

Richard C. Culbertson
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July 8, 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 Second Interim Order

Dear Judge Hoyer,

Respectfully, I have been disturbed that we have been going through this rate case blindly – without due diligence and not having generally accepted independent financial and performance audits of Columbia Gas of Pennsylvania.

\$98,300,000 is a lot of money to be taken from customer's pockets.

Then when I try, as a first-time participant in a rate case, start asking normal questions as an auditor would, Columbia objects, using outdated Rules of Civil Procedure and you sustain their objections.

Then I find that there is a Pennsylvania 1968 constitutional requirement, Article VIII § 10. Audit. Commissions "shall be subject to audits made in accordance with generally accepted auditing standards."

Then there are Management Directives that define generally accepted audits ... they are based upon GAO Yellow Book -- Audits, GAO Green -- Internal controls, and 2 CFR 200 -- Grants. Being that audits are required by the Pennsylvania Constitution; I believe there are significant ramifications of these gross omissions.

The Commission should have performed these audits or had these audits performed by third parties. It gets worse when the PUC court denies questions or requested documents that look like what is requested in a generally accepted audit.

Thank you for your consideration and compel Columbia to answer what is due in this proceeding.

Sincerely,

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

Richard C. Culbertson

Attachments:

Certificate of Service.

Ms. Rosemary Chiavetta, Secretary Pennsylvania Public Utilities Commission

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

| | | |
|--|---|----------------|
| Pennsylvania Public Utility Commission, et al. | : | R-2021-3024296 |
| | : | |
| | : | |
| v. | : | |
| | : | July 8, 2021 |
| Columbia Gas of Pennsylvania, Inc. | : | |

MOTION TO RECONSIDER SECOND INTERIM ORDER
ADDRESSING COMPLAINANT RICHARD C. CULBERTSON’S MOTION
TO COMPEL DISCOVERY

– THE COMMISSION IS REQUIRED BY THE PENNSYLVANIA CONSTITUTION TO PERFORM GENERALLY ACCEPTED AUDITS BUT NEGLECTED TO FULFILL THAT DUTY – SET II OF THE CULBERTSON INTERROGATORIES WAS AN ATTEMPT TO FILL PART OF THAT GAP WITH QUALITATIVE PERFORMANCE QUESTIONS. AUDITS ARE ESSENTIAL FOR ASSURANCE AND DECISION-MAKING. IN ADDITION, THE COMMISSION AND COLUMBIA ARE USING AND REFERENCING OUTDATED FEDERAL RULES OF CIVIL PROCEDURE RULES 26 AND 34 OF WHICH WERE SUPERSEDED ON 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 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. Ultimately Mark A. Hoyer Deputy Chief Administrative Law Judge issued SECOND INTERIM ORDER ADDRESSING COMPLAINANT RICHARD C. CULBERTSON'S MOTION TO COMPEL DISCOVERY on June 30, 2021.

"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.*

Discussion

This motion is meant to be and hoped to receive respectfully. I know the frequent reaction for information such as this is received with the five stages of grief. Denial, anger, bargaining, depression, and acceptance. We have to work through that.

A just and reasonable conclusion of this rate case cannot occur without due process. Due process includes access to and the privilege to look at things and ask relevant questions.

The Second Interim Order denies me due process.

The Participants of this rate case are at an extreme disadvantage. We are supposed to reach some sort of conclusion the Columbia's performance and expenditures deserve an increase of rates of \$98,300,000 without generally accepted audits. Audits require investigation and reviews of what is required vs. what was performed.

Based upon some sort of assurance provided by the auditor, decisions are made because a professional auditor working in accordance with GAGAS has concluded there is reliable reasonable assurance based upon the facts.

Without access to relevant facts, there is no reasonable assurance.

This rate case is an investigation – we participants are investigators and have to have access to investigate.

Federal Rules of Civil Procedure 26 were issued on December 1, 2015. The current high-level requirement is “(1) ...*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.*”

<https://www.supremecourt.gov/publicinfo/year-end/2015year-endreport.pdf>

Set II interrogatories are seeking relevant material information regarding this rate case, without these interrogatories truthfully and fully answered, justice of this rate case will be impaired.

In audits, there is an effort to collect material information.

Material information includes quantitative factors and qualitative factors.

