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Lindsay A. Berkstresser  
Associate

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File #: 182465

May 26, 2021

***VIA ELECTRONIC FILING***

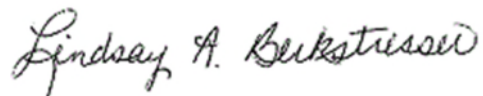
Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2nd Floor North  
Harrisburg, PA 17105-3265

**Re: PA Public Utility Commission v. Columbia Gas of Pennsylvania, Inc.**  
**Docket No. R-2021-3024349**

Dear Secretary Chiavetta:

Attached for filing is a Motion for Protective Order on behalf of Columbia Gas of Pennsylvania, Inc. in the above-referenced proceeding. Copies will be provided as indicated on the Certificate of Service.

Respectfully submitted,



Lindsay A. Berkstresser

LAB/kl  
Attachments

cc: Honorable Emily DeVoe  
Certificate of Service

## CERTIFICATE OF SERVICE

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).

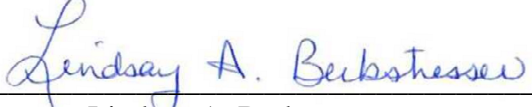
### VIA E-MAIL ONLY

Aron J. Beatty, Esquire  
Laura J. Antinucci, Esquire  
Office of Consumer Advocate  
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Forum Place, 5th Floor  
Harrisburg, PA 17101-1923  
[abeatty@paoca.org](mailto:abeatty@paoca.org)  
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Steven C. Gray, Esquire  
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555 Walnut Street  
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[sgray@pa.gov](mailto:sgray@pa.gov)  
[efure@pa.gov](mailto:efure@pa.gov)

Erika L. McLain, Esquire  
Bureau of Investigation & Enforcement  
Commonwealth Keystone Building  
400 North Street, 2nd Floor West  
Harrisburg, PA 17120  
[ermclain@pa.gov](mailto:ermclain@pa.gov)

Date: May 26, 2021

  
\_\_\_\_\_  
Lindsay A. Berkstresser

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	R-2021-3024349
Office of Consumer Advocate	:	C-2021-3024643
Office of Small Business Advocate	:	C-2021-3024762
	:	
v.	:	
	:	
Columbia Gas of Pennsylvania, Inc. 1307(f)	:	

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**MOTION OF COLUMBIA GAS OF PENNSYLVANIA, INC.  
FOR A PROTECTIVE ORDER**

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TO ADMINISTRATIVE LAW JUDGE EMILY I. DEVOE:

Columbia Gas of Pennsylvania, Inc. (“Columbia”), by and through its attorneys, Post & Schell, P.C., hereby requests that the attached Protective Order be entered in the above-captioned proceeding pursuant to the provisions of 52 Pa. Code § 5.365(a). In support thereof, Columbia represents as follows:

1. On March 1, 2021, Columbia submitted certain pre-filing data required under the Commission’s regulations. On April 1, 2021, Columbia filed Supplement No. 327 to Tariff Gas Pa. P.U.C. No. 9 and supporting testimony and exhibits pursuant to Section 1307(f) of the Public Utility Code, 66 Pa. C.S. § 1307(f). Supplement No. 327 is to become effective for service rendered on and after October 1, 2021. In Supplement No. 327, Columbia proposes an increase in its rates for recovery of purchased gas costs of \$0.12191/Therm.
2. The proceeding has been assigned to Administrative Law Judge Emily I. DeVoe (the “ALJ”) for hearings and issuance of a Recommended Decision.

3. The Bureau of Investigation and Enforcement (“I&E”), Office of Consumer Advocate (“OCA”) and Office of Small Business Advocate (“OSBA”) entered notices of appearance in this proceeding.

