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File #: 182466

June 21, 2021

***VIA ELECTRONIC FILING***

Rosemary Chiavetta, Secretary  
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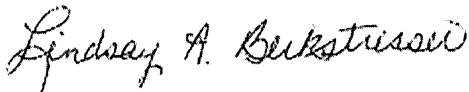
**Re: PA Public Utility Commission v. Columbia Gas of Pennsylvania, Inc.  
Docket No. R-2021-3024296**

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Dear Secretary Chiavetta:

Attached please find the Answer to the Motion to Compel Set II 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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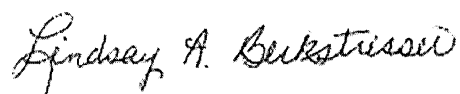
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Date: June 21, 2021

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

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Lindsay A. Berkstresser

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

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

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Columbia Gas of Pennsylvania, Inc. (“Columbia” or the “Company”) hereby submits this Answer to the Motion to Compel of Richard C. Culbertson Set II, Question 1, subparts a. through p., pursuant to 52 Pa. Code § 5.342(g)(1). As explained below, Mr. Culbertson’s Motion to Compel should be denied because Set II, Question 1 is vague, contains impermissible legal argument, and seeks information that is irrelevant, unlikely to lead to the discovery of admissible evidence, and outside the scope of this proceeding.

**I. BACKGROUND**

On June 7, 2021, Mr. Culbertson issued Set II, Question 1, which contains subparts a. through p.

On June 14, 2021, Columbia served objections to Set II, 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 II, Question 1 but were unable to resolve the objections.

On June 17, 2021, Mr. Culbertson filed a Motion to Compel Columbia’s response to Set II, Question 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).<sup>1</sup> 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).

## **III. MR. CULBERTSON’S MOTION TO COMPEL SHOULD BE DENIED.**

Set II, Question No. 1, subparts a. through h., provides as follows:

### **1. Reference: NISOURCE CODE OF BUSINESS CONDUCT**

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<sup>1</sup> 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).

*"You may report a potential violation of laws, rules or regulations or a potential violation of the Code or Company policies by contacting: Supervisor – Human Resources – Ethics Department"* Page 7 In Part

<https://www.nisource.com/docs/librariesprovider2/nisource-documents/nisource-policies/nisource-code-of-business-conduct.pdf?sfvrsn=71>

Page 9 In part:

*"USING SOLID JUDGMENT ...*

*NO CONTRACT OF EMPLOYMENT ...*

*Reports that concern a **possible violation of the law or the Code, or any complaints or concerns about accounting, auditing, disclosure or other financial or reporting practices** will be referred to the executive vice president and chief legal officer ...*

**DISCIPLINARY ACTION**

*All employees are responsible for knowing and complying with the Code and all applicable laws, regulations and policies of the Company. Employees who, in the course of their employment, violate the law, the Code or other policies of the Company, will be subject to disciplinary action up to and including termination of employment. All employees are required to complete educational assignments regarding the Company's Code."*

The COSO Internal Control Framework as well as the U.S. Sentencing Commission Chapter 8 includes requirements of preventing and detecting wrongdoing in organizations. The Sentencing Guidelines require *"the existence of an effective compliance and ethics program"*. <https://www.ussc.gov/guidelines/2018-guidelines-manual/2018-chapter-8>

a. Does NiSource / CPA have an effective compliance and ethics program consistent with and in conformity with the Sentencing Guidelines §8B2.1. *Effective Compliance and Ethics Program*? Please use the requirements listed as a self-assessment, and provide, explain and substantiate your answers. Answers need only apply to CPA operations.

b. What about before September 13, 2018, did NiSource / CPA have an effective compliance and ethics reporting program? Please explain and substantiate your answer.

c. The Code states ***possible violation ... will be referred to the executive vice president and chief legal officer***".

i) What does *"referred"* mean? Please provide the process.

ii) Why are some violations being referred to the Chief Legal Officer instead of remaining with the Ethics Department?

iii) The Director of Ethics and the Ethics Department has a duty to be perceived as and be fair and independent. Correct?

iv) Does the Chief Legal Officer provide independence and forsake her or his duty to protect NiSource? Please explain.

v) Does *"referred"* mean *"diverted"*?

vi) After a possible violation has been reported and the issues are referred to the Chief Legal Officer, who keeps track of the reported submission, the Chief Legal Officer or the Director of Ethics?

vii) Does the Director of Ethics have a direct reporting relationship with the Board of Directors?

