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July 7, 2021

**Via eFile System**

Rosemary Chiavetta, Secretary

Pennsylvania Public Utility Commission

PO Box 3265

Harrisburg, PA 17105-3265

Re: Pennsylvania Public Utility Commission et. al.

v.

Columbia Gas of Pennsylvania, Inc.

Docket No. R-2021-3024296

Dear Secretary Chiavetta:

Attached is my reply to the answer of Columbia Gas of Pennsylvania regarding my motion to the Pennsylvania Public Utility Commission to replace Judge Hoyer with another presiding officer that will appear to be more within the Canon for Judges in Pennsylvania. This is in the best interest of the public, the participants of this rate case, the Commission, Judge Hoyer, and the reputation of the Commonwealth of Pennsylvania.

Please provide my reply to the Commission for their consideration and determination.

My action here has been carefully considered; the current presiding officer cannot lead to the highest level of public confidence.

If you have any questions, please call me. By copy of this letter, copies of this motion have been served upon all parties. A certificate of service showing service on all parties has been filed with your office as required by 52 Pa. Code §5.341(b).

Sincerely,



Richard C. Culbertson

Enclosures: cc: Certificate of Service. eFiling Confirmation Number

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION  
Pennsylvania Public Utility Commission

v.

Columbia Gas of Pennsylvania, Inc.

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Docket No. R-2021-3024296

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REPLY OF RICHARD C. CULBERTSON TO COLUMBIA GAS OF PENNSYLVANIA, INC.'S  
ANSWER TO THE MOTION TO REPLACE THE PRESIDING OFFICER

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Richard C. Culbertson hereby provides a reply to Columbia Gas of Pennsylvania, Inc.'s ("Columbia" or the "Company") answer to the Motion to replace the Honorable Mark A. Hoyer, Deputy Chief Administrative Law Judge ("ALJ Hoyer") as the presiding officer in this rate case.

The standards by which judges are assigned and perform their duties are expressed in the Pennsylvania Constitution ARTICLE V and PA Title 207 Chapter 33  
<https://www.pacodeandbulletin.gov/Display/pacode?file=/secure/pacode/data/207/chapter33/subchapter33.html&d=reduce>

The PA Constitution and PA 207 Chapter 33 are not only requirements of the judiciary but promises and expectations of the people of Pennsylvania. A reasonable, responsible and knowledgeable person would most likely conclude that the current presiding officer does not meet the standard to be assigned and remain as presiding officer.

*Preamble*

*(1) This Code shall constitute the "canon of . . . judicial ethics" referenced in Article V, Section 17(b) of the **Pennsylvania Constitution**, which states, in pertinent part: "Justices and judges shall not engage in any activity prohibited by law and shall not violate any canon of legal or judicial ethics prescribed by the (Pennsylvania) Supreme Court."*

*(2) **An independent, fair, honorable and impartial judiciary is indispensable to our system of justice. The Pennsylvania legal system is founded upon the principle that an independent, fair, impartial, and competent judiciary, composed of persons of integrity, will interpret and apply the law that governs our society. The judiciary consequently plays a fundamental role in ensuring the principles of justice and the rule of law. The rules contained in this Code necessarily require judges, individually and collectively, to treat and honor the judicial office as a public trust, striving to preserve and enhance legitimacy and confidence in the legal system.***

*(3) Judges should uphold the dignity of judicial office at all times, avoiding both impropriety and the appearance of impropriety in their professional and personal lives. They [Judges] should at all times conduct themselves in a manner **that garners the highest level of public confidence in their independence, fairness, impartiality, integrity, and competence.***"

In a rate case, the primary purpose of this rate case is to determine if Columbia's rate base and thus rates are just and reasonable. [A]ll rules and regulations [includes practices by federal and state regulators] *affecting or pertaining to such rates or charges, shall be just and reasonable, and any such rate or charge that is not just and reasonable is declared to be unlawful.*" (15 U.S.C.

