*Via electronic service only due to Emergency Order at M-2020-3019262*

**BEFORE THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission, et al. : R-2021-3024296

:

:

v. :

:

Columbia Gas of Pennsylvania, Inc. :

**SECOND INTERIM ORDER**

**ADDRESSING COMPLAINANT RICHARD C. CULBERTSON’S SECOND MOTION**

**TO COMPEL DISCOVERY**

HISTORY OF THE PROCEEDING

On March 30, 2021, Columbia Gas of Pennsylvania, Inc. (Columbia) filed with the Pennsylvania Public Utility Commission (Commission) Supplement No. 325 to its Tariff Gas – Pa. P.U.C. No. 9. Supplement No. 325 was issued to be effective for service rendered on or after May 29, 2021. It proposed changes to Columbia’s distribution base rates designed to produce an increase in annual revenues of approximately $98.3 million based upon data for a fully projected future test year (FPFTY) ending December 31, 2022.

On May 6, 2021, the Commission issued an Order suspending Columbia’s Supplement No. 325 by operation of law until December 29, 2021.

On June 7, 2021, Complainant Richard C. Culbertson served discovery Set II, Question 1, which contains subparts a through p, on Columbia. On June 14, 2021, Columbia served objections to Mr. Culbertson’s discovery Set II, Question 1. According to counsel for Columbia, Lindsay A. Berkstresser, Esquire, Columbia and Mr. Culbertson discussed this discovery dispute and were unable to resolve it.

On June 17, 2021, Mr. Culbertson filed a Motion to Compel Columbia’s response to Set II, Question 1. On June 21, 2021, Columbia filed its Answer to the Motion to Compel.

DISCUSSION

Section 5.321(c) of the Commission’s Rules of Administrative Practice and Procedure, 52 Pa.Code § 5.321(c), specifically provides that “a party may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action.” Discovery is permitted regardless of whether the information sought “relates to the claim or defense of the party seeking discovery or to the claim or defense of another party or participant.” *Id*. Information may be discoverable, even if it would be inadmissible at a hearing. “It is not ground for objection that the information sought will be inadmissible at hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.” *Id*. Consistently, the Commission has allowed participants wide latitude in discovery matters. *Pa. P.U.C. v. The Peoples Natural Gas Company*, 62 Pa. PUC 56 (August 26, 1986); and *Pa. P.U.C. v. Equitable Gas Company*, 61 Pa. PUC 468 (May 16, 1986).

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); Answer of Columbia to Motion to Compel, p. 2.

In its Answer to the Motion to Compel, Columbia states that 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. Columbia contends that 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 Richard C. 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 undersigned agrees with Columbia’s objection to Richard C. Culbertson Set II, Question 1, subparts a through h. These interrogatory subparts (subparts a through h) are not likely to lead to the discovery of admissible evidence in this base rate proceeding. Columbia’s objection is sustained and Mr. Culbertson’s motion to compel answers to Richard C. Culbertson Set II, Question 1, subparts a through h, is denied.

Columbia also objects to Richard C. Culbertson Set II, Question 1, subparts i through p. Columbia contends that subparts i through p pertain to an event that happened in Merrimack Valley, Massachusetts on September 13, 2018. According to Columbia, the requests in Set II, Question 1, subparts i through p, are irrelevant and beyond the scope of permissible discovery in this proceeding. Columbia objects that 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. Answer to Motion to Compel, pp. 7-8.

Columbia opines that 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. Answer to Motion to Compel, p. 8.

The undersigned agrees with Columbia’s objection to Richard C. Culbertson Set II, Question 1, subparts i through p. These interrogatory subparts (subparts i through p) are not likely to lead to the discovery of admissible evidence in this base rate proceeding. Columbia’s objection is sustained and Mr. Culbertson’s motion to compel answers to Richard C. Culbertson Set II, Question 1, subparts i through p, is denied.

THEREFORE,

IT IS ORDERED:

1. That the Motion to Compel filed by Richard C. Culbertson on June 17, 2021, is denied in its entirety.
2. Columbia Gas of Pennsylvania, Inc.’s objections to Richard C. Culbertson’s Set II, Question 1 subparts a through p are sustained.

Date: June 30, 2021 /s/

Mark A. Hoyer

Deputy Chief Administrative Law Judge