A. Is that on an as-needed basis directly or with periodic reports approved by management? Please explain.

viii) What is the impact of Page 9, on employees and others instead of encouraging the reporting of possible violations of laws, regulations, tariff... it provides a chilling effect on employees and causes others, just remain silent?

ix) Are customer complaints regarding possible violations automatically referred to the Ethics Department? If not, why not?

d. How many ethics complaints regarding CPA have been submitted over the last five years, by year, and what percentage have been referred to the Chief Legal Officer?

e. How many ethics complaints regarding CPA have been submitted over the last five years, by year, and what percentage have been referred to the NiSource legal department at CPA?

f. How many ethics complaints were received but not recorded over the last five years, by year? Please explain.

g. Did an ethics complaint ever result in an accounting correction? If so, please explain.

h. Did an ethics concern/complaint result in a change in internal policy?

Richard C. Culbertson Set II, Question 1, subparts a. through h., pertain to the United States Sentencing Guidelines and the NiSource Code of Business Conduct. The requests in Set II, Question 1, subparts a. through h., are irrelevant and beyond the scope of permissible discovery in this proceeding. Columbia objects to Culbertson Set II, Question 1, subparts a. through h., because it seeks information that is irrelevant to this proceeding and is not likely to lead to the discovery of admissible evidence. The proper scope of discovery in this proceeding is information that relates to Columbia's rates and service. Question 1, subparts a. through h. is premised on the United States Sentencing Guidelines, which are beyond the scope of this proceeding. The United States Sentencing Guidelines are used by the United States Sentencing Commission in federal criminal cases. Specifically, the portion of the United States Sentencing Guidelines referenced in Question 1 provides as follows: "The guidelines and policy statements in this chapter apply when the convicted defendant is an organization." *See* U.S. Sentencing Guidelines, Chapter 8,

Introductory Comment.<sup>2</sup> This is not a federal criminal case. This is a base rate proceeding before the Pennsylvania Public Utility Commission.

Culbertson Set II, Question 1, subparts a. through h., also references the “COSO Internal Control Framework.” The “COSO Internal Control Framework” referenced in Question 1 is not relevant to the base rate proceeding before the Commission. Mr. Culbertson’s Motion to Compel does not explain how the COSO Internal Control Framework is relevant to this proceeding.

Culbertson Set II, Question 1, subparts a. through h., is also vague and argumentative. Specifically, subpart a. provides: “Does NiSource / CPA have an effective compliance and ethics program consistent with and in conformity with the Sentencing Guidelines §8B2.1. *Effective Compliance and Ethics Program*? Please use the requirements listed as a self-assessment, and provide, explain and substantiate your answers.” It is unclear what the reference to a “self-assessment” is requesting. In his Motion to Compel, Mr. Culbertson does not clarify what “self-assessment” he is requesting, but rather states that “quality assurance and compliance staff” should understand it. (Motion to Compel, p. 3) Subpart c. viii) provides: “What is the impact of Page 9, on employees and others instead of encouraging the reporting of possible violations of laws, regulations, tariff... it provides a chilling effect on employees and causes others, just remain silent?” This is not a question, but rather is framed as an argument.

Richard C. Culbertson Set II, Question No. 1, subparts i. through p., provides as follows:

i. 49 CFR § 192.195 *Protection against accidental overpressuring. Protection against accidental overpressuring. (a) General requirements. Except as provided in § 192.197, each pipeline that is connected to a gas source so that the maximum allowable operating pressure could be exceeded as the result of pressure control failure or of some other type of failure, must have pressure relieving or pressure limiting devices ... (b) Additional requirements for distribution systems. Each distribution system that is supplied from a source of gas that is at a higher pressure than the maximum allowable operating pressure for the system must - (1) Have pressure regulation devices capable of meeting the pressure, load, and other*

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<sup>2</sup> Available at <https://www.ussc.gov/guidelines/2018-guidelines-manual/2018-chapter-8>.