COMMERCE AND TRADE § 717c(a) - Rates and charges

[https://uscode.house.gov/view.xhtml?req=\(title:15%20section:717c%20edition:prelim\)](https://uscode.house.gov/view.xhtml?req=(title:15%20section:717c%20edition:prelim))

This is echoed in Federal regulations 18 CFR Part 201 - UNIFORM SYSTEM OF ACCOUNTS PRESCRIBED FOR NATURAL GAS COMPANIES SUBJECT TO THE PROVISIONS OF THE NATURAL GAS ACT

#### General Instructions

1. *Applicability. Each natural gas company must apply the system of accounts prescribed by the Commission.*

*E. All amounts included in the accounts prescribed herein for gas plant and operating expenses shall be just and reasonable and any payments or accruals by the utility in excess of just and reasonable charges shall be included in account 426.5, Other Deductions. (They are unallowable for recovery purposes and must not be included in the rate base as a direct or indirect cost.)*

#### **PA Title 66 § 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.***

#### **Title 66 § 1301. Rates to be just and reasonable.**

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

Title 66 § 1351. Definitions.

*"Capitalized cost." Costs permitted to be capitalized pursuant to the Uniform System of Accounts and Generally Accepted Accounting Principles.*

As shown above, just and reasonable costs are dependent upon knowledge of the Uniform System of Accounts and Generally Accepted Accounting Principles.

With this, Judges to garner the highest level of public they must have all the attributes that are required -- independence, fairness, impartiality, integrity, and competence.

Under competence – in a rate case there must be an adequate understanding of the Uniform System of Accounts and Generally Accepted Accounting Principles. It is very difficult for a person to be an expert in law and accounting.

To make up for the lack of first-hand knowledge of accounting and accounting operations at an organization, judicial and other decision-makers are supposed to rely on the opinions of accounting experts who perform audits and provide some sort of assurance of internal controls.

For this rate case, there is no assurance by auditors of any kind that Columbia operates consistently with the required internal controls. There have not been generally accepted audits performed that are reliable for accounting nor for performance.

Administrative law judges must understand the overall framework of public utility rate-making.

What has been tradition may have been the wrong approach. This starts with--

**Article VIII Section 10. Audit. of the Pennsylvania Constitution.**

*"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.*

**This Constitutional requirement was implemented by Management Directive 325.3 Performance of Audit Responsibilities -- January 10, 2011.**

[https://www.oa.pa.gov/Policies/md/Documents/325\\_3.pdf](https://www.oa.pa.gov/Policies/md/Documents/325_3.pdf)

**2. SCOPE.**

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

**4. Definitions**

*d. Government Auditing Standards (commonly referred to as the "Yellow Book"): A publication issued by the U.S. Government Accountability Office, Comptroller General of the United States, which contains standards for audits of government organizations, programs, activities, and functions, and of government assistance received by contractors, nonprofit organizations, and other nongovernment organizations.*

**5. POLICY.**

*a. Audits of commonwealth organizations, programs, activities, and functions are to be performed by qualified auditors, and must be performed in accordance with generally accepted government auditing standards (GAGAS), promulgated by the United States Government Accountability Office in its publication, Government Auditing Standards, except where it is determined to be more cost effective and operationally effective to have an audit performed in accordance with generally accepted auditing standards promulgated by the American Institute of Certified Public Accountants.*

*The purpose of an audit is to assess internal controls – internal control guidance and requirements are contained in the **GAO Green Book** and this is implemented by **Management Directive 325.12 Standards for Internal Controls in Commonwealth Agencies**. May 15, 2018.*

**2. SCOPE.**

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

*b. This directive **applies to all aspects of an agency's operations**, reporting, and compliance with applicable laws and regulations.*

**3. OBJECTIVE.** *To adopt and implement the internal control framework outlined in Standards for Internal Control in the Federal Government (Green Book) and ensure agencies use the components, principles, and attributes to design, implement, operate, and assess an effective internal control system.*

## **5. POLICY.**

*a. Each **agency must** design, implement, and operate, **for all programs** under its jurisdiction, **an internal control system** that incorporates the five components of internal control; follows the framework established by the Green Book; and documents the internal control responsibilities of the agency.*

## **Discussion**

Directive 325.12 Standards for Internal Controls in Commonwealth Agencies is clear with expectations. There is an internal control framework the must be used per the GAO Green Box. This is a management system taken from the COSO integrated inter control system of which NiSource and Columbia's top management claim they use.

