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File #: 182466

July 9, 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 the Answer of Columbia Gas of Pennsylvania, Inc. ("Columbia") to the Motion to Compel of Richard C. Culbertson – Set IV, Questions 1-31, in the above-referenced proceeding. Copies will be provided per the Certificate of Service.

Respectfully submitted,



Lindsay A. Berkstresser

LAB/kl
Attachment

cc: Honorable Mark A. Hoyer
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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richard.c.culbertson@gmail.com

Date: July 9, 2021

A handwritten signature in cursive script, reading "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.	:	

**ANSWER OF COLUMBIA GAS OF PENNSYLVANIA, INC.
TO THE MOTION TO COMPEL OF
RICHARD C. CULBERTSON – SET IV, QUESTIONS 1-31**

Columbia Gas of Pennsylvania, Inc. (“Columbia” or the “Company”) hereby submits this Answer to the Motion to Compel of Richard C. Culbertson regarding Set IV, Questions 1-31, pursuant to 52 Pa. Code § 5.342(g)(1). As explained below, Mr. Culbertson’s Motion to Compel should be denied because Set IV, Questions 1-31 are unreasonable and untimely, and they seek information that is (1) confidential customer information; (2) irrelevant and unlikely to lead to the discovery of admissible evidence; (3) outside the scope of this proceeding; (4) legal interpretations, strategy and argument; and (5) protected by attorney client privilege.

I. BACKGROUND

On June 21, 2021, Mr. Culbertson issued his Set IV interrogatories.

On June 28, 2021, Columbia served objections to all of Mr. Culbertson’s Set IV interrogatories. A true and correct copy of Columbia’s objections is attached hereto as Appendix A.

On July 6, 2021, Mr. Culbertson filed a Motion to Compel Columbia’s response to his Set IV interrogatories. Mr. Culbertson’s Motion to Compel is untimely. In accordance with Administrative Law Judge (“ALJ”) Hoyer’s May 21, 2021 Prehearing Order, motions to compel

are due within three days of service of written objections. Thus, any motion to compel the Set IV responses was due on July 1, 2021.

II. LEGAL STANDARD

Pursuant to Section 5.321(c), a party may obtain discovery of any matter not privileged that is relevant to a pending proceeding and that is reasonably calculated to lead to the discovery of admissible evidence. 52 Pa. Code § 5.321(c). Relevant evidence is “that which, tends to establish some fact material to the case, or which tends to make a fact at issue more or less probable.” *Commonwealth v. Scott*, 389 A.2d 79, 82 (1978).¹ Irrelevant or immaterial evidence is not admissible. 66 Pa. C.S. § 332(b). The Commission has excluded evidence on the basis that the evidence is not relevant to the scope of the proceeding. See e.g., *Investigation of the Philadelphia Area Taxicab Self-Insurance Program*, 1989 Pa. PUC LEXIS 206 (1989) (excluding evidence that was “not germane to the limited scope of the investigation...”).

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).

¹ See Pa.R.E. 401 (“Evidence is relevant if: (a) it has any tendency to make a fact more or less probable than it would be without the evidence; and (b) the fact is of consequence in determining the action.”); *Ecker v. Amtrak*, 2015 Phila. Ct. Com. Pl. LEXIS 98 (Mar. 13, 2015), *affirmed*, 2015 Pa. Super. Unpub. LEXIS 3615 (Pa. Super. 2015); *Parr v. Ford Motor Co.*, 109 A.3d 682 (Pa. Super. 2014), *appeal denied*, 2015 Pa. LEXIS 1150 (Pa. 2015). Even if evidence is relevant, such evidence may be excluded “if its probative value is outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence.” *Parr*, 109 A.3d at 697 (quoting Pa.R.E. 403).

In addition, interrogatories that seek legal interpretations, legal strategy and information that is protected by attorney-client privilege are impermissible. *See, e.g. Pa. PUC, et al. v. Pennsylvania American Water Co.*, Docket Nos. R-2011-2232243, et al. 2011 Pa. PUC LEXIS 1523 (July 21, 2011) (interrogatories requesting privileged attorney-client communications, attorney work product, or an attorney's mental impressions, analyses, or assessments as to legal matters are impermissible).

