's proposed revenue allocation for setting base rates, which is a common issue addressed in rate cases and which differs from the MLC's very purpose and function (*i.e.*, imposing unreasonable discrimination). OCA R. Exc. at 11-12.

The OCA avers that Columbia's use of one isolated cost difference, paving and restoration costs in excess of those under PennDOT's requirements, ignores other differences in cost of service that are not addressed by the MLC, such as Columbia's installation of average feet of distribution main per customer. Namely, the OCA points out that, as exemplified by the feet of distribution main per customer metric, Columbia's 54 feet of main per customer in Pittsburgh is lower than the 142 feet of distribution main

per customer in New Sewickley Township; but the MLC would impose a higher charge on Pittsburgh customers than customers in New Sewickley Township. The OCA further submits that the MLC fails to recognize costs associated with serving different classes, and it is not tied to any customer behavior. Here, the OCA contends, the MLC is based upon the decisions of municipal officials, over which utility customers have little to no control. The OCA maintains its position that Columbia's proposed MLC is fundamentally unfair as it is not based on cost causation, and it is unjust and unreasonable. Accordingly, the OCA argues that Columbia's exceptions should be denied. OCA R. Exc. at 12-13.

In reply to Columbia's Exceptions, CAUSE-PA asserts that the ALJ correctly concluded that approval of the MLC would exceed the scope of the Commission's authority. CAUSE-PA cites to the ALJ's explanations, both that "[T]he legislature has given municipal governments broad powers to establish and maintain roadways for the safe and proper use of the public," and that "It is hard to imagine many functions of local government more important than establishing, repairing and maintaining roadways for the safe, convenient and proper use of the traveling public." CAUSE-PA R. Exc. at 2 (citing R.D. at 103). CAUSE-PA asserts that the Company's arguments, including that the Recommended Decision would require Columbia to engage in piecemeal litigation, and that the MLC would not exceed the Commission's authority, are without merit. On the contrary, CAUSE-PA submits that the ALJ's analysis and conclusion was correct and that the Commission should adopt the ALJ's recommendation to reject the MLC and deny Columbia's Exceptions. CAUSE-PA R. Exc. at 3.

Additionally, CAUSE-PA argues that the MLC would result in rate discrimination and improper cost shifting. CAUSE-PA argues that the MLC disregards cost causation principles and creates improper geographic and interclass rate discrimination by shifting additional costs onto residential customers in Pittsburgh and Perryopolis based solely on their municipality, and without regard to rate classification.

CAUSE-PA restates its position that Columbia's low-income customers are already facing increasingly unaffordable heating burdens. Per CAUSE-PA, customer burdens will be compounded by Columbia's pending increase and the increases from other utilities with service territories that overlap Columbia's service territory. Thus, CAUSE-PA contends that under the MLC, burdens would be further exacerbated for Columbia customers in Pittsburgh and Perryopolis based solely on their municipality and without regard to their rate classification. Despite Columbia's arguments to the contrary, CAUSE-PA asserts the ALJ correctly determined that the MLC presents an unreasonable difference in rates as between localities, and that it creates an unreasonable prejudice and preference in rates. CAUSE-PA adds that the MLC would still be assessed to CAP customers, thereby increasing the cost of CAP programming. CAUSE-PA R. Exc. at 3-4.

Next, CAUSE-PA submits that Columbia's claims, that the MLC charge is reasonable because it is $0.70 and it is offered as a pilot program, do not eliminate Columbia's burden to demonstrate that the MLC is just and reasonable. According to CAUSE-PA, the additional costs levied through the proposed MLC are inequitable and would further compound the struggles of Pittsburgh residents, especially those in low-income and other vulnerable households. Additionally, CAUSE-PA maintains that the proposed MLC violates cost causation principles and creates unreasonable rate discrimination that is contrary to the public interest. For these reasons, CAUSE-PA claims that the Commission should adopt the ALJ's recommendation to reject Columbia's proposed MLC and reject Columbia's Exceptions to the Recommended Decision. CAUSE-PA R. Exc. at 4-6.