In a rate case and normal operations systems need to be tested to provide assurance to decision-makers including regulatory officials as the PUC that management systems are in place and functioning as required.

In a recent set of interrogatories, I had questions concerning Columbia's use of the COSO internal control system and the GAO Green Book. Columbia objected and refused to answer all questions – I requested the judge to Compel Columbia to answer the questions. Judge Hoyer only compelled Columbia to two questions – in short, do you use the GAO Green Book – the answer No. Do you use the COSO the answer -Yes. The next – provide documents that substantiate the use. Judge Hoyer did not compel them to respond with these easily available documents – if they exist. This is a softball question – if I were asked the same question while at Lockheed Martin, I would simply start by going to Corporate Policy Statement 11 regarding Internal Controls. If management put internal controls in place, then it should not be hard for them to find where they put them.

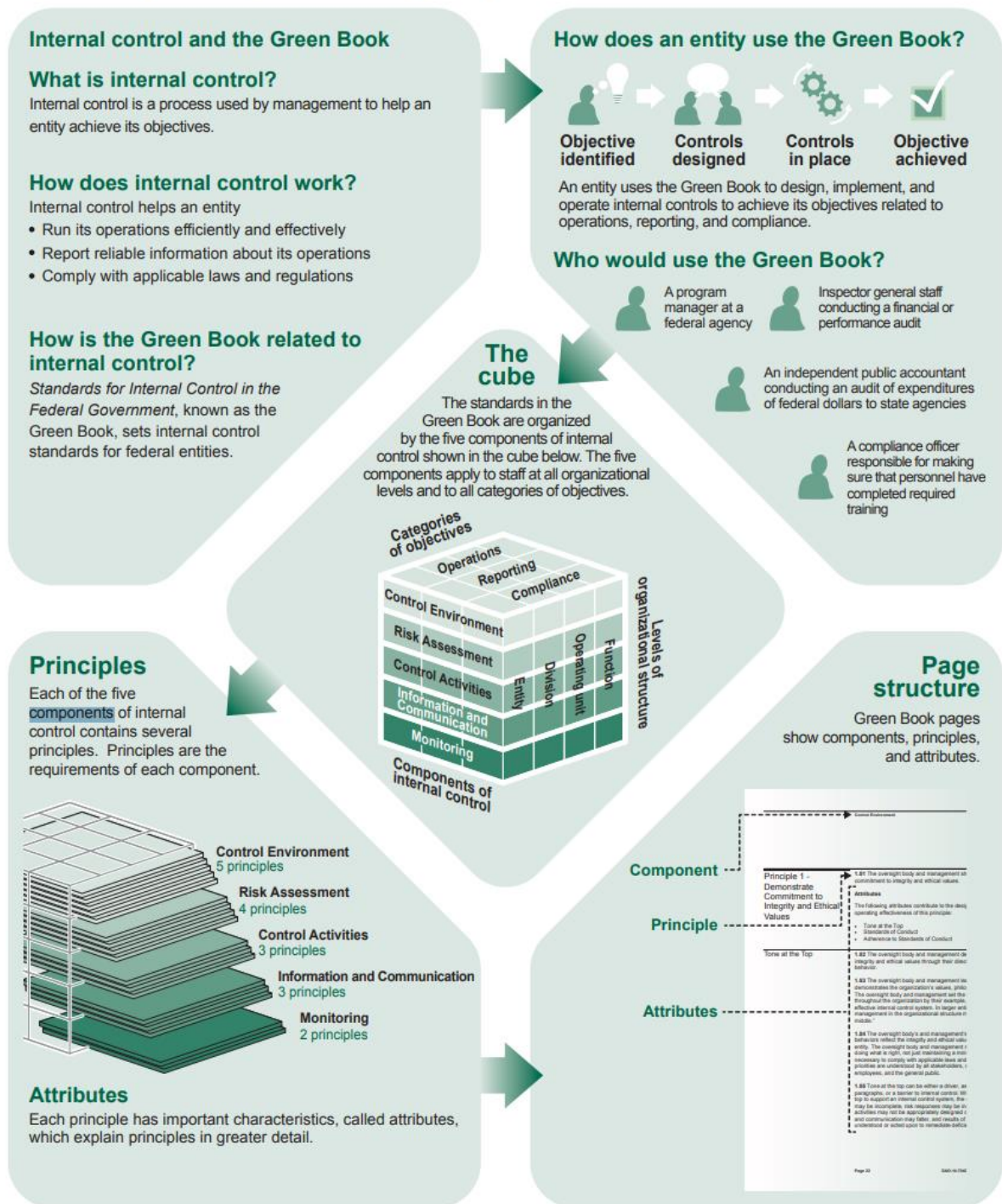
In a performance audit, these basic questions must be asked. In a rate case, Columbia has the burden of proof to show they do and their internal controls are in place and there is reasonable assurance the controls function as required.

