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July 15, 2020

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 PA, Inc.
Docket No. R-2020-3018835**

Dear Secretary Chiavetta:

Attached for filing are the Objections of Columbia Gas of Pennsylvania, Inc., to the Written Statement and Exhibits of Richard C. Culbertson in the above proceeding. Copies will be provided per the Certificate of Service. Thank you.

Respectfully yours,

Lindsay A. Berkstresser

LAB/kl
Attachment

cc: Certificate of Service

**CERTIFICATE OF SERVICE
(R-2020-3018835)**

I hereby certify that a true and correct copy of the foregoing has been served upon the following persons, in the manner indicated, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant.)

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Lindsay A. Berkstresser

Date: July 15, 2020

Lindsay A. Berkstresser

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	
	:	
v.	:	Docket No. R-2020-3018835
	:	
Columbia Gas of Pennsylvania, Inc.	:	

**OBJECTIONS OF
COLUMBIA GAS OF PENNSYLVANIA, INC. TO
THE WRITTEN STATEMENT AND EXHIBITS OF RICHARD C. CULBERTSON**

TO ADMINISTRATIVE LAW JUDGE KATRINA L. DUNDERDALE:

Columbia Gas of Pennsylvania, Inc. (“Columbia” or the “Company”) hereby files these Objections pursuant to the Pennsylvania Public Utility Commission’s (“Commission”) regulations at 52 Pa. Code § 5.401(a) and the directive of Administrative Law Judge Katrina L. Dunderdale (the “ALJ” or “ALJ Dunderdale”), to exclude certain portions of the written statement and exhibits submitted by Richard C. Culbertson at the July 8, 2020 Public Input Hearing. Columbia objects to portions of Mr. Culbertson’s written statement, marked as Public Input Hearing Exhibit 1, because it contains: (1) statements that are irrelevant to Columbia’s rates and service and (2) hearsay not subject to any hearsay exception under the Pennsylvania Rules of Evidence. Columbia objects to Public Input Hearing Exhibits 5 and 6 because they contain information that is irrelevant to Columbia’s rates and service.

In support thereof, Columbia states as follows:

I. BACKGROUND

1. On February 19, 2020, Columbia submitted its Notice of Intent to file a general rate increase on or about March 20, 2020. The Commission docketed the Notice at R-2020-3018835.

2. Due to the then-emerging COVID-19 crisis, Columbia decided to voluntarily request a delay to the filing of its general rate case. On March 24, 2020, Columbia filed for a waiver of 52 Pa. Code § 53.52(b)(2) and requested a thirty-day extension granting the Company authority to file data in support of a proposed increase in base rates based upon a historic test year ended November 30, 2019 on or before April 28, 2020.

3. By Secretarial letter dated March 27, 2020, the Commission granted Columbia's request.

4. On April 24, 2020, Columbia filed Supplement No. 307 to Tariff Gas PA. P.U.C. No. 9 ("Supplement No. 307") with the Commission. Supplement No. 307 was issued to be effective for service rendered on or after June 23, 2020. It proposed changes to Columbia's distribution base rates designed to produce an increase in annual revenues of approximately \$100.4 million based upon data for a fully projected future test year ending December 31, 2021 ("2020 Base Rate Case"). The filing was made in compliance with the Commission's regulations and Columbia's approved waiver, and contained all supporting data and testimony required to be submitted in conjunction with a tariff change seeking a general rate increase.

5. On April 27, 2020, the Commission's Bureau of Investigation and Enforcement ("I&E") filed a Notice of Appearance. The Office of Small Business Advocate and the Office of Consumer Advocate ("OCA") filed formal complaints on May 4, 2020 and May 5, 2020, respectively. The Communication Action Association of Pennsylvania, the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania, and the Columbia Industrial Intervenors filed Petitions to Intervene. Complaints were filed by the Pennsylvania State University, Dr. Richard Collins and Ionut R. Ilie.

6. On May 21, 2020, the Commission issued an Order pursuant to 66 Pa. C.S. §1308(d), suspending the filing by operation of law until January 23, 2021 (“Suspension Order”).