III. MR. CULBERTSON'S MOTION TO COMPEL SHOULD BE DENIED.

As explained herein, Mr. Culbertson's Set IV Interrogatories are not within the scope of permissible discovery in this proceeding. Mr. Culbertson's Set IV Interrogatories are based on public input hearing testimony provided by a former customer of Columbia, Mr. Hicks. Culbertson Set IV, Questions 1-31 provide as follows:

Reference:

On June 16, 2021, Michael Joseph Hicks Sr. provided testimony at the Public Input Hearing. Mr. Hicks lives at 2 8th Street in Uniontown, PA. Mr. Hicks claimed the CPA came into his home, looked at his furnace, claimed it had a bad heat exchanger, and red-tagged his gas furnace. Columbia's customer meter is located inside of Mr. Hicks' home. Columbia was involved somehow and a third party came in and arranged and installed a new more efficient furnace for which he did not pay. Sometime later, Mr. Hicks permitted gas service to be shut off so his customer's service line could be tested. He was not aware of any testing that occurred on his customer's service line, however. When it got cold Mr. Hicks requested that Columbia restore service. Columbia refused to restore gas service until Mr. Hicks replaced his customer's service line. Mr. Hicks contacted two plumbing contractors for estimates to replace his customer's service line and received estimates of around six thousand dollars.

Mr. Hicks did not have the \$6000 to replace his customer's service line, so he has been relying on electric heaters and kerosene heaters and spends about \$1000 a month to do so.

Mr. Hicks' provides an alarming testimony. From what he expressed, in essence, Mr. Hicks was driven to more dangerous alternative heating sources without cause.

Questions and Requests for Documents

1. Please provide Columbia's records of service to Mr. Hicks' residence. Do not include Mr. Hicks' personal information such as payment history.
2. Please provide a narrative as to Columbia's version of what happened to the gas service to the home of Mr. Hicks.
3. The delivery of gas service is at the curb valve or property line of Mr. Hicks's property per Columbia's tariff? Correct?
4. Had Columbia installed a Curb valve to this property?
5. Columbia had a right to have access to its property (customer meter) inside Mr. Hicks's home. Correct?
6. Columbia does not have a right to have free access to other's private property for maintenance purposes ... including testing and repair. Correct? Please explain.
7. Maintenance and repair of out-of-scope private property where costs are charged to other customers are not reasonable costs in a government-regulated environment. Correct?
8. Title 66 § 501. General powers. (c) Compliance.--Every public utility, its officers, agents, and employees, and every other person or corporation subject to the provisions of this part, affected by or subject to any regulations or orders of the commission or of any court, made, issued, or entered under the provisions of this part, shall observe, obey, and comply with such regulations or orders, and the terms and conditions thereof.
Does Columbia agree it not only must obey observe the commission's regulations but all other applicable Federal and Pennsylvania laws, regulations, standards, court orders ... as well as the UNITED STATES DISTRICT COURT, DISTRICT OF MASSACHUSETTS UNITED STATES DISTRICT COURT DISTRICT OF MASSACHUSETTS DEFERRED PROSECUTION AGREEMENT with NiSource the parent of CPA? <https://www.justice.gov/usao-ma/victim-and-witness-assistance-program/united-states-v-bay-state-gas-company-dba-columbia-gas-massachusetts> and <https://www.justice.gov/usao-ma/page/file/1252061/download>
9. 18 CFR Part 201 - UNIFORM SYSTEM OF ACCOUNTS PRESCRIBED FOR NATURAL GAS COMPANIES SUBJECT TO THE PROVISIONS OF THE NATURAL GAS ACT <https://www.law.cornell.edu/cfr/text/18/part-201>
Includes 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.**

2 CFR 200.434 Contributions and donations.

(a) Costs of contributions and donations, including cash, property, and services, from the non-Federal entity to other entities, are unallowable.

48 CFR § 31.205-8 - Contributions or donations.

31.205-8 Contributions or donations.

“Contributions or donations, including cash, property, and services, regardless of recipient, are unallowable”

PA Title 66 § 1510. “Ownership and maintenance of natural and artificial gas service lines. “Maintenance of service lines shall be the responsibility of the owner of the service line.”