Part of an investigation is an investigation. Material information and evidence must be sought. Stifling investigations is wrong. Shallow investigations on the basics certainly do not help the PUC commissioners to make reliable decisions in large rate cases.



# What is the Green Book and how is it used?

Important facts and concepts related to the Green Book and internal control



Sources: GAO and COSO.

GAO.GOV/GREENBOOK

GAO-14-704G

In implementations, investigations, and audits... first things first. The current tone at the top in this rate case will not get us to a reliable conclusion. Each of the attributes is an intangible asset of the organization. For audit and inventory purposes – the first test is existence. This rate case must find out what exists and what does not exist as required in *Management Directive 325.12 Standards for Internal Controls in Commonwealth Agencies*.

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## Principle 1 - Demonstrate Commitment to Integrity and Ethical Values

**1.01** The oversight body and management should demonstrate a commitment to integrity and ethical values.

### Attributes

The following attributes contribute to the design, implementation, and operating effectiveness of this principle:

- Tone at the Top
- Standards of Conduct
- Adherence to Standards of Conduct

The Pennsylvania Constitution, Pennsylvania's Public Utility Code, and the Federal government have established the framework to reach just and reasonable rates. Not following that established framework can result in disaster for safety, operations, affordability, and financial purposes.

Governance of Pennsylvania agencies requires understanding and use of the framework that has been established – that framework emphasizes Constitutional required Generally Accepted Audits as implemented by using the GAO Yellow Book. The 2020 PUC audit of Columbia Gas shows that is not in place. The PUC, ratepayers, and the public have no assurance that Columbia's rate and charges are just and reasonable – making self-inflicted blind recommendations and decisions is not a good attribute.

The Pennsylvania Constitution requires an oath of office for PUC Administrative Law Judges. *"I do solemnly swear (or affirm) that I will support, obey and defend the Constitution of the United States and the Constitution of this Commonwealth and that I will discharge the duties of my office with fidelity."*

Has the presiding officer supported, obeyed, and defended the Constitutional requirement *Article VIII Section 10. Audit* in his rate case approach?

How can the public reach a conclusion that rates are just and reasonable if the process to arrive at that assurance has never been diligently attempted nor occurred?

### **Conclusion**

The facts around this rate case are not what can legally proceed, as Columbia asserts. It will be the public's perceptions of how this and other rate cases are conducted and rate increases granted – this will not play well in Peoria, Punxsutawney, nor Pittsburgh.

The Judge's continual siding with Columbia on objections to interrogatories sets the tone at the top, emboldens them to not participate in discovery. Discovery is fundamental to due diligence, due process, and justice.

Justice would be best served with another presiding officer *"that garners the highest level of public confidence in their independence, fairness, impartiality, integrity, and competence."*

Judge Hoyer, the Commission, ratepayers, and the public would be better served if Judge Hoyer is replaced as the presiding officer in this rate case and Judge Hoyer spends time to recalibrate and get on track with what the Pennsylvania Constitution, laws, and regulations require.

Another presiding officer must possess a strong understanding of Pennsylvania's internal control and audit framework as required in the Management Directives on audits and internal controls.

Respectfully submitted.

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

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e-filing



## 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  
Richard C. Culbertson Reply to Columbia Gas Inc's to Motion to Replace Presiding  
Officer in the referenced rate case 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 7<sup>th</sup> day of July  
2021.

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

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Dated: July 7, 2021