*service conditions that will be experienced in normal operation of the system, and that could be activated in the event of failure of some portion of the system; and (2) Be designed so as to prevent accidental overpressuring.*

The existence of this pipeline safety regulation has been in 49 CFR 192 from inception (August 19, 1970).

After the explosions, fires, injury, and destruction on September 13, 2018, Merrimack Valley, Massachusetts, upon investigation by the National Transportation Safety Board, they issued report PAR 1902: Overpressurization of Natural Gas Distribution System, Explosions, and Fires in Merrimack Valley, Massachusetts September 13, 2018.

<https://www.nts.gov/investigations/AccidentReports/Reports/PAR1902.pdf>

<https://www.nts.gov/investigations/AccidentReports/Pages/PSR1802.aspx>

x

NiSource as part of a Deferred Prosecution Agreement with the United States in 2020 condition paragraph 11. <https://www.justice.gov/usao-ma/page/file/1252061/download>

“11. NiSource also agrees, as to each of its subsidiaries involved in the distribution of gas through pipeline facilities in Massachusetts, Indiana, Ohio, Pennsylvania, Maryland, Kentucky and Virginia to implement and adhere to each of the recommendations from the National Transportation Safety Board ("NTSB") related to NTSB Accident ID PLD 18MR003 regarding the Event.”

On December 14, 2018, Joe Hamrock President & CEO of NiSource committed to Hon. Robert Sumwalt, Chairman of National Transportation Safety Board [https://i.heart.com/v3/re/new\\_assets/ffb1d375-fad9-454c-90a8-7ddc57dd6241?passthrough=1](https://i.heart.com/v3/re/new_assets/ffb1d375-fad9-454c-90a8-7ddc57dd6241?passthrough=1) Under P-18-009 Control Procedures During Gas Main Modifications Mr. Hamrock committed “As previously announced, NiSource will be installing automatic pressure control equipment, referred to as “slam-shut” devices, on every low-pressure system across our seven-state operating area. These devices provide another level of control and protection, in that when they sense operating pressure that is too high or too low, they immediately shut down gas to the system.”

**The requirements of 49 CFR § 192.195 Protection against accidental overpressuring were not met in Massachusetts in 2018 and Washington County PA in 2019 – and not met for about fifty years in seven NiSource companies in seven states including Pennsylvania.**

i) Did a NiSource Gas Standard require the implementation of the 49 CFR § 192.195 requirements? If so, please provide and explain.

j) Were the requirements, and installation and maintenance part of a covered tasks list of CPA’s operator personnel as required per 49 CFR §195.501 Scope. (a) *This subpart prescribes the minimum requirements for operator qualification of individuals performing **covered tasks** on a pipeline facility.* (b) *For the purpose of this subpart, a covered task is an activity, identified by the operator, that: (1) Is performed on a pipeline facility; (2) Is an operations or maintenance task; (3) Is performed as a requirement of this part; and (4) Affects the operation or integrity of the pipeline.* Yes, or No? If yes, please provide substantiation.

A. **Please provide** the covered task list and associated internal policy that apply to 49 CFR 195 Subpart G Qualification of Pipeline Personnel and 49 CFR 192 Subpart N Qualification of Pipeline Personnel

B. Operator Qualification Overview from PHMSA <https://www.phmsa.dot.gov/pipeline/operator-qualifications/operator-qualification-overview>

*"The Operator Qualification [OQ] rule was adopted into the Code of Federal Regulations under Subpart N in 49 CFR Part 192 and Subpart G in 49 CFR Part 195. Under the rule, each pipeline operator is responsible for developing an OQ program, following their written OQ plan, establishing a covered task list applicable to their system, and defining the training and qualification requirements for personnel performing covered tasks on their pipeline facility. It is the operator's responsibility to ensure their contractors and vendors comply with their program requirements.*

