

Richard C. Culbertson  
1430 Bower Hill Road  
Pittsburgh, PA 15243  
(609) 410-0108  
[Richard.c.culbertson@Gmail.com](mailto:Richard.c.culbertson@Gmail.com)

July 24, 2021

Honorable Mark A. Hoyer  
Deputy Chief Administrative Law Judge,  
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  
Filing Number 2188370

Dear Judge Hoyer,

Attached is my motion to compel the proper answers to my interrogatories addressed to Ms. McLain, *"this set of interrogatories is addressed to you as a participant and representative of the Pennsylvania Public Utility Commission in this rate case. Questions should be answered by you or to the highest responsible level who is authorized to speak for the Commission."*

She has responded: ***"Ms. McLain is neither a participant in the instant base rate case nor a representative of the Pennsylvania Public Utility Commission. Ms. McLain's role in the instant proceeding is as a Prosecutor for the Pennsylvania Public Utility Commission's Bureau of Investigation and Enforcement."***

*I was certainly led to believe she was a representative of the Pennsylvania Public Utility Commission. If not, why the PUC Letterhead on her correspondence? I believe she has apparent authority.*

Respectfully,

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

Richard C. Culbertson  
[Richard.c.culbertson@Gmail.com](mailto:Richard.c.culbertson@Gmail.com)

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

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

If she is not a party to this rate case, why would Secretary Chiavetta honor her letter in the efile system?



COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA PUBLIC UTILITY COMMISSION  
COMMONWEALTH KEYSTONE BUILDING  
400 NORTH STREET, HARRISBURG, PA 17120

BUREAU OF  
INVESTIGATION  
&  
ENFORCEMENT

March 16, 2021

Via Electronic Filing

Secretary Rosemary Chiavetta  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street  
Harrisburg, PA 17120

Re: Pennsylvania Public Utility Commission, v.  
Columbia Gas of Pennsylvania, Inc.  
Docket No. R-2020-3018835  
I&E Letter

Dear Secretary Chiavetta:

On March 8, 2021, a Petition for Reconsideration was filed in the above-captioned proceeding by the Office of Consumer Advocate ("OCA"). Columbia Gas of Pennsylvania ("Columbia") filed its Answer to the OCA's Petition for Reconsideration on March 11, 2021 requesting the Pennsylvania Public Utility Commission ("Commission") deny the Petition for Reconsideration. The Bureau of Investigation and Enforcement ("I&E") agrees with Columbia that the Petition for Reconsideration does not meet the requirements set forth under 66 Pa.C.S. § 703(f)-(g) and more specifically the *Duick*<sup>1</sup> standard for granting reconsideration. I&E respectfully requests the Commission deny the Petition for Reconsideration because it fails to meet the requisite standards for granting reconsideration.

Sincerely,

Erika L. McLain  
Prosecutor  
Bureau of Investigation and Enforcement  
PA Attorney ID No. 320526

ELM/jfm

cc: Hon. Katrina L. Dunderdale (*OALJ, Pittsburgh – via email only*)  
Dan Pallas, Legal Assistant (*via email only*)  
Office of Special Assistants (*via email only*)  
Per Certificate of Service

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<sup>1</sup> *Duick v. Pennsylvania Gas and Water Co.*, 56 Pa. P.U.C. 553, 559 (1982).

I believe Ms. McLain acts with apparent authority and has a purpose more than just an observer, I also do not see any prosecuting role or activity from her. The PUC Secretary recognized her filing was from an empowered PUC official.

If Ms. McLain is not representing the Commission in this rate case, who is? Certainly the Commission has more material information regarding this rate case than what is publicly available. Who gets a fifteen percent raise without their supervisor's performance appraisal?

Has the Commission been a "no show" in this hearing? Has the Commission abandoned this rate case? The ALJ does not represent the PUC and is an independent judge simultaneously.

If the supervisor, PUC is a non-participant, that leaves the rest of us at a significant disadvantage in seeking justice for ratepayers. If the Commission is not a party or participant in this rate case, they should be removed from the title of the case. Correct?

I addressed my interrogatories to Ms. McLain but also... Questions should be answered by you or to the highest responsible level who is authorized to speak for the Commission.

Apparently, there was no attempt to direct these interrogatories to other PUC officials to respond.

The PUC actions and inactions are relevant in this rate case. The lack of audits as required by the Pennsylvania Constitution, and other laws and regulations is a core issue of this rate case. I am concerned with ethics violations as provided in Title 66 § 319. Code of ethics.

Pretending that audits exist or that the lack of audits provides some sort of assurance of effective internal controls is wrong. GAO Yellow Book provides the auditing standards that people expect to be used.

On Apr. 23, 1968, Proposition 4 was passed by the electorate of Pennsylvania and added to the Pennsylvania Constitution ARTICLE VIII. § 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."*

In rate cases, providing utilities the right to take money from the pockets of ratepayers where the utility is asking rate increases ~\$100,000,000, it would be reckless to award these increases without audits to the Constitutional standards, which now is the GAO Yellow Book – Generally Accepted Government Auditing Standards. Most prudent people look at restaurant, hotel bills or even money dispensed from the ATM... let alone expenditures into the hundreds of millions of dollars from a monopoly. Requiring audits was the intent of voters in 1968 and that is what is required now.

I am surprised by Ms. McLain's comment:

*"she does not have first-hand knowledge of the required oath for undefined "leaders" of the Commission. By way of further objection, the scope of this interrogatory is also improper because Ms. McLain has not offered an opinion on any oath of office affirmations as part of this proceeding."*

The oath of office in Pennsylvania is something to the effect *"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."* *The Pennsylvania Constitution I an oath of office Article VI § 3. Oath of office.*

I remember my oath of office when I entered the U.S. Army on September 9, 1969.

Ms. McLain claims she is not an auditor – how does she know if she is not familiar with the Management Directives and the GAO Yellow Book?

From the GAO Yellow Book, "1.27 f. *Auditor: An individual assigned to planning, directing, performing engagement procedures, or reporting on GAGAS engagements (including work on audits, attestation engagements, and reviews of financial statements) regardless of job title. Therefore, individuals who may have the title auditor, information technology auditor, analyst, practitioner, evaluator, inspector, or other similar titles are considered auditors under GAGAS."*

I would like to have MS. McLain answer or obtain these interrogatories with the same level of attitude, sense of authority, confidence, and competence as provided in her letter of March 16, 2021. Priority one -- *supports, obeys, and defends the Constitution of Pennsylvania.*

To serve justice for the ratepayers of Columbia Gas. Please compel Ms. McLain to answer these questions or provide them to the appropriate authorities in the PUC. If McLain has no perceivable purpose in rate cases, she should be barred from acting as a participant.

