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June 24, 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

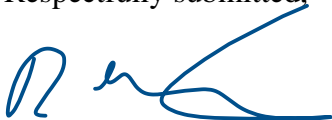
Re: PA Public Utility Commission v. Columbia Gas of Pennsylvania, Inc.
Docket No. R-2021-3024296

Dear Secretary Chiavetta:

Attached please find my reply to Columbia's Answer to the Motion to Compel on Interrogatories Set II Question 1 of Richard C. Culbertson.

Copies will be provided as indicated on the Certificate of Service.

Respectfully submitted,

A handwritten signature in blue ink, appearing to be 'R. Culbertson', with a long horizontal stroke extending to the right.

Richard C. Culbertson

efile

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June 24, 2021

Judge Hoyer,
Office of Administrative Law Judge
Piatt Place, Suite 220
301 Fifth Avenue
Pittsburgh, PA 15222

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

Reply to Columbia Gas Of Pennsylvania Answer to Culbertson's Motion to Compel

Dear Judge Hoyer,

Attached is my reply to Columbia's answer to my motion to Compel Columbia Gas of Pennsylvania to submit responses to my interrogatories as written in Set II.

Thank you for your consideration.
Sincerely,

A handwritten signature in black ink, appearing to read 'R. Culbertson', with a stylized flourish at the end.

Richard C. Culbertson

Attachments:

Reply to answer of Columbia Gas of Pennsylvania pertaining to my Motion to Compel on my interrogatories Set II Question 1.

Enclosures:

cc: PUC Secretary Rosemary Chiavetta, Certificate of Service. eFiling Confirmation Number

CERTIFICATE OF SERVICE

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 Reply 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 24th day of June 2021.

SERVICE BY E-MAIL ONLY

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Honorable Mark A. Hoyer
Deputy Chief Administrative Law Judge
PA Public Utility Commission
Office of Administrative Law Judge
301 Fifth Avenue Suite 220
Piatt Place Pittsburgh, PA 15222
mhoyer@pa.gov

Dated: June 24, 2021

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 II, Question 1.

Here we go again, Columbia does not want to participate in discovery in this rate case.

They are frustrating the process of due diligence ... distraction and running out the clock.

The PUC Court and participants of this rate case have a duty of due diligence in seeking just and reasonable rates.

Columbia takes the position --- by their answers to my interrogatories – we want a \$98.3 million increase – **‘no questions asked.’** If the Commission accepts and blesses the withholding of material information by Columbia that would result in an unconscionable contract or arrangement. Prudent contract parties do not enter into unconscionable contracts and arrangements, as this would not be acting in good faith.

Those who pay for goods and services have a right to check the bill. In a \$98.3 million rate case a “high degree of diligence” is required – a lesser degree of diligence would be gross negligence.

This rate case requires a high degree of diligence not just because of the high amount of the requested increase but because of the facts and circumstances.

Facts provided from NiSource, Parent of Columbia Gas reformatted into a table.

<https://investors.nisource.com/company-information/default.aspx>

	~ No. of Customers (In 000)	Miles of Pipe	Calculated Miles of pipe per customer	Miles of Bare Steel and Cast Iron	Rate Base (\$ 000,000)	Calculated Rate Base Per Customer \$	
NIPSCO	840	17500	.020	23*	1700	*2024	
COH	1500	20200	.013	2000	3200	2133	
CKY	137	2600	.019	2600	327	2387	
CVA	274	5300	.019	140**	850	3102	
CMD	34	660	.018	50	149	4382	
SUB TOL	2785				6226	2236	Ave
CPA	433	7700	.018	1200	2400	** 5545	
	3548				8626		

** CPA data was updated from information included in the Administrative Law Judge's Recommended Decision on December 4, 2020, Rate Case - R-2020-3018835. (Rate base \$2,401,427,019 and ~433,000 customers -- ~ \$5,545 per customer. This can be construed to be a hidden liability for each customer and their share of the rate base. The cost of money is substantial for each ratepayer. This high rate base per customer makes Columbia non-competitive in the energy marketplace.)