7. On May 29, 2020, Columbia filed Tariff Supplement No. 310 in accordance with the Commission’s Suspension Order.

8. On May 29, 2020, I&E filed an Expedited Motion requesting that the Commission extend the statutory suspension period until February 4, 2021.

9. Columbia and OCA filed Answers to I&E’s Motion. Columbia’s Answer proposed, as an alternative to involuntarily extending the statutory suspension period, that the procedural schedule be extended to allow consideration of the case at the Commission’s February 4, 2021, Public Meeting, with compliance rates to become effective as of January 23, 2021, the end of the statutory suspension period.

10. A telephonic prehearing conference was held on June 3, 2020.

11. On June 3, 2020, the Chief ALJ issued the Extension Order granting I&E’s Motion and involuntarily extending the statutory suspension period until February 4, 2021.

12. On June 23, 2020, Columbia filed a Petition for Reconsideration of the Extension Order pursuant to 52 Pa. Code § 5.44.

13. A public input hearing was held on July 8, 2020 at 1 p.m. During the public input hearing Mr. Culbertson testified and offered several exhibits for the record. ALJ Dunderdale indicated that she would allow Columbia until July 15, 2020 to submit any written objections to Mr. Culbertson’s written statement and exhibits. Tr. at 65, ln. 1-14; Tr. at 111, ln. 10-17.

14. Columbia hereby submits these objections to Mr. Culbertson’s written statement and exhibits.

II. OBJECTIONS

A. SPECIFIC OBJECTIONS

1. Objections to the Written Statement of Richard C. Culbertson (Public Input Hearing Exhibit 1).

15. Public Input Hearing Exhibit 1 is a nineteen-page written statement authored by Mr. Culbertson. As explained below, several portions of Public Input Hearing Exhibit 1 are objectionable and should be excluded from the record.

16. Columbia objects to the following portions of Mr. Culbertson's written statement because they are irrelevant to the rates and service of Columbia Gas of Pennsylvania.

- Chart on page 4 of Public Input Hearing Exhibit 1 purporting to calculate the rate base per customer of Columbia Gas of Pennsylvania's sister utilities in other states.
- Columbia Gas of Maryland Files Request for Investment in Safety Through Replacing and Upgrading Aging Infrastructure Pennsylvania – **15.17** percent <http://www.nisource.com/news/article/columbia-gas-of-maryland-files-request-for-investment-in-safety-through-replacing-and-upgrading-aging-infrastructure-20200515> on page 5 of Public Input Hearing Exhibit 1.
- The section titled "Internal Controls" on pages 5-8 of Public Input Hearing Exhibit 1.
- Paragraph on page 13 of Public Input Hearing Exhibit 1 under title "**NiSource and Columbia Gas of Massachusetts Faces Judgement**" including description of NTSB Final Report on page 14 of Public Input Hearing Exhibit 1.
- Article from CBS Local Boston entitled, "MA Attorney General Reaches Agreement With Columbia Gas, Company Will Pay \$56 Million – July 2, 2020" referenced on page 14 of Public Input Hearing 1.
- Chart purporting to calculate rate base of sister companies in other states on page 16 of Public Input Hearing Exhibit 1.
- Reference to Columbia Gas of Massachusetts conduct and NiSource Deferred Prosecution Agreement on page 18 of Public Input Hearing Exhibit 1.
- Quote from Department of Justice regarding Columbia Gas of Massachusetts on page 18 of Public Input Hearing Exhibit 1.

17. Columbia objects to the following portions of Mr. Culbertson's written statement because they are hearsay:

- Quote from article regarding incident in Washington County, PA at http://observer-reporter.com/news/localnews/five-injured-in-north-franklin-township-house-explosion/article_2a722694-b3cd-11e9-a137-1f81bc7773a1.html on page 13 of Public Input Hearing Exhibit 1.
- Excerpts from article entitled “NiSource and Columbia Gas of Massachusetts Faces Judgement” on page 13 of Public Input Hearing Exhibit 1.
- Article from CBS Local Boston entitled, “MA Attorney General Reaches Agreement With Columbia Gas, Company Will Pay \$56 Million – July 2, 2020” referenced on page 14 of Public Input Hearing 1.