Columbia’s tariff: 4.13 Maintenance of Lines

“All house and service lines to the curb valve, or the property or lot line if there is no curb valve, shall be kept and maintained in good condition by the owner of such facilities. When leaky or hazardous conditions of the service and house lines are found, repairs shall be made promptly by the owner of such facilities.

Has Columbia in this area has Columbia observed, obeyed, and complied with these regulations?

10. When the service technician examined the heat exchange of Mr. Hick’s furnace, to what financial account was this service technician charging his or her labor? Was it account 426.5, Other Deductions?
11. When did Columbia discontinue Mr. Hicks’ gas service?
12. Did Columbia remove the customer meter from Mr. Hick’s home? When?
13. Has Columbia abandoned Mr. Hicks’ service line? When?
14. Please provide Columbia’s or the NiSource policy regarding the “red-tagging” of private property?
15. Please provide a blank red tag, the kind that is or was used to stop the use of the faulty private property.
16. Are these Columbia Red Tags controlled -- with control numbers and logs? Explain?
17. How and who withdraws red tags from deficient private property? What are the associated processes, policies, and practices?
18. Does Columbia red tag its own property?
19. Did the Columbia technician receive consent to inspect the furnace of Mr. Hicks?
20. Does Columbia require, provide training and certification of their service technicians on the safe operation and maintenance of household appliances, including gas furnaces that consume natural gas? Explain and provide documentation.
21. Is inspecting a gas furnace heat exchanger include in Columbia’s a covered task as provided in 49 CFR Part 192, Subpart N - Qualification of Pipeline Personnel?
22. How does an inspection of a privately owned gas furnace fall within 49 CFR § 192.801 – Scope?
23. What was the technique of which the technician used to determine that the heat exchanger of the furnace was bad? What test equipment was used ... assume company-owned?
24. Does Columbia realize that the inspection of a furnace’s heat exchanger is not a simple, clean, easy nor quick task? The furnace must not be hot, the furnace must be opened up, the burners have to be removed then there is clean up with a vacuum cleaner, then an on the floor inspection with lights, mirrors, and photos, clean up again then reinstalling the burners and close up the furnace? Then conclude

with record keeping. Does Columbia keep evidence of inspections and testing of furnaces as are kept on pipelines? Is it possible that the technician assumed the furnace had a bad heat exchanger because the furnace was old and did not properly test and inspect?

25. Has the customer meter been removed from the premises? When?

26. Has the service line been abandoned? When and on what basis?

27. If a leak had been discovered at the curb valve at the connection private property and Columbia's property – who is responsible to replace or repair the leaking connection? What is Columbia's policy? Columbia pays, owner pays, or shared?

28. What and who prevented Mr. Hicks from replacing his own customer's service line?

29. Does Columbia agree that replacing a customer's service line is about is 95 percent moving dirt – Call 811 have the buried utility lines marked, digging a trench 18 in deep...? We should assume, being a former coal miner, Mr. Hicks knows how to move dirt ... correct? Did Columbia prevent Mr. Hicks from working on and maintaining his own property?

30. How many other former customers were forced to do what Mr. Hicks had to do to stay warm in winter? How big is that underserved market?

31. After hearing Mr. Hicks' testimony, has Columbia's legal staff notified Columbia's operations to start its investigation and review Mr. Hick's treatment and make necessary corrections? Please explain.

In Culbertson Set IV, Questions 1-5, 10-20, and 23-30, Mr. Culbertson requests information that is specific to Mr. Hicks, a former customer of Columbia. These questions seek information regarding the former customer's residence and residential account and the service that Columbia provided to the customer. In his Motion to Compel, Mr. Culbertson states that ratepayers are not covered under privacy laws, such as HIPPA. Motion to Compel, p. 7. However, Mr. Culbertson ignores the Commission's regulations that prohibit the unauthorized disclosure of private customer information to a third party. *See* 52 Pa. Code § 62.78. Mr. Culbertson is not representing Mr. Hicks in this matter. To the best of Columbia's knowledge, Mr. Culbertson does not own Mr. Hicks' residence and has no connection or relationship to Mr. Hicks or his residence. Columbia protects the privacy of its customers' and former customers' personal information and cannot release

private information about a customer's or former customer's service, account, and residence to Mr. Culbertson without the customer's consent.