4. A prehearing conference was held on April 6, 2021, at which time a litigation schedule was established.

5. The Parties to this proceeding have engaged in discovery, and Proprietary Information within the definition of 52 Pa. Code § 5.365 has been provided in discovery. In addition, Proprietary Information has been included in the parties’ testimony in this proceeding and will likely be introduced for the record in this proceeding. Parties may also desire to use Proprietary Information for cross-examination purposes. Treatment of such information as set forth in the attached proposed Protective Order is justified because unrestricted disclosure of this information would not be in the public interest. These considerations constitute cause for the restrictions specified in 52 Pa. Code § 5.365 and in Administrative Law Judge or Commission Orders granting relief pursuant to the regulation.

6. Under 52 Pa. Code §§ 5.362(a)(7) and 5.365, the Office of Administrative Law Judge or the Commission may issue a Protective Order to limit or prohibit disclosure of Proprietary Information where the potential harm to a participant would be substantial and outweighs the public’s interest in having access to the Proprietary Information. In applying this standard, relevant factors to be considered include: the extent to which disclosure would cause unfair economic or competitive damage; the extent to which the information may already be known by others; and the potential value of such information to the participant and the participant’s competitors and trade partners. 52 Pa. Code §§ 5.365(a)(1) – (3).

7. The documents sought to be protected by the Proposed Order also may contain proprietary information as described in 66 Pa.C.S. § 335(d), which provides:

if a document contains trade secrets or proprietary information and it has been determined by the commission that harm to the person claiming the privilege would be substantial or if a document required to be released under this section contains identifying information which would operate to the prejudice or impairment of a person's reputation or personal security, or information that would lead to the disclosure of a confidential source or subject a person to potential economic retaliation as a result of their cooperation with a commission investigation, or information which, if disclosed to the public, could be used for criminal or terroristic purposes, the identifying information may be expurgated from the copy of the document made part of the public record.

Therefore, treatment of such information as set forth in the attached proposed Protective Order is justified under 66 Pa.C.S. § 335(d).

8. The attached proposed Protective Order defines “Confidential” information in Paragraph 3 as “those materials which customarily are treated by that Party as sensitive or proprietary, which are not available to the public, and which, if disclosed freely, would subject that Party or its clients to risk of competitive disadvantage or other business injury.” The proposed Protective Order defines “Highly Confidential” information as materials that are of such a commercially sensitive nature among the parties or of such a private, personal nature that the producing party is able to justify a heightened level of confidential protection with respect to those materials. Clearly, protecting this type of information from disclosure is appropriate.

9. Limitation on the disclosure of Proprietary Information will not prejudice the rights of the participants, nor will such limitation frustrate the prompt and fair resolution of this proceeding. The proposed Protective Order balances the interests of the Parties, the public, and the Commission.

10. The attached proposed Protective Order will protect the Proprietary Information produced in discovery or submitted for the record while allowing the Parties to use such information for purposes of the instant litigation.

11. The attached proposed Protective Order has been shared with other parties to this proceeding. No party indicated that it opposed the proposed protective order.

WHEREFORE, for all the foregoing reasons, Columbia Gas of Pennsylvania, Inc. requests that Administrative Law Judge Emily I. DeVoe grant this Motion and issue the attached Protective Order.

Respectfully submitted,



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Columbia Gas of Pennsylvania, Inc.  
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Date: May 26, 2021

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	R-2021-3024349
Office of Consumer Advocate	:	C-2021-3024643
Office of Small Business Advocate	:	C-2021-3024762
	:	
v.	:	
	:	
Columbia Gas of Pennsylvania, Inc. 1307(f)	:	

**PROTECTIVE ORDER**

Upon consideration of the Motion for a Protective Order that was filed by Columbia Gas of Pennsylvania, Inc. on May 26, 2021;

IT IS ORDERED THAT:

1. The Motion for Protective Order is hereby granted with respect to the material and information identified in Paragraphs 2 and 3 below. All persons previously or hereafter granted access to the materials and information identified in Ordering Paragraphs 2 and 3 of this Protective Order shall use and disclose such information only in accordance with this Protective Order.