2. Objections to Public Input Hearing Exhibit 5.

18. Public Input Hearing Exhibit 5 is a Deferred Prosecution Agreement in the United States District Court for the District of Massachusetts involving Columbia Gas of Massachusetts and NiSource Inc. Columbia objects to Public Input Hearing Exhibit 5 because it is irrelevant to the issues in this base rate proceeding – the rates and service of Columbia Gas of Pennsylvania. Columbia Gas of Pennsylvania is not a party to the Deferred Prosecution Agreement. The subject of the Deferred Prosecution Agreement is an event that occurred in Merrimack Valley, Massachusetts, outside of Columbia Gas of Pennsylvania’s service territory. Columbia Gas of Pennsylvania was not involved in the event that led to the deferred prosecution agreement.

3. Objections to Public Input Hearing Exhibit 6.

19. Public Input Hearing Exhibit 6 is an Accident Report from the National Transportation Safety Board titled, “Overpressurization of Natural Gas Distribution System, Explosions, and Fires in Merrimack Valley, Massachusetts” dated September 13, 2018.

20. Columbia objects to Public Input Hearing Exhibit 6 because the Report is irrelevant to the rates and service of Columbia Gas of Pennsylvania. The subject of the report is an investigation regarding an event that happened in Merrimack Valley, Massachusetts involving Columbia Gas of Massachusetts. Columbia Gas of Pennsylvania was not involved in the event.

B. ARGUMENT IN SUPPORT OF OBJECTIONS

1. Public Input Hearing Exhibits 1, 5 and 6 should be excluded because they are irrelevant to Columbia’s rates and service.

21. Relevant evidence is “that which tends to establish some fact material to the case, or which tends to make a fact at issue more or less probable.” *Commonwealth v. Scott*, 389 A.2d 79, 82 (1978).¹ Irrelevant or immaterial evidence is not admissible. 66 Pa. C.S. § 332(b). The Commission has excluded evidence on the basis that the evidence is not relevant to the scope of the proceeding. See e.g., *Investigation of the Philadelphia Area Taxicab Self-Insurance Program*, 1989 Pa. PUC LEXIS 206 (1989) (excluding evidence that was “not germane to the limited scope of the investigation...”).

22. The proper scope of testimony in this proceeding is information that relates to Columbia’s rates and service. At the public input hearing, it was determined that Mr. Culbertson’s testimony should be limited to the rates and service of Columbia Gas of Pennsylvania. Tr. at 52, ln. 8-16. ALJ Dunderdale indicated that there is information in the exhibits that does not relate to Columbia Gas of Pennsylvania, which means it does not relate to the current base rate increase nor does it relate to service being provided by Columbia Gas of Pennsylvania. ALJ Dunderdale further directed Mr. Culbertson, “I will be limiting your testimony to only as it relates to the base rate, the rate that are being charged by Columbia Gas of Pennsylvania, and the service provided at your rental units by Columbia Gas of Pennsylvania.” Tr. at 52, ln. 17-25; Tr at 53, ln. 1-10. Therefore, the portions of Public Input Hearing Exhibit 1 identified above and Public Input Hearing Exhibits 5 and 6 should be excluded from the record in this proceeding because they do not relate to the rates and service of Columbia Gas of

¹ See Pa.R.E. 401 (“Evidence is relevant if: (a) it has any tendency to make a fact more or less probable than it would be without the evidence; and (b) the fact is of consequence in determining the action.”); *Ecker v. Amtrak*, 2015 Phila. Ct. Com. Pl. LEXIS 98 (Mar. 13, 2015), *affirmed*, 2015 Pa. Super. Unpub. LEXIS 3615 (Pa. Super. 2015); *Parr v. Ford Motor Co.*, 109 A.3d 682 (Pa. Super. 2014), *appeal denied*, 2015 Pa. LEXIS 1150 (Pa. 2015). Even if evidence is relevant, such evidence may be excluded “if its probative value is outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence.” *Parr*, 109 A.3d at 697 (quoting Pa.R.E. 403).

