



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

BUREAU OF
INVESTIGATION
&
ENFORCEMENT

July 26, 2021

Via Electronic Filing

Rosemary Chiavetta, Secretary
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-2021-3024296
I&E Answer to Richard C. Culbertson Motion to Compel

Dear Secretary Chiavetta:

Enclosed please find the **Answer of the Bureau of Investigation and Enforcement (I&E) to the Motion to Compel of 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

ELM/ac
Enclosures

cc: Honorable Mark A. Hoyer – Deputy Chief Administrative Law Judge (*via email only*)
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.	:	

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

The Bureau of Investigation and Enforcement (“I&E”) hereby submits this Answer to the Motion to Compel of Richard C. Culbertson regarding Set I Interrogatories 1 through 35 pursuant to 52 Pa. Code § 5.342(g)(1). As explained below, Mr. Culbertson’s Motion to Compel should be denied because Set I Interrogatories are untimely and fail to address I&E’s specific objections.

I. BACKGROUND

On July 15, 2021, Mr. Culbertson issued his Set I interrogatories.

On July 19, 2021, I&E prosecutor Erika L. McLain orally informed Mr. Culbertson that I&E objected to Set I Interrogatories 1 through 35.

On July 20, 2021, I&E served written objections to Set I Interrogatories 1 through 35.

A true and correct copy of I&E’s objections is attached hereto as Appendix A.

On Saturday, July 24, 2021, Mr. Culbertson filed an untimely Motion to Compel I&E's responses to Set I Interrogatories 1 through 35. I&E hereby files its timely¹ Answer requesting that Mr. Culbertson's Motion be dismissed.

II. LEGAL STANDARD

Pursuant to Section 5.321(c), a party may obtain discovery of any matter not privileged that is relevant to a pending proceeding and that is reasonably calculated to lead to the discovery of admissible evidence.² Relevant evidence is "that which, tends to establish some fact material to the case, or which tends to make a fact at issue more or less probable."³ Irrelevant or immaterial evidence is not admissible.⁴ The Commission has excluded evidence on the basis that the evidence is not relevant to the scope of the proceeding.⁵

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.⁶ "The law is [] clear that the Commission has the right to limit discovery that would place an unreasonable burden upon a participant in litigation."⁷ In

¹ I&E is serving its Answer on July 26, 2021; however, such a response is not due until July 29, 2021. ALJ Hoyer's May 21, 2021 Prehearing Order modified the Commission's discovery rules to require that all discovery and discovery-related pleadings propounded after 12:00 noon on a Friday will be deemed served on the next business day for purposes of determining the due date of the responses and responsive pleadings. Mr. Culbertson's Motion to Compel should be deemed served on Monday, July 26, 2021, given that he missed the Friday by noon service deadline and instead served his Motion on Saturday. Pursuant to the discovery modifications approved by the ALJ, I&E has three calendar days to serve its Answer; therefore, it has until July 29, 2021 to provide a timely Answer.

² 52 Pa. Code § 5.321(c).

³ Commonwealth v. Scott, 389 A.2d 79, 82 (1978).

⁴ 66 Pa. C.S. § 332(b).

⁵ Investigation of the Philadelphia Area Taxicab Self-Insurance Program, 1989 Pa. PUC LEXIS 206 (1989) (excluding evidence that was "not germane to the limited scope of the investigation...").

⁶ 52 Pa. Code § 5.361(a)(2),(4).

