
Lindsay A. Berkstresser
Associate

lberkstresser@postschell.com
717-612-6021 Direct
717-731-1977 Direct Fax
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 Motion for Protective Order filed on behalf of Columbia Gas of Pennsylvania, Inc., 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).

VIA E-MAIL

Erika L. McLain, Esquire
Bureau of Investigation & Enforcement
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120
Ermclain@pa.gov

Laura Antinucci, Esquire
Darryl A. Lawrence, Esquire
Barrett C. Sheridan, Esquire
Christy M. Appleby, Esquire
Office of Consumer Advocate
555 Walnut Street
5th Floor, Forum Place
Harrisburg, PA 17101
lantinucci@paoca.org
dlawrence@paoca.org
bsheridan@paoca.org
cappleby@paoca.org

Steve Gray, Esquire
Office of Small Business Advocate
555 Walnut Street
1st Floor, Forum Place
Harrisburg, PA 17101
sgray@pa.gov

Joseph L. Vullo, Esquire
Burke Vullo Reilly Roberts
1460 Wyoming Avenue
Forty Fort, PA 18704
*Counsel for PA Weatherization
Providers Task Force, Inc.*
jlvullo@bvrrlaw.com

Thomas J. Sniscak, Esquire
Whitney Snyder, Esquire
Hawke McKeon & Sniscak, LLP
100 North Tenth Street
Harrisburg, PA 17101
Counsel for Pennsylvania State University
Tjsniscak@hmslegal.com
WESnyder@hmslegal.com

Charis Mincavage, Esquire
Kenneth Stark, Esquire
McNees Wallace & Nurick LLC
100 Pine Street
Harrisburg, PA 17101
Counsel for Columbia Industrial Intervenor
cmincavage@mcneeslaw.com
kstark@mcneeslaw.com

John W. Sweet, Esquire
Ria M. Pereira, Esquire
Pennsylvania Utility Law Project
118 Locust Street
Harrisburg, PA 17101
Counsel for CAUSE-PA
pulp@pautilitylawproject.org

Todd S. Stewart, Esquire
Hawke McKeon & Sniscak LLP
100 North Tenth Street
Harrisburg, PA 17101
*Counsel for Intervenor Shipley Choice, LLC
d/b/a Shipley Energy ("Shipley") and the Retail
Energy Supply Association ("RESA")
("Shipley/RESA")*
tsstewart@hmslegal.com

Richard C. Culbertson
1430 Bower Hill Road
Pittsburgh, PA 15243
richard.c.culbertson@gmail.com

Ronald Lamb
221 Radcliffe Street
Pittsburgh, PA 15204
quraiskyzz@gmail.com

Date: July 28, 2021

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

Lindsay A. Berkstresser

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	Docket No.	R-2021-3024296
Office of Consumer Advocate	:		C-2021-3025078
Office of Small Business Advocate	:		C-2021-
Columbia Industrial Intervenors	:		C-2021-3025600
Pennsylvania State University	:		C-2021-3025775
Richard C. Culbertson	:		C-2021-3026054
Ronald Lamb	:		C-2021-3027217
	:		

v.

Columbia Gas of Pennsylvania, Inc.

**MOTION OF COLUMBIA GAS OF PENNSYLVANIA, INC.
FOR A PROTECTIVE ORDER**

TO DEPUTY CHIEF ADMINISTRATIVE LAW JUDGE MARK A. HOYER:

Columbia Gas of Pennsylvania, Inc. (“Columbia”), by and through its attorneys, Post & Schell, P.C., hereby requests that the attached Protective Order be entered in the above-captioned proceeding pursuant to the provisions of 52 Pa. Code § 5.365(a). In support thereof, Columbia represents as follows:

1. On February 26, 2021, Columbia submitted its Notice of Intent to file a general rate increase on or about March 30, 2021. The Commission docketed the Notice at R-2021-3024296.
2. On March 30, 2021, Columbia filed Supplement No. 325 to Tariff Gas PA. P.U.C. No. 9 (“Supplement No. 325”) with the Commission. Supplement No. 325 was issued to be effective for service rendered on or after May 29, 2021. It proposed changes to Columbia’s distribution base rates designed to produce an increase in annual revenues of approximately \$98.3 million based upon data for a fully projected future test year ending December 31, 2022.

