

## 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 Judge Mark A. Hoyer Deputy Chief Administrative Law Judge MOTION TO RECONSIDER FIRST INTERIM ORDER ADDRESSING COMPLAINANT RICHARD C. CULBERTSON'S MOTION TO COMPEL DISCOVERY -- BECAUSE OF USING OUTDATED RULES 26 AND 34 OF THE FEDERAL RULES OF CIVIL PROCEDURE OF WHICH WERE SUPERSEDED DECEMBER 1, 2015, upon parties of record in this proceeding in accordance with the requirements of 52 Pa.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 1st day of July 2021.

### **SERVICE BY E-MAIL ONLY**

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July 1, 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

MOTION TO RECONSIDER FIRST INTERIM ORDER ADDRESSING COMPLAINANT  
RICHARD C. CULBERTSON'S MOTION TO COMPEL DISCOVERY -- BECAUSE OF  
USING OUTDATED RULES 26 AND 34 OF THE FEDERAL RULES OF CIVIL  
PROCEDURE OF WHICH WERE SUPERSEDED DECEMBER 1, 2015

Dear Judge Hoyer,

Attached is my subject motion.

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:  
Motion to Reconsider First Interim Order

Enclosures:

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

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission, et al.	:	R-2021-3024296
	:	
	:	
v.	:	
	:	July 1, 2021
Columbia Gas of Pennsylvania, Inc.	:	

**MOTION TO RECONSIDER FIRST INTERIM ORDER**  
**ADDRESSING COMPLAINANT RICHARD C. CULBERTSON’S MOTION**  
**TO COMPEL DISCOVERY -- BECAUSE OF USING OUTDATED RULES 26 AND 34**  
**OF THE FEDERAL RULES OF CIVIL PROCEDURE OF WHICH WERE**  
**SUPERSEDED DECEMBER 1, 2015**

On May 24, 2021, Richard C Culbertson Filed a Formal Complaint in Columbia Gas of Pennsylvania’s Rate Case R-2021-3024296 whereby Columbia is requesting an annual revenue increase of \$98,300,000. The presiding officer assigned is the honorable Mark A. Hoyer Deputy Chief Administrative Law Judge.

On June 3, 2021, Complainant Richard C. Culbertson served discovery Set I, Question 1, which contains subparts a. through g., on Columbia. On June 8, 2021, Columbia served objections to Mr. Culbertson’s discovery Set I, 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. Ultimately Mark A. Hoyer Deputy Chief Administrative Law Judge issued FIRST INTERIM ORDER ADDRESSING COMPLAINANT RICHARD C. CULBERTSON’S MOTION TO COMPEL DISCOVERY on June 25, 2021.

*“IT IS ORDERED:*

*1. That the Motion to Compel filed by Richard C. Culbertson dated June 11, 2021, is granted, in part, and denied in part.*

*2. Columbia Gas of Pennsylvania, Inc. shall serve answers to Set 1, Question No. 1 subparts a and b only within seven days of the date of this order.*

*3. Columbia Gas of Pennsylvania, Inc.’s objections to Set 1, Question No. 1 subpart c, subpart d, subpart e, subpart f and subpart g are sustained and the motion to compel answers to the same is hereby denied.”*

The interrogatories pertained to the NiSource / Columbia Gas of Pennsylvania and included:

*“Reference NiSource Inc. UNITED STATES SECURITIES AND EXCHANGE COMMISSION FORM 10-K For the fiscal year ended December 31, 2020. On page 118.*

*“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.” <https://investors.nisource.com/financial-filings-and-reports/sec-filings/default.aspx>]

*a. Does Columbia recognize the GAO Green Book – Internal Controls, to be equivalent to the COSO Internal Control-Integrated Framework requirements? Please explain.*

b. *Has Columbia Gas of Pennsylvania as a subsidiary of NiSource also adopted the COSO Internal Control-Integrated Framework?*

c. *Please provide NiSource and CPA applicable policies, procedures, requirements, required training material, and the like that are intended to implement this internal control integrated framework. ...*

*“According to Columbia, Mr. Culbertson’s discovery Set I, Question No. 1, including all subparts, requests information that is irrelevant to this proceeding and **unlikely to lead to the discovery of admissible evidence.**” ....*

*“According to Columbia, Mr. Culbertson’s discovery Set I, Question No. 1, including all subparts, requests information that is irrelevant to this proceeding and unlikely to lead to the discovery of admissible evidence. Columbia contends that subparts (c) and (d) to Question 1 are vague and worded in such a manner that it is unclear what specific information is being requested.*

*From Judge Hoyer “Mr. Culbertson’s discovery Set I, Question No. 1, subpart e is unduly burdensome. Columbia’s objection to this subpart is sustained and Columbia shall not be required to provide a response to subpart e.*

*Columbia’s objection to Mr. Culbertson’s discovery Set I, Question No. 1 subpart f is sustained, and Columbia will not be compelled to answer it. Subpart f requests information that is not likely to lead to the discovery of admissible evidence. Columbia’s objection to Mr. Culbertson’s discovery Set I, Question No. 1 subpart g and subpart g(i) is likewise sustained as these two subparts are not likely to lead to the discovery of admissible evidence.”*

Columbia and the PUC should be using the current FEDERAL RULES OF CIVIL PROCEDURE.

