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File #: 182466

July 1, 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**

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Dear Secretary Chiavetta:

Attached please find the Answer of Columbia Gas of Pennsylvania, Inc. to the Motion of Richard C. Culbertson to Remove the Presiding Officer in the above-referenced proceeding. 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/attachment)  
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: July 1, 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.

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 OF  
RICHARD C. CULBERTSON TO REMOVE THE PRESIDING OFFICER**

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Columbia Gas of Pennsylvania, Inc. (“Columbia” or the “Company”) hereby submits this Answer to the Motion of Richard C. Culbertson to remove the Honorable Mark A. Hoyer, Deputy Chief Administrative Law Judge (“ALJ Hoyer”) as the presiding ALJ in this matter, pursuant to 52 Pa. Code § 5.61. As explained below, Mr. Culbertson’s Motion should be denied because Mr. Culbertson has failed to demonstrate any reasonable basis for removing ALJ Hoyer from this case.

**I. INTRODUCTION**

On May 24, 2021, Mr. Culbertson filed a Complaint against Columbia’s base rate increase request at Docket No. R-2021-3024296. Mr. Culbertson and Columbia have engaged in discovery in this proceeding, which has also been the subject of discovery motions. Mr. Culbertson submitted written testimony on June 16, 2021.

On June 11, 2021, Mr. Culbertson filed a Motion to Remove the Presiding Officer (“Motion”). As explained herein, Mr. Culbertson’s Motion is without merit and should be denied.

**II. MR. CULBERTSON'S MOTION TO REMOVE THE PRESIDING ALJ SHOULD BE DENIED.**

In his Motion, Mr. Culbertson presents three primary arguments for why he believes that ALJ Hoyer should not preside over this matter. All three of Mr. Culbertson's arguments are without merit. Mr. Culbertson has failed to present any evidence of bias or any other evidence to suggest that ALJ Hoyer cannot fairly adjudicate this matter. There is no reasonable justification for removing ALJ Hoyer from this case. Therefore, Mr. Culbertson's Motion should be denied.

Mr. Culbertson's first argument in support of his Motion is that ALJ Hoyer may have to rule on whether the Commission's vote in Columbia's 2020 base rate proceeding is legitimate. Motion, p. 3. However, that is not an issue to be decided in this case. The Commission's decision in Columbia's 2020 rate case is not being reexamined in this proceeding. Moreover, the Commission's order in the 2020 case has become final, and the time for appeal has passed. Mr. Culbertson's statement that ALJ Hoyer may have to rule on the Commission's order in the 2020 case is incorrect and provides no support for his request to remove ALJ Hoyer.

Relatedly, Mr. Culbertson alleges that ALJ Hoyer does not meet the standard of independence because ALJ Hoyer is "part of the solid line organizational chart of the PUC." Motion, p. 3. Specifically, Mr. Culbertson cites to Administrative Law Judge Dunderdale's Recommended Decision in Columbia's 2020 rate case and contends that ALJ Hoyer may not be perceived as impartial because Administrative Law Judge Dunderdale "directly reports to Judge Hoyer." Motion, pp. 3-4. There is nothing to suggest that ALJ Hoyer, as a Deputy Chief Administrative Law Judge, cannot rule impartially in this case, or that the existence of prior rate case decisions from another ALJ would unfairly affect ALJ Hoyer's decision making ability in this proceeding. Mr. Culbertson also cites the Commission's Code of Ethics at 66 Pa. C.S. § 319

but does not allege that ALJ Hoyer has violated any of the ethical rules. Therefore, Mr. Culbertson has failed to demonstrate that ALJ Hoyer cannot be impartial in this proceeding.

Next, Mr. Culbertson argues that ALJ Hoyer should not preside over this matter because ALJ Hoyer previously ruled against Mr. Culbertson in a separate complaint proceeding. Motion, p. 4. On May 8, 2017, Mr. Culbertson filed a Formal Complaint against Columbia with the Commission, which is docketed at Docket No. F-2017-2605797. That Complaint related to an abandonment of service issue. ALJ Hoyer was assigned to preside over the Complaint proceeding and issue a recommended decision. On October 1, 2019, ALJ Hoyer issued a recommended decision recommending that Mr. Culbertson's Complaint be denied. Mr. Culbertson also states that ALJ Hoyer ruled against him in discovery disputes in the Complaint proceeding. Motion, p. 4. The Commission has not yet ruled upon the Complaint. For these reasons, Mr. Culbertson believes that ALJ Hoyer and the Commission did not treat him fairly. Motion, p. 4. However, an adverse ruling is not evidence of bias. *See Rosenblum v. Bell Atlantic – Pennsylvania, Inc.*, Docket No. F-00236844, 1995 Pa. PUC LEXIS 79 (Sept. 29, 1995) (“An unfavorable decision does not, in and of itself, illuminate the fundamental unfairness necessary to establish bias, a violation of due process, or support recusal.”) Moreover, the 2017 Complaint is completely separate from this proceeding. The specific issues in the 2017 Complaint are not being decided in this base rate proceeding. There is no evidence to suggest that the 2017 Complaint will influence ALJ Hoyer's decision in this matter. The allegation of bias because of an adverse ruling in a prior Complaint case is without merit and should be rejected.

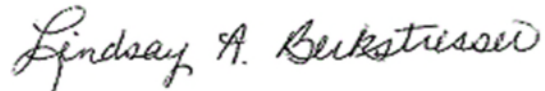
Finally, Mr. Culbertson alleges that there have been “due process and due diligence shortcomings.” Motion, p. 4. Specifically, Mr. Culbertson alleges that ALJ Hoyer and the Commission have failed to enforce section 59.13 of the Commission's regulations, 52 Pa. Code §

59.13 (requiring a utility to investigate customer complaints), by not requiring an investigation of Mr. Culbertson's Complaint against Columbia in this base rate proceeding. However, Mr. Culbertson does not provide any support for these allegations. In fact, the entire purpose of this proceeding is to investigate the base rate case filed by Columbia. The Commission has issued an Order suspending the proposed rates and tariff provisions and opening an investigation into the proposed rates and tariff provisions. *See Pa. PUC v. Columbia Gas of Pennsylvania, Inc.*, Docket No. R-2021-3024296 (Order entered May 6, 2021) (suspending Columbia's proposed tariff Supplement No. 325 and opening an investigation into the lawfulness, justness, and reasonableness of the rates, rules, and regulations contained therein). Mr. Culbertson has failed to substantiate his claim of denial of due process.

### **III. CONCLUSION**

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

Respectfully submitted,



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Date: July 1, 2021



## VERIFICATION

I, Nicole Paloney, hereby state that the facts above set forth are true and correct (or are true and correct to the best of my knowledge, information and belief) and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements made herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).

Date: July 1, 2021

Nicole Paloney  
Nicole Paloney  
Director of Rates and Regulatory Affairs  
Columbia Gas of Pennsylvania, Inc.