With Columbia Gas, qualitative and quantitative factors are under investigation. These concepts are presented and discussed in SEC Staff Accounting Bulletin: No. 99 – Materiality <https://www.sec.gov/interps/account/sab99.htm>

“The shorthand in the accounting and auditing literature for this analysis is that financial management and the auditor must consider both "quantitative" and "qualitative" factors in assessing an item's materiality. Court decisions, Commission rules and enforcement actions, and accounting and auditing literature⁶ have all considered "qualitative" factors in various contexts.”

...

“Qualitative factors may cause misstatements of quantitatively small amounts to be material; as stated in the auditing literature: As a result of the interaction of quantitative and qualitative considerations in materiality judgments, misstatements of relatively small amounts that come to the auditor's attention could have a material effect on the financial statements.”

As provide in my formal complaint, for example, I believe there are serious issues in accounting --- counted in “plant in service” accounts is property owned by others – the customer’s service line. That is qualitative and quantitative information. If that is true the next question an auditor or investigator how did that happen – internal control failures? The questions in Set II are

probing questions about the controls and applicable knowledge of preventing and detecting fraud. That line of questioning may not be comfortable but is necessary as a skeptical auditor.

From the GAO Yellow Book “3.21 *Independence comprises the following:*

a. Independence of mind: The state of mind that permits the conduct of an engagement without being affected by influences that compromise professional judgment, thereby allowing an individual to act with integrity and exercise objectivity and professional skepticism. <https://www.gao.gov/assets/gao-21-368g.pdf>

To understand due process and the objective of reaching just and reasonable rates for Columbia Gas of Pennsylvania, it is important to understand the overall framework that that is supposed to be used. **The Commonwealth of Pennsylvania has laid the track for the Commission to use.**

It starts in the Pennsylvania Constitution

Article I § 1. Inherent rights of mankind.

*All ... have certain inherent and **indefeasible rights**, among which are those of enjoying and defending life and liberty, of **acquiring, possessing and protecting property** and reputation, and of pursuing their own happiness.*

The property includes money, personal property, real property ...

Protecting my property includes participation in this rate case – and my full rights are indefeasible.

Article VIII § 10. Audit.

§ 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.***

*Any Commonwealth officer whose **approval is necessary** for any transaction relative to the financial affairs of the Commonwealth shall not be charged with the function of **auditing that transaction after its occurrence.** (This is the concept of independent audits and not auditing your own work.)*

There are problems with each paragraph of § 10. *Audit.*

- The PUC does not do audits in accordance with generally accepted auditing standards – those audits are Generally Accepted Government Audit Standards (GAGAS) audits.
- The PUC violates this second requirement. The Commission approves a rate increase based upon the recommendation of an Administrative Law Judge. The next go around, the administrative law judge investigates or audits their own work and recommends approval of their own work and the results of what they approved, then the PUC approves their own work again and the cycle continues. This is why the acceleration of unnecessary pipeline replacements has continued since about 2007 ... the PUC and ALJs continue to approve their own work. This is also why perhaps independent financial audits do not occur and external independent performance audits do not occur.
- Without recognition of the requirements, there is probably a connection non-compliance with the high rate base per customer in Pennsylvania vs. Indiana (2.7 times) and Ohio (2.6 times) as provided in my Formal Complaint.

Appendix A as part of this document, provides a more detailed constitutional, statute, management, and regulatory framework.

The purpose of audits is to provide reasonable assurance of internal controls.

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

The one-sheet summary internal control framework is provided below.

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



GAO-14-704G

*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.” The first of these:

**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

A Summary five components of internal control are included in Figure 3 below.

OV2.09 Figure 3 lists the five components of internal control and 17 related principles.

Figure 3: The Five Components and 17 Principles of Internal Control

Control Environment

1. The oversight body and management should demonstrate a commitment to integrity and ethical values.
2. The oversight body should oversee the entity's internal control system.
3. Management should establish an organizational structure, assign responsibility, and delegate authority to achieve the entity's objectives.
4. Management should demonstrate a commitment to recruit, develop, and retain competent individuals.
5. Management should evaluate performance and hold individuals accountable for their internal control responsibilities.

Risk Assessment

6. Management should define objectives clearly to enable the identification of risks and define risk tolerances.
7. Management should identify, analyze, and respond to risks related to achieving the defined objectives.
8. Management should consider the potential for fraud when identifying, analyzing, and responding to risks.
9. Management should identify, analyze, and respond to significant changes that could impact the internal control system.