3. On April 7, 2021, the Bureau of Investigation and Enforcement (“I&E”) filed a Notice of Appearance. Petitions to Intervene were filed by the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (April 12, 2021), Shipley Choice, LLC and Interstate Gas Supply, Inc. (April 16, 2021),¹ and Pennsylvania Weatherization Providers Task Force (May 3, 2020). Formal complaints were filed by the Office of Consumer Advocate (“OCA”) at Docket No. C-2021-3025078 on April 6, 2021, the Office of Small Business Advocate (“OSBA”) on April 15, 2021, Columbia Industrial Intervenors (“CII”) at Docket No. C-2021-3025600 on April 29, 2021, the Pennsylvania State University (“PSU”) at Docket No. C-2021-3025775 on May 7, 2021, Richard C. Culbertson at Docket No. C-2021-3026054 on May 25, 2021, and Ronald Lamb at Docket No. C-2021-3027217 on July 12, 2021.

4. On May 6, 2021, the Commission issued an Order pursuant to 66 Pa. C.S. §1308(d), suspending the filing by operation of law until December 29, 2021 (“Suspension Order”).

5. On May 14, 2021, Columbia filed Tariff Supplement No. 328 in accordance with the Commission’s Suspension Order.

6. The proceeding has been assigned to Deputy Chief Administrative Law Judge Mark A. Hoyer (the “ALJ”) for hearings and issuance of a Recommended Decision.

7. A telephonic prehearing conference was held on May 17, 2021, at which time a procedural schedule was adopted.

8. The Parties to this proceeding have engaged, and continue to engage, in substantial formal and informal discovery. Proprietary Information within the definition of 52 Pa. Code § 5.365 has been shared in discovery pursuant to protective agreements between the parties. In addition, Proprietary Information has been included in testimony, which may be introduced for the

¹ On May 5, 2021, Shipley Choice, LLC and the Retail Energy Supply Association filed an Amended Petition to Intervene to remove Interstate Gas Supply, Inc. individually from the Petition to Intervene and substitute the Retail Energy Supply Association in its place.

record in this proceeding. Parties may also desire to use Proprietary Information for cross-examination purposes. Treatment of such information as set forth in the attached proposed Protective Order is justified because unrestricted disclosure of this information would not be in the public interest. These considerations constitute cause for the restrictions specified in 52 Pa. Code § 5.365 and in Administrative Law Judge or Commission Orders granting relief pursuant to the regulation.

9. Under 52 Pa. Code §§ 5.362(a)(7) and 5.365, the Office of Administrative Law Judge or the Commission may issue a Protective Order to limit or prohibit disclosure of Proprietary Information where the potential harm to a participant would be substantial and outweighs the public's interest in having access to the Proprietary Information. In applying this standard, relevant factors to be considered include: the extent to which disclosure would cause unfair economic or competitive damage; the extent to which the information may already be known by others; and the potential value of such information to the participant and the participant's competitors and trade partners. 52 Pa. Code §§ 5.365(a)(1) – (3).

10. The documents sought to be protected by the Proposed Order also may contain proprietary information as described in 66 Pa.C.S. § 335(d), which provides:

if a document contains trade secrets or proprietary information and it has been determined by the commission that harm to the person claiming the privilege would be substantial or if a document required to be released under this section contains identifying information which would operate to the prejudice or impairment of a person's reputation or personal security, or information that would lead to the disclosure of a confidential source or subject a person to potential economic retaliation as a result of their cooperation with a commission investigation, or information which, if disclosed to the public, could be used for criminal or terroristic purposes, the identifying information may be expurgated from the copy of the document made part of the public record.

