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June 22, 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

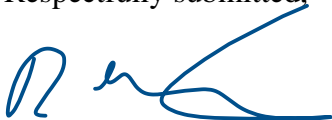
Re: PA Public Utility Commission v. Columbia Gas of Pennsylvania, Inc.
Docket No. R-2021-3024296

Dear Secretary Chiavetta:

Attached please find my response to Columbia's 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,



Richard C. Culbertson

CERTIFICATE OF SERVICE

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

I hereby certify that I have this day served a true copy of the following document, to Columbia Gas of Pennsylvania, Inc., Richard C. Culbertson Response to Columbia's Answer to Culbertson's Motion to Compel, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 22nd day of June 2021.

SERVICE BY E-MAIL ONLY

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Dated: June 21, 2021

eFiling Confirmation Number

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION
Pennsylvania Public Utility Commission

v.

Columbia Gas of Pennsylvania, Inc.

:
:
:
:
:

Docket No. R-2021-3024296

REPLY OF RICHARD C. CULBERTSON TO COLUMBIA GAS OF PENNSYLVANIA, INC.'S
ANSWER TO THE MOTION TO COMPEL OF
RICHARD C. CULBERTSON'S SET I QUESTION 1

Richard C. Culbertson hereby provides a reply to Columbia Gas of Pennsylvania, Inc.'s ("Columbia" or the "Company") answer to the Motion to Compel of Richard C. Culbertson for Set I, Question 1.

"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 agree Columbia Gas, a NiSource Company, believes internal control requirements, either provided by the COSO Internal Control-Integrated Framework or the GAO Green Book – Internal Controls, are 'vague, irrelevant and outside the scope of this proceeding, [and Columbia's operations, reporting and compliance] and [are] unduly burdensome.'

For individuals that are reasonably knowledgeable of corporate governance for publicly traded corporations in the United States, the above quote is alarming.

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.

Legal and Regulatory Standards Regarding Internal Controls

Preface – it is important that we do not get into a battle of legal quotes and citations. The purpose of this rate case is to determine if the existing and proposed rate increase --- rates and charges are just and reasonable per Federal and Pennsylvania law. To do that requires due diligence, due care, and due process. The request for \$98,300,000 annual rate increase is an enormous amount of money. We also know the existing rate base per customer is extremely different from that of Indiana and Ohio as provided in my Formal Complaint that was sourced from Columbia's parent NiSource's representations to investors. (CPA is ~ 2.7 times greater than in Indiana and 2.6 times higher than in Ohio.)

Internal Controls are the fundamentals of organizational governance.

1. PA Energy Consumer Bill of Rights – *“Your other rights in the competitive energy marketplace: The right to be protected from unfair, deceptive, fraudulent and anti-competitive practices of providers of electric and natural gas service.”* Internal controls of a public utility should prevent and detect these wrongful practices. Internal controls of a public utility are of the public interest.
https://www.puc.pa.gov/general/consumer_ed/pdf/Consumer_Bill_Of_Rights.pdf
2. Interrogatories are meant to test representations and assertions of Columbia Gas of Pennsylvania and are a normal and reasonable approach to due process and due diligence in a \$98 Million rate case.
3. From the U.S. Securities and Exchange Commission: *Management's Report on Internal Control Over Financial Reporting and Certification of Disclosure in Exchange Act Periodic Reports-- Frequently Asked Questions (revised October 6, 2004)*
<https://www.sec.gov/info/accountants/controlfaq1004.htm>
 - a. This SEC document mentions “internal Control” 102 times... hardly irrelevant and vague.
4. NiSource is listed on the New York Stock Exchange (NYSE), I refer Columbia / NiSource to the NYSE: *Corporate Governance Guide*. Internal controls are mentioned 56 times.
https://www.nyse.com/publicdocs/nyse/listing/NYSE_Corporate_Governance_Guide.pdf
 - a. Violations of NYSE expectations can result in delisting.
5. UNITED STATES SECURITIES AND EXCHANGE COMMISSION FORM 10-K For the fiscal year ended December 31, 2020, NiSource Inc. mentions internal control 46 times.
 - a. *“Opinion on Internal Control over Financial Reporting We have audited the internal control over financial reporting of NiSource Inc. and subsidiaries (the “Company”) as of December 31, 2020, based on criteria established in Internal Control-Integrated Framework (2013) issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).”*
Deloitte
 - b. ITEM 9A. CONTROLS AND PROCEDURES (Page 118)

Evaluation of Disclosure **Controls** and Procedures

*Our chief executive officer and chief financial officer are responsible for evaluating the effectiveness of disclosure **controls** and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)). Our disclosure **controls** and procedures are designed to provide reasonable assurance that the information required to be disclosed by the Company in reports that are filed or submitted under the Exchange Act are accumulated and communicated to management, including our chief executive officer and chief financial officer, as appropriate, to allow timely decisions regarding required disclosure and is recorded, processed, summarized and reported within the time periods specified in the rules and forms of the SEC. Based upon that evaluation, our chief executive officer and chief financial officer concluded that, as of the end of the period covered by this report, disclosure **controls** and procedures were effective to provide reasonable assurance that financial information was processed, recorded and reported accurately.*

Management's Annual Report on **Internal Control over Financial Reporting**

***Our management, including our chief executive officer and chief financial officer, are responsible for establishing and maintaining internal control over financial reporting**, as such term is defined under Rule 13a-15(f) or Rule 15d-15(f) promulgated under the Exchange Act. However, management would note that a control system can provide only reasonable, not absolute, assurance that the objectives of the control system are met. **Our management has adopted the 2013 framework set forth in the Committee of Sponsoring Organizations of the Treadway Commission report, Internal Control - Integrated Framework, the most commonly used and understood framework for evaluating internal control over financial reporting, as its framework for evaluating the reliability and effectiveness of internal control over financial reporting.** During 2020, we conducted an evaluation of our internal control over financial reporting. Based on this evaluation, management concluded that our internal control over financial reporting was effective as of the end of the period covered by this annual report.*

Deloitte & Touche LLP, our independent registered public accounting firm, issued an attestation report on our internal controls over financial reporting which is included herein.