Mr. Culbertson attempts to distinguish his request for "Columbia's records of service to Mr. Hick's residence" from "personal information such as payment history." Motion to Compel, p. 7. Mr. Culbertson fails to recognize that the Company's records of service to Mr. Hicks' residence are, by their very nature, personal information. Records of service include payment information and other personal information.

In his Motion to Compel, Mr. Culbertson states that the subject of Mr. Hicks' public input hearing testimony must be investigated. Motion to Compel, p. 2. Columbia notes that it has investigated this issue and will address Mr. Hicks' public input hearing testimony in the Company's rebuttal testimony. However, as part of Columbia's investigation, Columbia should not be required to divulge a former customer's information to Mr. Culbertson without the former customer's consent. Mr. Culbertson states that Mr. Hicks chose to make his experience public by testifying at the public input hearing. Motion to Compel, p. 12. At the public input hearing, unlike here, Mr. Hicks was able to choose what information he shared with the public. Offering sworn testimony at a public input hearing should not subject a customer's or former customer's information and account records to discovery from other members of the public. Such a policy could have a chilling effect on customers' willingness to testify.

Mr. Culbertson also argues that Mr. Hicks was seeking the help of the participants in this case to "investigate what Columbia had done to him." Motion to Compel, p. 7. Nothing in the public input hearing testimony suggests that Mr. Hicks was seeking help from Mr. Culbertson or any of the other participants in this case. *See* Tr. at 97-115. Mr.

Culbertson has not entered an appearance on behalf of Mr. Hicks in this case and may not legally represent Mr. Hicks before the Commission in this case. Mr. Culbertson acknowledges that he is “not of the legal profession.” Motion to Compel, p. 4. Columbia interprets this statement to mean that Mr. Culbertson does not have a license to practice law in Pennsylvania. Yet, Mr. Culbertson states that he “spend[s] a significant amount of time in standards writing, vetting, and promulgation, and try to adhere to relevant parts of PA Title 204 Chapter 81, 204 Pa Code Rule 6.1 Voluntary Pro Bono Public Service, which is doing things for the public, interest, service, and good.” Motion to Compel, p. 4. To the extent Mr. Culbertson is implying that he provides pro bono legal services, he may be engaging in the unauthorized practice of law. *See* 204 Pa. Code Rule 5.5.

Questions 28-30 also impermissibly ask Columbia to speculate as to why a customer made a particular decision regarding his residence and his natural gas service. It is improper discovery to ask Columbia to speculate as to the motives or reasoning of other persons. Further, Mr. Hicks did not file a complaint in this matter, and his testimony at the public input hearing indicated that the events he described occurred sometime in the late 1970s to 1980s, which is well outside the relevant periods being examined in this proceeding. Tr. at 98-100.

Richard C. Culbertson, Set IV, Questions, 6, 7, 8, 9, 21 and 22 are impermissible because they request legal opinions and interpretations from Columbia.² For example, these questions seek, *inter alia*, information regarding how Columbia can legally access private property, an interpretation of what constitutes reasonable costs, whether Columbia

² Mr. Culbertson states that Columbia did not address Set IV, Questions 21 and 22 in the Company’s objections. Motion to Compel, pp. 5-6. Mr. Culbertson is incorrect. Columbia’s objections to these questions were addressed on pages 6-7 of Columbia’s objections.

must comply with particular laws and regulations, and whether Columbia is in compliance with certain regulations. Further, Questions 6 and 7 are vague. It is unclear what is meant by the references to “free access to other’s private property” and “out-of-scope private property” in Questions 6 and 7.

Richard C. Culbertson, Set IV, Question 31, impermissibly seeks information regarding the Company’s legal strategy and information that is protected by attorney-client privilege and attorney work product. *See, e.g. Pa. PUC, et al. v. Pennsylvania American Water Co.*, Docket Nos. R-2011-2232243, et al. 2011 Pa. PUC LEXIS 1523 (July 21, 2011).