The rate base per customer is 2.7 times more in Pennsylvania than Indiana and 2.6 for Ohio. This is prima facie evidence that the **rate base is unreasonable thus rates are unreasonable.** The law of the land is that rates and charges must be just and reasonable otherwise they are unlawful.

\$5,545 is the proportional share of hidden debt each customer has for gas piping. Doing the math --If CPA had been operating as efficiently as NIPSCO (Indiana), CPA's rate base could be **~\$1,524,593,000 less.**

With this amount of disparity between CPA and others a prudent would ask does this amount a result of good internal controls or weak and deficient internal controls?

I now know there are problems with the traditional approach to rate making --- in substance, it is a form of a cost-plus a percentage of cost approach.

2 CFR 200 – Grants 2 CFR § 200.324 - Contract cost and price. “The cost plus a percentage of cost ... method of contracting must not be used.” --- Columbia wants more – this type of arrangement – but no questions asked.

From Columbia:

“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, unlikely¹ to lead to the discovery of admissible evidence, and outside the scope of this proceeding.”

This characterization of my interrogatories is not true and should be recognized as such. This quote is not the legal standard for denying discovery in Pennsylvania.

- What is vague to the unknowledgeable is not vague to the knowledgeable.
- *There is no prohibition on legal arguments 66Pa.C.S. 701. **Complaints.** “The commission, or any person, corporation, or municipal corporation having an interest in the subject matter, or any public utility concerned, may complain in writing, setting forth any act or thing done or omitted to be done by any public utility in violation, or claimed violation, of any law which the commission has jurisdiction to administer, or of any regulation or order of the commission.” The nature of a complaint is a legal argument. This is also repeated in 52 Pa. Code § 5.21*
- What may appear to the irrelevant to the unknowledgeable may appear to be relevant to the experienced and knowledgeable.
- “unlikely to lead to the discovery of admissible evidence” “Unlikely” is not the standard, the standard is “potential”. I may have the potential to a party to a rate case when I am 90 years old but that is certainly unlikely. The standard is provided in PA title 204, Chapter 81 Rule 3.4. Fairness to Opposing Party and Counsel.
- Internal controls of Columbia and NiSource are certainly not out of the scope of a rate case. Internal controls of an organization are equivalent to vital signs in the human body. There are indicators of health. In the NiSource 10=K Deloitte was testing internal controls on the control element of financial reporting.

¹ The quote and the term unlikely “to lead to the discovery of admissible evidence” is inconsistent with “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.*

Potential --- From Blacks Law Dictionary -Sixth edition “Existing in possibility but not in act.” The term **Potential** is mentioned 24 times in the Federla Rules of Civil Procedure.

https://www.law.cornell.edu/rules/frcp/rule_26

Likely -- -- Probably. More likely than not.

As provided in the reply to my Motion to Compel in the previous reply on my Set I:

“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.”

Full participation in discovery is an essential element of due process.

Again let me remind those who are refusing to participate in discovery of their obligations regarding discovery, and the practice law in Pennsylvania.

<http://www.pacodeandbulletin.gov/Display/pacode?file=/secure/pacode/data/204/chapter81/s3.4.html>

*“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.**”*

PA Title 204 teaches us the rules of proper behavior:

“A lawyer, as a member of the legal profession, ... [has] a special responsibility for the quality of justice.

“A lawyer should use the law’s procedures only for legitimate purposes and not to harass or intimidate others.”

Let me be clear – Columbia and their lawyers should not be concealing evidence of “potential evidentiary value” ... the lack of effective internal controls. They should not be frustrating this process by unreasonable objections of my interrogatories. I have a lot of questions regarding internal controls to reach some sort of assurance one way or another. Slowing down discovery, truncating, and frustrating the process does not lead to a high quality of justice. The public, Commission, customers, shareholders, and I deserve better.

It appears to me NiSource / Columbia's legal department and outside counsel have not been schooled in the requirements of corporate governance in the area of internal controls.