Respectfully,



Richard C Culbertson

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 my MOTION TO COMPEL MS. ERIKA MCLEAN TO PARTICIPANT IN INTERROGATORIES to a party 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 24th day of July 2021.

**SERVICE BY E-MAIL ONLY**

Honorable Mark A. Hoyer  
Deputy Chief Administrative Law Judge,  
Office of Administrative Law Judge  
Piatt Place, Suite 220  
301 Fifth Avenue  
Pittsburgh, PA 15222  
E-mail Hoyer, Mark A [mhoyer@pa.gov](mailto:mhoyer@pa.gov)

Erika L. McLain, Esquire  
Bureau of Investigation & Enforcement  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2<sup>nd</sup> Floor  
Harrisburg, PA 17120

Michael W. Hassell, Esquire  
Lindsay A. Berkstresser, Esquire  
Post & Schell, P.C.  
17 North Second Street, 12<sup>th</sup> Floor  
Harrisburg, PA 17101-1601

Theodore J. Gallagher, Esquire  
Columbia Gas of Pennsylvania, Inc.  
121 Champion Way  
Suite 100  
Canonsburg, PA 15317

Steven C. Gray, Esquire  
Office of Small Business Advocate  
555 Walnut Street  
1<sup>st</sup> Floor, Forum Place  
Harrisburg, PA 17109-1923

Amy E. Hirakis, Esquire  
NiSource Corporate Services Co.  
800 North Third Street  
Suite 204  
Harrisburg, PA 17102

John W. Sweet, Esquire  
Ria M. Pereira, Esquire  
PA Utility Law Project  
118 Locust Street  
Harrisburg, PA 17101

Joseph L. Vullo, Esquire  
PA Weatherization Providers Task Force, Inc.  
1460 Wyoming Avenue  
Forty Fort, PA 18704

Todd S. Stewart, Esquire  
Hawke McKeon & Sniscak LLP  
100 North Tenth Street  
Harrisburg, PA 17101



Harrison W. Breitman  
Assistant Consumer Advocate  
PA Attorney I.D. # 320580  
E-Mail: [HBreitman@paoca.org](mailto:HBreitman@paoca.org)

Laura J. Antinucci  
Assistant Consumer Advocate  
PA Attorney I.D. # 327217  
E-Mail: [LAntinucci@paoca.org](mailto:LAntinucci@paoca.org)

Darryl A. Lawrence Counsel for:  
Senior Assistant Consumer Advocate  
AdvocatePA Attorney I.D. # 93682  
E-Mail: [DLawrence@paoca.org](mailto:DLawrence@paoca.org)

Barrett C. Sheridan  
Assistant Consumer Advocate  
PA Attorney I.D. # 61138  
E-Mail: [BSheridan@paoca.org](mailto:BSheridan@paoca.org)

Christy M. Appleby  
Assistant Consumer Advocate  
PA Attorney I.D. # 85824  
E-Mail: [CAappleby@paoca.org](mailto:CAappleby@paoca.org)

Office of Consumer  
555 Walnut Street  
5<sup>th</sup> Floor, Forum  
Place Harrisburg, PA  
17101-1923

Dated: July 24, 2021

By Richard C. Culbertson



eFile



**From Ms. Erika McLain**  
**COMMONWEALTH OF PENNSYLVANIA**  
**PENNSYLVANIA PUBLIC UTILITY COMMISSION**  
**COMMONWEALTH KEYSTONE BUILDING**  
**400 NORTH STREET, HARRISBURG, PA 17120**

BUREAU OF  
INVESTIGATION  
  
&  
ENFORCEMENT

July 20, 2021

**Via Electronic Mail**

Richard C. Culbertson  
1430 Bower Hill Road  
Pittsburgh, PA 15243

[Richard.C.Culbertson@gmail.com](mailto:Richard.C.Culbertson@gmail.com)

Re: Pennsylvania Public Utility Commission v.  
Columbia Gas of Pennsylvania, Inc.  
Docket No. R-2021-3024296  
**I&E Objections to Richard C. Culbertson Interrogatories – Set I**

Dear Mr. Culbertson:

Enclosed please find the **Objections of the Bureau of Investigation and Enforcement (I&E) to Richard C. Culbertson Set I Interrogatories 1 through 35** for the above-captioned proceeding.

Copies are being served on parties per the attached Certificate of Service. *Due to the temporary closing of the PUC's offices, I&E is only providing electronic service.* Should you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in cursive script that reads "Erika L. McLain".

Erika L. McLain  
Prosecutor  
Bureau of Investigation and Enforcement  
PA Attorney ID No. 320526  
(717) 783-6170  
[ermclain@pa.gov](mailto:ermclain@pa.gov)

ELM/ac  
Enclosures

cc: Secretary Rosemary Chiavetta (*Cover Letter & Certificate of Service only – via e-file*)

Per Certificate of Service

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

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**OBJECTIONS OF  
THE BUREAU OF INVESTIGATION AND ENFORCEMENT TO  
RICHARD C. CULBERTSON  
SET I INTERROGATORIES 1 THROUGH 35**

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Pursuant to 52 Pa. Code § 5.342, the Bureau of Investigation and Enforcement (“I&E”) objects to Richard C. Culbertson Set I Interrogatories, 1 through 35, as follows. A certificate verifying service of these Objections on Richard C. Culbertson is being filed with the Secretary of the Pennsylvania Public Utility Commission (“Commission”). On July 19, 2021, I&E prosecutor Erika McLain orally informed Mr. Culbertson that I&E objected to Set 1 Interrogatories 1 through 35, and it now serves these timely written objections to Set 1.

**I. GENERAL OBJECTIONS**

A. I&E objects to Richard C. Culbertson Set I Interrogatories 1 through 35 to the extent they seek information prohibited by 52 Pa. Code § 5.323 the disclosure of the mental impressions of a party’s attorney or his conclusions, opinions, memoranda, notes, summaries, legal research or legal theories. Mr. Culbertson’s Set I interrogatories are directed to I&E counsel Erika L. McLain. In his introduction, Mr. Culbertson states, “Ms.

McLain, this set of interrogatories is addressed to you as a participant and representative of the Pennsylvania Public Utility Commission in this rate case.” Ms. McLain is neither a participant in the instant base rate case nor a representative of the Pennsylvania Public Utility Commission. Ms. McLain’s role in the instant proceeding is as a Prosecutor for the Pennsylvania Public Utility Commission’s Bureau of Investigation and Enforcement. I&E is an independent prosecutory bureau within the Commission.<sup>1</sup> Under Pennsylvania law<sup>2</sup> and *Lyness v. State Board of Medicine*, 605 A.2d 1204 (Pa. 1992), the Commission is precluded from intermingling its prosecutory, advisory and adjudicatory functions. As such, members of I&E are not authorized to speak on behalf of the Commission, nor do they act as advisors to the Commission or Commissioners.