- 1) Are there additional gaps in process flows required in regulations and covered tasks in Columbia's distribution systems?
- 2) It is understood that contract workers who install service lines are normally laborers. Correct?
- 3) Installing a curb valve may require a plumber – was that or is that a reason not to install curb valves on service lines? Please explain.
- 0) Where do the Federal regulations require operator qualification on a property, after gas delivery, not belonging to Columbia and for workers and owners that are not employees, contractors, or vendors of Columbia Gas of Pennsylvania?
- k) Does Columbia conform to the requirements in ASME/ANSI B31.8S-2004, "Supplement to B31.8 on Managing System Integrity of Gas Pipelines," 2004? Please provide where this standard is included in NiSource / Columbia Gas Standards or procedures. Also please provide substantiation.
- l) What organization within NiSource / Columbia is responsible to address overpressurization prevention?
- m) Over the last decades did anyone within CPA report a non-compliance with the Ethics Department or otherwise with 49 CFR 192.195? Please explain.
- n) Please provide the NiSource Gas Standards that now apply and any previous standards that applied to before September 13, 2018.
- o) After the disaster, did NiSource / CPA or others do a root cause analysis to determine why there was a non-compliance with 49 CFR 192.195? If so, please provide.
- p) Were there any corrections or improvements to the ethics program as a result of the disaster in Massachusetts? Please identify and provide.

Richard C. Culbertson Set II, Question 1, subparts i. through p., pertain to an event that happened in Merrimack Valley, Massachusetts on September 13, 2018. The requests in Set II,

Question 1, subparts i. through p., are irrelevant and beyond the scope of permissible discovery in this proceeding.

Culbertson Set II, Question 1, subparts i. through p., seeks information that is irrelevant to this proceeding and is not likely to lead to the discovery of admissible evidence. The proper scope of discovery in this proceeding is information that relates to Columbia's rates and service in Pennsylvania. The information requested arises from an event that occurred in Massachusetts (outside of Columbia Gas of Pennsylvania's service territory), and investigations stemming from that event, and therefore is irrelevant and outside the scope of this proceeding because it does not pertain to the rates or service of Columbia Gas of Pennsylvania.

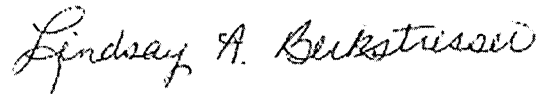
The requests in Culbertson Set II, subparts i. through p., are vague and phrased as legal argument. For example, subpart i. states: "**The requirements of 49 CFR § 192.195 Protection against accidental overpressuring were not met in Massachusetts in 2018 and Washington County PA in 2019 – and not met for about fifty years in seven NiSource companies in seven states including Pennsylvania.**" Subpart i. does not ask a question, but rather contains a legal argument. Part of subpart j. asks, "Are there additional gaps in process flows required in regulations and covered tasks in Columbia's distribution systems?" This question is vague and assumes that some "gaps" exist in either the regulations or Columbia's distribution system without any explanation as to what "gaps" are being referenced. Another request in subpart j. asks the following: "Where do the Federal regulations require operator qualification on a property, after gas delivery, not belonging to Columbia and for workers and owners that are not employees, contractors, or vendors of Columbia Gas of Pennsylvania?" This question improperly requests that Columbia conduct legal research and interpret the federal regulations.

Finally, in his Motion to Compel, Mr. Culbertson suggests that Columbia is unwilling to respond to discovery that relates to this rate case. (Motion to Compel, p. 2) Mr. Culbertson's assertion is wrong. Columbia has undertaken significant efforts to respond to all relevant discovery in this proceeding. To date, Columbia has responded to approximately 398 interrogatories from seven other parties in this proceeding. By comparison, Columbia has formally objected to only two interrogatories in this proceeding. The interrogatories to which Columbia has objected are not permissible under the Commission's regulations.

