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File #: 182466

June 17, 2021

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-2021-3024296**

Dear Secretary Chiavetta:

Attached please find the Answer to the Motion to Compel of Richard C. Culbertson on behalf of Columbia Gas of Pennsylvania, Inc. Copies will be provided as indicated on the Certificate of Service.

Respectfully submitted,



Lindsay A. Berkstresser

LAB/kl
Attachment

cc: Honorable Mark A. Hoyer (w/att.)
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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Date: June 17, 2021

A handwritten signature in cursive script, reading "Lindsay A. Berkstresser". The signature is written in dark ink and is positioned above a horizontal line.

Lindsay A. Berkstresser

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	
	:	
v.	:	Docket No. R-2021-3024296
	:	
Columbia Gas of Pennsylvania, Inc.	:	

**ANSWER OF COLUMBIA GAS OF PENNSYLVANIA, INC.
TO THE MOTION TO COMPEL OF
RICHARD C. CULBERTSON**

Columbia Gas of Pennsylvania, Inc. (“Columbia” or the “Company”) hereby submits this Answer to the Motion to Compel of Richard C. Culbertson Set I, Question 1, pursuant to 52 Pa. Code § 5.342(g)(1). As explained below, Mr. Culbertson’s Motion to Compel should be denied because Set I, Question 1 (which generally pertains to internal controls) is vague, irrelevant and outside the scope of this proceeding, unlikely to lead to the discovery of admissible evidence, and unduly burdensome.

I. BACKGROUND

On June 3, 2021, Mr. Culbertson issued Set I, Question 1, which contains subparts a. through g.

On June 8, 2021, Columbia served objections to Set I, Question 1. A true and correct copy of Columbia’s objections is attached hereto as Appendix A.

Counsel for Columbia and Mr. Culbertson discussed Columbia’s objections to Set I, Question 1 but were unable to resolve the objections.

On June 11, 2021, Mr. Culbertson filed a Motion to Compel Columbia’s response to Set I, Question 1.¹

II. LEGAL STANDARD

Pursuant to Section 5.321(c), a party may obtain discovery of any matter not privileged that is relevant to a pending proceeding and that is reasonably calculated to lead to the discovery of admissible evidence. 52 Pa. Code § 5.321(c). 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).² 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...”).

The Commission’s regulations place limitations on the scope of discovery. Discovery that would cause unreasonable burden or expense or require an unreasonable investigation by a party is not permitted. 52 Pa. Code § 5.361(a)(2), (4). “The law is [] clear that the Commission has the right to limit discovery that would place an unreasonable burden upon a participant in litigation.” *Application of Newtown Artesian Water Company and Indian Rock Water Company*, Docket No. A-212070, 1990 Pa. PUC LEXIS 83 (June 20, 1990) citing *City of Pittsburgh v. Pa. PUC*, 526 A.2d 1243, 1249-50 (Pa. Cmwlth. 1987).

¹ Mr. Culbertson’s service email dated June 11, 2021 failed to attach the Motion to Compel. The Motion to Compel was sent on Sunday, June 13, 2021.

² 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).

III. MR. CULBERTSON'S MOTION TO COMPEL SHOULD BE DENIED.

Set I, Question No. 1 provide as follows:

Reference NiSource Inc. UNITED STATES SECURITIES AND EXCHANGE COMMISSION FORM 10-K For the fiscal year ended December 31, 2020. On page 118.

“Our management, including our chief executive officer and chief financial officer, are responsible for establishing and maintaining internal control ... Our management has adopted the 2013 framework set forth in the Committee of Sponsoring Organizations [COSO] of the Treadway Commission report, Internal Control - Integrated Framework...”

a. Does Columbia recognize the GAO Green Book – Internal Controls, to be equivalent to the COSO Internal Control-Integrated Framework requirements? Please explain.

b. Has Columbia Gas of Pennsylvania as a subsidiary of NiSource also adopted the COSO Internal Control-Integrated Framework?

c. Please provide NiSource and CPA applicable policies, procedures, requirements, required training material, and the like that are intended to implement this internal control integrated framework.

d. The COSO framework defines internal control as:

Internal control is a process, effected by an entity's board of directors, management, and other personnel, designed to provide reasonable assurance regarding the achievement of objectives relating to operations, reporting, and compliance.

i) Has Columbia designed internal controls that provide reasonable assurance that objectives and requirements under operations are effective and efficient per the COSO requirements? Please provide substantiation.

ii) Has Columbia designed internal controls that provide reasonable assurance that objectives and requirements are being met under financial, non-financial, internal, and external reporting per the COSO requirements? Please provide substantiation.

iii) Has Columbia designed internal controls that provide reasonable assurance that objectives and requirements under compliance with laws, regulations, standards from recognized standards bodies, tariff, internal policy—e.g. NiSource Gas Standards, PUC orders...? Please provide substantiation.