Therefore, treatment of such information as set forth in the attached proposed Protective Order is justified under 66 Pa.C.S. § 335(d).

11. The attached proposed Protective Order defines “Confidential” information in Paragraph 3 as “those materials which customarily are treated by that Party as sensitive or proprietary, which are not available to the public, and which, if disclosed freely, would subject that Party or its clients to risk of competitive disadvantage or other business injury.” The proposed Protective Order defines “Highly Confidential” information as materials that are of such a commercially sensitive nature among the parties or of such a private, personal nature that the producing party is able to justify a heightened level of confidential protection with respect to those materials. Clearly, protecting this type of information from disclosure is appropriate.

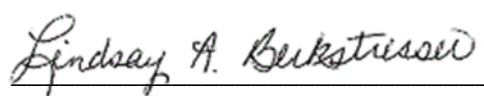
12. Limitation on the disclosure of Proprietary Information will not prejudice the rights of the participants, nor will such limitation frustrate the prompt and fair resolution of this proceeding. The proposed Protective Order balances the interests of the Parties, the public, and the Commission.

13. The attached proposed Protective Order will protect the Proprietary Information sought in discovery or submitted for the record while allowing the Parties to use such information for purposes of the instant litigation.

14. The attached proposed Protective Order has been shared with other parties to this proceeding. No party has indicated that it opposes the Protective Order.

WHEREFORE, for all the foregoing reasons, Columbia Gas of Pennsylvania, Inc. requests that Deputy Chief Administrative Law Judge Mark A. Hoyer grant this Motion and issue the attached Protective Order.

Respectfully submitted,

A handwritten signature in cursive script, reading "Lindsay A. Berkstresser", is written over a horizontal line.

Theodore Gallagher (ID # 90842)
Columbia Gas of Pennsylvania, Inc.
121 Champion Way, Suite 100
Phone: 724-416-6355
Fax: 724-416-6384
E-mail: tjgallagher@nisource.com

Michael W. Hassell (ID # 34851)
Lindsay A. Berkstresser (ID # 318370)
Post & Schell, P.C.
17 North Second Street
12th Floor
Harrisburg, PA 17101
Phone: 717-731-1970
Fax: 717-731-1985
E-mail: mhassell@postschell.com
E-mail: lberkstresser@postschell.com

Amy E. Hirakis (ID # 310094)
800 North 3rd Street
Suite 204
Harrisburg, PA 17102
Phone: 717-233-1351
E-mail: ahirakis@nisource.com

Date: July 28, 2021

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	Docket No.	R-2021-3024296
Office of Consumer Advocate	:		C-2021-3025078
Office of Small Business Advocate	:		C-2021-
Columbia Industrial Intervenors	:		C-2021-3025600
Pennsylvania State University	:		C-2021-3025775
Richard C. Culbertson	:		C-2021-3026054
Ronald Lamb	:		C-2021-3027217
	:		

v.

Columbia Gas of Pennsylvania, Inc.

PROTECTIVE ORDER

Upon consideration of the Motion for a Protective Order that was filed by Columbia Gas of Pennsylvania, Inc. on July 28, 2021;

IT IS ORDERED THAT:

1. The Motion is hereby granted with respect to all materials and information identified in Paragraphs 2 and 3 below, which are or will be filed with the Commission, produced in discovery, or otherwise presented during the above-captioned proceeding and all proceedings consolidated with it. All persons now or hereafter granted access to the materials and information identified in Paragraphs 2 and 3 of this Protective Order shall use and disclose such information only in accordance with this Order.

