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File #: 182466

August 3, 2021

VIA ELECTRONIC FILING

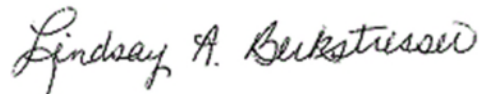
Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor North
P.O. Box 3265
Harrisburg, PA 17105-3265

**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 to Strike 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).

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Date: August 3, 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 TO STRIKE
OF
COLUMBIA GAS OF PENNSYLVANIA**

TO DEPUTY CHIEF ADMINISTRATIVE LAW JUDGE MARK A. HOYER:

Columbia Gas of Pennsylvania, Inc. (“Columbia”), by and through its attorneys, hereby files this Motion to Strike, pursuant to 52 Pa. Code §§ 5.103 and 5.412, and requests that Culbertson Exhibits A through M be stricken because they are untimely and irrelevant.¹ In support thereof, Columbia states as follows:

1. On May 21, 2021, Deputy Chief Administrative Law Judge Mark A. Hoyer (the “ALJ”) issued a Procedural Order establishing a procedural schedule with deadlines for submitting

¹ Columbia notes that it received Culbertson Exhibits A through M today, August 3, 2021, the day before the scheduled hearing in this case, and as such, Columbia has not had an opportunity to review Culbertson Exhibit A through M for other possible objections. Columbia reserves its right to object to Culbertson Exhibits A through M on other grounds in addition to untimeliness.

testimony and exhibits in this proceeding. The Procedural Order set forth the following procedural schedule:

Date	Event
June 14, 2021 at 1:00 p.m. and 6:00 p.m.	Telephonic Public Input Hearings
June 16, 2021 at 1:00 p.m. and 6:00 p.m.	Telephonic Public Input Hearings
June 16, 2021	Service of Other Parties' Written Direct Testimony
July 14, 2021	Service of Written Rebuttal Testimony
July 27, 2021	Service of Written Surrebuttal Testimony
July 30, 2021	Service of Rejoinder Outline
August 3-5, 2021 at 10:00 a.m. each day	Telephonic Evidentiary Hearings*
August 25, 2021	Filing and Service of Main Briefs
September 7, 2021	Filing and Service of Reply Briefs

*The first day of hearings was subsequently canceled.

2. Mr. Culbertson submitted direct testimony on June 16, 2021, and surrebuttal testimony on July 22, 2021.

3. On August 3, 2021, the day before the scheduled evidentiary hearing in this case, Mr. Culbertson sent an email to counsel indicating that he intends to present thirteen Exhibits, labeled Exhibits A through M. None of these Exhibits were previously presented in Mr. Culbertson's direct or surrebuttal testimonies.

4. Culbertson Exhibits A through M should be stricken because they are untimely and do not comply with the procedural schedule set forth in the ALJ's Procedural Order. Culbertson Exhibits A through M also violate Section 5.243(e) of the Commission's regulations. Section 5.243(e) of the Commission's regulations expressly prohibits a party from "introduce[ing] evidence during a rebuttal phase which . . . should have been included in the party's case-in-chief."

52 Pa. Code § 5.243(e)(2). Pursuant to Section 5.243(e) of the Commission’s regulations, Mr. Culbertson should be prohibited from presenting any evidence at the hearing that should have been included in Mr. Culbertson’s written testimony.

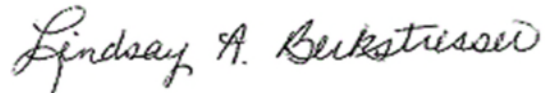
5. Allowing Mr. Culbertson to present evidence for the first time at the hearing that should have been included in his direct case would violate Columbia’s due process rights because Columbia will not have an adequate opportunity to respond. Due process requires that a party be afforded a fair opportunity to respond to adverse claims. *See In re Shenandoah Suburban Bus Lines, Inc.*, 46 A.2d 26, 29 (Pa. Super. Ct. 1946) (parties must be given an opportunity to offer evidence in explanation or rebuttal); *Pa. PUC, et al. v. UGI Utilities*, Docket No. R-00932862, 1994 Pa. PUC LEXIS 138, *82-83 (May 23, 1994) (“The allowance of new claims late in a case raises significant due process concerns. Such concerns arise from the lack of adequate time to . . . respond adequately to adverse positions.”); *Pa. PUC v. Duquesne Light Co.*, 59 Pa. PUC 67 (January 25, 1985) (disallowing the untimely introduction of exhibits); *Pa. PUC v. Pennsylvania-American Water Company*, 1989 Pa. PUC LEXIS 170, *167-169, 71 Pa. PUC 210 (October 27, 1989) (“late filed updates deny opposing parties an opportunity . . . to respond with countering evidence or testimony”).

6. In addition, the ALJ has previously ruled that several of these documents concern matters that are not relevant to this proceeding. *See* First Interim Order entered on June 25, 2021 (granting in part and denying in part Motion to Compel); Second Interim order entered on June 30, 2021 (denying Motion to Compel). In the First and Second Interim Orders, the ALJ agreed with Columbia that the proper scope of this proceeding is information that relates to Columbia’s rates and service and that information that does not pertain to Columbia’s rates and service is irrelevant.

7. Accordingly, Columbia respectfully requests that Culbertson Exhibits A through M be stricken as untimely and irrelevant and not considered as evidence in this proceeding.

WHEREFORE, Columbia Gas of Pennsylvania, Inc. respectfully requests that Deputy Chief Administrative Law Judge Mark A. Hoyer strike Culbertson Exhibits A through M.

Respectfully submitted,



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Date: August 3, 2021