**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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Date: June 21, 2021

# APPENDIX A

---

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June 14, 2021

***VIA EMAIL (RICHARD.C.CULBERTSON@GMAIL.COM)***

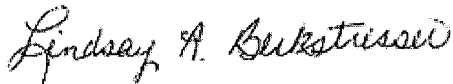
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**Re: PA Public Utility Commission v. Columbia Gas of Pennsylvania, Inc.  
Docket No. R-2021-3024296**

Dear Mr. Culbertson:

Attached please find the Objection of Columbia Gas of Pennsylvania, Inc., to the Interrogatory Propounded by Richard C. Culbertson - Set II, Question 1, in the above-referenced proceeding. Copies will be provided as indicated on the Certificate of Service.

Very truly yours,



Lindsay A. Berkstresser

LAB/jl  
Enclosures

cc: Certificate of Service  
Rosemary Chiavetta, Secretary (*Letter & 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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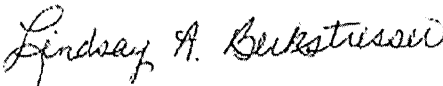
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Date: June 14, 2021

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Lindsay A. Berkstresser

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

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**OBJECTION OF COLUMBIA GAS OF PENNSYLVANIA, INC.  
TO THE INTERROGATORY PROPOUNDED BY  
RICHARD C. CULBERTSON – SET II, QUESTION 1**

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Columbia Gas of Pennsylvania, Inc. (“Columbia”) hereby submits these Objections to the Interrogatory Propounded by Richard C. Culbertson Set II, Question 1, subparts a. through p., pursuant to 52 Pa. Code § 5.342. As explained below, Columbia objects to Richard C. Culbertson Set II, Question 1, subparts a. through p., (“Culbertson Set II”) because it is vague, contains impermissible legal argument, and because it seeks information that is irrelevant, unlikely to lead to the discovery of admissible evidence, and outside the scope of this proceeding.

**I. OBJECTION TO RICHARD C. CULBERTSON SET II, QUESTION 1**

**A. Objection to Richard C. Culbertson Set II, Question 1, subparts a. through h.**

Richard C. Culbertson Set II, Question 1, subparts a. through h., provides as follows:

1. Reference: NISOURCE CODE OF BUSINESS CONDUCT  
*“You may report a potential violation of laws, rules or regulations or a potential violation of the Code or Company policies by contacting: Supervisor – Human Resources – Ethics Department”* Page 7 In Part  
<https://www.nisource.com/docs/librariesprovider2/nisource-documents/nisource-policies/nisource-code-of-business-conduct.pdf?sfvrsn=71>  
Page 9 In part:  
*“USING SOLID JUDGMENT ...*

**NO CONTRACT OF EMPLOYMENT ...**

***Reports that concern a possible violation of the law or the Code, or any complaints or concerns about accounting, auditing, disclosure or other financial or reporting practices will be referred to the executive vice president and chief legal officer ...***

**DISCIPLINARY ACTION**

***All employees are responsible for knowing and complying with the Code and all applicable laws, regulations and policies of the Company. Employees who, in the course of their employment, violate the law, the Code or other policies of the Company, will be subject to disciplinary action up to and including termination of employment. All employees are required to complete educational assignments regarding the Company's Code."***

The COSO Internal Control Framework as well as the U.S. Sentencing Commission Chapter 8 includes requirements of preventing and detecting wrongdoing in organizations. The Sentencing Guidelines require "the existence of an effective compliance and ethics program". <https://www.ussc.gov/guidelines/2018-guidelines-manual/2018-chapter-8>

a. Does NiSource / CPA have an effective compliance and ethics program consistent with and in conformity with the Sentencing Guidelines §8B2.1. *Effective Compliance and Ethics Program*? Please use the requirements listed as a self-assessment, and provide, explain and substantiate your answers. Answers need only apply to CPA operations.

b. What about before September 13, 2018, did NiSource / CPA have an effective compliance and ethics reporting program? Please explain and substantiate your answer.

c. The Code states ***possible violation ... will be referred to the executive vice president and chief legal officer***".

i) What does "referred" mean? Please provide the process.

ii) Why are some violations being referred to the Chief Legal Officer instead of remaining with the Ethics Department?

iii) The Director of Ethics and the Ethics Department has a duty to be perceived as and be fair and independent. Correct?

iv) Does the Chief Legal Officer provide independence and forsake her or his duty to protect NiSource? Please explain.

v) Does "referred" mean "diverted"?

vi) After a possible violation has been reported and the issues are referred to the Chief Legal Officer, who keeps track of the reported submission, the Chief Legal Officer or the Director of Ethics?

vii) Does the Director of Ethics have a direct reporting relationship with the Board of Directors?