Source: GAO. | GAO-14-704G

Control Activities

10. Management should design control activities to achieve objectives and respond to risks.
11. Management should design the entity's information system and related control activities to achieve objectives and respond to risks.
12. Management should implement control activities through policies.

Information and Communication

13. Management should use quality information to achieve the entity's objectives.
14. Management should internally communicate the necessary quality information to achieve the entity's objectives.
15. Management should externally communicate the necessary quality information to achieve the entity's objectives.

Monitoring

16. Management should establish and operate monitoring activities to monitor the internal control system and evaluate the results.
17. Management should remediate identified internal control deficiencies on a timely basis.

Internal Control and the Entity

OV2.10 A direct relationship exists among an entity's objectives, the five components of internal control, and the organizational structure of an entity. Objectives are what an entity wants to achieve. The five components of internal control are what are required of the entity to achieve the objectives. Organizational structure encompasses the operating units, operational processes, and other structures management

The Commission should have audited the five components and 17 Principles but did not. This leaves the parties of this rate case without any assurance of internal controls – effective and efficient operations, reliable reporting – financial and non-financial, compliance with laws and regulations and safeguarding assets. Rate cases should never begin without GAGAS audits. Customers deserve better.

A rate case is an investigation. Investigations, audits, and inspections all seek the same objectives – reliable facts to make decisions and establish accountability.

The interrogatories in Set II are a form of an audit of internal controls of Columbia Gas.

By paragraph of the Interim order -- 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).

Comment: Interrogatory Set II is consistent with Section 5.321(c) as written. Key phrases: a party may obtain discovery; Discovery is permitted regardless of whether the information sought "relates to the claim...; **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."**

"Consistently, the Commission has allowed participants wide latitude in discovery matters."

Comment: That may be true in but the statement is not consistent with this interim order.

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. Cmwlt. 1987); Answer of Columbia to Motion to Compel, p. 2.

Comment: In prior years the phrase. "Discovery that would cause unreasonable burden or expense or require an unreasonable investigation by a party is not permitted" caused problems and was eliminated. Pennsylvania Rules of Civil Procedure included a proportionality standard similar to the Federal Rules. What is unreasonable must be gaged with the proportionality standard. These interrogatories do not place an unreasonable burden upon Columbia gas in a \$98,300,000 rate increase.

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.

Comment: Columbia's contention is wrong -- Management Directive 325.12 Standards for Internal Controls in Commonwealth Agencies made this relevant. The Sarbanes Oxley (2002) that applies to corporations required the Sentencing Commission to address and deter wrongdoing in corporations. See 17 CFR § 229.406 - (Item 406) Code of ethics.
<https://www.law.cornell.edu/cfr/text/17/229.406>

Keep in mind, NiSource for the problems in Massachusetts is still under a Federal deferred prosecution agreement. That agreement also pertains to acts in Pennsylvania. At the prior rate case – Columbia also claimed what happened in Massachusetts was irrelevant but that assertion was denied – Per Judge Administrative Law Judge Katrina L. Dunderdale's THIRD

INTERIM ORDER, Denying Objections of Columbia Gas of Pennsylvania, Inc. to Portions of Public Input Testimony of Richard C. Culbertson

“Mr. Culbertson interspersed his testimony and exhibits with material that is relevant to the base rate proceeding as well as some material that appears irrelevant but it is not. While some evidence is repetitive on the circumstances surrounding the natural gas explosion in Massachusetts in 2018 involving Columbia Gas of Massachusetts, Inc., those same exhibits contain statements from Columbia Gas’ parent company, NiSource, about costs NiSource expected to spend or promised to spend on infrastructure and safety equipment/practices through its subsidiary, Columbia Gas of Pennsylvania, Inc.”

“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.”

Comment: The Sentencing Guidelines provide guidelines on ethics programs. It also provides advice on how to minimize penalties. If there are costs in the rate base that is counter to the Pennsylvania law regarding capital cost ... Columbia/ NiSource could have some problems.

What are suitable in a GAGAS audit are also suitable questions in a PUC investigation via interrogatory. Set II are all suitable questions in a GAGAS audit.

“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.”

Comment: *“unlikely to lead to the discovery of admissible evidence”*

This boilerplate objection was eliminated with the update of Federal Rules of Civil Procedure 26, issued December 1, 2015. The current high-level requirement is “(1) ...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.