5. Disposition

Upon our consideration of the Parties' positions and the evidentiary record, we shall deny Columbia's Exceptions and adopt the recommendation of ALJ Watson to

deny Columbia's proposed MLC.[19] As a preliminary matter, we recognize Columbia's ultimate goal in proposing the MLC, which is to maximize the cost efficiency of its main replacement program. While Columbia seeks to continue its main replacement progress in a cost-efficient manner, over the last fifteen years, its cost per foot to replace pipe has increased from $81.25 to $289. Columbia has determined that the costs imposed for restoration and permitting fee mandates by local ordinances are a major driver of increased replacement costs. Columbia St. 1 at 18-19; Columbia M.B. at 6.

We commend Columbia for the robust efforts that it has made to control main replacement costs. Columbia's direct efforts to mitigate costs have included education and extensive outreach efforts to municipal leaders. Additionally, Columbia has undertaken continued efforts to negotiate more reasonable terms with municipalities. The record demonstrates that the Company has successfully negotiated lower costs with several municipalities that produced cost savings for ratepayers. Columbia St. 7 at 21-23; Columbia M.B. at 10. Where negotiations proved to be unsuccessful, Columbia has initiated litigation, including an action to challenge the ordinances of Menallen Township, which is now pending in the Commonwealth Court of Pennsylvania. Columbia St. 7 at 24. Columbia also engaged in legislative efforts to address excessive permitting fees and restoration standards by strongly supporting House Bill 1655.[20] Columbia St. 7 at 17; Columbia M.B. at 11.

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[19] While we adopt the ALJ's recommendation to reject the MLC, as explained herein, we decline to address the Parties' arguments in their Exceptions and Replies regarding the ALJ's discussion of the Commission's authority to address issues imposed by municipal ordinances or requirements. The Commission need not consider and resolve such issues here, where, as threshold matters, we determine that the proposed MLC violates the Code in multiple respects.

[20] House Bill 1655, which was introduced on September 5, 2023, proposes to amend Title 15 of the Pennsylvania Consolidated Statutes, 15 Pa.CS (Corporations and Unincorporated Associations). Namely, if enacted, House Bill 1655 would prohibit municipalities from implementing permitting fees and restoration requirements that exceed PennDOT's fees and standards.

Ratepayers have benefitted from Columbia's efforts to control costs. Columbia St. 7 at 22-23. While we acknowledge both the cost savings benefits for ratepayers and Columbia's commendable efforts to produce those savings, the record does not support the conclusion that the MLC is a cost control measure. Instead, we find that the MLC is a targeted surcharge that would not produce any cost savings for all of Columbia's 445,000 ratepayers who pay for main replacement costs. Instead, on its face, the MLC would impose a surcharge, solely upon approximately 22,604 customers in Pittsburgh and Perryopolis, for redistribution to only the 2,116 customers in New Sewickley Township and Roscoe Borough, without justification rooted in any rate making principles. We find that while it is revenue neutral, since the collected amount is redistributed from a set of customers to another set group of customers, the MLC is nevertheless unjust, unreasonable and without basis.

Upon closer examination, by design, the MLC's purpose is to impose higher rates upon Columbia's customers in Pittsburgh and Perryopolis in the hope that those customers' resulting "ire" will influence the decisions of their municipal officials. While we recognize Columbia's understandable frustration regarding the time and expense it is spending on negotiations, lobbying efforts, and litigation as pathways to seek relief from expensive municipal restoration costs, those are the legally appropriate avenues of redress. Notwithstanding Columbia's asserted intention, *i.e.*, cost reduction, public utility rates are not tools to be used by utilities for the purpose of influencing the decisions of municipal officials. Additionally, we are unpersuaded by Columbia's arguments that the MLC conforms to the Code because it imposes only a *de minimus* charge, or that it is experimental and being proposed only on a pilot basis. The amount of the MLC, and whether it is offered as a pilot program or a permanent program, are inconsequential, because the determinative issue before us is whether the proposed MLC constitutes a just and reasonable rate, under the guiding rate making principles set forth in the Code, Commission Regulations, and relevant case law. We conclude that it does not.

Failure of Columbia to Meet its Burden of Proving the MLC is a Just and Reasonable Rate

On review, we agree with the ALJ that Columbia has failed to meet its burden of proving that the MLC is a just and reasonable rate as required by Section 1301 of the Code, 66 Pa.C.S. § 1301. We also conclude that the MLC would result in impermissible rate discrimination in violation of Section 1304 of the Code, 66 Pa.C.S. § 1304, warranting an additional basis for its rejection. The analysis underlying our determinations is set forth more fully below.