⁷ Application of Newtown Artesian Water Company and Indian Rock Water Company, Docket No. A-212070, 1990 Pa. PUC LEXIS 83 (June 20, 1990) citing City of Pittsburgh v. Pa. PUC, 526 A.2d 1243, 1249-50 (Pa. Cmwlth. 1987).

addition, interrogatories that seek legal interpretations, legal strategy and information that is protected by attorney-client privilege are impermissible.⁸

Furthermore, Commission regulations at 52 Pa. Code § 5.323 prohibit the disclosure of the mental impressions of a party's attorney or his conclusions, opinions, memoranda, notes, summaries, legal research or legal theories.⁹

III. THE MOTION TO COMPEL SHOULD BE DENIED

A. The Motion to Compel is untimely.

Mr. Culbertson's Motion to Compel is untimely and should be denied. On May 21, 2021, Administrative Law Judge Hoyer ("ALJ Hoyer") issued a Prehearing Order, which modified the timeframes set forth in the Commission's regulations for discovery responses, objections, and certain discovery related pleadings. The Prehearing Order provides that motions to compel are due within three days of service of written objections.¹⁰ I&E served its written objections to Richard C. Culbertson Set I Interrogatories 1 through 35 on July 20, 2021. Thus, any motion to compel the Set I responses was due on Friday, July 23, 2021. Mr. Culbertson failed to meet this obligation as he served his Motion to Compel on Saturday, July 24, 2021 at 10:02 a.m.

Mr. Culbertson is aware of this requirement as a prior Motion to Compel of his was recently dismissed for this identical reason. Specifically, on July 20, 2021, ALJ Hoyer

⁸ Pa. PUC, et al. v. Pennsylvania American Water Co., Docket Nos. R-2011-2232243, et al. 2011 Pa. PUC LEXIS 1523 (July 21, 2011) (interrogatories requesting privileged attorney-client communications, attorney work product, or an attorney's mental impressions, analyses, or assessments as to legal matters are impermissible).

⁹ 52 Pa. Code § 5.323.

¹⁰ Prehearing Order at Docket No. R-2021-3024296, p. 6 (Order issued May 21, 2021).

issued a Third Interim Order denying Richard C. Culbertson's Motion to Compel Columbia Gas responses to discovery. In the Third Interim Order ALJ Hoyer explains:

The discovery regulations were modified by a Prehearing Order issued in this proceeding on May 21, 2021. Those modifications were agreed upon by the parties participating in the prehearing conference. They are designed to lessen the discovery regulation time limits in an effort to afford the parties with timely discovery in advance of the preparation of written testimony and exhibits. These discovery modifications are necessary because there is a statutory deadline for this proceeding and hearings were scheduled for August 3-5, 2021, at the prehearing conference. It would be prejudicial to Columbia to entertain an untimely motion to compel while it responds to discovery from several parties, propounds discovery and prepares written testimony and exhibits. The discovery rules modifications must be applied equally and fairly to all parties in this proceeding.¹¹

Although Mr. Culbertson was on notice that his Motion to Compel had been denied by ALJ Hoyer on July 20, 2021 due to untimeliness, Mr. Culbertson nevertheless served his Motion to Compel I&E responses on Saturday, July 24, 2021, after the July 23, 2021 deadline. Therefore, Mr. Culbertson's untimely Motion to Compel Set I Interrogatories 1 through 35 should be denied.

B. The Motion to Compel fails to adequately address I&E's objections.

In his Motion to Compel, Mr. Culbertson fails to respond to I&E's objections.

In I&E's July 20, 2021 Objections, I&E articulates in its first General Objection to Mr. Culbertson directing questions 1 through 35 to I&E prosecutor Erika L. McLain. In his Motion to Compel, Mr. Culbertson continues to assert that service of 35 interrogatories on I&E counsel is proper. Mr. Culbertson neglects to respond to I&E's objections to Richard

¹¹ Third Interim Order Addressing Complainant Richard C. Culbertson's Third Motion to Compel Discovery (July 20, 2021), pp. 2-3.

C. Culbertson Set I Interrogatories 1 through 35 insofar as 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. As Mr. Culbertson's interrogatories are solely addressed to "Ms. McLain...as a participant and representative of the Public Utility Commission" requesting legal interpretation, I&E's objections should be granted. As explained in I&E's objections, Ms. McLain is neither a participant nor a representative of the Commission. Ms. McLain's role in the instant proceeding is as a Prosecutor for the Commission's Bureau of Investigation and Enforcement. Not only are such questions barred by 52 Pa. Code § 5.323 but also inappropriate as they seek answers to questions that I&E has not addressed in its case in chief. Mr. Culbertson's Motion to Compel failed to address these objections.