Here is not the place to adequately teach that. It makes no difference if Columbia Gas is ignorant or not they are still accountable for their weaknesses and deficiencies of internal controls.

To set the stage in understanding internal controls I highly recommend Columbia and others read the Foreword to the GAO Green Book by the Comptroller General of the United States, Gene L Dodaro. <https://www.gao.gov/assets/gao-14-704g.pdf>

The GAO Green Book applies to organizations that receive Federal grants --- including the Commonwealth of Pennsylvania and the Pennsylvania Public Utilities Commission.

I expected the state government would have recognized the applicability of the Green Book – and they do.

Pennsylvania's Governor's office issues various Management Directives [https://www.oa.pa.gov/Policies/md/Pages/FinancialManagement\(305-325\).aspx](https://www.oa.pa.gov/Policies/md/Pages/FinancialManagement(305-325).aspx)

Evaluating Agency Internal Controls and Risk through Self Assessment Number 325.11 Amended May 17, 2012

1. PURPOSE. *This directive establishes policy, responsibilities, and procedures for identifying and analyzing financial, operational, compliance, and strategic risk and evaluating internal controls through self assessment.*

2. SCOPE. *This directive applies to all departments, boards, commissions, councils, authorities, and offices (hereinafter referred to as "agencies") under the Governor's jurisdiction.*

See for example Definitions:

"Control Self Assessment (CSA). *A process whereby an agency identifies risks, evaluates internal controls, determines residual risk, and, afterwards, considers whether to create or enhance internal controls that reduce the residual risks affecting organizational vision/mission statements, goals, and objectives. CSA is accomplished using an internal control framework through surveys of, or workshops consisting of, CSA work teams.*

Internal Control. *A process designed to mitigate risk and provide reasonable assurance regarding strategy, compliance, and the reliability of operations and reporting. This concept applies equally to the agency as a whole and specific units within the agency."*
https://www.oa.pa.gov/Policies/md/Documents/325_11.pdf

For publicly traded corporation – and their auditors they are subject to Public Company Accounting Oversight Board Auditing Standard No.5 An Audit of Internal Control Over Financial Reporting That Is Integrated with An Audit of Financial Statements

https://pcaobus.org/oversight/standards/archived-standards/pre-reorganized-auditing-standards-interpretations/details/Auditing_Standard_5

This requires the identification of the internal control framework that the company is using.

The NiSource 10-K Provides <https://d18rn0p25nwr6d.cloudfront.net/CIK-0001111711/9f4ccf64-7861-4b15-936d-32aaaaadeafa7.pdf>

“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 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.”

Management knows about internal controls and the COSO framework as such management should have no resistance in answering interrogatories regarding internal controls.

Those receiving grant money are subject to **2 CFR 200 UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS**<https://www.law.cornell.edu/cfr/text/2/part-200>

§ 200.6 Auditor. Auditor means an auditor who is a public accountant or a Federal, state or local government audit organization, which meets the general standards specified in generally accepted government auditing standards (GAGAS). § 200.61 Internal controls. Internal controls means a process, implemented by a non-Federal entity, designed to provide reasonable assurance regarding the achievement of objectives in the following categories: (a) Effectiveness and efficiency of operations; (b) Reliability of reporting for internal and external use; and (c) Compliance with applicable laws and regulations.

§ 200.110 Effective/applicability date. (a) The standards set forth in this part which affect administration of Federal awards issued by Federal agencies become effective once implemented by Federal agencies or when any future amendment to this part becomes final. Federal agencies must implement the policies and procedures applicable to Federal awards by promulgating a regulation to be effective by December 26, 2014 unless different provisions are required by statute or approved by OMB. (b) The standards set forth in Subpart F—Audit Requirements of this part and any other standards which apply directly to Federal agencies will be effective December 26, 2013 and will apply to audits of fiscal years beginning on or after December 26, 2014.