The MLC Is an Unjust and Unreasonable Rate

In its Exceptions, Columbia claims that the ALJ erred by failing to acknowledge that the intent of the MLC is to test whether municipalities will respond to constituents' pressures, and to test whether the MLC will incent the repeal of municipal restoration standards. Columbia Exc. at 10. We disagree. Regardless of Columbia's stated intent to increase the cost efficiency of its pipeline replacements, ratemaking may not be used as a tool to exact political pressure or to test municipalities' response to such pressure. To be sure, the Commission "has broad discretion in determining whether rates are reasonable" and it "is vested with discretion to decide what factors it will consider in setting or evaluating a utility's rates." *See Popowsky II, supra*. Alongside its broad authority, the Commission also has an ongoing duty to protect the public from unreasonable rates while ensuring that utility companies are permitted to charge rates sufficient to cover their costs and to provide a reasonable rate of return. *Commonwealth v. Duquesne Light Co*., 366 A.2d 242 (Pa. 1976).

The MLC is an unjust and unreasonable rate because its purpose, incenting political change, is unrelated to recovering the cost of utility service, and Columbia provides no authority, whether under the Code, Commission Regulations or relevant case

law, that would otherwise support approval of the MLC as a just and reasonable rate. At the outset, the unrefuted record evidence demonstrates that Columbia has already reflected local paving and restoration costs in the cost of service that underlies its revenue requirement. R.D. at 103; Columbia St. 6-R at 54; OCA St. 5SR at 37. Significantly, the proposed MLC would be implemented, in addition to rates that *already* recover Columbia's cost of service. Because Columbia is already recovering its municipal restoration costs in base rates, the MLC would recover rates *in excess of* Columbia's revenue requirement from some customers, to transfer to others. In essence, using the MLC, Columbia inappropriately positions itself as a type of "collection agent" by imposing a monthly charge of $0.70 per bill on customers in Pittsburgh and Perryopolis, to then redistribute as a monthly $7.44 credit to customers in New Sewickley Township and Roscoe Borough.

We are persuaded by the arguments of the OCA noting that Columbia has failed to identify *any* citations to statute, case law, regulation, or any Commission decision that would authorize the proposed MLC. OCA R.B. at 2. Although Columbia clarified that it does not offer the MLC as an alternative ratemaking proposal, or as a tracking or reconciliation mechanism, it did not identify any authority that would support approval of the MLC. *See*, Columbia M.B. at 13; Columbia R.B. at 8. We acknowledge that Columbia characterizes the MLC as a "rate design approach" to assigning the cost of excessive restoration demands to the customers. However, we conclude that this characterization, while *suggestive* of rate design principles, is not a viable substitute for actual rate design principles rooted in statute, case law, regulation, or other Commission authority. *See*, Columbia M.B. at 13. Columbia's characterization of the MLC as a "rate design approach" also fails to identify a permissible basis for Columbia to collect rates above an established revenue requirement, even where it does not retain such revenues, but redistributed those collected revenues to the distinct *detriment* of some of its customers and the distinct *benefit* of other of its customers. Accordingly, we conclude that Columbia has failed to meet its burden of proving that the MLC is just, reasonable,

and in conformity with the Code, Commission Regulations or orders of the Commission as required by Section 1301 of the Code.

Failure of Columbia to Produce Substantial Evidence to Support its Proposed MLC

We also agree with the ALJ that Columbia has failed to meet its burden of providing substantial evidence to support the MLC. *See*, R.D. at 117. Each of the 450 municipalities that Columbia serves has its own municipal fee ordinance structure and permitting methodologies. Columbia St. 1 at 20. To determine which customers would be subject to the MLC, Columbia identified municipalities that had ordinances which imposed restoration requirements for construction projects that either exceeded or fell below PennDOT's restoration standards. Next, Columbia reviewed all construction projects for the calendar years of 2021, 2022, and 2023 to determine whether the municipality had agreed to negotiate lower restoration standards. Columbia developed the MLC to be implemented for municipalities that have requirements that are "substantial outliers" from PennDOT paving requirements. Columbia M.B. at 12.