B. I&E objects to Richard Culbertson Set I Interrogatories 1 through 35 to the extent they impose an obligation or response beyond that required by the Pennsylvania Public Utility Code or the regulations applicable to matters before the Commission, seek information that is vague and ambiguous, overly broad, and/or seeks information not relevant to this proceeding or not reasonably calculated to lead to the discovery of admissible evidence.

C. I&E objects to Richard Culbertson Set I Interrogatories 1 through 35 to the extent they seek to obtain confidential, proprietary or highly confidential information or information or documents that are protected by attorney/client privilege, the work product privilege, and/or any other privilege. I&E hereby claims such privileges and applicable

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<sup>1</sup> Final Procedural Order at Docket M-2008-2071852 (entered August 11, 2011).

<sup>2</sup> 66 Pa.C.S. § 308.2(b).

protections. Inadvertent disclosure of any such privileged information or documents shall not be deemed to be a waiver of any privilege.

D. I&E objects to Richard Culbertson Set I Interrogatories 1 through 35 to the extent that they require the making of an unreasonable investigation by I&E and to the extent they seek publicly available information or information that is equally available to both parties, on the basis that any such request imposes an undue burden on I&E.

E. All of the foregoing General Objections are incorporated by reference in response to Richard C. Culbertson Set I Interrogatories 1 through 35, regardless of whether or not any additional objections, general or specific, are made in regard to a specific discovery request.

## **II. SPECIFIC OBJECTIONS**

I&E submits the following Specific Objections to Richard C. Culbertson Set I Interrogatories 1 through 35. A copy of Richard C. Culbertson's Set I Interrogatories 1 through 35 is attached to these Objections.

1. Objection. The information sought by this interrogatory is not reasonably calculated to lead to admissible evidence. The scope and responsibilities of Ms. McLain's job are not issues ripe for resolution in Columbia's base rate case.
2. Objection. This question improperly calls for Ms. McLain's legal conclusion regarding the applicability of the Pennsylvania Constitution.
3. Objection. This question improperly calls for Ms. McLain's legal conclusion regarding the Pennsylvania Public Utility Commission's responsibilities.
4. Objection. This question improperly calls for Ms. McLain's legal conclusion regarding the Pennsylvania Public Utility Commission's status as a government entity.

5. Objection. This question does not call for any response, as it purports to request a document, but also simultaneously includes a direct link to the document requested.

6. Objection. This question improperly calls for Ms. McLain's legal conclusion regarding the applicability of a Management Directive.

7. Objection. The information sought by this interrogatory is not reasonably calculated to lead to admissible evidence. The policy and/or regulatory basis that may underlie the Pennsylvania Public Utility's implementation of any applicable Management Directives are not issues ripe for resolution in Columbia's base rate case. By way of additional objection, the interrogatory imposes an undue burden upon counsel to conduct and compile research that is not germane to I&E's case or to the Commission's evaluation of Columbia's rate filing.

8. Objection. This question improperly calls for Ms. McLain's legal conclusion regarding the applicability of a Management Directive.

9. Objection. The information sought by this interrogatory is not reasonably calculated to lead to admissible evidence. The policy and/or regulatory basis that may underlie the Pennsylvania Public Utility's implementation of any applicable Management Directives are not issues ripe for resolution in Columbia's base rate case. By way of further objection, Ms. McLain does not act in an advisory capacity for the Commission, nor is she empowered or authorized to speak for the Commission.

10. Objection. This question improperly calls for Ms. McLain's legal conclusion regarding the applicability of a Management Directive.

11. Objection. This question improperly calls for Ms. McLain's legal conclusion

regarding the applicability of 2 CFR Part 200.



12. Objection. This question improperly calls for Ms. McLain's legal conclusion regarding the applicability of 2 CFR § 200.324.

13. Objection. This question improperly calls for Ms. McLain's legal conclusion regarding the applicability of Title 66 § 523.

14. Objection. This question improperly calls for Ms. McLain's conclusions regarding "traditional ratemaking" and is objectionable on multiple bases. First, the interrogatory is insufficiently specific because it does not define "traditional ratemaking" in a manner that would enable Ms. McLain to formulate a response. Furthermore, if even "traditional ratemaking" were defined, Ms. McLain has not offered an opinion in this case regarding profits being tied to spending, and therefore there is no foundation for this question.

15. Objection. This question improperly calls for Ms. McLain's legal conclusion regarding the consistency between 2 CFR and 18 CFR.

16. Objection. This question is objectionable on several bases. First, the question improperly calls for Ms. McLain's legal conclusion regarding various federal regulations and the alleged rate base per customer ratio of Columbia as well as non-jurisdictional entities in Indiana and Ohio. Aside from improperly seeking Ms. McLain's legal opinion, this question is also objectionable in that it relies upon Ms. McLain's acceptance of unproven facts and calculations regarding the rate base for unnamed non-jurisdictional entities in Indiana and Ohio, and therefore provides insufficient information to enable Ms. McLain to respond. Finally, Ms. McLain did not offer an opinion regarding Columbia Gas's rate base.

17. Objection. This question is objectionable on two bases. First, this question improperly requires Ms. McLain's analysis of the Public Utility Code, which is outside the

scope of permissible discovery. Additionally, this question seeks Ms. McLain to make a legal determination of the General Assembly's intent based upon the number of times that a word purportedly appears in the Public Utility Code, which not only improperly calls for a legal conclusion, but which would require Ms. McLain to make that conclusion based on Mr. Culbertson's unsupported determination that a certain number of references dictates the General Assembly's intent and priority.

18. Objection. This question is objectionable on two bases. First, this question improperly requires Ms. McLain's analysis of the Pennsylvania Constitution and a Management Directive, which is outside the scope of permissible discovery. Additionally, this question incorrectly assumes that Ms. McLain has information that she does not actually possess, as she has neither performed an audit of Columbia Gas, nor can she personally attest to the manner in which any audit was performed.

19. Objection. This question improperly calls for Ms. McLain's legal conclusion regarding the applicability of the Pennsylvania Constitution and a Management Directive to a Columbia Gas audit. By way of further objection, this question is also insufficiently specific to enable any response, as it fails to define the type of "assurance" sought and it also fails to define "internal controls" as would be necessary to formulate a response if Ms. McLain were able to answer it (she cannot).