Pennsylvania. Instead, these portions of Public Input Hearing Exhibit 1 and Public Input Hearing Exhibits 5 and 6 relate to Columbia Gas of Pennsylvania's sister companies as well as unrelated companies in other states. The expenses and investments incurred by utilities in other jurisdictions, necessary to provide safe and adequate service and to meet requirements established by other jurisdictions, are not relevant to the expenses and investments needed to provide service and to meet regulatory requirements in Pennsylvania. Reasons for differences are extremely fact-specific, but any exploration of facts involving expenses and investment of other utilities would overburden this record with irrelevant information. Furthermore, the events involving and the actions of companies in other states are not events involving or the actions of Columbia Gas of Pennsylvania.

23. The laws cited in the "Internal Controls" section on pages 5-8 of Public Input Hearing Exhibit 1 are not relevant to the base rate proceeding before the Commission.

2. Portions of Public Input Hearing Exhibit 1 should be excluded because they contain inadmissible hearsay.

24. Hearsay is an out-of-court statement offered to prove the truth of the matter asserted. Pa.R.E. 801; *Bonegre v. Workers' Compensation Appeal Board (Bertolini's)*, 863 A.2d 68, 72 (Pa. Cmwlth. 2004). Ordinarily, hearsay evidence is inadmissible unless some exception applies. Pa.R.E. 802. The hearsay rule is somewhat relaxed in proceedings before administrative agencies. *Rox Coal Co. v. Workers' Comp. Appeal Bd. (Snizaski)*, 570 Pa. 60, 807 A.2d 906 (2002). The Commonwealth Court established what is commonly called the "Walker Rule" to apply to the use of hearsay evidence during administrative proceedings:

- (1) Hearsay evidence, properly objected to, is not competent evidence to support a finding;
- (2) Hearsay evidence, admitted without objection, will be given its natural probative effect and may support a finding, if it is corroborated by any competent evidence in the record, but a finding of fact based solely on hearsay will not stand.

Walker v. Unemployment Comp. Bd. of Review, 367 A.2d 366, 370 (Pa. Cmwlth. 1976). The “Walker Rule” has been affirmed by the Pennsylvania Supreme Court. *Rox Coal Co. v. Workers’ Comp. Appeal Bd. (Snizaski)*, 570 Pa. 60, 807 A.2d 906 (2002).

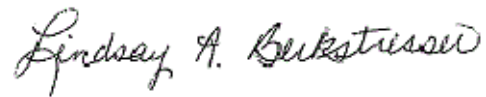
25. Hearsay evidence has routinely been rejected by the Commission using the Walker Rule. *See, e.g., Harold J. Harris v. Columbia Gas of Pa. Inc.*, 2011 Pa. PUC LEXIS 604 (2011) (uncorroborated statements of field technicians could not be aggregated and testified to by a single witness not present on site); *In Re Application of TrailCo*, 2008 Pa. PUC LEXIS 60 (2008) (notarized statements of two non-testifying landowners contending they refused to buy property on the basis of power line location were hearsay).

26. Public Input Hearing Exhibit 1 contains several hearsay statements, as identified above, and those statements should be excluded. These portions of Public Input Hearing Exhibit 1 constitute or contain hearsay because they include out of court statements being offered for the truth of the matter asserted. Many of the portions of Public Input Hearing Exhibit 1 identified above cite or reference statements that were not written by Mr. Culbertson. The authors of these various statements and materials did not testify at the public input hearing. Therefore, these are out of court statements being offered for the truth of the matters asserted.

III. CONCLUSION

WHEREFORE, Columbia Gas of Pennsylvania, Inc. respectfully requests that Administrative Law Judge Katrina L. Dunderdale exclude the portions of Public Input Hearing Exhibit 1 identified in these Objections and Public Input Hearing Exhibits 5 and 6 from the record in this proceeding.

Respectfully submitted,



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