Columbia's review apparently concluded with the determination that Pittsburgh, Perryopolis, New Sewickley Township, and Roscoe Borough were substantial outliers on the opposite ends of the spectrum. According to Columbia, both Pittsburgh and Perryopolis have restoration standards that exceeded PennDOT standards, and each of these municipalities was unwilling to negotiate with Columbia for lower standards. On the other hand, New Sewickley Township and Roscoe Borough each had lower restoration requirements than the Company's posited baseline PennDOT standards, as they permitted restoration back to the roadway's original condition. Columbia St. 9 at 18. Columbia then calculated the MLC on what it claims are the cost differences between Pittsburgh's and Perryopolis's excessive mill and overlay paving requirements *vis-à-vis* the costs that would have otherwise been incurred under PennDOT's standards. Columbia concluded that the difference resulted in additional costs of $1,349,423 and

$53,752, respectively, from 2021 through 2023. On these facts, it is clear that PennDOT's restoration standards served as Columbia's defining basis for establishing and calculating the MLC.

By asking the Commission to approve PennDOT's restoration standards as a benchmark ratemaking consideration, Columbia implicitly asks that we approve those standards without any existing statute or regulation to establish them as a valid, statewide baseline standard. *See* OCA R. Exc. at 4-7; R.D. at 110. We decline to use ratemaking as an incentive for municipalities to adopt PennDOT restoration standards. We agree with the ALJ that Columbia failed to provide credible evidence to establish that the PennDOT standards are a reasonable benchmark for municipalities to follow in enacting their restoration fees and requirements. R.D. at 110.

As ALJ Watson rightly acknowledged, municipalities consider various costs in determining their road permit and restoration fees. Such considerations may include, *inter alia*, engineering and administrative fees, road preparation and surface paving, adjacent structures and sidewalks and bridges, the existence of other utilities or fixtures, the volume of traffic on roadways, roadway life expectancy, and safety issues. R.D. at 111. In this case, nothing in the record addresses why Pittsburgh and Perryopolis have adopted and maintained mill and paving requirements that exceed the PennDOT standards. Additionally, aside from cost differences, nothing in the record addresses how or why Pittsburgh and Perryopolis's unwillingness to adopt PennDOT's restoration standards would justify penalizing utility customers within those municipalities in the form of higher utility rates for gas service. In the same vein, nothing in the record addresses how or why New Sewickley Township and Roscoe Borough determined to adopt restoration standards lower than PennDOT's, or how or why their municipal decisions would justify rewarding utility customers within those municipalities with utility rate credits funded by the residents of Pittsburgh and Perryopolis. Through its unsupported reliance upon the PennDOT standards as the defining metric for assessing

the MLC, Columbia has failed to meet its burden of providing substantial evidence to support the MLC.

Columbia's Proposed MLC is Impermissibly Discriminatory

We also agree with ALJ Watson's conclusion that the MLC is impermissibly discriminatory in violation of Section 1304 of the Code because it imposes both improper geographic rate discrimination and unreasonable rate subsidization across rate classes. R.D. at 115-16. Section 1304 of the Code states, in pertinent part, that "[n]o 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. The question of whether the classification utilized by the utility is reasonable is a question of fact to be determined by the finder of the fact, namely the Commission. *Philadelphia Suburban Transp. Co. v. Pa. PUC,* 281 A.2d 179, 184 (Pa. Cmwlth. 1971). Precedent also provides the following guidance, which is applicable here:

> Before a rate can be declared unduly preferential and therefore unlawful, it is essential that there be not only an advantage to one, but a resulting injury to another. Such an injury may arise from collecting from one more than a reasonable rate to him in order to make up for inadequate rates charged to another, or because of a lower rate to one of two patrons who are competitors in business. There must be an advantage to one at the expense of the other. *Philadelphia Elec. Co. v. Pa. PUC*, 470 A.2d 654, 657 (PA. Cmwlth. 1984).

Accordingly, in order to establish that the MLC is unduly preferential, we must find that it imposes not only an advantage to one party, but a resulting injury to another. We agree with ALJ Watson that the record supports such a finding in this case. R.D. at 113-14. We find that, even if the MLC were to qualify as a "rate" under the applicable rate design principles, the proposed MLC is unduly preferential, and therefore unlawful, as it

unjustifiably advantages one group of municipal residents/customers at the expense of another.