20. Objection. This interrogatory is insufficiently specific because it does not appear to pose a question that can be answered. By way of further objection, to the extent that this interrogatory may be intended to require Ms. McLain to give her conclusion or opinion regarding a PUC audit that she was not involved in, this question improperly seeks such conclusion or opinion, providing an additional basis for objection.<sup>6</sup>

21. Objection. This interrogatory improperly seeks Ms. McLain's conclusion regarding a Columbia Gas audit that she did not perform.

22. Objection. This interrogatory improperly seeks Ms. McLain's opinion regarding auditing procedure. By way of further response, Ms. McLain is not an auditor, and she has not offered an opinion about auditing practices as part of this proceeding.

23. Objection. This interrogatory improperly seeks Ms. McLain's legal conclusion about utilities' burden of proof.

24. Objection. This interrogatory improperly seeks Ms. McLain's opinion regarding auditing procedure. By way of further response, Ms. McLain is not an auditor, and she has not offered an opinion about auditing practices as part of this proceeding.

25. Objection. This interrogatory improperly seeks Ms. McLain's legal determination as to whether unidentified audits comply with the Pennsylvania Constitution, a Management Directive, and the GAO Yellow Book. By way of further response, this scope of this question is also objectionable in that Ms. McLain is not an auditor, and she has not offered an opinion about auditing practices as part of this proceeding.

26. Objection. This interrogatory improperly seeks Ms. McLain's conclusion as to the justness and reasonableness of Columbia's rates, a matter that is on its own a valid basis for objection. By way of further objection, the scope of this question is improper because it requires Ms. McLain to make a conclusion that hinges upon auditing standards when she is not an auditor, and she has not offered an opinion about auditing practices as part of this proceeding.

27. Objection. This interrogatory improperly seeks Ms. McLain's opinion about due diligence

hinging upon compliance with vague and undefined “required internal controls and audits standards.” By way of further objection, the scope of this question is improper because it requires Ms. McLain to make a conclusion that hinges upon auditing standards when she is not an auditor, and she has not offered an opinion about auditing practices as part of this proceeding.

28. Objection. The scope of this question is improper because it requires Ms. McLain to make a conclusion that hinges upon auditing standards when she is not an auditor, and she has not offered an opinion about auditing practices as part of this proceeding.

29. Objection. The scope of this question is improper because it requires Ms. McLain to make a conclusion about vague and undefined “industry standards” that hinges upon auditing standards when she is not an auditor, and she has not offered an opinion about auditing practices as part of this proceeding.

30. Objection. The premise of this question is improper because it incorrectly assumes, without any underlying basis, that Ms. McLain is empowered or authorized to speak for the Commission, when, in fact, she does not have first-hand knowledge of the required oath for undefined “leaders” of the Commission. By way of further objection, the scope of this interrogatory is also improper because Ms. McLain has not offered an opinion on any oath of office affirmations as part of this proceeding.

31. Objection. This interrogatory is insufficiently specific because it does not appear to pose a question that can be answered. By way of further objection, to the extent that this interrogatory may be intended to require Ms. McLain to give her conclusion or opinion regarding application of the Public Utility Code and federal regulations to auditing obligation, this question improperly seeks such conclusion or opinion, providing an additional basis for objection.

Finally, the scope of this question is improper because it

requires Ms. McLain to make a conclusion that hinges upon auditing standards when she is not an auditor, and she has not offered an opinion about auditing practices as part of this proceeding.

32. Objection. This interrogatory is improper because it incorrectly relies upon the assumption of facts that are not in evidence, including the following: (1) that all of the information in the referenced table is correct; (2) that the rate base per customer calculations for Indiana and Ohio, non-jurisdictional entities, are accurate; (3) that the rate base per customer calculations of Indiana and Ohio, non-jurisdictional entities, directly translate to the calculation methods used by this Commission for Columbia, a jurisdictional entity; (4) the unsupported claim that the PUC has not conducted audits in a timely manner or properly; and (5) the existence of any disparities. By way of further objection, the scope of this question is improper because it requires Ms. McLain to make a conclusion that hinges upon auditing standards when she is not an auditor, and she has not offered an opinion about auditing practices as part of this proceeding.

33. Objection. The scope of this interrogatory is improper because it relies upon the factually inaccurate position that Ms. McLain can provide “assurance” on behalf of the PUC. In fact, Ms. McLain does not act in an advisory capacity for the Commission, nor is she empowered or authorized to speak for the Commission. By way of further objection, this interrogatory incorrectly relies upon the assumption of Mr. Culbertson that audits have not been performed as required as a fact, when no such fact has been established. Finally, by way of further objection, the scope of this question is improper because it requires Ms. McLain to make a conclusion that hinges upon auditing standards when she is not an auditor, and she has not offered an opinion about auditing practices

as part of this proceeding.

34. Objection. The interrogatory is improper because requires Ms. McLain to provide an opinion that is not properly within the scope of discovery for this ratemaking proceeding. By way of further objection, the scope of this question is improper because Ms. McLain did not offer an opinion in this case regarding Columbia's current rates.

35. Objection. The interrogatory is improper because requires Ms. McLain to provide a personal opinion that is not properly within the scope of discovery. By way of further objection, the scope of this question is improper because Ms. McLain did not offer expert testimony in this case regarding the ratemaking process. By way of final objection, this question overly broad and too vague to enable formulation of any response, as assessment of customers' knowledge and level of comfort are subjectively measured, and such subjective judgments are not properly within the scope of this ratemaking proceeding.

Respectfully submitted,

A handwritten signature in cursive script that reads "Erika L. McLain". The ink is dark and the signature is fluid.

Erika L. McLain  
Prosecutor  
PA Attorney ID No. 320526

Pennsylvania Public Utility Commission  
Bureau of Investigation and Enforcement  
Commonwealth Keystone Building  
400 North Street  
Harrisburg, PA 17120  
(717) 783-6170  
[ermclain@pa.gov](mailto:ermclain@pa.gov)

Dated: July 20, 2021

Richard C. Culbertson

1430 Bower Hill Road

Pittsburgh, PA 15243

(609) 410-0108

[Richard.c.culbertson@Gmail.com](mailto:Richard.c.culbertson@Gmail.com)

July 15, 2021

Erika L. McLain, Esquire

Bureau of Investigation & Enforcement

Public Utility Commission

Commonwealth Keystone Building

400 North Street, 2nd Floor

Harrisburg, PA 17120

Re: Pennsylvania Public Utility Commission

v.