A. Is that on an as-needed basis directly or with periodic reports approved by management? Please explain.

viii) What is the impact of Page 9, on employees and others instead of encouraging the reporting of possible violations of laws, regulations, tariff... it provides a chilling effect on employees and causes others, just remain silent?

- ix) Are customer complaints regarding possible violations automatically referred to the Ethics Department? If not, why not?
- d. How many ethics complaints regarding CPA have been submitted over the last five years, by year, and what percentage have been referred to the Chief Legal Officer?
- e. How many ethics complaints regarding CPA have been submitted over the last five years, by year, and what percentage have been referred to the NiSource legal department at CPA?
- f. How many ethics complaints were received but not recorded over the last five years, by year? Please explain.
- g. Did an ethics complaint ever result in an accounting correction? If so, please explain.
- h. Did an ethics concern/complaint result in a change in internal policy?

Richard C. Culbertson Set II, Question 1, subparts a. through h., pertain to the United States Sentencing Guidelines and the NiSource Code of Business Conduct. The requests in Set I, Question 1, subparts a. through h., are irrelevant and beyond the scope of permissible discovery in this proceeding. Pursuant to Section 5.321(c) of the Commission's regulations, a party may obtain discovery of any matter not privileged that is relevant to a pending proceeding or 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).<sup>1</sup> 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*

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<sup>1</sup> 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).

*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...”).

Columbia objects to Culbertson Set II, Question 1, subparts a. through h., because it seeks information that is irrelevant to this proceeding and is not likely to lead to the discovery of admissible evidence. The proper scope of discovery in this proceeding is information that relates to Columbia’s rates and service. Question 1, subparts a. through h. is premised on the United States Sentencing Guidelines, which are beyond the scope of this proceeding. The United States Sentencing Guidelines are used by the United States Sentencing Commission in federal criminal cases. Specifically, the portion of the United States Sentencing Guidelines referenced in Question 1 provides as follows: “The guidelines and policy statements in this chapter apply when the convicted defendant is an organization.” *See* U.S. Sentencing Guidelines, Chapter 8, Introductory Comment.<sup>2</sup> This is not a federal criminal case. This is a base rate proceeding before the Pennsylvania Public Utility Commission.

Culbertson Set II, Question 1, subparts a. through h., also references the “COSO Internal Control Framework.” The “COSO Internal Control Framework” referenced in Question 1 is not relevant to the base rate proceeding before the Commission. The “COSO Internal Control Framework” has nothing to do with the rates and service of Columbia and is outside the scope of this proceeding.

Columbia further objects to Culbertson Set II, Question 1, subparts a. through h., because it is vague and argumentative. Specifically, subpart a. provides: “Does NiSource / CPA have an effective compliance and ethics program consistent with and in conformity with the Sentencing Guidelines §8B2.1. *Effective Compliance and Ethics Program*? Please

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<sup>2</sup> Available at <https://www.uscc.gov/guidelines/2018-guidelines-manual/2018-chapter-8>.

use the requirements listed as a self-assessment, and provide, explain and substantiate your answers.” It is unclear what the reference to a “self-assessment” is requesting. Subpart c. viii) provides: “What is the impact of Page 9, on employees and others instead of encouraging the reporting of possible violations of laws, regulations, tariff... it provides a chilling effect on employees and causes others, just remain silent?” This is not a question, but rather is framed as an argument.