In his Motion to Compel, Mr. Culbertson claims that the NiSource Code of Business Conduct may circumvent the attorney-client privilege and that employees who are subject to the NiSource Code of Business Conduct may not be covered by attorney-client privilege. Motion to Compel, p. 12. However, nothing in the NiSource Code of Business Conduct implies that an employee has waived attorney-client privilege by complying with the NiSource Code of Business Conduct.

Mr. Culbertson makes several other arguments in his Motion to Compel, none of which address Columbia’s objections, and all of which are without merit. Columbia will respond to the remainder of the arguments set forth in Mr. Culbertson’s Motion to Compel in turn.

Mr. Culbertson cites the U.S. Sentencing Guidelines in attempt to support his argument that the Commission must conduct an investigation. Motion to Compel, p. 3. Mr. Culbertson’s argument is flawed for two reasons. First, the U.S. Sentencing Guidelines do not apply to this base rate proceeding before the Commission. Second, Mr. Culbertson

fails to acknowledge that the Commission did open an investigation into the rates and service of Columbia in this case. *See Order Suspending Supplement No. 325*, Docket No. R-2021-3024296 (Order entered May 6, 2021).

Mr. Culbertson accuses Columbia of abusing the rate case process and refusing to participate in lawful discovery. Columbia is permitted to present its position as to why certain interrogatories are objectionable. That is not an abuse of the rate case process, nor is it a refusal to participate in lawful discovery. Columbia has complied with all of the ALJ's orders regarding discovery in this case. Moreover, Columbia has responded to approximately 400 interrogatories from other parties in this case. Clearly, Columbia has engaged in the discovery process.

Mr. Culbertson references the American Bar Association's Rule of Professional Responsibility 3.4: Fairness to Opposing Party & Counsel, which provides:

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;

Culbertson Motion to Compel, pp. 7-8, 14. Mr. Culbertson is confusing proper discovery objections and pleadings with unlawfully obstructing access to evidence. Objecting to impermissible discovery requests does not violate this rule.

Mr. Culbertson cites the Federal Rules of Civil Procedure as part of his argument. Motion to Compel, pp. 6-7. However, the Federal Rules of Civil Procedure do not apply to proceedings before the Commission. The Commission's discovery regulations at 52 Pa. Code § 5.321, *et seq.* govern discovery in this case.

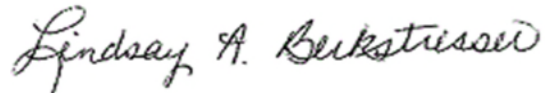
Mr. Culbertson references the Third Interim Order from Columbia's 2020 rate case and picks the following quote from that Order: "All costs which a public utility uses to compute its base rate, including improvements to infrastructure and to safety, are relevant in a base rate proceeding. In addition, safety specifically is always a relevant issue in a base rate proceeding." Motion to Compel, p. 11. This quote was specific to a dispute regarding the admissibility of testimony in a prior rate case and is not controlling with respect to Mr. Culbertson's interrogatories in this case. The questions being asked in Mr. Culbertson's Set IV Interrogatories were not the subject of the prior order.

Finally, Mr. Culbertson references the Sarbanes Oxley Act. Motion to Compel, p. 13. The Sarbanes Oxley Act is irrelevant to the issues in this case and provides no support for his arguments.

IV. CONCLUSION

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

Respectfully submitted,



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Date: July 9, 2021

Appendix A

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**OBJECTIONS OF COLUMBIA GAS OF PENNSYLVANIA, INC.
TO THE INTERROGATORIES PROPOUNDED BY
RICHARD C. CULBERTSON – SET IV, QUESTIONS 1-31**

Columbia Gas of Pennsylvania, Inc. (“Columbia”) hereby submits these Objections to the Interrogatories Propounded by Richard C. Culbertson Set IV, Questions 1 through 31, pursuant to 52 Pa. Code § 5.342. As explained below, Columbia objects to Richard C. Culbertson Set IV, Questions 1 through 31, because they seek information that is (1) confidential customer information; (2) irrelevant and unlikely to lead to the discovery of admissible evidence; (3) outside the scope of this proceeding; (4) legal interpretations, strategy and argument; and (5) protected by attorney client privilege.