Columbia Gas of Pennsylvania, Inc.

Docket No. R-2021-3024296

Interrogatories Addressed to Erika L. McLain, Esquire

Dear Ms. McLain

Attached with this letter are my interrogatories addressed to you as a party to this rate case.

Please let me know if you have any questions. I believe your responses are relevant and material to this rate case, as we seek just and reasonable rates for the customers of Columbia Gas of Pennsylvania.

Thank you for your responses.

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

Efile 2187725

**Pennsylvania Public Utility  
Commission et. al**

**v.**

**Columbia Gas of Pennsylvania, Inc.**

**Docket No. R-2021-3024296**

**Interrogatories of Richard C. Culbertson**

**To Erica L. McLain, Prosecutor, Bureau of  
Investigation and Enforcement of the  
Pennsylvania Public Utility Commission**

**Set I**

**These interrogatories pertain to one or more  
elements of Internal Controls of the Pennsylvania  
Public Utility Commission -- Effective and Efficient  
Operations – Reliable Reporting -- Compliance  
with Laws, Regulations, and Standards**

**Introduction:** Pennsylvania Public Utility Law Title 66 is primarily about relationships – the relationships between Columbia Gas of Pennsylvania, the Pennsylvania Public Utilities Commission, and customers. Each has a role and each has legal and ethical responsibilities. This set focuses on the role and acts done or omitted by the Pennsylvania Public Utilities Commission. Customers cannot be treated fairly and as promised unless the relationship between the Commission and utility functions as required. Weaknesses and deficiencies are harmful to the relationship collectively and individually. In the long run, individual customers are harmed the most. The public and the participants of this rate case and customers are entitled to understand the workings of the Pennsylvania Public Utilities Commission so to better understand the workings of Columbia Gas of Pennsylvania and to achieve just and reasonable rates for customers.

Ms. McLain, this set of interrogatories is addressed to you as a participant and representative of the Pennsylvania Public Utility Commission in this rate case. Questions should be answered by you or to the highest responsible level who is authorized to speak for the Commission.

1. Ms. McLain, please describe your job. Are you primarily an advocate of the Pennsylvania Public Utility Commission, the customers of public utilities, public utilities, or are you independent and can be an advocate or oppose any organization you see fit? Please explain but include to what extent you are permitted to formally or informally criticize the PUC. Also if you hear something in a rate case that appears to be counter to laws and regulations are you in a position to initiate an investigation.
2. Question/ Data request. On Apr. 23, 1968, Proposition 4 was passed by the electorate of Pennsylvania and added to the Pennsylvania Constitution ARTICLE VIII.  
§ 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.”*

The Pennsylvania Public Utility Commission is subject to Pennsylvania Constitution § 10. Audit. **Correct? If not, please explain.**

3. Question/ Data request. The Pennsylvania Public Utilities Commission is an independent agency that has the responsibility to supervise public utilities. **Correct? If not, please explain.**
4. Question/ Data request. The Pennsylvania Public Utility Commission may be an independent agency but it is not a government sovereign entity – it is still part of the Commonwealth government that uses the common infrastructure and management systems. **Correct? If not, please explain.**

For example Management Directive 105.1 Allocation and Allotment of Funds

[https://www.oa.pa.gov/Policies/md/Documents/105\\_1.pdf](https://www.oa.pa.gov/Policies/md/Documents/105_1.pdf)

*“Funds are to be allocated and allotted as shown herein. This directive applies to all agencies that utilize Commonwealth accounting systems.”*

Management Directive 105.1 is applicable to the Commission.

5. Question/ Data request. Management Directive 325.3 Amended, Performance of Audit Responsibilities, January 10, 2011, By Direction of Mary A. Soderberg, Secretary of the Budget [https://www.oa.pa.gov/Policies/md/Documents/325\\_3.pdf](https://www.oa.pa.gov/Policies/md/Documents/325_3.pdf)

6.

*“This directive establishes policy, responsibilities, and procedures for the performance of audits and nonaudit services for commonwealth agencies.”*

*“c. Policy and responsibilities contained herein apply to audits performed under an agency's direction...”*

*“3. OBJECTIVE. To ensure Agency Audit Organizations, Comptroller Operations Audit Organizations, and other qualified auditors understand the policy, responsibilities, and procedures established for performing audits and nonaudit services.”*

*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) [GAO Yellow Book], 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.*

Management Directive 325.3 Amended, is applicable to the audits performed under the direction of the Pennsylvania Public Utility Commission. **Correct? If not, please explain.**

7. Question/ Data request. Please provide the internal policy or regulation of the PUC that implements Management Directive 325.3 Performance of Audit Responsibilities.

*“This directive establishes policy, responsibilities, and procedures for implementing effective internal control systems within commonwealth agencies.”*

8. Question/ Data request. Management Directive 325.12, Standards for Internal Controls in Commonwealth Agencies May 15, 2018, By Direction of Randy C. Albright, Secretary of the Budget. This Management Directive is also applicable to the Commission. **Correct? Please explain, if not.**

9. Please provide implementing internal policy or regulations that implement Management Directive 325.12 Standards for Internal Controls...
  
10. Management Directive 325.9 December 23, 2014 Processing Audits of Federal Pass-Through Funds By Direction of Charles B. Zogby, Secretary of the Budget.  
*"This directive establishes policy, responsibilities, and procedures for processing subrecipient single audit reports. This amendment updates the audit clause used in agreements between commonwealth agencies and subrecipients; and other applicable portions of the directive as a result of the codification of federal award audit requirements in 2 CFR Part 200 Subpart F – Audit Requirements ..."*  
[https://www.oa.pa.gov/Policies/md/Documents/325\\_9.pdf](https://www.oa.pa.gov/Policies/md/Documents/325_9.pdf)  
 This Management Directive applies to the PUC directly or indirectly or explicitly or implicitly as part as a result of receiving Federal grant money. **Correct? If not, please explain.**
  
11. **2 CFR Part 200, Subpart E—COST PRINCIPLES** Applies to the Commission starting with §200.400 Policy guide. **Correct? If not, please explain.**
  
12. *"2 CFR § 200.324 - Contract cost and price. (d) The cost plus a percentage of cost and percentage of construction cost methods of contracting **must not be used.**" 41 U.S.C. Sec. 3905. Cost contracts (a) Cost-Plus-A-Percentage-Of-Cost Contracts Disallowed. --The cost- plus-a-percentage-of-cost system of contracting shall not be used. This law and regulations applies to the Pennsylvania Public Utility Commission in setting rates? If not, please explain.*
  