In Columbia’s objections, this general statement is no longer appropriate. Individual interrogatories deserve individual answers or objections with suitable cause.

Ultimately Columbia still must submit the proof that it has reliable internal controls that provides reasonable assurance that the requested increase is just and reasonable. Denying reasonable interrogatories does not help their cause. But ratepayers need to know if Columbia is properly treating them. Free disclosures stimulate trust.

Conclusion:

This rate case cannot be deemed fair unless parties play by the rules, have access to answers and documents. Obsolete-type objections should not be used as excuses to not participate.

Generally accepted audits of Columbia Gas are constitutionally required. On relevant questions of little costs, there should be no objections because of Pennsylvania's Rules of Civil Procedure's proportionality standard – Comments to Rule 4009.

New information should be the basis for changing decisions. Columbia answers to these questions will contribute, one way or another to some sort of assurance that the final rulings will be justified.

I respectfully request Judge Hoyer that you reconsider this Second Interim Order in light of current requirements.

Recognize there is a big hole in the required Constitutional process with *Article VIII § 10. Audit*— and that we defend the Constitution and start making changes. We can not correct nor defend the past. Audits and processes of the PUC must get on track with Pennsylvania requirements But we should be able to submit normal audit questions and receive answers without conflict in a rate case.

The changes in Federal Rules of Civil Procedure 26 and 34 change the tone and approach to interrogatories at all levels. 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, it would not be fair to ratepayers and other stakeholders, and certainly not result in just and reasonable rates.

As we increase our knowledge our responsibilities increase as well.

Respectfully submitted.



Richard C. Culbertson

1430 Bower Hill Road

Pittsburgh, PA 15243

Date July 8, 2021

eFiling Confirmation Number

Appendix A

Requirements for audits

The Constitution of Pennsylvania

§ 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.***

Any Commonwealth officer whose approval is necessary for any transaction relative to the financial affairs of the

Commonwealth shall not be charged with the function of auditing that transaction after its occurrence.

(**Apr. 23, 1968, P.L.App.7, Prop. No.4**)

1968 Amendment. Proposal No.4 amended and renumbered former section 14 to present section 10. Section 3 of Proposal No.4 provided that section 10 shall take effect as soon as possible but no later than July 1, 1970.

Prior Provisions. Former section 10 was repealed by amendment of April 23, 1968, P.L.App.11, Prop. No.6.

Title 66 § 516. Audits of certain utilities.

(a) **General rule.**--The commission shall provide for audits of any electric, gas, telephone or water utility whose plant in service is valued at not less than \$10,000,000. The audits shall include an examination of management effectiveness and operating efficiency. The commission shall establish procedures for audits of the operations of utilities as provided in this section. Audits shall be conducted at least once every five years unless the commission finds that a specific audit is unnecessary, but in no event shall audits be conducted less than once every eight years. A summary of the audits mandated by this subsection shall be released to the public, and a complete copy of the audits shall be provided to the Office of Trial Staff and the Office of Consumer Advocate.

(b) **Management efficiency investigations.**--In addition to the audits mandated by subsection (a), the commission shall appoint a management efficiency investigator who shall periodically examine the management effectiveness and operating efficiency of all utilities required to be audited under subsection (a) and monitor the utility company responses to the audits required by subsection (a). For the purposes of carrying out the periodic audit required by this subsection and for carrying out the monitoring of audits required by subsection (a), the commission is hereby empowered to direct the management efficiency investigator to conduct such investigations through and with teams made up of commission staff and/or independent consulting firms; further, the commission may designate specific items of management effectiveness and operating efficiency to be investigated. The management efficiency investigator shall provide an annual report to the commission, the affected utility, the Office of Trial Staff and the Office of Consumer Advocate detailing the findings of such investigations.

(c) **Use of independent auditing firms.**--The commission may require an audit under subsection (a) or (b) to be performed by an independent consulting firm. When the commission, under either subsection (a) or (b), orders an audit to be performed by an

independent consulting firm, the commission, after consultation with the utility, shall select the firm and require the utility to enter into a contract with the firm providing for payment of the firm by the utility. The terms of the contract shall include all reasonable expenses directly related to the performance of the audit or to the management efficiency investigation activities of independent consulting firms at the utility, as well as their preparation and presentation of testimony in any contested litigation which may be undertaken as a result of the audit findings under subsection (a) or (b). That contract shall require the audit firm to work under the direction of the commission.