iv) Has Columbia designed internal controls that provide reasonable assurance of adequate and necessary protection of assets, including company property, money, undue risk and liability, and other property per the COSO requirements? Please provide substantiation.

e. Please survey senior management by name of Columbia and ask the following questions without prompting, coordinating, or research: (Please include at least ten individuals who have decision-making and accountability responsibility, and the complete audit and compliance staff. These individuals include top management from the organization chart and their leading decision-making direct reports. Include name, title, areas of responsibility, and time in position.)

i) Have you been aware of and have read a document entitled Internal Control - Integrated Framework by the Committee of Sponsoring Organizations [COSO] of the Treadway Commission?

ii) Have you been aware and use of a similar document entitled Internal Control in the Federal Government by U.S. Government Accountability Office?

iii) Have you initiated changes under your area of responsibility as a result of this document? Please provide examples.

ii) Please provide your understanding of internal controls as they apply to your organization.

iv) Do you know if you have access to both of these documents?

f. If NiSource/ Columbia has a training program regarding internal controls, what is the nature of the program?

g. Is there a method used to assure compliance and conformance to requirements included in applicable laws, regulations, tariffs, and internal policy? Please explain.

i) If there are errors and omissions, what is the method to prevent and correct such deficiencies and weaknesses?

Set I, Question 1, including all subparts, requests information that is irrelevant to this proceeding and unlikely to lead to the discovery of admissible evidence. Subparts (c) and (d) to Question 1 are vague and worded in such a manner that it is unclear what specific information is being requested. In addition, subpart (e) to Question 1 is unduly burdensome because it would require Columbia to survey numerous individuals, including “senior management” and “the complete audit and compliance staff” without “prompting or coordinating.” For these reasons and as fully explained herein, Mr. Culbertson’s Motion to Compel should be denied.

Question 1 seeks information regarding internal controls. While Columbia is not opposed to explaining the internal controls that the Company has in place, the internal controls referenced in Question 1 are not relevant to the base rate proceeding before the Commission. Specifically, subpart (a) of Question 1 refers to the GAO Green Book. The GAO Green Book pertains to federal government standards for internal controls. The internal control standards used by the federal government have nothing to do with the rates and service of Columbia and are completely irrelevant to and outside the scope of this proceeding. Columbia is without sufficient information to hypothesize regarding the internal controls used by federal government agencies.

Question 1 is also overly broad and contains vague requests. Question 1, subpart (c) references “CPA applicable policies, procedures, requirements, required training material, and the like.” Question 1, subpart (d)(iii) references “objectives and requirements under compliance with laws, regulations, standards from recognized standards bodies, tariff, internal policy—e.g. NiSource Gas Standards, PUC orders...” (See Question 1, subparts (c) and (d)(iii)). These requests are framed in a very vague manner and are extremely broad, which make it difficult, if not impossible, to respond. Question 1, subpart (c) also requests information from NiSource that is not within Columbia’s possession or control.

In his Motion to Compel, Mr. Culbertson states, “My questions are normal audit questions. Those being audited or investigated do not control the questions or the option to opt-out of the process.” (Motion to Compel, p. 4.) However, Mr. Culbertson fails to recognize that he is not auditing Columbia. This is a base rate proceeding, and the questions being asked must be permissible under the Commission’s regulations pertaining to discovery.

Finally, Question 1, subpart (e) is overly burdensome. Question 1, subpart (e) asks Columbia to “survey senior management by name of Columbia and ask the following questions

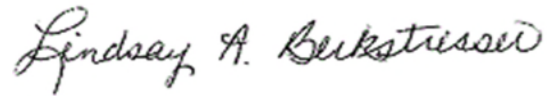
without prompting, coordinating, or research: (Please include at least ten individuals who have decision-making and accountability responsibility, and the complete audit and compliance staff. . .” Not only are the questions in the requested survey irrelevant to the rates and service of Columbia, conducting the requested survey of “senior management” and “the complete audit and compliance staff” “without prompting, coordinating, or research” is an unreasonable and overly burdensome request. Senior management and the complete audit and compliance staff consists of numerous individuals (both inside and outside of Columbia). To survey all of these individuals would take a tremendous amount of time, effort and resources, and to reach all of these individuals “without prompting or coordinating” would be a nearly impossible task.

In his Motion to Compel, Mr. Culbertson states that internal controls are relevant to a base rate proceeding. (Motion to Compel, p. 4.) However, Set I, Question 1 is not limited to seeking information regarding the internal controls that Columbia has in place. For the reasons explained herein, it is impossible for Columbia to answer Set I, Question 1 as phrased by Mr. Culbertson because the request is vague, overly broad, and irrelevant.

IV. CONCLUSION

WHEREFORE, Columbia Gas of Pennsylvania, Inc. respectfully requests that the Motion to Compel of Richard C. Culbertson be denied.

Respectfully submitted,



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