13. Title 66 § 523. Performance factor consideration. This law does not include a cost plus percentage of cost type of arrangement. **Correct? If not, please explain.**
  
14. Generally traditional rate-making uses a form of cost plus percentage of cost type of arrangement where profits are tied to spending rather than performance. **If not, please explain.**

15. 2 CFR§200.404 Reasonable costs. [https://www.ecfr.gov/cgi-bin/text-idx?SID=8da0e85617057fb16c627e28b693eb50&mc=true&node=se2.1.200\\_1404&rgn=div8](https://www.ecfr.gov/cgi-bin/text-idx?SID=8da0e85617057fb16c627e28b693eb50&mc=true&node=se2.1.200_1404&rgn=div8) and 18 CFR Part 201 - UNIFORM SYSTEM OF ACCOUNTS PRESCRIBED FOR NATURAL GAS COMPANIES SUBJECT TO THE PROVISIONS OF THE NATURAL GAS ACT -- *General Instructions E. All amounts included in the accounts prescribed hereinfor 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.* <https://www.law.cornell.edu/cfr/text/18/part-201>

Here reasonable/unreasonable costs by an organization are consistent between 2 CFR and 18 CFR. **Correct? If not, please explain.**

**For example 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. In FERC account 426.1 Donations. This account shall include all payments or donations for charitable, social or community welfare purposes. FERC Accounts 426.5 and 426.1 are both below the line and are unallowable for recovery purposes as plant in service.

16. “2 CFR §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 the reasonableness of a given cost, consideration must be given to: (c) Market prices for comparable goods or services for the geographic area.” This also applies in rate cases where a given utility is outside of a competitive range.

The concept of and guidance of the competitive range is presented in the Federal Acquisition Regulations 15.306

In that Columbia Gas of Pennsylvania rate base per customer is 2.7 times that of the NiSource gas utility in Indiana and 2.6 times the gas utility in Ohio ... in a competitive market, this disparity puts Columbia Gas of Pennsylvania outside of the competitive range in a rate case. Columbia Gas of Pennsylvania’s rate base per customer appears unreasonable, thus rates are also unreasonable. **Correct? If not, please explain.**

17. In the body of PA Title 66 PUBLIC UTILITIES includes keywords: The term **prudent** is used 44 times primarily related to cost, **fair** 32; **just** 216; **reasonable** 258; **effective** 271; **efficient** 28; **safe** 104; **comply** 50; **conform** 25; **obey** 9; **audit** 68, **diligent or diligence** 3; **fidelity** 1, **observe** 3; **penalty** 25; **must** 86; **shall** 2,210, **should** 27; **burden of proof** 29, **trust** 0; and **balance between** 0. These terms used in Title 66 provide indicators of the intent and priorities of law that generally apply to public utilities and the

Commission. **Correct? If not, please explain.**

18. The Pennsylvania Constitution, as a result of a proposition in 1968 requires audits -- generally accepted audits, (Pennsylvania Constitution ARTICLE VIII. § 10. Audits) Management Directive 325.3 requires generally accepted audits be performed in accordance with the GAO Yellow Book. June 2020 the PUC's Bureau of Audits issued a Management and Performance Audit of Columbia Gas of Pennsylvania but was not released to the public until after the Public Input Hearing on July 8, 2020. <https://www.puc.pa.gov/pcdocs/1670369.pdf>

**Was this audit performed in accordance with the PA Constitution and Management Directive 325?** The audit does not claim to be. If the answer is yes, please provide where in this audit, it claims that it has been performed in accordance with generally accepted auditing standards.

19. Pennsylvania Constitution ARTICLE VIII. § 10. Audits, "shall be subject to audits made in accordance with generally accepted auditing standards." Management Directive 325.3 requires generally accepted audits performed in accordance with the GAO Yellow Book. June 2020 the PUC's Bureau of Audits issued a Management and Performance Audit of Columbia Gas of Pennsylvania but was not released to the public until after the Public Input Hearing on July 8, 2020. <https://www.puc.pa.gov/pcdocs/1670369.pdf>

This document does not provide to the Commission, Columbia Gas of Pennsylvania, its customers, investors, or the public any form of "assurance" of effective internal controls. **Correct? If not, please explain.**

20. June 2020 the PUC's Bureau of Audits issued a Management and Performance Audit of Columbia Gas of Pennsylvania <https://www.puc.pa.gov/pcdocs/1670369.pdf> Did identify "NiSource Corporate Services Company has internal control deficiencies within certain accounting processes." Page 27. The PUC auditors explained, "*Internal control ensures operational effectiveness and efficiency; reliable financial reporting; and, compliance with laws, regulations, and policies.*" **Correct? If not, please explain.**

21. The prior audit of Columbia by the PUC Bureau of Audits was issued June 2013, Docket No. D-20 12-2290672 and it too does not provide reasonable assurance of internal controls. **Correct? If not, please explain.**

The publicly available document is provided below.

[http://www.oca.state.pa.us/industry/natural\\_gas/documents/columbia/2015%20base%20rate%20case/Columbia Gas Rate Case R-2015-2468056/10.%20Standard%20Filing%20Requirements%20-%20Exhibits%2013%20-%20Volume%204%20of%2010.pdf](http://www.oca.state.pa.us/industry/natural_gas/documents/columbia/2015%20base%20rate%20case/Columbia_Gas_Rate_Case_R-2015-2468056/10.%20Standard%20Filing%20Requirements%20-%20Exhibits%2013%20-%20Volume%204%20of%2010.pdf)

22. In a rate case, it is not assumed the participants have or will reach some sort of reasonable assurance of Columbia's internal controls as a GAGAS qualified auditor would. **Correct? If not, please explain.**
23. It is the responsibility of the utility to show, as part of their burden of proof any independent audits or investigations that provide assurance or lack of assurance. **Correct? If not, please explain.**
24. A lack of a reasonable assurance evaluation in audits, assessments, inspections does not mean it should be assumed there is reasonable assurance. **Correct? If not, please explain.**
25. If the Pennsylvania Oath of Office requires individuals of the PUC to faithfully support, obey and defend the Constitution of Pennsylvania and Article VIII Section 10 requires the use of generally accepted audits standards and Management Directive 325.3 requires the Commission's audits must be in accordance with the GAO Yellow Book and these audits did not occur to the extent of reaching reasonable assurance of internal controls, then those responsible fell short of those obligations. **Correct? If not, please explain.**
26. Reliably just and reasonable rates of Columbia Gas of Pennsylvania cannot be reasonably determined if generally accepted audit standards have not been followed by the PUC nor provided by Columbia Gas in other external audits to the same GAGAS. **Correct? If not, please explain.**



