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November 11, 2022

VIA ELECTRONIC FILING

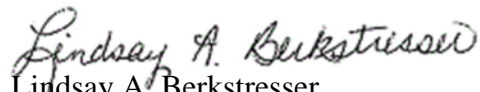
Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor North
P.O. Box 3265
Harrisburg, PA 17105-3265

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

Dear Secretary Chiavetta:

Attached for filing on behalf of Columbia Gas of Pennsylvania, Inc. is the Motion to Strike Richard C. Culbertson's Motion to the Commission to Expedite Determinations in the above-referenced proceeding. Copies will be provided per the attached Certificate of Service.

Respectfully submitted,



Lindsay A. Berkstresser
Principal

LAB/kl
Attachment

cc: Honorable Christopher P. Pell (*via email*)
Honorable John M. Coogan (*via email*)
Certificate of Service

CERTIFICATE OF SERVICE

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

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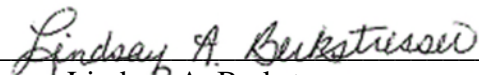
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Date: November 11, 2022


Lindsay A. Berkstresser

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

MOTION TO STRIKE OF COLUMBIA GAS OF PENNSYLVANIA, INC.

TO DEPUTY CHIEF ADMINISTRATIVE LAW JUDGE CHRISTOPHER PELL AND ADMINISTRATIVE LAW JUDGE JOHN COOGAN:

Columbia Gas of Pennsylvania, Inc. (“Columbia”), by and through its attorneys, hereby files this Motion to Strike, pursuant to 52 Pa. Code § 5.103 and requests that Richard C. Culbertson’s October 24, 2022 “Motion to the Commission to Expedite Determinations Regarding the Pipeline Safety Including the Regulatory Required Installation, Maintenance, and Use of Utility-Owned Curb Valves as Connected to Service lines” (hereinafter, “Motion”) be stricken because it (1) improperly re-argues issues that are the subject of Exceptions and Replies to Exceptions that are currently pending before the Pennsylvania Public Utility Commission (“Commission”) and (2) attempts to rely on material that is not part of the evidentiary record in this proceeding. In support of its Motion to Strike, Columbia states as follows:

I. INTRODUCTION

1. In his Motion, Mr. Culbertson requests that the Commission expedite its determination on Mr. Culbertson's alleged safety concerns regarding the installation of curb valves. This issue is currently pending before the Commission as part of Columbia's 2022 Base Rate proceeding at this docket.

2. The installation of curb valves was addressed in the rebuttal testimony of Columbia witness Kempic. *See* Columbia St. No. 1-R, pp. 18-19. The Bureau of Investigation and Enforcement's ("I&E") witness Merritt also presented testimony on curb valves. *See* I&E St. No. 1-R, pp. 18-19. Mr. Culbertson did not present any testimony or exhibits or any evidence whatsoever for the record in this proceeding, including any evidence with respect to the issue of curb valves.

3. Columbia and Mr. Culbertson filed Main Briefs and Reply Briefs regarding the issues raised by Mr. Culbertson in this proceeding, including the issue of curb valves. I&E filed a Reply Brief regarding the curb valve issue.

4. On September 30, 2022, Deputy Chief Administrative Law Judge Pell and Administrative Law Judge Coogan (the "ALJs") issued a Recommended Decision ("RD") recommending that the Commission deny Mr. Culbertson's Complaint in its entirety. Specifically, the RD rejected Mr. Culbertson's alleged safety concerns regarding the installation of curb valves. *See* RD, p. 116.

5. On October 14, 2022, Mr. Culbertson filed Exceptions to the RD addressing, *inter alia*, the issue of curb valves. On October 21, 2022, Columbia and I&E filed Replies to Mr. Culbertson's Exceptions. Mr. Culbertson's Exceptions and Columbia's and I&E's Replies are currently pending before the Commission.

II. ARGUMENT

A. **IN HIS MOTION, MR. CULBERTSON IMPROPERLY ATTEMPTS TO RE-ARGUE ISSUES THAT ARE THE SUBJECT OF PENDING EXCEPTIONS AND REPLIES TO EXCEPTIONS.**

6. Mr. Culbertson argues that an expedited determination on the issue of curb valves is necessary and that the Commission should not wait to decide the issue with the remaining issues in the base rate proceeding because it pertains to a safety concern. Motion, p. 14. Mr. Culbertson's request should be denied because the record is clear that no safety issue exists, and Mr. Culbertson's Motion is effectively an attempt to re-argue issues that are the subject of pending Exceptions and Replies.

7. As an initial matter, the record in this proceeding is clear that no safety issue exists on Columbia's system. Both Columbia witness Kempic and I&E witness Merritt explained that Columbia's practice regarding curb valves complies with the applicable safety regulations. *See* Columbia St. No. 1-R, pp. 18-19 and I&E St. No. 4-SR, pp. 10-11. No party, including Mr. Culbertson, presented any evidence in response to Mr. Kempic's and Mr. Merritt's testimony on curb valves. Therefore, Mr. Culbertson's position that there are safety issues that must be addressed before the Commission issues an order in the base rate proceeding is not supported by the record evidence in this case.