Conclusion: Many stakeholders, including governments and customers, are interested in Columbia's internal controls. Full participation in discovery is an essential element of due process. Columbia and its external attorneys need to do what they are obligated to do in this \$98,300,000 rate case. All attorneys must fulfill their professional obligations ... ***"PA title 204, Chapter 81 Rule 3.4. Fairness to Opposing Party and Counsel.***

*A lawyer **shall not:** (a) unlawfully **obstruct another party's access to evidence** or unlawfully alter, destroy or **conceal a document or other material having potential evidentiary value** or **assist another person to do any such act;***

(b) falsify evidence, counsel or assist a witness to testify falsely...

Comment:

(1) The procedure of the adversary system contemplates that the evidence in a case is to be marshalled competitively by the contending parties. Fair competition in the adversary system is secured by prohibitions against destruction or concealment of evidence, improperly influencing witnesses, obstructive tactics in discovery procedure, and the like.

*(2) Documents and other items of evidence are often essential to establish a claim or defense. Subject to evidentiary privileges, the right of an opposing party, including the government, to obtain evidence through discovery or subpoena **is an important procedural right. The exercise of that right can be frustrated if relevant material is altered, concealed or destroyed.***"

Columbia Tariff: 1.5 Statement of Agents

No agent or employee of the Company has authority to make any promise, agreement or representation inconsistent with the provisions of this Tariff.

- a. That means outside attorneys must not misrepresent Columbia's obligations to "observe obey and comply" with the tariff (bilateral agreement) provided under 3.3 Acceptance below.

3.3 Acceptance

*Acceptance of service by the customer shall **constitute an agreement** [this bi-lateral agreement] to accept service under these Rules and Regulations, as amended from time to time, the Orders or Rules of the Pennsylvania Public Utility Commission, and Laws of the Commonwealth of Pennsylvania, and the Laws of the United States of America.*

The SEC 10-K submitted by NiSource with various management representations --- these are representations to stakeholders. The contents of the 10-K are **subject to testing** by auditors and investigators and participants of this rate case.

A participant in a rate case has a higher duty, however than an auditor who may have to reach an opinion with reasonable assurance. In paying for "actual legitimate cost", absolute assurance is more of the standard for ratepayers. Most reasonable and prudent buyers always check the bill before paying for a transaction --- I as a ratepayer, interested party, and a participant of this rate case are entitled to check the collective bill ... it is in the public's interest that I do so.

FEDERAL POWER COMMISSION et al. v. HOPE NATURAL GAS CO. helps us understand rate making.

24 *"The primary aim of this legislation [Natural Gas Act] was to protect consumers against exploitation at the lands (SIC) [hands] of natural gas companies."*

54 (I believe this is the heart of Hope decision.)

*"... the Commission's rate orders must be founded on **due consideration of all the elements of the public interest** which the production and distribution of natural gas involve just because it is natural gas. These elements are reflected in the Natural Gas Act, if that Act be applied as an entirety. See, for instance, §§ 4(a)(b)(c)(d), 6, and 11, 15 U.S.C. §§ 717c(a)(b)(c)(d), 717e, and 717j, 15 U.S.C.A. §§ 717c(a—d), 717e, 717j. Of course the statute is not concerned with abstract theories of ratemaking. **But its very foundation is the 'public interest', and the public interest is a texture of multiple strands.** It includes*

*more than contemporary investors and contemporary consumers. The needs to be served are not restricted to immediacy, and **social as well as economic costs must be counted.***"

The work of the participants of this rate case is to identify and evaluate those "strands" or elements of public interest. Columbia's concealing those strands is not fair... as we seek the *due consideration of all the elements of the public interest.*

One of the important lessons I learned, in a class in 1988, in dealing in the government contracting arena and it applies to ratemaking as well. The Instructor was Louis Rosen, he has been one of the foremost experts of the Government's Cost Accounting Standards. He said – "The very thing you do not want the Government to know are the very things that you must tell the Government."

In the end, full disclosure and that Columbia has the burden of proof in this rate case is an asset of the public of which the ratepayers (including the Federal Government) have paid for and deserve! That asset is an intangible asset and may be subject to 18 U.S. Code § 641 - Public money, property or records¹⁸.

The primary efforts of Columbia should not be to obstruct, conceal or try to find ways to "remain silent" in this rate case. Now, is the time for full disclose (current, accurate, and complete) and willing and full participation in arriving at fair and reasonable rates and charges.

I request that my Motion to Compel be granted and Columbia's Answer be determined to be non-persuasive.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'R. Culbertson', followed by a horizontal line.

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