27. Due diligence in rate cases is impaired without compliance with required internal controls and audits standards. **Correct? If not, please explain.**
28. Proceedings in a rate case are not the same as an audit conducted in accordance with GAGAS and do not pretend to be as reliable, in any event, decisions are made by the PUC in rate cases with or without audits. **Correct? If not, please explain.**
29. Industry surveys are not nearly as reliable for decision-making purposes in a rate case as audits performed in accordance with GAGAS. **Correct? If not, please explain.**
30. **Article VI § 3. Oath of office.** *Senators, Representatives, and all judicial, State and county officers shall, before entering on the duties of their respective offices, take and subscribe the following oath or affirmation before a person authorized to administer oaths. "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."* Leaders of the PA PUC recite this oath of office before entering service of the PUC. **Correct? If not, please explain.**
31. Title 66 § 516. Audits of certain utilities. Does not justify omitting the required audits per the Pennsylvania Constitution, Management Directives, and 2 CFR 200 (regarding Federal grants). **Correct? If not, please explain.**
32. In my Formal Complaint, I include the following table from authoritative sources—NiSource and the ALJ's recommendation report of December 4, 2020, on Columbia's previous rate case. <https://investors.nisource.com/company-information/default.aspx>

	~ No. of Customers (In 000)	Miles of Pipe	Calculated Miles of pipe per customer	Miles of Bare Steel and Cast Iron	Rate Base (\$ 000,000)	Calculated Rate Base Per Customer \$	
NIPSCO	840	17500	.020	23*	1700	*2024	
COH	1500	20200	.013	2000	3200	2133	
CKY	137	2600	.019	2600	327	2387	
CVA	274	5300	.019	140**	850	3102	
CMD	34	660	.018	50	149	4382	
SUB TOL	2785				6226	2236	Ave
CPA	433	7700	.018	1200	2400	** 5545	
	3548				8626		

Columbia Gas of Pennsylvania (CPA) rate base per customer is 2.7 times that of Indiana and 2.6 times that of Ohio. Could it be, since the PUC has not conducted audits in a timely manner and to the proper standard, this may have been a root cause for these disparities? But we do not know. **Correct? If not, please explain.**

33. What assurance can the PUC provide to Columbia's customers and investors that the ratebase and rates are just and reasonable in that audits have not been performed as required?

34. Was due process used to arrive at the current rates using due diligence and due professional care? **If the answer is Yes, please explain.**

35. Would it be reasonable for knowledgeable customers not to feel comfortable with the current rate-making process?

Thank you,

Richard C Culbertson

efile 2187725



## 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 Set I Interrogatories addressed Erika L. McLain, Esquire a party 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 15<sup>th</sup> day of July 2021.

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

Erika L. McLain, Esquire	Steven C. Gray, Esquire
Bureau of Investigation & Enforcement	Office of Small Business Advocate
Pennsylvania Public Utility Commission	555 Walnut Street
Commonwealth Keystone Building	1 <sup>st</sup> Floor, Forum Place
400 North Street, 2 <sup>nd</sup> Floor	Harrisburg, PA 17109-1923
Harrisburg, PA 17120	
Michael W. Hassell, Esquire	Amy E. Hirakis, Esquire
Lindsay A. Berkstresser, Esquire	NiSource Corporate Services Co.
Post & Schell, P.C.	800 North Third Street
17 North Second Street, 12 <sup>th</sup> Floor	Suite 204
Harrisburg, PA 17101-1601	Harrisburg, PA 17102
Theodore J. Gallagher, Esquire	John W. Sweet, Esquire
Columbia Gas of Pennsylvania, Inc.	Ria M. Pereira, Esquire
121 Champion Way	PA Utility Law Project

Suite 100

Canonsburg, PA 15317

Joseph L. Vullo, Esquire

PA Weatherization Providers Task Force, Inc.  
1460 Wyoming Avenue

Forty Fort, PA 18704

118 Locust Street

Harrisburg, PA 17101

Todd S. Stewart, Esquire

Hawke McKeon & Sniscak LLP  
100 North Tenth Street

Harrisburg, PA 17101

Charis Mincavage, Esquire  
Kenneth R. Stark, Esquire  
McNees Wallace & Nurick LLC  
100 Pine Street  
P.O. Box 1166  
Harrisburg, PA 17108-1166

Richard C. Culbertson  
1430 Bower Hill Road  
Pittsburgh, PA 15243

/s/ Harrison W. Breitman

Harrison W. Breitman  
Assistant Consumer Advocate  
PA Attorney I.D. # 320580  
E-Mail: [HBreitman@paoca.org](mailto:HBreitman@paoca.org)

Laura J. Antinucci  
Assistant Consumer Advocate  
PA Attorney I.D. # 327217  
E-Mail: [LAntinucci@paoca.org](mailto:LAntinucci@paoca.org)

Darryl A. Lawrence  
Senior Assistant Consumer Advocate  
AdvocatePA Attorney I.D. # 93682  
E-Mail: [DLawrence@paoca.org](mailto:DLawrence@paoca.org)

Thomas J. Sniscak, Esquire  
Whitney E. Snyder, Esquire  
Bryce R. Beard, Esquire  
Hawke McKeon & Sniscak, LLP  
100 North Tenth Street  
Harrisburg, PA 17101

Barrett C. Sheridan  
Assistant Consumer Advocate  
PA Attorney I.D. # 61138  
E-Mail: [BSheridan@paoca.org](mailto:BSheridan@paoca.org)

Christy M. Appleby  
Assistant Consumer Advocate  
PA Attorney I.D. # 85824  
E-Mail: [CAappleby@paoca.org](mailto:CAappleby@paoca.org)

Counsel for:  
Office of Consumer  
555 Walnut Street  
5<sup>th</sup> Floor, Forum Place  
Harrisburg, PA 17101-  
1923  
Phone: (717) 783-5048  
Fax: (717) 783-7152  
Dated: July 14, 2021

**eFile 2187725**

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**CERTIFICATE OF SERVICE**

I hereby certify that I am serving the foregoing **Objections to Interrogatories** dated July 20, 2021, in the manner and upon the persons listed below:

**Served via Electronic Mail Only**

Lindsay A. Berkstresser, Esq.  
Michael W. Hassell, Esq.  
Post & Schell, P.C.  
17 North Second Street, 12th Floor  
Harrisburg, PA 17101-1601  
[lberkstresser@postschell.com](mailto:lberkstresser@postschell.com)  
[mhassell@postschell.com](mailto:mhassell@postschell.com)  
*Counsel for Columbia Gas of  
Pennsylvania, Inc.*

121 Champion Way, Suite 100  
Canonsburg, PA 15317  
[npaloney@nisource.com](mailto:npaloney@nisource.com)  
[tjgallagher@nisource.com](mailto:tjgallagher@nisource.com)

Amy E. Hirakis, Esq.  
  