**B. Objection to Richard C. Culbertson Set II, Question 1, subparts i. through p.**

Culbertson Set II, Question 1, subparts i. through p., provide as follows:

*i. 49 CFR § 192.195 Protection against accidental overpressuring. Protection against accidental overpressuring. (a) General requirements. Except as provided in § 192.197, each pipeline that is connected to a gas source so that the maximum allowable operating pressure could be exceeded as the result of pressure control failure or of some other type of failure, must have pressure relieving or pressure limiting devices ... (b) Additional requirements for distribution systems. Each distribution system that is supplied from a source of gas that is at a higher pressure than the maximum allowable operating pressure for the system **must** - (1) Have pressure regulation devices capable of meeting the pressure, load, and other service conditions that will be experienced in normal operation of the system, and that could be activated in the event of failure of some portion of the system; and (2) **Be designed so as to prevent accidental overpressuring.***

The existence of this pipeline safety regulation has been in 49 CFR 192 from inception (August 19, 1970).

After the explosions, fires, injury, and destruction on September 13, 2018, Merrimack Valley, Massachusetts, upon investigation by the National Transportation Safety Board, they issued report PAR 1902: Overpressurization of Natural Gas Distribution System, Explosions, and Fires in Merrimack Valley, Massachusetts September 13, 2018.

<https://www.nts.gov/investigations/AccidentReports/Reports/PAR1902.pdf>

<https://www.nts.gov/investigations/AccidentReports/Pages/PSR1802.aspx>

NiSource as part of a Deferred Prosecution Agreement with the United States in 2020 condition paragraph 11. <https://www.justice.gov/usao-ma/page/file/1252061/download>

“11. NiSource also agrees, as to each of its subsidiaries involved in the distribution of gas through pipeline facilities in Massachusetts, Indiana, Ohio, Pennsylvania, Maryland, Kentucky and Virginia to implement and adhere to each of the recommendations from the National Transportation

Safety Board ("NTSB ") related to NTSB Accident ID PLD 18MR003 regarding the Event."

On December 14, 2018, Joe Hamrock President & CEO of NiSource committed to Hon. Robert Sumwalt, Chairman of National Transportation Safety Board [https://i.heart.com/v3/re/new\\_assets/ffb1d375-fad9-454c-90a8-7ddc57dd6241?passthrough=1](https://i.heart.com/v3/re/new_assets/ffb1d375-fad9-454c-90a8-7ddc57dd6241?passthrough=1) Under P-18-009 Control Procedures During Gas Main Modifications Mr. Hamrock committed "As previously announced, NiSource will be installing automatic pressure control equipment, referred to as "slam-shut" devices, on every low-pressure system across our seven-state operating area. These devices provide another level of control and protection, in that when they sense operating pressure that is too high or too low, they immediately shut down gas to the system."

The requirements of **49 CFR § 192.195 Protection against accidental overpressuring were not met in Massachusetts in 2018 and Washington County PA in 2019 – and not met for about fifty years in seven NiSource companies in seven states including Pennsylvania.**

i) Did a NiSource Gas Standard require the implementation of the 49 CFR § 192.195 requirements? If so, please provide and explain.

j) Were the requirements, and installation and maintenance part of a covered tasks list of CPA's operator personnel as required per 49 CFR §195.501 Scope. *(a) This subpart prescribes the minimum requirements for operator qualification of individuals performing covered tasks on a pipeline facility. (b) For the purpose of this subpart, a covered task is an activity, identified by the operator, that: (1) Is performed on a pipeline facility; (2) Is an operations or maintenance task; (3) Is performed as a requirement of this part; and (4) Affects the operation or integrity of the pipeline. Yes, or No? If yes, please provide substantiation.*

A. **Please provide** the covered task list and associated internal policy that apply to 49 CFR 195 Subpart G Qualification of Pipeline Personnel and 49 CFR 192 Subpart N Qualification of Pipeline Personnel

B. Operator Qualification Overview from PHMSA <https://www.phmsa.dot.gov/pipeline/operator-qualifications/operator-qualification-overview>

*"The Operator Qualification [OQ] rule was adopted into the Code of Federal Regulations under Subpart N in 49 CFR Part 192 and Subpart G in 49 CFR Part 195. Under the rule, each pipeline operator is responsible for developing an OQ program, following their written OQ plan, establishing a covered task list applicable to their system, and defining the training and qualification requirements for personnel performing covered tasks on their pipeline facility. It is the operator's responsibility to ensure their contractors and vendors comply with their program requirements.*

1) Are there additional gaps in process flows required in regulations and covered tasks in Columbia's distribution systems?