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As the OCA recognized, the very objective of the MLC is to treat customers differently based upon where they live. Columbia's objective is exemplified by the fact that customers who are located in Pittsburgh and Perryopolis would be billed a monthly MLC charge of $0.70 per bill, simply by residing in these municipalities. In turn, customers who live in New Sewickley Township and Roscoe Borough would receive a monthly MLC credit of $7.44, simply by virtue of where they reside. OCA M.B. at 8-9. As the ALJ correctly explained, the MLC will not assess charges or credits to customers residing in any other municipality served by Columbia, despite the fact that those customers also pay for the paving and restoration costs for Pittsburgh, Perryopolis, Roscoe Borough, and New Sewickley Township through base rates. R.D. at 113 (citing OCA St. 5 at 30; OCA St. 5-SR at 38; CAUSE-PA St. 6-R at 54). On the contrary, while all Columbia customers are paying for allegedly excessive paving and restoration costs, Columbia has designed the MLC to provide a credit to only 2,116 customers in New Sewickley Township and Roscoe Borough. OCA St. 5-SR at 38. In consideration of these facts, we agree with the ALJ's conclusion that the MLC imposes an unreasonable preference and prejudice in rates depending on where a consumer resides. R.D. at 117.

The geographic rate discrimination imposed by the MLC is also further exemplified in Columbia's selective application of the MLC. Notably, Columbia also fails to substantiate a basis to impose additional charges only upon its customers in Pittsburgh and Perryopolis, to the exclusion of its customers in other municipalities whose restoration requirements also exceed those adopted by PennDOT. Though Columbia asserts that it has limited the MLC's application to substantial outliers, it never identifies the criteria it used to determine which outliers were substantial.

A review of the record reveals that outside of Pittsburgh and Perryopolis, several municipalities have restoration requirements that exceed PennDOT standards, and that have resulted in Columbia paying higher compliance costs. First, Columbia avers that two proposed pipeline projects in one unidentified Pennsylvania township imposed permitting and engineering fees that were over 57 times the cost of PennDOT's requirements. Additionally, Columbia generally pointed to the mill and overlay requirements "of many municipalities," which are far greater than what PennDOT requires on a state highway, and which increase costs for utility customers. Finally, Columbia indicates that an unidentified borough requires curb to curb paving and other excessive requirements that exceed PennDOT's corresponding restoration requirements. The borough's excessive requirements resulted in costs that would nearly double those existing under PennDOT's requirements, increasing from the $260,000 of compliance costs under PennDOT's requirements to $470,000 in costs to comply with the borough's requirements. Columbia M.B. at 7.

Although Columbia has failed to identify the municipalities in each of the above examples, in at least one of its examples, it has identified "many municipalities" as having mill and overlay requirements "far greater than what PennDOT requires on a state highway." Despite Columbia's characterization that many municipalities have higher mill and overlay standards than PennDOT, Columbia proposes to implement the MLC as a charge for only two of these municipalities, Pittsburgh and Perryopolis, to the exclusion of others, and to the sole benefit of New Sewickley Township and Roscoe Borough. In our view, Columbia has failed to provide a justifiable basis for its selective application of the MLC. We find this disparity to be yet another way that the MLC would impermissibly convey an advantage to customers residing in other municipalities, to the detriment of customers in Pittsburgh and Perryopolis.

Columbia's Reliance Upon *City of Pittsburgh*

As a final matter, we find that Columbia's reliance upon *City of Pittsburgh, supra*, to support its position that the MLC cannot be determined to be discriminatory or unreasonably high, is misplaced for several reasons. *See*, Columbia Exc. at 9-10. First, the scope of the issues in *City of Pittsburgh* versus those in this instant case are distinct. In *City of Pittsburgh*, the City's appeal was based on four issues: (1) whether substantial evidence supported the reasonableness of Western Pennsylvania Water Company's allocation of revenue requirement; (2) whether the Commission erred in failing to address the allocation of revenue requirement among customer classes; (3) whether substantial evidence supported the reasonableness of the company's allocation of the revenue requirement among customer classes; and (4) whether the commission's rejection of the City's discovery request regarding per-district and per-customer class costs violated discovery rules. *City of Pittsburgh* at 1245. *City of Pittsburgh* did not address issues related to a surcharge, to be imposed as either a charge or a credit on top of an established and allocated revenue requirement, for only a very small subsect of customers as Columbia proposes through the MLC in this proceeding. Thus, we agree with the OCA that *City of Pittsburgh* deals primarily with allocation of the revenue requirement, an issue which is commonly litigated in utility base rate cases, but which is inapplicable to the MLC. *See*, OCA R. Exc. at 11.