2. The material or information subject to this Protective Order includes all correspondence, documents, data, information, studies, methodologies and other materials, furnished in discovery in this proceeding, as well as written and oral testimony, exhibits, examination and cross-examination questions, motions, briefs, oral argument, and other writings submitted by the parties to this proceeding (together, “Parties”; individually, a “Party”) that contains Proprietary Information as defined in Paragraph 3 below. To the extent any additional Proprietary Information is furnished in this proceeding, such information shall also be subject to this Protective Order.

3. A Party may designate as “Confidential” those materials which customarily are treated by that party as sensitive or proprietary, which are not available to the public, and which,

if disclosed freely, would subject that Party or its clients to risk of competitive disadvantage or other business injury. A Party may designate as “Highly Confidential” those materials that are of such a commercially sensitive nature among the parties or of such a private, personal nature that the producing Party is able to justify a heightened level of confidential protection with respect to those materials. For example but without limitation, “Highly Confidential” information may include proprietary information that constitutes or describes: (i) customer names or customers’ prospects’ names, addresses, annual volumes of gas usage, or other customer-identifying information; (ii) competitive strategies or service alternatives; (iii) competitive pricing or discounting information; and (iv) marketing materials that have not yet been used. Together, these materials will be referred to as “Proprietary Information” for the purposes of this Protective Order.

4. Proprietary Information shall be made available to counsel for the non-producing Party who has entered an appearance in this proceeding and does not have responsibilities constituting a Restricted Person, subject to the terms of this Protective Order. Such counsel shall use or disclose the Confidential and Highly Confidential Information only for purposes of preparing or presenting evidence, cross examination or argument in this proceeding.

5. In addition, information deemed as “Confidential” material shall be made available to a “Reviewing Representative” who is a person who has signed a Non-Disclosure Certificate in the form attached as Appendix A hereto and who is:

- (i) an attorney for one of the Parties to this Stipulated Protective Agreement who has entered an appearance in this proceeding;
- (ii) an attorney, paralegal, or other employee associated for purposes of this proceeding with an attorney described in subparagraph 5(i);
- (iii) an expert or an employee of an expert retained by a Party to this Stipulated Protective Agreement for the purpose of advising, preparing for or testifying in this proceeding;

- (iv) an employee or other representative of a Party to this Stipulated Protective Agreement with significant responsibility in this proceeding; or
- (v) a person mutually agreed to by the Parties to this Stipulated Protective Agreement.

The Information deemed as “Highly Confidential” material may be provided to a “Reviewing Representative” who has signed a Non-Disclosure Certificate in the form attached as Appendix A hereto and who is:

- (i) an attorney for one of the Parties to this Stipulated Protective Agreement who has entered an appearance in this proceeding;
- (ii) an attorney, paralegal, or other employee associated for purposes of this proceeding with an attorney described in subparagraph 7(i);
- (iii) an expert or an employee of an expert retained by a Party to this Stipulated Protective Agreement for the purpose of advising, preparing for or testifying in this proceeding; or
- (iv) a person mutually agreed to by the Parties to this Stipulated Protective Agreement.

Provided, however, that a Reviewing Representative of Highly Confidential information shall not be a “Restricted Person” as defined in Paragraph 6 or include any employee or agent of a customer of a Party to this Stipulated Protective Agreement, a competitor of a Party to this Stipulated Protective Agreement or a competitor of a customer of a Party to this Stipulated Protective Agreement, whose duties include: (a) the marketing, sale or purchase of natural gas or natural gas transportation services; (b) management regarding or supervision of any employee whose duties include the marketing, sale or purchase of natural gas or natural gas transportation services for a competitor of a Party to this Stipulated Protective Agreement or a customer of the Party; (c) consulting services for a competitor of a Party to this Stipulated Protective Agreement or a customer of the Party regarding the marketing, sale or purchase of natural gas or natural gas transportation services; or (d) other strategic business activities in which use of market sensitive

information could be reasonably expected to cause competitive harm to a Party or to a customer of a Party to this Stipulated Protective Agreement.