2. The information subject to this Protective Order is all correspondence, documents, data, information, studies, methodologies and other materials, furnished in discovery in this proceeding, as well as written and oral testimony, exhibits, examination and cross-examination questions, motions, briefs, oral argument, and other writings submitted by the parties to this proceeding, which are believed by the producing party to be of a proprietary or confidential nature

and which are so designated by being stamped “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL.” Such materials will be referred to below as “Proprietary Information.” When a statement or exhibit is identified for the record, the portions thereof that constitute Proprietary Information shall be designated as such for the record.

3. This Protective Order applies to the following categories of materials: (A) the Parties may designate as “CONFIDENTIAL” those materials which customarily are treated by that party as sensitive or proprietary, which are not available to the public, and which, if disclosed freely, would subject that party or its clients to risk of competitive disadvantage or other business injury; (B) the parties may designate as “HIGHLY CONFIDENTIAL” those materials that are of such a commercially sensitive nature among the parties or of such a private, personal nature that the producing party is able to justify a heightened level of confidential protection with respect to those materials. For example, but without limitation, “HIGHLY CONFIDENTIAL” information may include Proprietary Information that constitutes or describes: (a) customer names or customer prospects’ names, addresses, annual volumes of gas usage, or other customer-identifying information; (b) marketing plans; (c) competitive strategies or service alternatives; (d) market share projections; (e) competitive pricing or discounting information; and (f) marketing materials that have not yet been used. The parties shall endeavor to limit their designation of information as HIGHLY CONFIDENTIAL.

4. Proprietary Information shall be made available to counsel for a party who has entered an appearance in this proceeding and does not have responsibilities constituting a Restricted Person, subject to the terms of this Protective Order. Such counsel shall use or disclose the Proprietary Information only for purposes of preparing or presenting evidence, cross examination or argument in this proceeding. To the extent required for participation in this proceeding, counsel for a party may afford access to Proprietary Information subject to the conditions set forth in this Protective Order.

5. Information deemed as “CONFIDENTIAL”, shall be made available to a “Reviewing Representative” who is a person who has signed a Non-Disclosure Certificate and who is:

- (i) an attorney for one of the parties to this proceeding who has entered an appearance in this proceeding;
- (ii) an attorney, paralegal, or other employee associated for purposes of this proceeding with an attorney described in subparagraph 5(i);
- (iii) an expert or an employee of an expert retained by a Party to this Stipulated Protective Agreement for the purpose of advising, preparing for or testifying in this proceeding;
- (iv) an employee or other representative of a party with significant responsibility in this proceeding; or
- (v) a person mutually agreed to by the parties

6. Information deemed as “HIGHLY CONFIDENTIAL”, may be provided to a “Reviewing Representative” who has signed a Non-Disclosure Certificate and who is:

- (i) an attorney for one of the parties to this proceeding who has entered an appearance in this proceeding;
- (ii) an attorney, paralegal, or other employee associated for purposes of this proceeding with an attorney described in subparagraph 6(i);
- (iii) an expert or an employee of an expert retained by a party to this proceeding for the purpose of advising, preparing for or testifying in this proceeding; or
- (iv) a person mutually agreed to by the parties

Provided, further, that in accordance with the provisions of Sections 5.362 and 5.365(e) of the Commission’s Rules of Practice and Procedure, 52 Pa. Code §§ 5.362, 5.365(e), any party may, by subsequent objection or motion, seek further protection with respect to HIGHLY CONFIDENTIAL material, including, but not limited to, total prohibition of disclosure or limitation of disclosure only to particular parties.