I. OBJECTIONS TO RICHARD C. CULBERTSON SET IV, QUESTIONS 1-31

Richard C. Culbertson Set IV, Questions 1-31, provide as follows:

Reference:

On June 16, 2021, Michael Joseph Hicks Sr. provided testimony at the Public Input Hearing. Mr. Hicks lives at 2 8th Street in Uniontown, PA. Mr. Hicks claimed the CPA came into his home, looked at his furnace, claimed it had a bad heat exchanger, and red-tagged his gas furnace. Columbia’s customer meter is located inside of Mr. Hicks’ home. Columbia was involved somehow and a third party came in and arranged and installed a new more efficient furnace for which he did not pay. Sometime later, Mr. Hicks permitted gas service to be shut off so his customer’s service line could be tested. He was not aware of any testing that occurred on his customer’s service line, however. When it got cold Mr. Hicks requested that Columbia restore service. Columbia refused

to restore gas service until Mr. Hicks replaced his customer's service line. Mr. Hicks contacted two plumbing contractors for estimates to replace his customer's service line and received estimates of around six thousand dollars.

Mr. Hicks did not have the \$6000 to replace his customer's service line, so he has been relying on electric heaters and kerosene heaters and spends about \$1000 a month to do so.

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1. Please provide Columbia's records of service to Mr. Hicks' residence. Do not include Mr. Hicks' personal information such as payment history.

2. Please provide a narrative as to Columbia's version of what happened to the gas service to the home of Mr. Hicks.

3. The delivery of gas service is at the curb valve or property line of Mr. Hicks's property per Columbia's tariff? Correct?

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5. Columbia had a right to have access to its property (customer meter) inside Mr. Hicks's home. Correct?

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7. Maintenance and repair of out-of-scope private property where costs are charged to other customers are not reasonable costs in a government-regulated environment. Correct?

8. Title 66 § 501. General powers. (c) Compliance.--Every public utility, its officers, agents, and employees, and every other person or corporation subject to the provisions of this part, affected by or subject to any regulations or orders of the commission or of any court, made, issued, or entered under the provisions of this part, shall observe, obey, and comply with such regulations or orders, and the terms and conditions thereof.

Does Columbia agree it not only must obey observe the commission's regulations but all other applicable Federal and Pennsylvania laws, regulations, standards, court orders ... as well as the UNITED STATES DISTRICT COURT, DISTRICT OF MASSACHUSETTS UNITED STATES DISTRICT COURT DISTRICT OF MASSACHUSETTS DEFERRED PROSECUTION AGREEMENT with NiSource the parent of CPA? <https://www.justice.gov/usao-ma/victim-and-witness-assistance-program/united-states-v-bay-state-gas-company-dba-columbia-gas-massachusetts> and <https://www.justice.gov/usao-ma/page/file/1252061/download>

9. 18 CFR Part 201 - UNIFORM SYSTEM OF ACCOUNTS PRESCRIBED FOR NATURAL GAS COMPANIES SUBJECT TO THE PROVISIONS OF THE NATURAL GAS ACT <https://www.law.cornell.edu/cfr/text/18/part-201>

Includes 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.**

2 CFR 200.434 Contributions and donations.

(a) Costs of contributions and donations, including cash, property, and services, from the non-Federal entity to other entities, are unallowable.

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31.205-8 Contributions or donations.

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Columbia’s tariff: 4.13 Maintenance of Lines

“All house and service lines to the curb valve, or the property or lot line if there is no curb valve, shall be kept and maintained in good condition by the owner of such facilities. When leaky or hazardous conditions of the service and house lines are found, repairs shall be made promptly by the owner of such facilities.

Has Columbia in this area has Columbia observed, obeyed, and complied with these regulations?

10. When the service technician examined the heat exchange of Mr. Hick’s furnace, to what financial account was this service technician charging his or her labor? Was it account 426.5, Other Deductions?