A qualified “Reviewing Representative” for “Highly Confidential” material may review and discuss “Highly Confidential” material with their client or with the entity with which they are employed or associated, to the extent that the client or entity is not a “Restricted Person”, but may not share with or permit the client or entity to review the “Highly Confidential” material. Such discussions must be general in nature and not disclose specific “Highly Confidential” information. However, counsel for I&E, OCA, and OSBA may share Proprietary Information with the I&E Director, the I&E Deputy Director, Consumer Advocate and Small Business Advocate, respectively, without obtaining a Non-Disclosure Certificate from these individuals, provided that these individuals otherwise abide by the terms of this Protective Order.

6. A Reviewing Representative or counsel entering an appearance may not be a “Restricted Person,” unless authorized to review material by agreement of the producing Party. “Restricted Person” shall mean: (a) an officer, director, stockholder, partner, owner or employee of any competitor of a Party; (b) an officer, director, stockholder, partner, owner or employee of any affiliate of a competitor of a Party (including any association of competitors of a Party); (c) an officer, director, stockholder, owner or employee of a competitor of a customer of a Party if the Proprietary Information concerns a specific identifiable customer of the Party; (d) an officer, director, stockholder, owner or employee of an affiliate of a competitor of a customer of a Party if the Proprietary Information concerns a specific identifiable customer of the Party; (e) an officer, director, stockholder, owner or employee of an entity which has sold gas to a Party in the last twenty-four (24) months; or (f) an officer, director, stockholder, owner or employee of an affiliate of an entity which has sold gas to a Party in the last twenty-four (24) months; provided, however,

that no expert shall be disqualified on account of being a stockholder, partner, or owner unless that expert's interest in the business would provide a significant motive for violation of the limitations of permissible use of the Proprietary Information. For purposes of this Protective Order, stocks, partnership or other ownership interests valued at more than \$10,000 or constituting more than a 1% interest in a business establishes a significant motive for violation. The OSBA's consultant, Mr. Robert D. Knecht, will not be considered a "Restricted Person," provided that Mr. Knecht does not share, distribute, or discuss the Proprietary Information with any person except authorized OSBA representatives.

7. If an expert for a Party to this proceeding, another member of the expert's firm or the expert's firm also serves as an expert for, or as a consultant or advisor to, a Restricted Person, said expert must: (1) identify for the other Party to this proceeding, each Restricted Person and each expert or consultant; (2) make reasonable attempts to segregate those personnel assisting in the expert's participation in this proceeding from those personnel working on behalf of a Restricted Person; and (3) if segregation of such personnel is impractical, the expert shall give to the producing Party written assurances that the lack of segregation will in no way jeopardize the interests of the producing Party or its customers. The Parties retain the right to challenge the adequacy of the written assurances that the Parties or their customers' interests will not be jeopardized.

8. No other person may have access to the Proprietary Information except as authorized by order of the Commission or the Presiding Administrative Law Judge. Such persons shall use and disclose such information only in accordance with this Protective Order.

9. If a party wishes to designate as a Reviewing Representative a person not described above, the Party shall seek agreement from the party providing the Proprietary Information. If no

agreement is reached, the Party shall submit the disputed designation to the Administrative Law Judge for resolution.

10. Proprietary Information produced in this proceeding shall be made available to the Commission and its Staff. For purposes of filing, to the extent that Proprietary Information is placed in the Commission's report folders, such information shall be handled in accordance with routine Commission procedures inasmuch as the report folders are not subject to public disclosure. To the extent that Proprietary Information is placed in the Commission's testimony or document folders, such information shall be separately bound, conspicuously marked, and accompanied by a copy of this Protective Order. Public inspection of Proprietary Information shall be permitted only in accordance with this Protective Order.