7. For purposes of this Protective Order, a Reviewing Representative may not be a “Restricted Person.”

(a) A “Restricted Person” shall mean: (i) an officer, director, stockholder, partner, or owner of any competitor of the parties or an employee of such an entity if the employee’s duties involve marketing or pricing of the competitor’s products or services; (ii) an officer, director, stockholder, partner, or owner of any affiliate of a competitor of the parties (including any association of competitors of the parties) or an employee of such an entity if the employee’s duties involve marketing or pricing of the competitor’s products or services; (iii) an officer, director, stockholder, owner or employee of a competitor of a customer of the parties if the Proprietary Information concerns a specific, identifiable customer of the parties; and (iv) an officer, director, stockholder, owner or employee of an affiliate of a competitor of a customer of the parties if the Proprietary Information concerns a specific, identifiable customer of the parties; provided, however, that no expert shall be disqualified on account of being a stockholder, partner, or owner unless that expert’s interest in the business would provide a significant motive for violation of the limitations of permissible use of the Proprietary Information. For purposes of this Protective Order, stocks, partnership or other ownership interests valued at more than \$10,000 or constituting more than a 1% interest in a business establishes a significant motive for violation.

(b) If an expert for a party, another member of the expert’s firm or the expert’s firm generally also serves as an expert for, or as a consultant or advisor to, a Restricted Person, said expert must: (i) identify for the parties each Restricted Person and each expert or consultant; (ii) make reasonable attempts to segregate those personnel assisting in the expert’s participation in this proceeding from those personnel working on behalf of a Restricted Person; and (iii) if segregation of such personnel is impractical the expert shall give to the producing party written assurances that the lack of segregation will in no way jeopardize the interests of the parties or their customers. The parties

retain the right to challenge the adequacy of the written assurances that the parties' or their customers' interests will not be jeopardized. No other persons may have access to the Proprietary Information except as authorized by order of the Commission.

(c) The Office of Small Business Advocate's ("OSBA") consultant, Mr. Robert D. Knecht, will not be considered to be a "Restricted Person" and Paragraphs 7(a) and 7(b) will not apply to Mr. Knecht, provided that Mr. Knecht does not share, distribute, or discuss the Proprietary Information with any person except authorized OSBA representatives.

8. A qualified "Reviewing Representative" for "HIGHLY CONFIDENTIAL" material may review and discuss "HIGHLY CONFIDENTIAL" material with their client or with the entity with which they are employed or associated, to the extent that the client or entity is not a "Restricted Person", but may not share with or permit the client or entity to review the "HIGHLY CONFIDENTIAL," material provided however that counsel for I&E, the Office of Consumer Advocate, and Office of Small Business Advocate may share Proprietary Information with the I&E Director, Consumer Advocate, and Small Business Advocate, respectively, without obtaining a Non-Disclosure Certificate from these individuals, provided however, that these individuals otherwise abide by the terms of the Stipulated Protective Agreement.

9. Proprietary Information shall be treated by the parties and by the Reviewing Representative in accordance with the certificate executed pursuant to Paragraph 11(a). Information deemed Proprietary Information shall not be used except as necessary for the conduct of this proceeding, nor shall it be disclosed in any manner to any person except a Reviewing Representative who is engaged in the conduct of this proceeding and who needs to know the information in order to carry out that person's responsibilities in this proceeding.

10. Reviewing Representatives may not use information contained in any Proprietary Information obtained through this proceeding to give any party or any competitor of any party a

commercial advantage. In the event that a Party wishes to designate as a Reviewing Representative a person not described in Paragraphs 5(i) through 5(iv) or 6(i) through 6(iii) above, the party shall seek agreement from the party providing the Proprietary Information. If an agreement is reached, that person shall be a Reviewing Representative pursuant to Paragraph 5(v) or 6(iv) above with respect to those materials. If no agreement is reached, the party shall submit the disputed designation to the presiding Administrative Law Judge for resolution.

11. (a) A Reviewing Representative shall not be permitted to inspect, participate in discussions regarding, or otherwise be permitted access to Proprietary Information pursuant to this Protective Order unless that Reviewing Representative has first executed a Non-Disclosure Certificate provided that if an attorney qualified as a Reviewing Representative has executed such a certificate, the paralegals, secretarial and clerical personnel under the attorney's instruction, supervision or control need not do so. A copy of each Non-Disclosure Certificate shall be provided to counsel for the party asserting confidentiality prior to disclosure of any Proprietary Information to that Reviewing Representative.