11. When did Columbia discontinue Mr. Hicks’ gas service?

12. Did Columbia remove the customer meter from Mr. Hick’s home? When?

13. Has Columbia abandoned Mr. Hicks’ service line? When?

14. Please provide Columbia’s or the NiSource policy regarding the “red-tagging” of private property?

15. Please provide a blank red tag, the kind that is or was used to stop the use of the faulty private property.

16. Are these Columbia Red Tags controlled -- with control numbers and logs? Explain?

17. How and who withdraws red tags from deficient private property? What are the associated processes, policies, and practices?

18. Does Columbia red tag its own property?

19. Did the Columbia technician receive consent to inspect the furnace of Mr. Hicks?

20. Does Columbia require, provide training and certification of their service technicians on the safe operation and maintenance of household appliances, including gas furnaces that consume natural gas? Explain and provide documentation.

21. Is inspecting a gas furnace heat exchanger include in Columbia's a covered task as provided in 49 CFR Part 192, Subpart N - Qualification of Pipeline Personnel?
22. How does an inspection of a privately owned gas furnace fall within 49 CFR § 192.801 – Scope?
23. What was the technique of which the technician used to determine that the heat exchanger of the furnace was bad? What test equipment was used ... assume company-owned?
24. Does Columbia realize that the inspection of a furnace's heat exchanger is not a simple, clean, easy nor quick task? The furnace must not be hot, the furnace must be opened up, the burners have to be removed then there is clean up with a vacuum cleaner, then an on the floor inspection with lights, mirrors, and photos, clean up again then reinstalling the burners and close up the furnace? Then conclude with record keeping. Does Columbia keep evidence of inspections and testing of furnaces as are kept on pipelines? Is it possible that the technician assumed the furnace had a bad heat exchanger because the furnace was old and did not properly test and inspect?
25. Has the customer meter been removed from the premises? When?
26. Has the service line been abandoned? When and on what basis?
27. If a leak had been discovered at the curb valve at the connection private property and Columbia's property – who is responsible to replace or repair the leaking connection? What is Columbia's policy? Columbia pays, owner pays, or shared?
28. What and who prevented Mr. Hicks from replacing his own customer's service line?
29. Does Columbia agree that replacing a customer's service line is about is 95 percent moving dirt – Call 811 have the buried utility lines marked, digging a trench 18 in deep...? We should assume, being a former coal miner, Mr. Hicks knows how to move dirt ... correct? Did Columbia prevent Mr. Hicks from working on and maintaining his own property?
30. How many other former customers were forced to do what Mr. Hicks had to do to stay warm in winter? How big is that underserved market?
31. After hearing Mr. Hicks' testimony, has Columbia's legal staff notified Columbia's operations to start its investigation and review Mr. Hick's treatment and make necessary corrections? Please explain.

Richard C. Culbertson Set IV, Questions 1-31, are not within the scope of permissible discovery in this proceeding. Pursuant to Section 5.321(c) of the Commission's regulations, a party may obtain discovery of any matter not privileged that is relevant to a pending proceeding or that is reasonably calculated to lead to the discovery of admissible evidence. 52 Pa. Code § 5.321(c). Relevant evidence is "that which, tends to establish some fact material to the case, or which tends to make a fact at issue more or less probable." *Commonwealth v. Scott*, 389 A.2d 79, 82 (1978).¹ Irrelevant or immaterial evidence is not admissible. 66 Pa. C.S. § 332(b). The Commission has excluded evidence on the basis that the evidence is not relevant to the scope of the proceeding. See e.g., *Investigation of the Philadelphia Area Taxicab Self-Insurance Program*, 1989 Pa. PUC LEXIS 206 (1989) (excluding evidence that was "not germane to the limited scope of the investigation..."). 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).

In addition, interrogatories that seek legal interpretations, legal strategy and information that is protected by attorney-client privilege are impermissible. See, e.g. *Pa. PUC, et al. v. Pennsylvania American Water Co.*, Docket Nos. R-2011-2232243, et al. 2011 Pa. PUC LEXIS 1523 (July 21, 2011) (interrogatories requesting privileged attorney-client communications, attorney work product, or an attorney's mental impressions, analyses, or assessments as to legal matters are impermissible).