8. Although Mr. Culbertson's Motion is framed as a request for an expedited ruling, Mr. Culbertson's Motion improperly attempts to re-argue the same issues that are the subject of Exceptions and Replies currently pending before the Commission as part of the base rate proceeding. In his Motion, Mr. Culbertson repeats and elaborates on arguments regarding curb valves that he raised in his Exceptions. Motion, pp. 1-4, 6-8. Such a pleading is improper because Columbia does not have an adequate opportunity to respond to additional arguments raised after

the deadline for exceptions and replies. The Commission has previously refused to accept material submitted at a late stage of the proceeding when other parties would not have an adequate opportunity to respond. See, e.g., *Pa. PUC, et al. v. UGI Utilities*, Docket No. R-00932862, 1994 Pa. PUC LEXIS 138, *82-83 (May 23, 1994); *Pa. PUC v. Duquesne Light Co.*, 59 Pa. PUC 67 (January 25, 1985); *Pa. PUC v. Pennsylvania-American Water Company*, 1989 Pa. PUC LEXIS 170, *167-169, 71 Pa. PUC 210 (October 27, 1989). Therefore, Mr. Culbertson's attempt to introduce additional arguments after the deadline for exceptions and replies should be rejected, and his Motion should be stricken. Moreover, Mr. Culbertson could have presented his request for an expedited ruling on the curb valve issue in his briefs or exceptions but chose not to do so.

9. In his Motion, Mr. Culbertson attempts to respond to arguments raised in Columbia's Reply Exceptions. Motion, pp. 1-3, 6-10. The Commission's regulations provide for exceptions and replies to exceptions, but do not permit a party to file a "reply" to reply exceptions. See 52 Pa. Code §§ 5.533, 5.535. Therefore, the Motion is improper and should be stricken.

B. IN HIS MOTION, MR. CULBERTSON IMPROPERLY RELIES ON MATERIAL THAT IS NOT PART OF THE EVIDENTIARY RECORD IN THIS PROCEEDING.

10. In his Motion, Mr. Culbertson attempts to introduce material that is not part of the record in this proceeding. It is well-established that parties cannot rely on extra-record evidence to support their claims. See, e.g., *Myers v. PPL Electric Utilities Corporation*, Docket No. C-2017-2620710, 2019 Pa. PUC LEXIS 261 (Order entered Aug. 29, 2019) at *36 (rejecting extra-record evidence that was presented for the first time at the briefing stage). Therefore, Mr. Culbertson's Motion should be stricken.

11. Mr. Culbertson heavily relies on extra-record material, much of which is irrelevant, to support his request for an expedited ruling. The following material in Mr. Culbertson's Motion was not introduced or admitted for the record in this case:

- Motion, p. 2, footnote 1 – News article regarding strike
- Motion, p. 3 – reference to abandonment of service line at 1608 McFarland Road
- Motion, pp. 3-4 – National Transportation Safety Board Report regarding UGI Utilities
- Motion, pp. 4-6 – 2020 Article regarding Commission Settlement with UGI Utilities
- Motion, pp. 8-9 – May 17, 1989 PHMSA Letter
- Motion, p. 9 – Plumber’s Guide
- Motion, pp. 10-13 – Photos and description of property at 1605 Memorial Way, Dormont, PA
- Motion, pp. 13-14 – Media article and description of October 2022 line hit near Bower Hill Road, Mt. Lebanon, PA
- Motion, Appendix A – NiSource Deferred Prosecution Agreement

12. There is no proper foundation to support the authenticity of these items. Further, Columbia did not have an opportunity to respond to the information presented in Mr. Culbertson’s Motion because it was not presented until after the close of the record and the due dates for briefs and exceptions. It is a fundamental principle of due process that information purporting to be of a factual nature must be submitted as evidence for the record and may not be included for the first time in briefs or exceptions. *See In re Shenandoah Suburban Bus Lines, Inc.*, 46 A.2d 26, 29 (Pa. Super. Ct. 1946) (“In hearings before the commission all parties must be apprised of the evidence submitted and must be given opportunity to cross-examine witnesses; to inspect documents and to offer evidence in explanation or rebuttal.”)

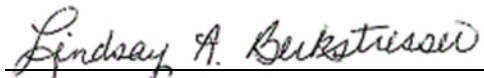
13. “The allowance of new claims late in a case raises significant due process concerns. Such concerns arise from the lack of adequate time to . . . respond adequately to adverse positions.” *Pa. PUC, et al. v. UGI Utilities*, Docket No. R-00932862, 1994 Pa. PUC LEXIS 138, *82-83 (May 23, 1994); *see also Pa. PUC v. Duquesne Light Co.*, 59 Pa. PUC 67 (January 25, 1985) (disallowing the untimely introduction of exhibits); *Pa. PUC v. Pennsylvania-American Water*

Company, 1989 Pa. PUC LEXIS 170, *167-169, 71 Pa. PUC 210 (October 27, 1989) (“late filed updates deny opposing parties an opportunity . . . to respond with countering evidence or testimony”). Accordingly, Mr. Culbertson’s Motion should be stricken because it attempts to introduce new evidence at this late stage of the proceeding after the RD has been issued and Exceptions and Replies are already pending before the Commission.

III. CONCLUSION

WHEREFORE, Columbia Gas of Pennsylvania, Inc. respectfully requests that Deputy Chief Administrative Law Judge Pell and Administrative Law Judge Coogan grant this Motion to Strike.

Respectfully submitted,



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Date: November 11, 2022