*§ 200.303 Internal controls. The non-Federal **entity must:** (a) Establish and maintain effective internal control over the Federal award that provides **reasonable assurance** that the*

*non-Federal entity is managing the Federal award in compliance with **Federal statutes, regulations, and the terms and conditions of the Federal award.** These internal controls should be in compliance with guidance in “**Standards for Internal Control in the Federal Government**” [GAGAS—GAO Green Book] issued by the Comptroller General of the United States and the “**Internal Control Integrated Framework**”, issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).*

§ 200.514 Scope of audit. (a) General. The audit must be conducted in accordance with GAGAS. The audit must cover the entire operations of the auditee.

The requirements of internal control are multidimensional.

2.09 The oversight body oversees management’s design, implementation, and operation of the entity’s internal control system. The oversight body’s responsibilities for the entity’s internal control system include the following:

- **Control Environment** - *Establish integrity and ethical values, establish oversight structure, develop expectations of competence, and maintain accountability to all members of the oversight body and key stakeholders.*

- **Risk Assessment** - *Oversee management’s assessment of risks to the achievement of objectives, including the potential impact of significant changes, fraud, and management override of internal control.*

- **Control Activities** - *Provide oversight to management in the development and performance of control activities.*

- **Information and Communication** - *Analyze and discuss information relating to the entity’s achievement of objectives.*

- **Monitoring** - *Scrutinize the nature and scope of management’s monitoring activities as well as management’s evaluation and remediation of identified deficiencies. accountable for their internal control responsibilities.*

My interrogatories fall within the internal control framework. They have been designed to acquire evidence of Columbia’s – that Columbia / NiSource have effective internal controls to meet the requirements of Pennsylvania Public utility law:

§ 315. Burden of proof.

*(a) Reasonableness of rates --In any proceeding upon the motion of the commission, involving any proposed or existing rate of any public utility, or in any proceedings upon complaint involving any **proposed increase in rates, the burden of proof to show that the rate involved is just and reasonable shall be upon the public utility.***

§ 1301. Rates to be just and reasonable.

(a) Regulation.--Every rate made, demanded, or received by any public utility, ... shall be just and reasonable, and in conformity with regulations or orders of the commission.

§ 2205. Duties of natural gas distribution companies.

(a) *Integrity of distribution system.* --

(1) *Each natural gas distribution company shall maintain the integrity of its distribution system at least in conformity with the standards established by the Federal Department of Transportation and such other standards practiced by the industry in a manner sufficient to provide safe and reliable service to all retail gas customers connected to its system consistent with this title and the commission's orders or regulations.*

“PA Energy Consumer Bill of Rights

https://www.puc.state.pa.us/general/consumer_ed/pdf/Consumer_Bill_Of_Rights.pdf

Your rights include:

• *Safe and reliable utility service”*

A rate case is about trust – that trust is based upon the assurance that Columbia has adequate and effective internal controls. Are we dealing with a poison tree that produces poison fruit or are we dealing with a good tree that produces good fruit?

Columbia has the burden of proof that it is deserving of that trust and deserves a \$98,300,000 rate increase. That comes with confidence and verified assurance of adequate and effective internal controls.

Denying responses to reasonable and lawful interrogatories does not help Columbia’s cause for receiving this exceptionally large rate increase.

I highly recommend that Columbia be Compelled to participate in interrogatories. Due process cannot be achieved if Columbia wants a large increase with the prevision -- no questions asked.

Let’s go back to 2 CFR 200 – Grants 2 CFR § 200.324 - *Contract cost and price.* (d) *The cost plus a percentage of cost ...contracting **must not be used.*** The traditional approach to rate-making for Columbia is in substance a cost-plus-percentage of cost arrangement. No prudent person enters such an arrangement --- but Columbia wants more – this type of arrangement – but no questions asked.

Conclusion: I request the Administrative Law Judge to reject Columbia’s Answer to my Motion to Compel on my Set II Question 1. And, Compel Columbia to answer the interrogatories in good faith by those who are knowledgeable and responsible for Columbia’s internal controls.

Some of those who understand the questions would include Mr. Hamrock, Mr. Kempic, and members of the NiSource Board of Directors’ Audit Committee.

I end with Hope.

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.

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

Respectfully submitted,



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