(d) Other powers of commission unaffected.--This section is not intended to alter or repeal any existing powers of the commission.

(Dec. 21, 1984, P.L.1240, No.234, eff. 60 days; July 10, 1986, P.L.1238, No.114, eff. imd.)

Discussion and Conclusion

PA Title 66 § 516. Audits of certain utilities. Is In gross conflict with The Constitution of Pennsylvania ARTICLE VIII § 10. Audit.

§ 10. Audit. Became constitutional with (Apr. 23, 1968, P.L.App.7, Prop. No.4) Voted in by the people of Pennsylvania with Proposition 4.

Title 66 § 516. Audits of certain utilities came to be with public law in 1984
(Dec. 21, 1984, P.L.1240, No.234, eff. 60 days; July 10, 1986, P.L.1238, No.114, eff. imd.)

The Pennsylvania Constitution supersedes public law.

Generally accepted auditing standards do not permit audits every 5-8 years. Generally accepted audit standards do not use unreasonably high thresholds to avoid audits. \$10,000,000 plant in service, as defined 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>

Those who have utilities that have less than \$10,000,000 in plant in service deserve Constitutional protection as well.

Management Directive 325.3 Performance of Audit Responsibilities -- January 10, 2011.

https://www.oa.pa.gov/Policies/md/Documents/325_3.pdf adopts the GAO Yellow Book. The GAO Yellow Book has been in existence since the 1970s and has had over ten updates.

The primary purpose of audits is to audit internal controls. Pennsylvania administration adopted Management Directive 325.12 Standards for Internal Controls in Commonwealth Agencies. May 15, 2018.)

For those organizations the White House's Office of Management and Budget (OMB) issued circulars that applied to those who received Federal grants—Pennsylvania receives substantial grant money including the Pennsylvania Public Utility Commission and to pay for Low-Income Home Energy Assistance Program (LIHEAP)

The OMB circulars were placed into the Code of Federal Regulations (CFR) 2 Section 200. https://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title02/2cfr200_main_02.tpl was first published in 2015.

Pennsylvania issued Management Directive 325.9 Amended Processing Audits of Federal Pass-Through Funds https://www.oa.pa.gov/Policies/md/Documents/325_9.pdf incorporates the requirements of 2 CFR 200 and the GAO Yellow Book makes them applicable to agencies including the Pennsylvania Public Utility Commission -- 2. SCOPE.

- a. Applies to all departments, boards, **commissions**, and councils (hereinafter referred to as "agencies") under the Governor's jurisdiction that administer federal programs ...

2 CFR 200 Points back to the GAO Green Book

§ 200.303 Internal controls. The non-Federal entity must: (a) Establish and maintain effective internal control over the Federal award that provides reasonable assurance that the non-Federal entity is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the Federal award. These internal controls should comply with the guidance in "Standards for Internal Control in the Federal Government" issued by the Comptroller General of the United States and the "Internal Control Integrated Framework", issued by the Committee of Sponsoring Organizations of the Treadway Commission (**COSO**).

Subpart E—Cost Principles

§ 200.404 Reasonable costs.

A cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost. The question of reasonableness is particularly important when the non-Federal entity is predominantly federally-funded. In determining reasonableness of a given cost, **consideration must be given to:**

(c) **Market prices for comparable goods or services for the geographic area.**

§ 200.7 Auditor.

Auditor means an auditor who is a public accountant or a Federal, state, local government, or Indian tribe audit organization, which meets the general standards specified for external auditors in generally accepted government auditing standards (GAGAS). [GAO Yellow Book. The term auditor does not include internal auditors of nonprofit organizations.

§ 200.501 Audit requirements.

- (a) Audit required. A non-Federal entity that expends **\$750,000** or more during the non-Federal entity's fiscal year in Federal awards **must have a single or program-specific audit conducted for that year** in accordance with the provisions of this part.

§ 200.504 Frequency of audits. Except for the provisions for biennial audits provided in paragraphs (a) and (b) of this section, **audits required by this part must be performed annually.**

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, the Richard C. Culbertson Motion to reconsider Second Interim Order this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 in the manner and upon the persons listed below: Dated this 8th day of July 2021.

SERVICE BY E-MAIL ONLY

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Dated: July 8, 2021

eFiling Confirmation Number

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, the Richard C. Culbertson Motion to reconsider Second Interim Order this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 in the manner and upon the persons listed below: Dated this 8th day of July 2021.

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