We also find that Columbia erroneously relied upon *City of Pittsburgh* as supporting the conclusion that the MLC's $0.70 per bill charge cannot be unreasonably high and discriminatory. Columbia points to the $1.84 per year rate difference for Pittsburgh customers approved in *City of Pittsburgh*, which the Commission determined to be *de minimus*, to support its argument that the monthly charge of $0.70 per bill is a "small differential to pay" for the MLC. Columbia M.B. at 4-5. With our recognition that the issues raised and resolved in *City of Pittsburgh* are distinguishable, we also reject the argument that the $1.84 per year rate difference discussed in *City of Pittsburgh*

translates to a determination that the MLC's $0.70 additional per bill charge is *de minimus* and therefore non-discriminatory. We conclude that the MLC is an unjust, unreasonable, and impermissibly discriminatory rate regardless of the amount of the charge.

Based upon the forgoing discussion, we shall deny Columbia's Exceptions and adopt the ALJ's recommendation to reject Columbia's proposed MLC.

VII. Conclusion

For the reasons set forth above, we shall adopt the Joint Petition and approve the Partial Settlement, without modification, as in the public interest, contingent upon Columbia filing a *Section 53.45(h) Affidavit* confirming that it has met the notice requirements set forth in our Regulations at 52 Pa. Code § 53.45. Additionally, we shall: (1) deny the Exceptions of Columbia; and (2) adopt the Recommended Decision of ALJ Jeffrey A. Watson, as modified, consistent with this Opinion and Order; **THEREFORE,**

IT IS ORDERED:

1. That the Exceptions of Columbia Gas of Pennsylvania, Inc. filed on October 8, 2024, to the Recommended Decision of Administrative Law Judge Jeffrey A. Watson, issued on October 1, 2024, are denied, consistent with this Opinion and Order.

2. That the Recommended Decision of Administrative Law Judge Jeffrey A. Watson, issued on October 1, 2024, is adopted, as modified, consistent with this Opinion and Order.

3. That as a condition of approving the Joint Petition for Approval of Settlement, Columbia Gas of Pennsylvania, Inc. shall be required to file a *Section 53.45 Affidavit* with the Commission confirming it has met the public notice requirements outlined in the Commission's Regulations at 52 Pa. Code. § 53.45, consistent with this Opinion and Order. The *Section 53.45 Affidavit* must be filed to this rate case, at Docket No. R-2024-3046519, within ten (10) days of the effective date of this Opinion and Order and served upon all parties in this case. A copy of this affidavit shall be filed with the Bureau of Technical Utility Services-Finance Division.

4. That if Columbia Gas of Pennsylvania, Inc. is able to provide the *Section 53.45 Affidavit* described in Ordering Paragraph No. 3, above, then the following, set forth in Ordering Paragraph Nos. 5-17, below, shall apply upon the Commission's receipt of the affidavit.

5. That the Joint Petition for Approval of Settlement filed at Docket No. R-2024-3046519, including all terms and conditions stated therein, is granted and the Joint Petition for Approval of Settlement is thereby approved, without modification, consistent with this Opinion and Order.

6. That Columbia Gas of Pennsylvania, Inc. shall not place into effect the rates, rules, and regulations contained in Supplement No. 374 to its Tariff Gas - Pa. P.U.C. No. 9, as filed on March 15, 2024, the same having been found to be unjust, unreasonable, and therefore, unlawful.

7. That Columbia Gas of Pennsylvania, Inc. is authorized to file tariffs, tariff supplements, or tariff revisions containing the rates, rules ,and regulations, consistent with the findings herein, and in Appendix A attached to the Joint Petition for Approval of Settlement, consistent with this Opinion and Order, so as to produce annual revenues not in excess of $74,000,000 from its customers.