NiSource Corporate Services, Co.  
800 North Third Street, Suite 204  
  
Harrisburg, PA 17102  
[ahirakis@nisource.com](mailto:ahirakis@nisource.com)  
*Counsel for Columbia Gas of  
Pennsylvania, Inc.*

Nicole M. Paloney, Esq.  
Theodore J. Gallagher, Esq.  
  
Columbia Gas of Pennsylvania, Inc.  
Southpointe Industrial Park

Thomas J.  
Sniscak,  
Esq.

Whitney  
E. Snyder,  
Esq. Bryce  
R. Beard,  
Esq.

Hawke, McKeon &  
Sniscak LLP100 N.  
Tenth Street

Harrisburg, PA  
17101  
[tjsniscak@hmslegal.com](mailto:tjsniscak@hmslegal.com)  
[wesnyder@hmslegal.com](mailto:wesnyder@hmslegal.com)  
[brbeard@hmslegal.com](mailto:brbeard@hmslegal.com)

*Counsel for The Penn State  
University*

Todd S. Stewart, Esq.

Hawke, McKeon &  
Sniscak LLP100 N.  
Tenth Street

Harrisburg,  
PA 17101  
[tsstewart@hmslegal.com](mailto:tsstewart@hmslegal.com)  
*m Counsel  
for  
Shipley/RES  
A*

Barrett  
Sheridan,  
Esq. Christy  
Appleby, Esq.

Darryl A. Lawrence, Esq.  
Harrison W. Breitman, Esq.  
Laura Antinucci, Esq.

Office of Consumer Advocate  
555 Walnut Street

5th Floor, Forum Place  
Harrisburg, PA 17101-1923

[OCAColumbiaGas2021@paoca.org](mailto:OCAColumbiaGas2021@paoca.org)



Steven C. Gray, Esq.  
Office of Small Business Advocate555  
Walnut Street  
  
1st Floor, Forum Place  
Harrisburg, PA 17101  
[sgray@pa.gov](mailto:sgray@pa.gov)

1430 Bower Hill RoadPittsburgh, PA  
15243  
[Richard.C.Culbertson@gmail.com](mailto:Richard.C.Culbertson@gmail.com)  
*Complainant*

John W. Sweet, Esq.  
Elizabeth R. Marx, Esq.  
Ria M. Pereira, Esq.  
  
Pennsylvania Utility Law Project118  
Locust Street  
  
Harrisburg, PA 17101  
[pulp@pautilitylawproject.org](mailto:pulp@pautilitylawproject.org)

Charis Mincavage, Esq.  
Kenneth R. Stark, Esq.  
  
McNees Wallace & Nurick LLC  
100 Pine Street  
  
P.O. Box 1166  
Harrisburg, PA 17108  
  
[cmincavage@mcneeslaw.com](mailto:cmincavage@mcneeslaw.com)  
[kstark@mcneeslaw.com](mailto:kstark@mcneeslaw.com)  
*Counsel for CII*

Joseph L. Vullo, Esq. Burke  
Vullo Reilly Roberts1460  
Wyoming Avenue Forty  
Fort, PA 18704  
[jlvullo@bvrrlaw.com](mailto:jlvullo@bvrrlaw.com)  
*Counsel for Pennsylvania*  
  
*Weatherization Providers Task Force*

Richard C. Culbertson

James  
L. Crist  
Lume  
n  
Group  
, Inc.

4226 Yarmouth  
Drive, Suite 101  
Allison Park, PA  
15101  
[jlcris@aol.com](mailto:jlcris@aol.com)

*Consultant for The Penn State  
University*

Harry  
Gelle  
r,  
Esq.  
118  
Locus  
t  
Stree  
t

Harrisburg, PA  
17101  
[hgellerpulp@palegal](mailto:hgellerpulp@palegal)

[aid.net](http://aid.net) *Witness for CAUSE-PA*

Robert D. Knecht  
Industrial Economic, Inc.  
2067 Massachusetts Avenue  
Cambridge, MA 02140  
[rdk@indecon.com](mailto:rdk@indecon.com)  
*Consultant for OSBA*

David Effron  
Berkshire Consulting Services  
12 Pond Path  
Northampton, NH 03862  
[OCAColumbiaGas2021@paoca.org](mailto:OCAColumbiaGas2021@paoca.org) *Consultant  
for OCA*

Jerry Mierzwa  
Exeter Associates, Inc.  
10480 Little Patuxent Pkwy, Suite 300  
Columbia, MD 21044-3575  
[OCAColumbiaGas2021@paoca.org](mailto:OCAColumbiaGas2021@paoca.org) *Consultant  
for OCA*

Kevin O'Donnell  
William O'Donnell

Nova Energy Consultants, Inc.  
1350 SE Maynard Rd, Suite 101

Cary, NC 27511

[OCAColumbiaGas2021@paoca.org](mailto:OCAColumbiaGas2021@paoca.org)

*Consultant for OCA*

Roger Colton

Fisher Sheehan & Colton  
34 Warwick Road

Belmont, MA 02478

[OCAColumbiaGas2021@paoca.org](mailto:OCAColumbiaGas2021@paoca.org) *Consultant  
for OCA*

A handwritten signature in cursive script, reading "Erika L. McLain", positioned above a horizontal line.

Erika L. McLain

Prosecutor

Bureau of Investigation and  
EnforcementPA Attorney ID No. 320526



Date Created	Filing Number
7/20/2021	2188370

Commonwealth  
of Pennsylvania  
**Pennsylvania**  
**Public Utility**  
**Commission**  
Harrisburg, PA  
17105-3265

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**G -**  
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Your filing has been electronically received. Upon review of the filing for conformity with the Commission's filing requirements, a notice will be issued acknowledging acceptance or rejection (with reason) of the filing. The matter will receive the attention of the Commission and you will be advised if any further action is required on your part.

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**Docket Number:** R-2021-3024296

**Case Description:**

**Transmission Date:** 7/20/2021 2:16 PM

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R-2021-3024296 I&E Objections to Culbertson Interrogatories Set I (nos 1-35) CL&COS FINAL.pdf	Certificate of Service	7/20/2021 2:15:04 PM

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Commission, 400 North Street, Harrisburg PA 17120 a copy of the filing confirmation page or reference the filing confirmation number on the first page of the paper copy.

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7/20/2021 2:16:35 PM

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