Rules 26 and 34 were updated update of December 1, 2015, with significant changes. The phrase **“reasonably calculated to lead to the discovery of admissible evidence”**

**was deleted** and no longer should be used as it harms those seeking justice. **The phase started with Rule 26 and ends with Rule 26.**

FEDERAL RULES OF CIVIL PROCEDURE DECEMBER 1, 2019

[https://www.uscourts.gov/sites/default/files/federal\\_rules\\_of\\_civil\\_procedure\\_dec\\_1\\_2019\\_0.pdf](https://www.uscourts.gov/sites/default/files/federal_rules_of_civil_procedure_dec_1_2019_0.pdf)

The core of Rule 26 is (b) DISCOVERY SCOPE AND LIMITS. (**Revised and issued December 1, 2015**)

*“(1) Scope in General. Unless otherwise limited by court order, the scope of discovery is as follows: Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party’s claim or defense and **proportional** to the needs of the case, considering the **importance** of the issues at stake in the action, the **amount in controversy**, the parties’ relative access to relevant information, the parties’ resources, the importance of the discovery in resolving the issues, and whether the **burden or expense of the proposed discovery outweighs its likely benefit**. Information within this scope of discovery need not be admissible in evidence to be discoverable.”*

**If the current Rules 26 and 34 were used, Columbia’s objections to these interrogatories would not be valid in this \$98,300,000 rate case.**

This interrogatory seeks relevant and material information that has potential evidentiary value. See ABA 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. A lawyer shall not counsel or assist another person to do any such act;”

[https://www.americanbar.org/groups/professional\\_responsibility/policy/ethics\\_2000\\_commission/e2k\\_rule34/](https://www.americanbar.org/groups/professional_responsibility/policy/ethics_2000_commission/e2k_rule34/)

These interrogatories are meant to be relevant, cost-effective, proportional to the needs of the case for the amounts in controversy. Benefits to ratepayers of the requested information are expected to greatly exceed the burden and expense of producing the information sought in this \$98,300,000 rate case.

See Fischer v. Forrest, No. 1:2014cv01304 - Document 151 (S.D.N.Y. 2017)  
<https://law.justia.com/cases/federal/district-courts/new-york/nysdce/1:2014cv01304/424229/151/>

*“The December 1, 2015 amendment to Rule 26(b)(1) limits discovery to material “relevant to any party’s claim or defense . . .” Discovery about “subject matter” no longer is permitted. General Objection I also objects that the discovery is not “likely to lead to the discovery of relevant, admissible evidence.” The 2015 amendments **deleted that language from Rule 26(b)(1), and lawyers need to remove it from their jargon.**”*

2015 Year-End Report on the Federal Judiciary  
<https://www.supremecourt.gov/publicinfo/year-end/2015year-endreport.pdf>

*“The amendments [to Rules 26 and 34] may not look like a big deal at first glance, but they are.”*

Due process in this rate case requires using and abiding by the current rules.

The changes with Rules 26 and 34 are the difference between justice and injustice.

In closing, the Pennsylvania Constitution requires:  
<https://www.legis.state.pa.us/WU01/LI/LI/CT/HTM/00/00.008..HTM>

*ARTICLE VIII TAXATION AND FINANCE § 10. **Audit.** The financial affairs of any entity funded or financially aided by the Commonwealth, and all departments, boards, commissions, agencies, instrumentalities, authorities and institutions of the Commonwealth, shall be subject to audits made in accordance with generally accepted auditing standards.*



Those standards are included in the GAO Yellow Book. <https://www.gao.gov/assets/gao-21-368g.pdf> The Pennsylvania Public Utility Commission is required to be using the GAO Yellow Book per Pennsylvania's Management Directive No. 325.3 Performance of Audit Responsibilities, January 10, 2011, of which implements the Constitutional requirement.

The purpose of audits is to provide some sort of assurance that an organization is fulfilling its internal control obligations of effective and efficient operations, reliable reporting, and compliance with laws, regulations, standards, tariff ... "Assurance" is mentioned 58 times in the GAO Yellow Book. Internal control is mentioned 244 times. Understanding Columbia's internal controls are paramount to this rate case.

I respectfully request Judge Hoyer that you reconsider this First Interim Order in light of the changes in Rules 26 and 34, importance to this rate case, and compel and Columbia to also recognize the changes in Rules 26 and 34 and participate in good faith discovery. Columbia must not take the position in this rate case—I want a \$98,300,000 increase in rates with no questions asked. This would not be due process nor due diligence, would not be fair to ratepayers and other stakeholders, and certainly not result in just and reasonable rates.

Respectfully submitted.



Richard C. Culbertson

1430 Bower Hill Road

Pittsburgh, PA 15243

Date July 1, 2021