8. That Columbia Gas of Pennsylvania, Inc.'s tariffs, tariff supplements and/or tariff revisions, as set forth in Ordering Paragraph No. 7 above, may be filed on at least one (1) days' notice after the entry date of this Opinion and Order, for service rendered on and after December 14, 2024.

9. That Columbia Gas of Pennsylvania, Inc. shall comply with all directives and conclusions contained in this Opinion and Order, including the terms and conditions of the Joint Petition for Approval of Settlement filed in this proceeding, that are not the subject of individual ordering paragraphs, as if they were the subject of an individual ordering paragraph.

10. That the Formal Complaint filed by the Office of Consumer Advocate in this proceeding, at Docket No. C-2024-3047675, be deemed satisfied and marked closed.

11. That the Formal Complaint filed by the Office of Small Business Advocate in this proceeding, at Docket No. C-2024-3047905, be deemed satisfied and marked closed.

12. That the Formal Complaint filed by Ronald T. Bernick in this proceeding, at Docket No. C-2024-3048339, be dismissed and marked closed.

13. That the Formal Complaint filed by Linda Allison in this proceeding, at Docket No. C-2024-3048588, be dismissed and marked closed.

14. That the Formal Complaint filed by Philip Bloch in this proceeding, at Docket No. C-2024-3048478, be dismissed and marked closed.

15. That the Formal Complaint filed by the Pennsylvania State University in this proceeding, at Docket No. C-2024-3048624, be deemed satisfied and marked closed.

16. That the Formal Complaint filed by Daniel E. Skvarla in this proceeding, at Docket No. C-2024-3049677, be dismissed and marked closed.

17. That upon acceptance and approval by the Commission of the appropriate compliance filings, tariffs, tariff supplements, or tariff revisions filed by Columbia Gas of Pennsylvania, Inc., consistent with this Opinion and Order, this proceeding at Docket No. R-2024-3046519 shall be marked closed.

18. Alternatively, that if Columbia Gas of Pennsylvania, Inc. is unable to provide the *Section 53.45 Affidavit* indicated in Ordering Paragraph No. 3, then ordering paragraphs Nos. 19-21, below, shall apply in lieu of Ordering Paragraph Nos. 5-17.

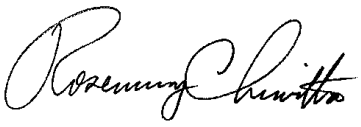
19. That if Columbia Gas of Pennsylvania, Inc. is unable to provide the *Section 53.45 Affidavit* indicated in Ordering Paragraph No. 3, then it may elect to proceed with this case by voluntarily seeking an extension of the statutory timeline prescribed in 66 Pa.C.S. § 1308(d).

20. That if Columbia Gas of Pennsylvania, Inc. determines to proceed with a voluntary extension, as described in Ordering Paragraph No. 19, the Commission shall remand this matter to the Office of Administrative Law Judge and direct Columbia Gas of Pennsylvania, Inc. to provide notice to all ratepayers of its originally proposed general rate increase in accordance with 52 Pa. Code § 53.45. Upon certification by the Company of compliance with 52 Pa. Code § 53.45, the Office of Administrative Law Judge shall establish the procedures and timeframe necessary to receive any additional evidence and/or Formal Complaints from notified customers.

21. That if Columbia Gas of Pennsylvania, Inc. elects to employ the option described in Ordering Paragraph Nos. 18-20, it must notify the Commission within ten (10) days of the effective date of this Order by letter filed to this rate case at Docket No. R-2024-3046519 and served upon all parties in this proceeding.

22. Alternatively, that if Columbia Gas of Pennsylvania, Inc. is unable to provide the *Section 53.45 Affidavit* indicated in Ordering Paragraph No. 3, and it also elects not to exercise the option to proceed with this case, as described in Ordering Paragraph Nos. 18-20, Columbia Gas of Pennsylvania Inc.'s request for rate relief shall be deemed denied in its entirety, the Joint Petition for Approval of Settlement shall be deemed rejected, and this proceeding at Docket No. R-2024-3046519 shall be marked closed.

BY THE COMMISSION,



Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: November 21, 2024

ORDER ENTERED: November 21, 2024