¹ See Pa.R.E. 401 ("Evidence is relevant if: (a) it has any tendency to make a fact more or less probable than it would be without the evidence; and (b) the fact is of consequence in determining the action."); *Ecker v. Amtrak*, 2015 Phila. Ct. Com. Pl. LEXIS 98 (Mar. 13, 2015), *affirmed*, 2015 Pa. Super. Unpub. LEXIS 3615 (Pa. Super. 2015); *Parr v. Ford Motor Co.*, 109 A.3d 682 (Pa. Super. 2014), *appeal denied*, 2015 Pa. LEXIS 1150 (Pa. 2015). Even if evidence is relevant, such evidence may be excluded "if its probative value is outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence." *Parr*, 109 A.3d at 697 (quoting Pa.R.E. 403).

II. OBJECTIONS TO RICHARD C. CULBERTSON SET IV, QUESTIONS 1-5, 10-20, AND 23-30

In Richard C. Culbertson Set IV, Questions 1-5, 10-20, and 23-30, Mr. Culbertson requests information that is specific to Mr. Hicks, a former customer of Columbia. These questions seek information regarding the former customer's residence and residential account and the service that Columbia provided to the customer. The Commission's regulations prohibit the unauthorized disclosure of private customer information to a third party. See 52 Pa. Code § 62.78. Information regarding a customer's service, account and residence cannot be publicly released without the customer's consent. Mr. Culbertson is not representing Mr. Hicks in this matter. To the best of Columbia's knowledge, Mr. Culbertson does not own Mr. Hick's residence and has no connection or relationship to Mr. Hicks or his residence. Columbia protects the privacy of its customers' and former customers' personal information and cannot release private information about a customer's service, account, and residence to Mr. Culbertson without the customer's consent.

These questions also impermissibly ask Columbia to speculate as to why a customer made a particular decision regarding his residence and his natural gas service. Mr. Hicks did not file a complaint in this matter, and his testimony at the public input hearing indicated that the events he described occurred sometime in the late 1970s to 1980s, which is well outside the relevant periods being examined in this proceeding. Tr. at 98-100.

III. OBJECTIONS TO RICHARD C. CULBERTSON, SET IV, QUESTIONS 6, 7, 8, 9, 21, 22 AND 31

Richard C. Culbertson, Set IV, Questions, 6, 7, 9, 21 and 22 are impermissible because they request legal opinions and interpretations from Columbia. For example, these questions seek, *inter alia*, information regarding how Columbia can legally access private property, an interpretation of what constitutes reasonable costs, whether Columbia must comply with particular laws and regulations, and whether Columbia is in compliance with certain regulations. Further, it

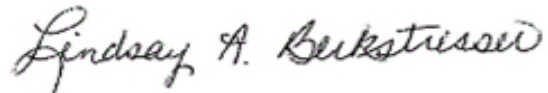
is unclear what information is being sought in Questions 6 and 7. It is unclear what is meant by the references to “free access to other’s private property” and “out-of-scope private property” in Questions 6 and 7.

Richard C. Culbertson, Set IV, Question 31, impermissibly seeks information regarding the Company’s legal strategy and information that is protected by attorney-client privilege and attorney work product. *See, e.g. Pa. PUC, et al. v. Pennsylvania American Water Co.*, Docket Nos. R-2011-2232243, et al. 2011 Pa. PUC LEXIS 1523 (July 21, 2011).

IV. CONCLUSION

WHEREFORE, Columbia Gas of Pennsylvania, Inc. specifically objects to Richard C. Culbertson Set IV, Questions 1-31 because they seek information that is (1) confidential customer information; (2) irrelevant and unlikely to lead to the discovery of admissible evidence; (3) outside the scope of this proceeding; (4) legal interpretations, strategy and argument; and (5) protected by attorney client privilege.

Respectfully submitted,



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Date: June 28, 2021

VERIFICATION

I, Nicole Paloney, Director of Rates & Regulatory Affairs for Columbia Gas of Pennsylvania, Inc., hereby state that the facts above set forth 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 herein are made subject to the penalties of 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities).



Nicole Paloney

Date: July 9, 2021