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File #: 182466

July 21, 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. to the Motion to Reconsider First Interim Order Addressing Complainant Culbertson's Motion to Compel Discovery 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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Date: July 21, 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 RECONSIDER FIRST INTERM ORDER
ADDRESSING COMPLAINANT RICARD C. CULBERTSON'S
MOTION TO COMPEL DISCOVERY**

Columbia Gas of Pennsylvania, Inc. (“Columbia” or the “Company”) hereby submits this Answer to the “Motion to Reconsider First Interim Order Addressing Complainant Richard C. Culbertson’s Motion to Compel Discovery – Because of Using Outdated Rules 26 and 34 of the Federal Rules of Civil Procedure of Which Were Superseded December 1, 2015” (hereinafter referred to as “Motion for Reconsideration”). As explained below, Mr. Culbertson’s Motion for Reconsideration should be denied because the Motion does not present any arguments that warrant reconsideration of Administrative Law Judge Mark A. Hoyer’s (“ALJ Hoyer”) First Interim Order Addressing Complainant Richard C. Culbertson’s Motion to Compel Discovery (“First Interim Order”). As indicated from the title of Mr. Culbertson’s Motion for Reconsideration, the premise of the Motion for Reconsideration is that ALJ Hoyer failed to apply the Federal Rules of Civil Procedure to the discovery dispute. However, the Commission’s discovery regulations at 52 Pa. Code § 5.321, *et seq.*, and not the Federal Rules of Civil Procedure, are controlling in this proceeding. The First Interim Order correctly applied the Commission’s discovery regulations to reach a determination on the discovery dispute. Therefore, Columbia respectfully requests that the Motion for Reconsideration be denied.

I. BACKGROUND

On June 3, 2021, Mr. Culbertson served his first set of interrogatories on Columbia, Set I, Question 1, which consisted of subparts a. through g.

On June 8, 2021, Columbia served objections to Set I, Question 1.

On June 11, 2021, Mr. Culbertson filed a Motion to Compel the responses to Set I. Question I.¹

On June 17, 2021, Columbia filed its Answer to the Motion to Compel, which explained the reasons for Columbia's objections to the discovery requests.

On June 25, 2021, the ALJ issued the First Interim Order granting in part and denying in part the Motion to Compel.

On July 1, 2021, Mr. Culbertson filed the Motion for Reconsideration of the First Interim Order.

II. THE MOTION FOR RECONSIDERATION SHOULD BE DENIED.

As the moving party, Mr. Culbertson has the burden of proof. *See, e.g., Application of Airquest*, Docket No. A-2015-2493073 (Order entered December 8, 2016) (request for reconsideration of secretarial letter denying application for failure to comply with conditions); *Application of Dep't of Transportation (Norfolk)*, Docket No. A-2018-3003795 (November 19, 2019) (request for reconsideration of secretarial letter approving application with conditions). Mr. Culbertson's Motion for Reconsideration should be denied because it presents no new arguments that warrant reconsideration of the well-reasoned discovery ruling set forth in the First Interim Order. The Motion for Reconsideration cites the Federal Rules of Civil Procedure, American Bar Association Rule 3.4 (Fairness to Opposing Party and Counsel), and a portion of the Pennsylvania

¹ Mr. Culbertson's service email dated June 11, 2021, failed to attach the Motion to Compel. The Motion to Compel was sent on Sunday, June 13, 2021.

Constitution related to audits of entities receiving Commonwealth funding. None of these references provide any justification for reconsidering the First Interim Order.

The Motion for Reconsideration is largely premised on Mr. Culbertson's argument that the Commission should apply the Federal Rules of Civil Procedure to the discovery process in this proceeding. However, the Federal Rules of Civil Procedure are not controlling in this case. The Motion for Reconsideration fails to recognize that the Commission has established Rules of Administrative Practice and Procedure that govern the discovery process in proceedings before the Commission and completely ignores the Commission's discovery regulations at 52 Pa. Code § 5.321, *et seq.* The First Interim Order correctly applied these regulations in determining that the requests set forth in Set I, Question 1, except for subparts a and b, are not permissible under the Commission's discovery regulations. Specifically, the First Interim Order correctly determined that Set I, Question 1, subparts c and d are vague and worded in such a manner that it is unclear what information is being requested. The First Interim Order also correctly determined that Set I, Question 1 subpart e is unduly burdensome and that subparts f, g and g(i) are irrelevant and not likely to lead to the discovery of admissible evidence. The Motion for Reconsideration does not set forth any new arguments that would support reconsidering the ALJ's ruling that these interrogatories not permissible under the Commission's discovery regulations.

The Motion for Reconsideration also 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;

(Motion for Reconsideration, p. 4) 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.

Finally, the Motion for Reconsideration cites Article VIII, Section 10, of the Pennsylvania Constitution, which relates to audits of entities that receive Commonwealth funding. Specifically, the Motion for Reconsideration quotes the following language:

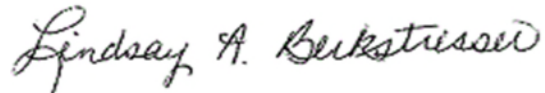
The financial affairs of any entity funded or financially aided by the Commonwealth, and all departments, boards, commissions, agencies, instrumentalities, authorities and institutions of the Commonwealth, shall be subject to audits made in accordance with generally accepted auditing standards.

(Motion for Reconsideration, p. 5) The referenced section is inapplicable to Columbia because Columbia does not receive funding from the Commonwealth. This argument is irrelevant to the current base rate proceeding and provides no justification for the reconsideration request. Furthermore, Columbia is subject to regular audits by the Commission, which are made public.

III. CONCLUSION

WHEREFORE, Columbia Gas of Pennsylvania, Inc. respectfully requests that the Motion for Reconsideration be denied.

Respectfully submitted,



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Date: July 21, 2021

VERIFICATION

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

Date: July 21, 2021

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