11. The producing Party shall designate data or documents as containing Proprietary Information by stamping the documents "Confidential" or "Highly Confidential." Where only part of data or compilations or multi-page documents constitutes or contains Proprietary Information, the Parties, insofar as reasonably practical, within discovery or other time constraints imposed in this proceeding, shall designate only the specific data or pages of documents which constitute or contain Property Information.

12. Nonproducing Parties will consider and treat the Proprietary Information as within the exemptions from disclosure provided in the Pennsylvania Right to Know Law, Act of February 14, 2008, P.L. 6, 65 P.S. §§ 67.101-67.3104, effective January 1, 2009, until such time as the information is found to be non-proprietary.

13. Any public reference to Proprietary Information by a Party shall be to the title or exhibit reference in sufficient detail to permit persons with access to the Proprietary Information

to fully understand the reference and not more. The Proprietary Information shall remain a part of the record, to the extent admitted, for all purposes of administrative or judicial review.

14. Part of any record of this proceeding containing Proprietary Information shall be sealed for all purposes, including administrative and judicial review, unless such Proprietary Information is released from the restrictions of this Protective Order, either through the agreement of the Parties or pursuant to an order of the Administrative Law Judge, the Commission or an appellate court.

15. A nonproducing Party shall retain the right to question or challenge the confidential or proprietary nature of Proprietary Information. If a nonproducing Party challenges the designation of a document or information as within the definition established in paragraph 3 of this Protective Order, the Party producing the information retains the burden of demonstrating that the designation is appropriate.

16. Each Party shall retain the right to question or challenge the admissibility of Proprietary Information; to object to the production of Proprietary Information on any proper ground other than confidentiality; to refuse to produce Proprietary Information pending the adjudication of the objection; and to seek additional measures of protection of Proprietary Information beyond those provided in this Protective Order.

17. Within 30 days after a Commission Final Order is entered in the above-captioned proceeding, or in the event of appeals, within thirty days after appeals are finally decided, the nonproducing Parties, upon request by the producing Party, shall either destroy or return to the producing Party all copies of all documents and other materials not entered into the record, including notes, which contain any Proprietary Information. In the event that a nonproducing Party elects to destroy all copies of documents and other materials containing Proprietary Information

instead of returning the copies of documents and other materials containing Proprietary Information to the producing Party, the nonproducing Party shall certify in writing to the producing Party that the Proprietary Information has been destroyed.

18. If any person who has had access to Proprietary Information subsequently is assigned to perform any duties which would make that person ineligible to be a Reviewing Representative of “Confidential” or “Highly Confidential” information, that person shall immediately inform the producing Party of his or her new duties, shall dispose of any Proprietary Information and any information derived therefrom in his or her possession, and shall continue to comply with the requirements of this Protective Order with regard to the Proprietary Information to which that person previously had access.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Administrative Law Judge  
Emily I. DeVoe

**APPENDIX A**

Pennsylvania Public Utility Commission	:	R-2021-3024349
Office of Consumer Advocate	:	C-2021-3024643
Office of Small Business Advocate	:	C-2021-3024762
	:	
v.	:	
	:	
Columbia Gas of Pennsylvania, Inc. 1307(f)	:	

**NON-DISCLOSURE CERTIFICATE**

TO WHOM IT MAY CONCERN:

The undersigned is a Reviewing Representative of the \_\_\_\_\_, a party to this proceeding (“Party”), and is not, or has no knowledge or basis for believing that he/she is a “Restricted Person” as that term is defined in Paragraph 6 of the Stipulated Protective Agreement executed on behalf of the Party with regard to the above-referenced proceeding or prohibited from being a “Reviewing Representative of Highly Confidential information” pursuant to Paragraph 5 of the Stipulated Protective Agreement. The undersigned has read and understands the Stipulated Protective Agreement in the above-referenced proceeding, which Stipulated Protective Agreement deals with the treatment of Proprietary Information. The undersigned agrees to be bound by, and comply with, the terms and conditions of said Stipulated Protective Agreement.

\_\_\_\_\_  
Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Employer