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File #: 182466

July 28, 2021

VIA ELECTRONIC FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor North
P.O. Box 3265
Harrisburg, PA 17105-3265

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

Dear Secretary Chiavetta:

Attached please find the Answer of Columbia Gas of Pennsylvania, Inc. to the Motion to Reconsider Second Interim Order Addressing Complainant Culbertson's Motion to Compel Discovery in the above-referenced proceeding. Copies will be provided per the Certificate of Service.

Respectfully submitted,



Lindsay A. Berkstresser

LAB/kl
Attachment

cc: Honorable Mark A. Hoyer
Certificate of Service

CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the foregoing have been served upon the following persons, in the manner indicated, in accordance with the requirements of § 1.54 (relating to service by a participant).

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Date: July 28, 2021

A handwritten signature in cursive script that reads "Lindsay A. Berkstresser". The signature is written in dark ink and is positioned above a horizontal line.

Lindsay A. Berkstresser

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**ANSWER OF COLUMBIA GAS OF PENNSYLVANIA, INC.
TO THE MOTION TO RECONSIDER SECOND INTERIM ORDER
ADDRESSING COMPLAINANT RICARD C. CULBERTSON’S
MOTION TO COMPEL DISCOVERY**

Columbia Gas of Pennsylvania, Inc. (“Columbia” or the “Company”) hereby submits this Answer to the “Motion to Reconsider Second Interim Order Addressing Complainant Richard C. Culbertson’s Motion to Compel Discovery” (hereinafter referred to as “Motion for Reconsideration”). As explained below, Mr. Culbertson’s Motion for Reconsideration should be denied because the Motion does not present any arguments that warrant reconsideration of Administrative Law Judge Mark A. Hoyer’s (“ALJ Hoyer”) Second Interim Order Addressing Complainant Richard C. Culbertson’s Motion to Compel Discovery (“Second Interim Order”). The Second Interim Order correctly applied the Commission’s discovery regulations to reach a determination on the discovery dispute. Therefore, Columbia respectfully requests that the Motion for Reconsideration be denied.

I. BACKGROUND

On June 7, 2021, Mr. Culbertson served his Set II interrogatories on Columbia.

On June 14, 2021, Columbia served objections to Set II.

On June 17, 2021, Mr. Culbertson filed a Motion to Compel the responses to Set II.

On June 21, 2021, Columbia filed its Answer to the Motion to Compel, which explained the reasons for Columbia's objections to the discovery requests.

On June 30, 2021, the ALJ issued the Second Interim Order denying the Motion to Compel.

On July 8, 2021, Mr. Culbertson filed the Motion for Reconsideration of the Second Interim Order.

II. THE MOTION FOR RECONSIDERATION SHOULD BE DENIED.

As the moving party, Mr. Culbertson has the burden of proof. *See, e.g., Application of Airquest*, Docket No. A-2015-2493073 (Order entered December 8, 2016) (request for reconsideration of secretarial letter denying application for failure to comply with conditions); *Application of Dep't of Transportation (Norfolk)*, Docket No. A-2018-3003795 (November 19, 2019) (request for reconsideration of secretarial letter approving application with conditions). Mr. Culbertson's Motion for Reconsideration should be denied because it presents no new arguments that warrant reconsideration of the well-reasoned discovery ruling set forth in the Second Interim Order. The Motion for Reconsideration cites due process, an alleged lack of adequate auditing, the Federal Rules of Civil Procedure, and the Sarbanes-Oxley Act. None of these arguments provide any justification for reconsidering the Second Interim Order.

In the Motion for Reconsideration, Mr. Culbertson alleges that the Second Interim Order denies him due process. Motion, p. 2. However, the Motion for Reconsideration offers no support for this argument. Due process in an administrative proceeding before the Commission requires notice and an opportunity to be heard. *Kline v. PPL Electric Utilities*, Docket No. C-2017-2621072, 2020 Pa. PUC LEXIS 504 (Oct. 8, 2020) citing *Chester Water Auth. v. Pa. PUC*, 581 Pa. 640, 868 A.2d 384 (2005) (procedural due process is a flexible concept, and thus, implicates procedural protections as each particular situation demands). The Second Interim Order does not

deny Mr. Culbertson due process because due process does not require that parties have the right to ask discovery questions that are impermissible under the Commission's discovery regulations.

In the Motion for Reconsideration, Mr. Culbertson alleges that the Commission has not conducted proper audits of Columbia. Motion, p. 5. Mr. Culbertson's allegations regarding the Commission's auditing of Columbia are inaccurate and should be disregarded. Contrary to Mr. Culbertson's allegations, Columbia is subject to regular audits by the Commission, which are public. *See, e.g.,* Management and Operations Audit of Columbia Gas of Pennsylvania, Inc., Docket No. D-2019-3011582 (Issued June 2020, available at <https://www.puc.pa.gov/pcdocs/1670369.pdf>).

Relatedly, Mr. Culbertson argues that the interrogatories that are the subject of the Second Interim Order are questions that should be asked in an audit. Motion, p. 10. However, this is not the standard for permissible discovery in base rate proceedings before the Commission. The standard for permissible discovery is governed by the Commission's regulations at 52 Pa. Code § 5.321, *et seq.* Mr. Culbertson's allegations regarding what he views as a lack of sufficient auditing by the Commission provides no support for the Motion for Reconsideration. The Commission, and not Mr. Culbertson, is responsible for conducting audits of utilities.

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

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

Motion, p. 4. The referenced section is inapplicable to Columbia because Columbia does not receive funding from the Commonwealth. This argument is irrelevant to the current base rate proceeding and provides no justification for the reconsideration request.

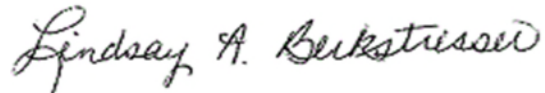
The Motion for Reconsideration alleges that ALJ Hoyer failed to apply the Federal Rules of Civil Procedure to the discovery dispute. Motion, pp. 2-3, 13. However, the Commission's discovery regulations at 52 Pa. Code § 5.321, *et seq.*, and not the Federal Rules of Civil Procedure, are controlling in this proceeding. The Motion for Reconsideration fails to recognize that the Commission has established Rules of Administrative Practice and Procedure that govern the discovery process in proceedings before the Commission and completely ignores the Commission's discovery regulations. The Second Interim Order correctly applied these regulations in determining that the requests set forth in Set II are not permissible under the Commission's discovery regulations. Specifically, the Second Interim Order correctly determined that the Set II interrogatories are not likely to lead to the discovery of admissible evidence because they are irrelevant and outside the scope of this base rate proceeding. Second Interim Order, p. 3. The Motion for Reconsideration does not set forth any new arguments that would support reconsidering the ALJ's ruling that these interrogatories not permissible under the Commission's discovery regulations.

Finally, the Motion for Reconsideration cites the Sarbanes-Oxley Act. Motion for Reconsideration, p. 11. The Sarbanes-Oxley Act is irrelevant to the issues in this case before the Commission and provides no support for the Motion for Reconsideration.

III. CONCLUSION

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

Respectfully submitted,



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Date: July 28, 2021

VERIFICATION

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

Date: July 28, 2021

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