*Via electronic service only due to Emergency Order at M-2020-3019262*

**BEFORE THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission, et al. : R-2021-3024296

:

:

v. :

:

Columbia Gas of Pennsylvania, Inc. :

**EIGHTH INTERIM ORDER**

**ADDRESSING COMPLAINANT RICHARD C. CULBERTSON’S FIFTH MOTION**

**TO COMPEL DISCOVERY**

HISTORY OF THE PROCEEDING

On March 30, 2021, Columbia Gas of Pennsylvania, Inc. (Columbia) filed with the Pennsylvania Public Utility Commission (Commission) Supplement No. 325 to its Tariff Gas – Pa. P.U.C. No. 9. 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 (FPFTY) ending December 31, 2022.

On May 6, 2021, the Commission issued an Order suspending Columbia’s Supplement No. 325 by operation of law until December 29, 2021.

On July 15, 2021, Complainant Richard C. Culbertson served his Set I, Interrogatories 1-35 on the Commission’s Bureau of Investigation and Enforcement (I&E). The interrogatories were directed to Erica L. McClain counsel for I&E. On July 20, 2021, I&E served objections to Set I, Interrogatories 1-35. On July 26, 2021, Mr. Culbertson served I&E with a Motion to Compel responses to his Set I, Interrogatories 1-35. [[1]](#footnote-1) On July 26, 2021, I&E filed its answer to this motion to compel.

In accordance with the Prehearing Order issued by the undersigned on May 21, 2021, motions to compel are due within three days of service of written objections. Thus, any motion to compel the Set I responses was due on July 23, 2021.

DISCUSSION

Section 5.321(c) of the Commission’s Rules of Administrative Practice and Procedure, 52 Pa.Code § 5.321(c), specifically provides that “a party may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action.” Discovery is permitted regardless of whether the information sought “relates to the claim or defense of the party seeking discovery or to the claim or defense of another party or participant.” *Id*. Information may be discoverable, even if it would be inadmissible at a hearing. “It is not ground for objection that the information sought will be inadmissible at hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.” *Id*. Consistently, the Commission has allowed participants wide latitude in discovery matters. *Pa. P.U.C. v. The Peoples Natural Gas Company*, 62 Pa. PUC 56 (August 26, 1986); and *Pa. P.U.C. v. Equitable Gas Company*, 61 Pa. PUC 468 (May 16, 1986).

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. 52 Pa.Code § 5.361(a)(2), (4). “The law is [ ] clear that the Commission has the right to limit discovery that would place an unreasonable burden upon a participant in litigation*.*” *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); Answer of Columbia to Motion to Compel, p. 2.

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 I&E to entertain an untimely motion to compel served 6 business days prior to the scheduled hearings. The intensity of preparation and time required to prepare the week prior to a base rate proceeding of this nature increases. Counsel for I&E must confer with I&E’s proposed witnesses, participate in settlement conferences and other conferences, prepare to examine I&E’s witnesses and to cross-examine witnesses that may be presented by other parties in this proceeding. Additionally, the parties must comply with orders and directives issued by the undersigned for the purpose of presiding over the hearings. The discovery rules modifications must be applied equally and fairly to all parties in this proceeding.

I&E’s objection is sustained and Mr. Culbertson’s motion to compel answers to Richard C. Culbertson Set I., Interrogatories 1-35 directed to I&E is denied because it is untimely.

THEREFORE,

IT IS ORDERED:

1. That the Motion to Compel answers by the Commission’s Bureau of Investigation and Enforcement to Set I., Interrogatories 1-35, filed by Richard C. Culbertson on Saturday, July 24, 2021, and served on the Commission’s Bureau of Investigation and Enforcement on July 26, 2021, is denied in its entirety because it was untimely filed.

Date: July 29, 2021 /s/

Mark A. Hoyer

Deputy Chief Administrative Law Judge

**R-2021-3024296 - PA PUBLIC UTILITY COMMISSION v. COLUMBIA GAS OF PENNSYLVANIA INC**7/14/21

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1. On Saturday, July 24, 2021, Mr. Culbertson untimely filed this Motion to Compel. Pursuant to the discovery modifications included in the Prehearing Order issued on May 21, 2021, discovery-related pleadings served after 12:00 p.m. on a Friday are deemed served on the next business day. The next business day after July 24, 2021, was Monday, July 26, 2021. [↑](#footnote-ref-1)