(b) Attorneys and outside experts qualified as Reviewing Representatives are responsible for ensuring that persons under their supervision or control comply with the Protective Order.

12. None of the parties waive their right to pursue any other legal or equitable remedies that may be available in the event of actual or anticipated disclosure of Proprietary Information.

13. The parties shall designate data or documents as constituting or containing Proprietary Information by stamping the documents "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL." Where only part of data compilations or multi-page documents constitutes or contains Proprietary Information, the parties, insofar as reasonably practicable within discovery and other time constraints imposed in this proceeding, shall designate only the specific data or pages of documents which

constitute or contain Proprietary Information. The Proprietary Information shall be made available for review in a manner mutually acceptable by counsel of record, and shall be conspicuously marked “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL.”

14. The party will consider and treat the Proprietary Information as within the exemptions from disclosure provided in Section 335(d) of the Public Utility Code, 66 Pa.C.S. § 335(d), and the Pennsylvania Right-to-Know Act, Act of February 14, 2008, P.L. 6, 65 P.S. §§ 67.101 *et seq.*, until such time as the information is found to be non-proprietary.

15. Any public reference to Proprietary Information by a party or its Reviewing Representatives shall be to the title or exhibit reference in sufficient detail to permit persons with access to the Proprietary Information to understand fully the reference and not more. The Proprietary Information shall remain a part of the record, to the extent admitted, for all purposes of administrative or judicial review.

16. Part of any record of this proceeding containing Proprietary Information, including but not limited to all exhibits, writings, testimony, cross examination, argument, and responses to discovery, and including reference thereto as mentioned in Paragraph 15 above, shall be sealed for all purposes, including administrative and judicial review, unless such Proprietary Information is released from the restrictions of this Protective Order, either through the agreement of the parties to this proceeding or pursuant to an order of the Commission.

17. The parties shall retain the right to question or challenge the confidential or proprietary nature of Proprietary Information and to question or challenge the admissibility of Proprietary Information. If a party challenges the designation of a document or information as proprietary, the party providing the information retains the burden of demonstrating that the designation is appropriate.

18. The parties shall retain the right to question or challenge the admissibility of Proprietary Information; to object to the production of Proprietary Information on any proper ground; and to refuse to produce Proprietary Information pending the adjudication of the objection.

19. Within 30 days after a Commission final order is entered in the above-captioned proceeding, or in the event of appeals, within thirty days after appeals are finally decided, the party, upon request, shall either destroy or return to the parties all copies of all documents and other materials not entered into the record, including notes, which contain any Proprietary Information. In the event that the party elects to destroy all copies of documents and other materials containing Proprietary Information instead of returning the copies of documents and other materials containing Proprietary Information to the parties, the party shall certify in writing to the other Party that the Proprietary Information has been destroyed.

Dated: _____

Administrative Law Judge
Mark A. Hoyer

APPENDIX A

Pennsylvania Public Utility Commission	:	Docket No.	R-2021-3024296
Office of Consumer Advocate	:		C-2021-3025078
Office of Small Business Advocate	:		C-2021-
Columbia Industrial Intervenors	:		C-2021-3025600
Pennsylvania State University	:		C-2021-3025775
Richard C. Culbertson	:		C-2021-3026054
Ronald Lamb	:		C-2021-3027217
	:		

v.

Columbia Gas of Pennsylvania, Inc.

TO WHOM IT MAY CONCERN:

The undersigned is the _____ of _____ (the retaining party).

The undersigned has read and understands the Protective Order deals with the treatment of Proprietary Information. The undersigned agrees to be bound by and comply with the terms and conditions of said Protective Order.

Indicate by checking the appropriate box(es) what type of Propriety Information the undersigned may review pursuant to the Protective Order.

CONFIDENTIAL ☐

HIGHLY CONFIDENTIAL ☐

SIGNATURE

PRINT NAME

ADDRESS

EMPLOYER

DATE: _____