2) It is understood that contract workers who install service lines are normally laborers. Correct?

3) Installing a curb valve may require a plumber – was that or is that a reason not to install curb valves on service lines? Please explain.

0) Where do the Federal regulations require operator qualification on a property, after gas delivery, not belonging to Columbia and for workers and owners that are not employees, contractors, or vendors of Columbia Gas of Pennsylvania?

k) Does Columbia conform to the requirements in ASME/ANSI B31.8S-2004, "Supplement to B31.8 on Managing System Integrity of Gas Pipelines," 2004? Please provide where this standard is included in NiSource / Columbia Gas Standards or procedures. Also please provide substantiation.

l) What organization within NiSource / Columbia is responsible to address overpressurization prevention?

m) Over the last decades did anyone within CPA report a non-compliance with the Ethics Department or otherwise with 49 CFR 192.195? Please explain.

n) Please provide the NiSource Gas Standards that now apply and any previous standards that applied to before September 13, 2018.

o) After the disaster, did NiSource / CPA or others do a root cause analysis to determine why there was a non-compliance with 49 CFR 192.195? If so, please provide.

p) Were there any corrections or improvements to the ethics program as a result of the disaster in Massachusetts? Please identify and provide.

Richard C. Culbertson Set II, Question 1, subparts i. through p., pertain to an event that happened Merrimack Valley, Massachusetts on September 13, 2018. The requests in Set II, Question 1, subparts i. through p., are irrelevant and beyond the scope of permissible discovery in this proceeding. Pursuant to Section 5.321(c) of the Commission's regulations, a party may obtain discovery of any matter not privileged that is relevant to a pending proceeding or 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).<sup>3</sup> Irrelevant or immaterial evidence is not

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<sup>3</sup> 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



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...”).

Columbia objects to Culbertson Set II, Question 1, subparts i. through p., because it seeks information that is irrelevant to this proceeding and is not likely to lead to the discovery of admissible evidence. The proper scope of discovery in this proceeding is information that relates to Columbia’s rates and service in Pennsylvania. The information requested arises from an event that occurred in Massachusetts (outside of Columbia Gas of Pennsylvania’s service territory), and investigations stemming from that event, and therefore is irrelevant and outside the scope of this proceeding because it does not pertain to the rates or service of Columbia Gas of Pennsylvania.

Columbia also objects to Culbertson Set II, Question 1, subparts i. through p., to the extent that it seeks information from NiSource that is not within Columbia’s possession or control. NiSource is not a party to this proceeding.

Columbia also objects to Culbertson Set II, subparts i. through p., because the requests are vague and phrased as legal argument. For example, subpart i. states: “The requirements of **49 CFR § 192.195 Protection against accidental overpressuring were not met in Massachusetts in 2018 and Washington County PA in 2019 – and not met for about fifty years in seven NiSource companies in seven states including Pennsylvania.**” Subpart i. does not ask a question, but rather contains a legal argument. Part of subpart j. asks, “Are there additional gaps in process flows required in regulations and covered tasks

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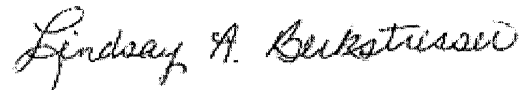
issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence.” *Parr*, 109 A.3d at 697 (quoting Pa.R.E. 403).

in Columbia's distribution systems?" This question is vague and assumes that some "gaps" exist in either the regulations or Columbia's distribution system without any explanation as to what "gaps" are being referenced. Another request in subpart j. asks the following: "Where do the Federal regulations require operator qualification on a property, after gas delivery, not belonging to Columbia and for workers and owners that are not employees, contractors, or vendors of Columbia Gas of Pennsylvania?" This question improperly requests that Columbia conduct legal research and interpret the federal regulations.

## II. CONCLUSION

WHEREFORE, Columbia Gas of Pennsylvania, Inc. specifically objects to Richard C. Culbertson Set II, Question 1 (including all subparts) because it is irrelevant, vague, argumentative, and seeks information that is beyond the scope of permissible discovery in this proceeding.

Respectfully submitted,



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