Moreover, despite the explanation provided in I&E's Objections, Mr. Culbertson's Motion to Compel appears to not understand I&E's role in rate proceedings. He continues to assert that Ms. McLain represents the Commission: "Notice the letterhead of her correspondence – from this she is representing the PUC and happens to work for the Bureau of Investigation and Enforcement. This Correspondence shows she is not working as a prosecutor but as an advocate." As has been previously explained, I&E is an independent prosecutory bureau with the Public Utility Commission.¹² I&E's role in rate proceedings is publicly available and can easily be found on the Commission's website stating: "The Bureau of Investigation and Enforcement serves as the prosecutory bureau for purposes of representing the public interest in ratemaking and service matters before the Office of

¹² Final Procedural Order at Docket M-2008-2071852 (entered August 11, 2011).

Administrative Law Judge, and enforcing compliance with the state and federal motor carrier safety and gas safety laws and regulations.”¹³ I&E further explained in its objections that 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. Under Pennsylvania law¹⁴ 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. The ban on intermingling functions precludes I&E from communicating with any other Commission Bureau on matters that are currently pending before the Commission.

Additionally, as stated in I&E’s objections, Mr. Culbertson’s Set I Interrogatories 1 through 35 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. Mr. Culbertson’s interrogatories go beyond the scope of the instant proceeding as evidenced by his inclusion of a letter from the 2020 Columbia Gas base rate case in his Motion to Compel. Moreover, Mr. Culbertson’s interrogatories are not relevant to this proceeding as they seek information pertaining to audits, audits that are not included in the instant base rate case and which I&E did not address in its case. Furthermore, as explained by I&E’s objections, Ms. McLain’s role is not as an auditor for the Commission but as a prosecutor for the Bureau of Investigation and Enforcement.

¹³ <https://www.puc.pa.gov/about-the-puc/offices-and-staff-directory> accessed July 26, 2021.

¹⁴ 66 Pa.C.S. § 308.2(b).

Lastly, Mr. Culbertson's interrogatories are unreasonable and burdensome during a time when I&E is preparing its surrebuttal testimony for service tomorrow, July 27, 2021, engaging in settlement discussions and preparing for hearings set to begin August 3, 2021. Contrary to Mr. Culbertson's contention that, "If McLain has no perceivable purpose in rate cases, she should be barred from acting as a participant," it is clear that I&E, with Ms. McLain as the assigned prosecutor, is an active party in this rate proceeding. I&E has issued discovery, provided expert witness testimony, engaged in settlement discussions and, ultimately, will prepare briefs if settlement negotiations are unsuccessful. Mr. Culbertson's improper discovery is unreasonable and burdensome as I&E continues to represent the public interest in this proceeding.

IV. CONCLUSION

WHEREFORE, the Bureau of Investigation and Enforcement respectfully requests that the Motion to Compel be denied.

Respectfully submitted,



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

Dated: July 26, 2021

Appendix A



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

Appendix A
1 of 27
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

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

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.	:	

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

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.¹ Under Pennsylvania law² 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

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

² 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 calls 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.

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,



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
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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

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, sweeping 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

“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

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

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 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 herein for gas plant and operating expenses shall be just and reasonable and any payments or accruals by the utility in excess of just and reasonable charges shall be included in account 426.5, Other Deductions.* <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

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 rate base 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 15th day of July 2021.

SERVICE BY E-MAIL ONLY

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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

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

Erika L. McLain
Prosecutor
Bureau of Investigation and Enforcement
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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

VERIFICATION

I, Erika L. McLain, Prosecutor for the Pennsylvania Public Utility Commission's Bureau of Investigation and Enforcement, herby state that the facts set forth above are true and correct to the best of my knowledge, information and belief and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities.



Erika L. McLain
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Dated: July 26, 2021

**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 **Answer to Motion** dated July 26, 2021, in the manner and upon the persons listed below:

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